

DIRECTOR OF THE DEPARTMENT OF LABOR & INDUSTRIES
STATE OF WASHINGTON

In re: GRAYSON MORGAN,

Appellant.

Determination of Compliance No.
DOC-151-21

OAH Docket No. 09-2021-LI-01714

No. 2022-021-WPA

DIRECTOR'S ORDER

RCW 49.48.084(4); RCW 34.05

Joel Sacks, Director of the Washington State Department of Labor & Industries, having considered the Initial Order, the Petition for Review filed by the Department of Labor and Industries (Department) with the Director's Office, the briefing submitted to the Director's office by the parties, and the record developed at the Office of Administrative Hearings, issues this Director's Order.

The Director makes these Findings of Fact, Conclusions of Law, and Final Decision and Order.

I. FINDINGS OF FACT

1. The Office of Administrative Hearings issued an Initial Order on June 24, 2002. The Appellant timely sought administrative review.

DIRECTOR'S ORDER
NO. 2022-021-WPA

RCW 49.48.084(4); RCW 34.05

1

OFFICE OF THE DIRECTOR
DEPARTMENT OF LABOR & INDUSTRIES
P.O. BOX 44001
OLYMPIA, WA 98504-4001

2. The Director adopts and incorporates by reference Findings of Facts No. 4.1 to 4.22 of the Initial Order dated June 24, 2022.

II. CONCLUSIONS OF LAW

1. The Director has the jurisdiction to consider this matter.
2. The Director adopts and incorporates by reference Conclusions of Law Nos. 5.2 to 5.26 of the Initial Order dated June 24, 2022.
3. The Appellant requests a stay and a hearing about the Department of Labor & Industries' brief. No such hearing is authorized under the Administrative Procedure Act and in any event, it is not warranted.

III. DECISION AND ORDER

1. The Determination of Compliance dated June 24, 2021 is AFFIRMED



JOEL SACKS
Director

SERVICE

This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19).

APPEAL RIGHTS

Reconsideration. Any party may file a petition for reconsideration. RCW 34.05.470. Any petition for reconsideration must be filed within 10 days of service of this Order and must state the specific grounds on which relief is requested. No matter will be reconsidered unless it clearly appears from the petition for reconsideration that (a) there is material clerical error in the order or (b) there is specific material error of fact or law. A petition for reconsideration, together with any argument in support thereof, should be filed by emailing to DirectorAppeal@LNI.WA.GOV, or by mailing or delivering it directly to Joel Sacks, Director of the Department of Labor and Industries, P. O. Box 44001 Olympia, Washington 98504-4001, with a copy to all other parties of record and their representatives. Filing means actual receipt of the document at the Director's Office. RCW 34.05.010(6).

NOTE: A petition for reconsideration is not required before seeking judicial review. If a petition for reconsideration is filed, however, the 30-day period will begin to run upon the resolution of that petition. A timely filed petition for reconsideration is deemed to be denied if, within twenty (20) days from the date the petition is filed, the Director does not (a) dispose of the petition or (b) serve the parties with a written notice specifying the date by which it will act on the petition. RCW 34.05.470(3).

Judicial Review. Any petition for judicial review must be filed with the appropriate court and served within 30 days after service of this Order. RCW 34.05.542. RCW 49.48.084(5) provides, "Orders that are not appealed within the time period specified in this section and Chapter 34.05 RCW are final and binding, and not subject to further appeal." Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement.

DECLARATION OF MAILING

I, Lisa Deck, declare under penalty of perjury under the laws of the State of Washington that the DIRECTOR'S ORDER was mailed via e-mail on the 22 day of November 2022 to the following:

Captain Grayson Morgan, PhD
1328 Double Gate Rd
Davidsonville, MD 21035
gbmorgan@hotmail.com

McFerran Law, P.S.
c/o Edward McFerran
PO Box 110426
Tacoma, WA 98411
ed@mcFerranlaw.com

Elizabeth A. Fischer
Office of the Attorney General
Labor and Industries Division
PO Box 40121
Olympia, WA 98504
Elizabeth.Fischer@atg.wa.gov
lniolyeservice@atg.wa.gov

DATED this 22 day of November 2022, at Tumwater, Washington.



