

**DIRECTOR OF THE DEPARTMENT OF LABOR & INDUSTRIES
STATE OF WASHINGTON**

In re:

JASON JOHNSON,

Appellant,

Determination of Compliance No.
DOC-080-22,

OAH Docket No. 03-2022-LI-01762

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 appeal filed by Jason Johnson (the Appellant) and briefing submitted to the Director's Office, and having reviewed the record, issues this Director's Order.

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

I. FINDINGS OF FACT

1. The Office of Administrative Hearings issued and served the Initial Order on February 17, 2023.
2. The Director received a timely filed petition for review from the Appellant.
3. The Director adopts and incorporates all the Order's Findings of Fact.

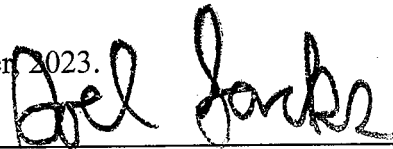
II. CONCLUSIONS OF LAW

1. Based on the Appellant's timely filed petition for review, there is authority to review and decide this matter under RCW 49.48.084 and RCW 34.05.
2. The Director adopts and incorporates all the conclusions of law.
3. The Appellant had sufficient time to prepare his case and the OAH provided any permissible assistance, including offering extra time and continuances and assisting with exhibit filing. Johnson had sufficient time to prepare for hearing and presented several hours of testimony. There is no indication that any additional opportunity to present evidence would result in any additional evidence that would affect the outcome of this matter, especially as the dispute centers around a written agreement Johnson admittedly signed and was introduced into evidence and discussed at length.

III. DECISION AND ORDER

Consistent with the above Findings of Fact and Conclusion of Law, the Determination of Compliance is **AFFIRMED** and the Order of February 17, 2023, is incorporated by reference herein.

DATED at Tumwater this 24 day of October, 2023.



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 it 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.

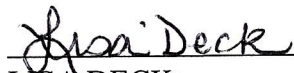
DECLARATION OF MAILING

I, LISA DECK, hereby declare under penalty of perjury under the laws of the State of Washington, that the **DIRECTOR'S ORDER** was e-mailed on the 24 day of October 2023, to the following:

Christina K. Dallen, AAG
Office of the Attorney General
P.O. Box 40121
Olympia, WA 98504
Christina.Dallen@atg.wa.gov
Deb.Gross@atg.wa.gov
lnoiyeservice@atg.wa.gov

Jason Johnson
P.O. Box 15072
Salem, OR 97309
JasonJportland@outlook.com

DATED this 24 day of October, 2023, at Tumwater, Washington.



LISA DECK

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Jason Johnson,

Appellant/Wage Claimant.

Docket No. 03-2022-LI-01762

INITIAL ORDER

Agency: Department of Labor &
Industries

Program: Wage Payments

Agency No. 080-22

1. ISSUE

1.1. Whether to affirm or to set aside Determination of Compliance #080-22 dated December 9, 2021, in which the Department of Labor and Industries determined that Greenlight Solar, LLC did not violate the Washington State Wage Payment or Minimum Wage Acts as to Jason Johnson.

2. ORDER SUMMARY

2.1. Determination of Compliance #080-22 dated December 9, 2021, in which the Department of Labor and Industries determined that Greenlight Solar, LLC did not violate the Washington State Wage Payment or Minimum Wage Acts as to Jason Johnson should be AFFIRMED.

3. HEARING

3.1. Hearing Dates: November 14-15, and December 19, 2022

3.2. Administrative Law Judge: Terry A. Schuh

3.3. Appellant: Jason Johnson

3.3.1. Representative: Jason Johnson

3.3.2. Witness: Jason Johnson

3.4. Agency: Department of Labor and Industries

3.4.1. Representative: Christina K. Dallen, Assistant Attorney General

3.4.2. Witness: Crystal Arnold, Industrial Relations Agent, Department of Labor and Industries

3.5. Exhibits: Department of Labor and Industries' Exhibits 1 through 10 were admitted into the record as evidence. Jason Johnson's Exhibits A through E were admitted into the record as evidence except Exhibit C, pages 1 through 3, and all references to criminal records in Exhibits A, C, and E.