LISA DECK

NOV 23 2022

WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS

LABOR & INDUSTRIES DIVISION
OLYMPIA • WASHINGTON

In the matter of:

Grayson Morgan,

Appellant/Wage Claimant.

Docket No. 09-2021-LI-01714

INITIAL ORDER

Agency: Labor and Industries

Program: Wage Payments

Agency No. 151-21

1. ISSUES

1.1. Did an employer-employee relationship exist between McFerran Law, P.S. and Grayson Morgan?

1.2. Was Grayson Morgan a Washington State employee?

1.3. Did McFerran Law, P.S. violate Chapter 49.46 RCW by failing to pay minimum wages to Grayson Morgan during the period of December 2017 through November 2019, as addressed in Determination of Compliance No. 151-21 dated June 24, 2021?

1.3.1. If so, what is the total amount of unpaid wages?

1.3.2. If so, what is the appropriate amount of interest?

1.3.3. If so, what is the appropriate penalty?

2. ORDER SUMMARY

2.1. No. An employer-employee relationship did not exist between McFerran Law, P.S. and Grayson Morgan.

2.2. No. Grayson Morgan was not a Washington-based employee.

2.3. No. Because there was no employer-employee relationship between McFerran Law, P.S. and Grayson Morgan, and because Grayson Morgan was not a Washington-based employee, Washington's minimum wage requirements do not apply to that relationship.

2.3.1. No violation occurred. Therefore, McFerran Law, P.S. owes no wages, interest, or penalty.

3. HEARING

3.1. Hearing Date: April 25-28, 2022

3.2. Administrative Law Judge: Joni Derifield

3.3. Appellant: Grayson Morgan ("Appellant")

3.3.1. Representative: Grayson Morgan appeared pro se.

3.3.2. Witnesses:

3.3.2.1. Grayson Morgan, Appellant

3.3.2.2. Joshua Grice, former Employment Standards Program Manager for the Washington State Department of Labor and Industries

3.4. Agency: Labor and Industries ("Department")

3.4.1. Representative: Lisa Roth, Assistant Attorney General

3.4.2. Witnesses:

3.4.2.1. Jean Bouffard, Attorney at McFerran Law, P.S.

3.4.2.2. Antonia Joseph, Industrial Relations Agent for the Department

3.4.2.3. Russell Hauss, Compliance Specialist Supervisor for the Department

3.4.2.4. Sheree Tonioli, Office Manager for McFerran Law, P.S.

3.4.2.5. Grayson Morgan, Appellant

3.5. Exhibits:

3.5.1. The Department's Exhibits 1 through 17 were admitted.

3.5.2. The Appellant's Exhibits A through Z were admitted.

4. FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

Jurisdiction

4.1. On June 24, 2021, the Department issued Determination of Compliance No. 151-21 in this matter. Ex. 1, pgs. 1-3.

4.2. On July 2, 2021, the Appellant timely appealed the Determination of Compliance. *Id.* at 7.

McFerran Law, P.S. and Grayson Morgan

4.3. The alleged employer, McFerran Law, P.S. ("McFerran Law"), is a law firm located in Tacoma, Washington. Ex. 3, pgs. 1, 5, 7.

4.4. The Appellant, Grayson Morgan, resides in Davidsonville, Maryland, where he has lived since 2015. *Morgan Testimony*. He owns his home in Maryland. *Id.* His vehicle is registered in Maryland. *Id.* He does not own any real estate in Washington. *Id.* However, the Appellant is registered to vote in Washington, and files his taxes as a Washington resident, because military service members may choose their state of residency. *Id.*

4.5. The Appellant worked full time as an engineer during the relevant period, in addition to serving as an officer in the United States Navy Reserve. *Id.* He has no training as a paralegal. *Id.*

Gavin Morgan's Foreclosure

4.6. This case relates to a residential mortgage foreclosure action involving the Appellant's brother, Joseph Gavin Morgan ("Gavin Morgan"). *Bouffard Testimony.*

4.7. The Appellant provided assistance to Gavin Morgan for approximately one year prior to the filing of the foreclosure lawsuit, attempting to resolve the financing and construction problems associated with his rehabilitation loan. Ex. 13, pg. 2; *Bouffard Testimony; Morgan Testimony.* He drafted emails for his brother to send to others when the renovation started to falter, and when his brother needed assistance with enforcement actions. *Morgan Testimony.* He "ghost wrote" correspondence for his brother to use. Ex. 4, pg. 38; Ex. 5, pg. 91; *Bouffard Testimony.* The Appellant gathered documents and conducted extensive review, analysis, and organization of thousands of documents during this time. Ex. 15, pg. 2, 5; *Morgan Testimony.* He recommended that Gavin Morgan file complaints with a number of government oversight agencies, and assisted with that process. Ex. 4, pg. 38; *Morgan Testimony; Bouffard Testimony.* He determined which agencies had oversight, drafted the complaints to those, and reviewed the responses. *Id.*

4.8. Furthermore, after Gavin Morgan retained legal counsel, the Appellant assisted him in filing pro se damage complaints against two individuals involved in the case. *Id.*

4.9. On November 24, 2017, Gavin Morgan retained Jean Bouffard, an attorney with McFerran Law, to represent him in the foreclosure action. Ex. 5, pgs. 26, 29-31. Although Gavin Morgan retained the law firm and he was Ms. Bouffard's client, the Appellant paid at least \$145,811.00 in legal fees for the case—80 percent or more of the cost of the representation. Ex. 4, pgs. 78, 122; Ex. 5, pgs. 27, 93-98; Ex. 10, pg. 15; *Tonioli Testimony; Morgan Testimony.* Gavin Morgan and the Appellant tried to keep the legal fees down by doing as much work themselves as possible. Ex. 5, pg. 75; Ex. G, pg. 3; *Joseph Testimony; Hauss Testimony.*

4.10. Gavin Morgan asked Ms. Bouffard to rely on his brother, the Appellant, to provide information for the case that Gavin Morgan was unable to provide. Ex. 5, pgs. 84, 86; Ex. 13, pg. 2; *Bouffard Testimony.* Gavin Morgan "did not have the time or the emotional resources to gather and analyze records." Ex. 15, pgs. 2, 8. Early in the representation, Ms. Bouffard would ask Gavin Morgan a question, Gavin would email the Appellant, and then Gavin would forward the Appellant's answer to Ms. Bouffard. *Bouffard Testimony.* Eventually, to make communications more efficient, Ms. Bouffard began to communicate directly with

the Appellant via email and telephone. *Id.* The Appellant was the source of virtually all information a client typically provides his attorney. *Id.*