3.6. Observer: Erin Johnson attended the hearing periodically as an observer.

4. FINDINGS OF FACT

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

Jurisdiction

4.1. The Department of Labor and Industries (“the Department”) issued Determination of Compliance No. 080-22, dated December 9, 2021, in which the Department found that Greenlight Solar, LLC (“Greenlight Solar”) did not violate the Washington State Wage Payments Act (“WPA”) and/or Minimum Wage Act (“MWA”) concerning Jason Johnson (“Mr. Johnson” or “Johnson”). for the period of time identified in Mr. Johnson’s Worker Rights Complaint. Ex. 1; see Ex. 5.

4.2. On December 28, 2021, Mr. Johnson appealed that decision. Ex. 2.

Mr. Johnson worked for Green Solar

4.3. Mr. Johnson worked for Greenlight Solar from May 1, 2018, through November 9, 2018. Ex. 5 page 1.

4.4. Mr. Johnson worked for Greenlight Solar as a solar sales consultant, selling roof and solar roof installations, paid by commission.

Mr. Johnson filed a Worker Rights Complaint

4.5. Mr. Johnson filed a Worker Rights Complaint with the Department on May 7, 2021. Ex. 5, see esp. p. 1.

4.6. Mr. Johnson sought final wages not paid, unpaid hours not worked, and unauthorized deductions – for a total of \$23,044.00. Ex. 5, p. 1.

The Department investigated Mr. Johnson’s Worker Rights Complaint

4.7. The Department investigated Mr. Johnson’s Worker Rights Complaint. Arnold Testimony; Exs. 3, 4.

4.8. Mr. Johnson alleged that Greenlight Solar owed him \$23,044.00 in unpaid commissions. Arnold Testimony; Exs. 3, 4.

4.9. After reviewing the information supplied by Mr. Johnson in conjunction with a copy of the commission agreement also supplied by Mr. Johnson, and after factoring for partial commissions already paid, the Department determined that only \$11,749.05 warranted further investigation. Arnold Testimony; Exs. 3, 4.

4.10. Ultimately, the Department determined that Greenlight Solar owed Mr. Johnson only \$988.00, representing an unlawful deduction Greenlight Solar took from Mr. Johnson’s wages. Arnold Testimony; Exs. 3, 4.

- 4.11. The remainder of the \$11,749.05 was a result of the disputes between Mr. Johnson and Greenlight Solar regarding the meaning of certain language in the commission agreement, and especially regarding what Greenlight Solar expected Mr. Johnson to do before he had fully earned the commission. Arnold Testimony; Exs. 3, 4.

Mr. Johnson and Greenlight Solar disputed some of the terms of his commission agreement

- 4.12. The Department needs to prove a common agreement, such as amount of wages or percentage of sale for a commission, etc. Arnold Testimony. If both parties agree, that is sufficient. Arnold Testimony. If not, then the Department needs to see a written agreement. Arnold Testimony. That is to say, the Department must see a signed agreement that supports either the employee or the employer. Arnold Testimony.
- 4.13. Here, Mr. Johnson signed a written commission agreement on May 2, 2018. Arnold Testimony; Ex. 6, p. 31. Of particular significance here is the following language: "Commissions are split with 50% as a front end draw and 50% as a final commission once the job has been completed. Sales Reps are required to install the ECU and have the customers sign a final completion certificate before any final commissioner will be paid. All job deductions will be on the final commission." Ex. 6, p. 31. A subsequent amendment did not effect, much less alter, these requirements. Arnold Testimony; see Ex. A, p. 21. Neither Mr. Johnson nor Greenlight submitted any other confirmation of a commission agreement. Arnold Testimony.
- 4.14. Accordingly, there were certain things the employee had to do before a commission would be paid. Arnold Testimony. Therefore, the Department had to receive confirmation regarding each job for which wages were claimed that those conditions had been met. Arnold Testimony.
- 4.15. During the investigation, Mr. Johnson said that he did not need to install an ECU before his final commission was owed, that he did not need to secure a customer's signature on a final completion certificate before his final commission was owed, and that deductions could not be made from his commission. Arnold Testimony. More specifically, Mr. Johnson believed that installing an ECU was irrelevant to whether a commission had been earned. Johnson Testimony. Installing the ECU was something additional to the sale, a task done after the sale occurred and the commission was earned. Johnson Testimony. Moreover, what constituted a deduction was not clarified in the agreement. Johnson Testimony. Mr. Johnson never thought that the word "deduction" had anything to do with reducing his commission. Johnson Testimony. He never would have accepted the job had he thought so. Johnson Testimony.