- 4.11. The Appellant provided support to Ms. Bouffard during her representation of Gavin Morgan. *Morgan Testimony*. He provided most of the documents used in the case, including documents disclosed to the opposing party during discovery. *Id.* The Appellant noted in a declaration that he “maintain[s] a database of thousands of records related to this litigation in order to assist my brother’s counsel . . . Gavin and his Counsel rely on my recollections and my record keeping to support their strategic work in this litigation . . . I am dedicated to helping my brother with his lawsuit.” Ex. 14, pg. 2. As he did prior to the lawsuit, the Appellant continued to gather, organize, and analyze documents while Ms. Bouffard represented Gavin Morgan. Ex. Q, pg. 1; Ex. 5, pg. 75; Ex. 15, pg. 5; *Morgan Testimony*.
- 4.12. In addition, the Appellant offered to generate a first draft of discovery requests, which Ms. Bouffard permitted. Ex. 12, pgs. 1-3, 21-22; *Bouffard Testimony*. Ms. Bouffard did not assign him this task; the Appellant offered to do so. Ex. 12, pgs. 1-3, 21-22. He assisted in drafting motions, in that Ms. Bouffard would call him with questions or ask him to complete missing information. *Morgan Testimony*. He drafted the estimate of damages for the case. Ex. 11, pgs. 1-2; *Morgan Testimony*. The Appellant created event timelines, researched Washington statutes and case law, researched locations of witnesses for serving subpoenas, and prepared organizational charts. Ex. 15, pg. 5. Ms. Bouffard did not require him to do any of these tasks, however. See, e.g., Ex. 12, pg. 3.
- 4.13. The Appellant performed the vast majority of the tasks from his home and other locations within the State of Maryland. Ex. 4, pgs. 130, 305-324; *Morgan Testimony*. He flew from Maryland to attend depositions in Washington and California, and assisted in question development and evidence for those depositions. Ex. 15, pg. 5; *Morgan Testimony*; *Bouffard Testimony*. Ms. Bouffard typically communicated with the Appellant from her office in Washington, although she also attended depositions in California. *Bouffard Testimony*.
- 4.14. During one deposition, Ms. Bouffard asserted that the Appellant was her “paralegal for purposes of this case.” Ex. I, pg. 7. She did so to stave off opposing counsel’s objection to his presence at the deposition. *Id.*; *Bouffard Testimony*.
- 4.15. Similarly, during the course of the litigation, a discovery dispute ensued in which an opposing party sought to compel production of email communications between Gavin Morgan, Ms. Bouffard, and the Appellant. Ex. 4, pgs. 26-27; Ex. 13; Ex. 14; Ex. 15; *Bouffard Testimony*. In an attempt to avoid disclosure of those emails, Ms. Bouffard raised attorney-client privilege and work product objections. Ex. 4, pgs. 26-27; Ex. 15, pg. 17; Ex. H, pg. 1. In support of Gavin Morgan’s

Opposition to Motion to Compel, Ms. Bouffard argued that the Appellant's role in the litigation is that of a "volunteer paralegal." Ex. G, pg. 3; Ex. H, pg. 1; Ex. 15, pg. 5; *Bouffard Testimony*. The Appellant understood, however, that Ms. Bouffard's characterization was strategic. Ex. 2, pg. 1; Ex. H, pg. 1; *Morgan Testimony*.

- 4.16. Ultimately, the judge disagreed with Ms. Bouffard's characterization. Ex. 15, pgs. 16-18. She granted the Motion to Compel and ordered Gavin Morgan and the Appellant to produce the requested emails. *Id.* Nevertheless, the Appellant continued to provide assistance to Ms. Bouffard on his brother's case.
- 4.17. Ms. Bouffard even represented the Appellant for a period in 2019, in relation to the discovery dispute, and at his deposition. Ex. 16, pgs. 8-10; *Morgan Testimony*; *Bouffard Testimony*.
- 4.18. McFerran Law did not track the Appellant's hours, nor did it bill Gavin Morgan for the Appellant's work on his behalf. Ex. 4, pgs. 94-128, 133, 144; *Bouffard Testimony*; *Morgan Testimony*. In fact, the work he performed reduced McFerran Law's bills—the bulk of which the Appellant himself paid—since Ms. Bouffard's paralegal did not have to perform that work. Ex. G, pg. 3; *Bouffard Testimony*; *Joseph Testimony*.
- 4.19. The Appellant did not work on the cases of McFerran Law's other clients, and the firm did not bill any other client for his work. *Morgan Testimony*; *Bouffard Testimony*; *Joseph Testimony*. He did not have a McFerran Law email address or business cards. *Id.* He typically used his own computer and phone for the tasks. Ex. 4, pg. 144. McFerran Law did not give him performance evaluations or supervision. *Morgan Testimony*.
- 4.20. McFerran Law and the Appellant did not have an agreement to pay the Appellant compensation for the assistance he provided. *Morgan Testimony*; *Bouffard Testimony*; *Joseph Testimony*. The parties never discussed compensation, and in the nearly two years the Appellant assisted with Gavin Morgan's representation, McFerran Law never paid the Appellant any money. *Id.* The Appellant did not ask McFerran Law for the compensation he now claims he is owed. Ex. 4, pg. 4; *Morgan Testimony*.
- 4.21. From the Appellant's perspective, the purpose of his assistance with his brother's case was to help Ms. Bouffard succeed in representing his brother. *Morgan Testimony*; Ex. 5, pgs. 77, 81; *see also Bouffard Testimony*. His goal was to promote the success of that legal matter. *Morgan Testimony*. Whatever Ms. Bouffard needed, the Appellant made himself available to assist with those tasks. *Id.*