- 4.16. Signing the signoff paper and installing the ECU was done by Mason [Kiemele, principal of Greenlight Solar]. Ex. 5, pp. 3, 5. (Johnson reporting to the Department on his statement attached to his Worker Rights Complaint.) Green Solar never said that these tasks were an “absolute requirement” to getting paid. Ex. 5, p. 5.
- 4.17. However, Mr. Kiemele reported to the Department: Mr. Johnson “stated that he was not responsible for hooking up the ECU or final sign off paperwork with customers. **All of this is untrue, Jason signed a document on May 2, 2018 that states specifically that sales reps are responsible for installing the ECU and getting a final completion certificate from the customer before any final commissions are paid.**” Ex. 7, p. 27 (emphasis in original).
- 4.18. On May 19, 2021, Ms. Arnold wrote to Mr. Johnson in an email that the Department does not have jurisdiction over commission contract matters unless it can prove the terms of the contract had been worked into an established pay practice. See, Ex. 3, pp. 1-2.
- 4.19. On June 17, 2021, Ms. Arnold wrote to Mr. Johnson in an email that the Department has jurisdiction over matters that violate the WPA but not over purely contractual disputes. See, Ex. 3, p. 3. Further, she wrote, that Department jurisdiction is predicated upon a wage agreed upon by the employee and the employer. See, Ex. 3, p. 3. Russ Hauss, Ms. Arnold’s supervisor, reiterated that point in an email to Mr. Johnson on August 10, 2021. See, Ex. 3, p. 6.
- 4.20. On June 12, 2021, Mr. Johnson wrote in an email to Mr. Hauss that the installation of the ECU was not a requirement in order to be paid. See, Ex. 3, p. 7.
- 4.21. If there is a not an agreed wage, then the Department cannot prove that alleged unpaid wages are lawfully owed. Arnold Testimony.
- 4.22. Thus, the Department told Mr. Johnson that it closed the file on his Worker Rights Complaint because it lacked jurisdiction to enforce it. Johnson Testimony.

5. CONCLUSIONS OF LAW

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

Jurisdiction

- 5.1. I have jurisdiction to hear and decide this matter under Revised Code of Washington (“RCW”) 49.48.084 and Chapter 34.05 RCW.

The Determination of Compliance should be affirmed

- 5.2. A Worker Rights Complaint is a wage complaint, meaning a complaint from an employee alleging that an employer has violated a wage payment requirement. RCW 49.48.082(11).