- 4.22. Ms. Bouffard ceased representing Gavin Morgan in late 2019. *Bouffard Testimony*. Gavin Morgan eventually lost his house to foreclosure in May of 2020. *Morgan Testimony*.
- 4.23. Following Ms. Bouffard's withdrawal, the Appellant continued to provide assistance to Gavin Morgan. He assisted his brother in sending letters to elected officials requesting their assistance with agencies that were non-responsive to his complaints. *Id.* Additionally, he helped him file complaints with the Washington State Bar Association against the lawyers who executed the foreclosure, and against Ms. Bouffard and other lawyers at McFerran Law. *Morgan Testimony*.

Wage Complaint

- 4.24. On November 1, 2020, the Appellant filed a worker rights complaint with the Department. Ex. 4, pgs. 2-4. The Appellant alleged in his complaint that McFerran Law owed him \$10,790.00 in wages for 830 hours of work. *Id.* at 3.
- 4.25. The number of unpaid hours the Appellant claims he is owed changed a number of times following the filing of his claim. On November 11, 2020, he claimed he was owed for 870 hours. Ex. 4, pgs. 140-141. On November 20, 2020, he increased his estimate to 3,600 hours—equivalent to 90 weeks at 40 hours per week—despite his full time employment with another employer. Ex. 4, pg. 143. When a Department representative inquired about whether he worked eight hours per day in addition to his full time job, the Appellant once again adjusted his estimate of hours. Ex. 4, pgs. 145-147. On April 24, 2021, he asserted that McFerran Law owed him for 1,077 hours of work. Ex. 4, pgs. 304, 324. This is the Appellant's final estimate of the hours for which he believes McFerran Law owes him wages. *Id.*; *Morgan Testimony*.
- 4.26. The Department assigned Antonia Joseph, Industrial Relations Agent, to investigate the Appellant's complaint. *Joseph Testimony*. After discussing the case with the Appellant and McFerran Law, and gathering documentation from both parties, Ms. Joseph determined that the Appellant was not a Washington-based employee and therefore the Department had no jurisdiction to address his dispute. *Id.*; Ex. 4, pgs. 164-165. After seeking input from her supervisor, Russell Hauss, and a technical specialist for the Department, she issued a formal determination to this effect on December 8, 2020. Ex. 4, pgs. 164-165, 189; *Joseph Testimony*. Ms. Joseph did not reach the issue of whether there was an employer-employee relationship between the parties. *Joseph Testimony*.
- 4.27. On January 20, 2021, the Appellant filed a complaint with the Department regarding Ms. Joseph's handling of his case. Ex. 4, pg. 192. Ms. Joseph's supervisor, Mr. Hauss, again became involved in this case. Ex. 4, pgs. 189-191; *Joseph Testimony*.

- 4.28. On March 12, 2021, the Department reopened the case due to a change in policy. *Joseph Testimony; Hauss Testimony*; Ex. 4, pg. 195.¹
- 4.29. On May 4, 2021, Ms. Joseph determined that the Appellant was neither an employee nor Washington-based. Ex. 4, pg. 325. She recommended that the Department issue a Determination of Compliance. *Id.*; Ex. 1, pg. 6.
- 4.30. On June 24, 2021, the Department issued Determination of Compliance No. 151-21, which adopted Ms. Joseph's recommendations. Ex. 1, pgs. 1-3. The Department determined that McFerran Law did not violate the Wage Payment Act or Minimum Wage Act with regard to the Appellant during the period of December 2017 through November 2019. *Id.* at 1.
- 4.31. On July 6, 2021, the Appellant appealed the Department's Determination of Compliance. Ex. 1, pg. 7.
- 4.32. The Appellant's primary intent in pursuing this appeal is to hold McFerran Law accountable for what he asserts is illegal activity in allowing volunteers to perform work in a for-profit business. *Morgan Testimony*. He acknowledges, however, that his secondary objective is to get McFerran Law to pay him for his work on his brother's case. *Id.*; Ex. 4, pgs. 3, 141.

5. CONCLUSIONS OF LAW

Based upon the facts above, I make the following conclusions:

Jurisdiction

- 5.1. I have jurisdiction over the persons and subject matter of this case under RCW 49.48.084 and Chapter 34.05 RCW.

Wage Payment Laws

- 5.2. Wage payment laws pertain to employees. *See, e.g.*, RCW 49.48.083(1).
- 5.3. When an employee files a wage complaint, the Department must investigate. RCW 49.48.083(1). If the Department determines that the employer violated one or more wage payment requirements, the Department shall issue a Citation and Notice of Assessment. *Id.* If the Department determines that the employer complied with the law, the Department shall issue a Determination of Compliance. *Id.*

¹ Previously, the Department procedure was to evaluate a case for jurisdiction and then issue a letter of non-acceptance; this is what Ms. Joseph initially did in this case. *Hauss Testimony*. However, the Department changed its policy and required agents to issue a Determination of Compliance after finding a claimant is not a Washington-based employee. *Id.*

- 5.4. Wage payment requirements are those “set forth in RCW 49.46.020, 49.46.130, 49.48.010, 49.52.050, or 49.52.060, and any related rules adopted by the department.” RCW 49.48.082(12). These wage payment requirements include, but are not limited to, requirements to pay minimum wages, overtime wages, agreed wages, and wages for final pay periods. *Id.*
- 5.5. For the period of January 1, 2017 through December 31, 2017, every employer shall pay its employees who are over the age of 18 a wage of not less than \$11.00 per hour. RCW 49.46.020(1)(a). For the period of January 1, 2018 through December 31, 2018, employers must pay a minimum wage of \$11.50 per hour. RCW 49.46.020(1)(b). For the period of January 1, 2019 through December 31, 2019, employers must pay a minimum wage of \$12.00 per hour. RCW 49.46.020(1)(c).
- 5.6. “Wage” means “compensation due to an employee by reason of employment.” RCW 49.46.010(7); RCW 49.48.082(10).
- 5.7. The term “employee,” for the purposes of minimum hourly wage and overtime requirements, is defined as “any individual employed by an employer.” RCW 49.46.010(3); RCW 49.48.082(5). Similarly, the regulations define the term as one “who is employed in the business of his employer.” WAC 296-126-002(2).
- 5.8. “Employer” includes any business or person “acting directly or indirectly in the interest of an employer in relation to an employee.” RCW 49.46.010(4). In addition, the regulations define the term as a business that “employs one or more employees.” WAC 296-126-002(1).
- 5.9. “Employ” means “to engage, suffer or permit work.” WAC 296-126-002(3); see also RCW 49.46.010(2); ES.A.1(5).
- 5.10. Department policies, derived from the statutes and regulations, explain that volunteers are not allowed in for-profit businesses. ES.A.1(5).
- 5.11. Employers must comply with wage payment requirements and are liable for wage payment violations. RCW 49.48.083(2). Unpaid employment is unlawful. *Id.*; see also ES.A.1(5).
- 5.12. Any employer who pays an employee less than the wages to which the employee is entitled shall be liable to the employee for the full amount of such wage rate. RCW 49.46.090(1).

[Continued]

Washington Jurisdiction

5.13. The Washington Supreme Court held that the Minimum Wage Act “regulates only employers who are doing business in Washington and who have hired Washington-based employees.” *Bostain v. Food Express, Inc.*, 159 Wn.2d 700, 719 (2007).