- 5.3. "Wage payment requirement' means a wage payment requirement 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).
- 5.4. Here, the only wage requirement arguably at issue here is that expressed in RCW 49.52.050.
- 5.5. Employers cannot pay wages lower than that to which the employer and employee have agreed. RCW 49.52.050(2). Moreover, for the Department to take action, the employer's action must be *willful*. See RCW 49.52.050 (*willfully* pay an lower wage, in subsection (2); *willfully* mis-record wages paid, in subsections (3) and (4); *willfully* receive a false receipt for wages, in subsection (5)).
- 5.6. To be *willful* conduct means that the conduct does not flow from a bona fide dispute. RCW 49.48.082(13); see also, *Durand v. HIMC Corp.*, 151 Wn.App. 818, 214 P.3d 189 (2009) and *Pope v. Univ. of Wash.*, 121 Wn.2d 479, 852 1055 (1993).
- 5.7. Here, Greenlight Solar and Mr. Johnson dispute the meaning and application of selected language from the commission agreement that Mr. Johnson signed on May 2, 2018. Mr. Johnson argued that Greenlight Solar's interpretation is dishonest and inconsistent with Greenlight Solar's verbal representations and industry practice. However, Greenlight Solar's interpretations match the language of the commission agreement, whereas Mr. Johnson's do not. Accordingly, Greenlight Solar's conduct results from a bonafide dispute with Mr. Johnson regarding certain relevant language in the commission agreement. Therefore, to whatever degree Greenlight Solar can be considered to have withheld wages from Mr. Johnson, it did not do so *willfully* as a matter of law. I do not doubt that Mr. Johnson honestly and vehemently believes that he has been cheated. However, the only authority that the Department has over wage disputes is that which is given to the Department from the Washington State Legislature as expressed in the statutes the Legislature has produced. Further, my authority is limited to the authority held by the agency that is subject to the appeal. Here, given that Greenlight Solar's conduct cannot be considered to be *willful*, Mr. Johnson's wage complaint, in the form of a Worker Rights Complaint, cannot succeed. Thus, the Determination of Compliance, No. 080-22, dated December 21, 2021, should be affirmed.

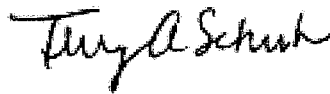
[Continued]

6. INITIAL ORDER

IT IS HEREBY ORDERED THAT:

- 6.1. The Department of Labor and Industries action is AFFIRMED.
- 6.2. Determination of Compliance No. 080-22 is AFFIRMED.
- 6.3. Greenlight Solar, LLC did not violate Washington State wage payment law as to Jason Johnson.

Issued from Tacoma, Washington on the date of mailing.



Terry A. Schuh
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 Review with the Director of the Department of Labor and Industries.¹ You may e-mail your Petition for Review to the Director at directorappeal@lni.wa.gov. You may also mail or deliver your Petition for 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 Review, please do not mail or deliver a paper copy to the Director.

Whether you e-mail, mail or deliver the Petition for Review, the Director *must actually receive* the Petition for 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 Review to the other parties at the same time.

If the Director does not receive a Petition for Review within 30 days from the date of the Initial Order, the Initial Order shall become final with no further right to appeal.²

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

¹ RCW 49.48.084 and RCW 34.05.464.

² RCW 49.48.084 and Chapter 34.05 RCW.

CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 03-2022-LI-01762

I certify that true copies of this document were served on those listed below, from Tacoma, Washington via Consolidated Mail Services by one of the following: First Class Mail, Certified Mail, Hand Delivery via Messenger, Campus Mail, Facsimile, or by Email.

<p>Jason Johnson PO Box 15072 Salem, OR 97309 <i>Appellant/Wage Claimant</i></p>	<p><input type="checkbox"/> First Class Mail <input checked="" type="checkbox"/> Certified Mail, Return Receipt 9489 0090 0027 6305 6305 59 <input type="checkbox"/> Campus Mail <input checked="" type="checkbox"/> E-mail JasonJportland@outlook.com</p>
<p>Christina K. Dallen, AAG Office of the Attorney General MS: 40121; PO Box 40121 Olympia, WA 98504 <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 Christina.Dallen@atg.wa.gov Deb.Gross@atg.wa.gov Iniolyeservice@atg.wa.gov</p>
<p>Greenlight Solar LLC 6115 E 18th St Ste B Vancouver, WA 98661 <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, February 17, 2023

OFFICE OF ADMINISTRATIVE HEARINGS



Tamara Roberson
Legal Assistant 2