5.14. The Department issued Administrative Policy No. ES.A.13 to provide clarity in determining whether an employee is “Washington-based” and therefore protected by Washington State’s Minimum Wage Act. The analysis requires consideration of whether there is a conflict between the laws of two states, and second, which state has the most significant relationship to the employee. *Id.* at 2. The policy directs the evaluator to consider “the number and the significance of each connection to Washington State.” *Id.* It identifies the following factors:

- Where was the employment agreement made?
- Does the employee live in Washington?
- Does the employer have its base of operations in Washington?
- Does the employee have his or her base of operations in Washington?
- Does the employer maintain a work site in Washington?
- If the employee leaves Washington as part of the employee’s work, where does the trip begin and end?
- Does the employee receive work assignments from a location in Washington?
- Is the employee’s work supervised by individuals operating from the employer’s location in Washington?
- How much of the work is performed in Washington?
- How long is the contract to do work in Washington?

Id.

Burden of Proof, Standard of Proof, and Standard of Review

5.15. In appealing a Citation and Notice of Assessment or Determination of Compliance, the party challenging the Department’s decision has the burden of proof, by a preponderance of the evidence. See RCW 34.05.570(1)(a).

5.16. A preponderance of the evidence is that evidence which, when fairly considered, produces the stronger impression, has the greater weight, and is more convincing as to its truth when weighed against the evidence in opposition to it. *Yamamoto v. Puget Sound Lumber Co.*, 84 Wash. 411, 146 P. 861 (1915).

5.17. Substantial evidence must be presented and must be “sufficient to persuade a fair-minded person of the truth or correctness of the matter.” *Ongom v. Dept. of Health*, 124 Wn. App. 935, 948-49, 104 P.3d 29 (2005), *reviewed on other grounds*, 155 Wn.2d 1001, 122 P.3d 185 (2005).

5.18. The standard of review by the administrative law judge is de novo. RCW 49.48.084(3).

Grayson Morgan was not an Employee

5.19. In this case, a preponderance of the evidence establishes that the Appellant was not an employee of McFerran Law. Therefore, Washington’s minimum wage protections did not apply to that relationship.

5.20. The Appellant assisted with his brother’s case prior to McFerran Law’s involvement, during the course of its representation, and after the representation concluded. The Appellant performed work for the benefit of his brother, and to minimize legal fees the Appellant himself paid, rather than for the benefit of McFerran Law.

5.21. The only context in which any party referred to the Appellant as a “volunteer paralegal” was during the discovery dispute concerning disclosure of emails involving the Appellant, and during a deposition which the Appellant wished to attend as a non-party. It is clear that this label was not the appellant’s actual title or functional purpose. Rather, it was a legal strategy—a failed one—to avoid disclosure of information during discovery. In fact, the Appellant acknowledged during testimony that he understood the title was a strategy to prevent disclosure. While the law prohibits McFerran Law from using volunteers as employees, the Appellant did not function as an employee.

5.22. Furthermore, for there to be an employer-employee relationship, and therefore liability for wages, the parties must meet the definition of employer and employee. To be considered an employer, McFerran Law must have been “acting directly or indirectly *in the interest of an employer* in relation to an employee.” RCW 49.46.010(4). In other words, McFerran Law’s relationship with the Appellant must have been in its own interests; the relationship must be for the benefit of McFerran Law. The facts of this case, however, show that the relationship between McFerran Law and the Appellant was for the benefit of Gavin Morgan and the Appellant. McFerran Law was not the Appellant’s employer, and no employer-employee relationship existed.

[Continued]

5.23. The undersigned considered the Appellant's argument that it is not appropriate to require the existence of an employer-employee relationship, because such would not exist with a volunteer. That argument ignores the key fact that the substantive issue in this case is whether McFerran Law owes the Appellant wages. To be owed wages under the Wage Payment Act, there must be an employer-employee relationship. The Appellant's argument fails on that basis.

Grayson Morgan was not Washington-Based

5.24. Finally, the evidence shows that the Appellant was not Washington-based. First, with respect to the conflict of laws analysis, the Appellant presented no evidence regarding the protections of Maryland law as compared to Washington law.

5.25. Proceeding to an analysis of the number and significance of connections to each state, although McFerran Law's offices are in Washington and Ms. Bouffard asked the Appellant for particular things from Washington, the Appellant lived in Maryland and performed almost all of this assistance while in Maryland. Any travel the Appellant did in relation to his brother's case began and ended from his home in Maryland. There was no employment agreement, nor was there a contract which specified that the Appellant was to work in Washington. The fact that the Appellant was located in and almost exclusively performed his tasks from Maryland, and that there were no employment agreements or contracts to suggest a connection to work in Washington, are the most significant facts. Therefore, the undersigned concludes that the Appellant was not a Washington-based employee.

5.26. The Appellant failed to meet his burden of proof that he was an employee, that McFerran Law was his employer, and that he was Washington-based. Accordingly, Determination of Compliance No. 151-21 will be AFFIRMED.

6. INITIAL ORDER

IT IS HEREBY ORDERED THAT:

6.1. Determination of Compliance No. 151-21 is AFFIRMED.

6.2. An employer-employee relationship did not exist between McFerran Law and Grayson Morgan.

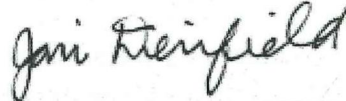
6.3. Grayson Morgan was not a Washington-based employee.

[Continued]

6.4. Because there was no employer-employee relationship between McFerran Law and Grayson Morgan, and because Grayson Morgan was not a Washington-based employee, Washington's minimum wage requirements do not apply to that relationship.

6.5. No violation occurred. Therefore, McFerran Law owes no wages, interest, or penalty.

Issued from Tacoma, Washington on the date of mailing.



Joni Derifield
Administrative Law Judge
Office of Administrative Hearings

CERTIFICATE OF SERVICE ATTACHED.

PETITION FOR REVIEW

Any party that disputes this Initial Order may file a Petition for Administrative Review with the Director of the Department of Labor and Industries.² You may e-mail your Petition for Administrative Review to the Director at directorappeal@lni.wa.gov. You may also mail or deliver your Petition for Administrative Review to the Director at the Department's physical address listed below.

Mailing Address:

Director
Department of Labor and Industries
PO Box 44001
Olympia, WA 98504-4001

Physical Address:

7273 Linderson Way SW
Tumwater, WA 98501

If you e-mail your Petition for Administrative Review, please do not mail or deliver a paper copy to the Director.

Whether you e-mail, mail or deliver the Petition for Administrative Review, the Director *must actually receive* the Petition for Administrative Review during office hours at the Director's office within 30 days of the date this Initial Order was mailed to the parties. You must also provide a copy of your Petition for Administrative Review to the other parties at the same time.

If the Director does not receive a Petition for Administrative Review within 30 days from the date of the Initial Order, the Initial Order shall become final with no further right to appeal.³

If you timely file a Petition for Administrative Review, the Director will conduct an administrative review under chapter 34.05 RCW.

² RCW 49.48.084 and RCW 34.05.464.

³ RCW 49.48.084 and Chapter 34.05 RCW.

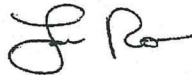
CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 09-2021-LI-01714

I certify that true copies of this document were served from Tacoma, Washington via Consolidated Mail Services upon the following as indicated:

| | |
|---|---|
| <p>Grayson Morgan 1328 Double Gate Rd Davidsonville, MD 21035 <i>Appellant/Wage Claimant</i></p> | <p><input type="checkbox"/> First Class Mail <input checked="" type="checkbox"/> Certified Mail, Return Receipt 9489 0090 0027 6080 8777 81 <input type="checkbox"/> Campus Mail <input checked="" type="checkbox"/> E-mail Gbmorgan@hotmail.com</p> |
| <p>Lisa Roth, AAG Office of the Attorney General 800 5th Ave Ste 2000 Seattle, WA 98104 <i>Agency Representative</i></p> | <p><input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input checked="" type="checkbox"/> E-mail LisaM.Roth@atg.wa.gov Rachel.Thornton@atg.wa.gov Iniseaeservice@atg.wa.gov</p> |
| <p>McFerran Law, P.S. c/o Edward McFerran 3906 S 74th St Tacoma, WA 98409 <i>Intervenor/Employer</i></p> | <p><input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> E-mail</p> |

Date: Friday, June 24, 2022

OFFICE OF ADMINISTRATIVE HEARINGS



Tamara Roberson
Legal Assistant 2