

DIRECTOR OF THE DEPARTMENT OF LABOR & INDUSTRIES
STATE OF WASHINGTON

In re:

MCCULLY CONTRACTING
SPECIALIST, INC.,

APPELLANT,

Citation and Notice of Assessment No. W-
342-16, W-343-16, W-344-16

OAH Docket No. 07-2016-LI-00199

NO. 2017-015-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 Order Denying Appeal (Order) served on May 18, 2017, having considered the petition for administrative review filed by McCully Contracting Specialist, Inc. (the Appellant) with the Director's Office, and briefing submitted to the Director's Office, and having reviewed the record, issues this Director's Order.

The parties in this matter are the Department of Labor & Industries and the Appellant.

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 Order on May 18, 2017.

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RCW 49.48.084(4); RCW 34.05

2. On May 30, 2017, the Director received a timely filed petition for administrative review from Appellant.

3. On May 4, 2017, the Office of Administrative Hearings (OAH) scheduled a status conference for May 15, 2017. The notice advised parties that failure to call in could result in dismissal of the appeal. OAH has sent previous correspondence to the Appellant, as well as the Order. The file contains no returned correspondence, and the Appellant received the Order as evidenced by its appeal.

4. In Appellant's appeal, Nathan McCully lists the reason for failure to appear at the conference that "I was unaware of this date and meeting."

5. On June 20, 2017, Appellant was asked to "provide a full explanation as to why he did not appear for the status conference on May 15, 2017," by July 19, 2017. The Appellant did not submit an explanation.

6. Appellant has not demonstrated good cause as to why its representative failed to appear at the status conference. It is not credible that Nathan McCully did not know about the status conference as notices and the Order have been sent to the Appellant without being returned and where he has verified actual receipt through his appeal.

7. The Director adopts and incorporates the Order's "Prehearing Conference" summary.

II. CONCLUSIONS OF LAW

1. Based on the Appellant's timely filed petition for administrative 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 the Order's Conclusion of Law and Order.

III. DECISION AND ORDER

Consistent with the above Findings of Fact and Conclusion of Law, the Citation and Notice of Assessment is AFFIRMED and the Order of May 18, 2017, is incorporated by reference herein.

DATED at Tumwater this 6 day of September, 2017.



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 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 Rodriguez, hereby declare under penalty of perjury under the laws of the State of Washington, that the DIRECTOR'S ORDER was mailed on the 6 day of September 2017, to the following via U.S. Mail, postage prepaid.

Nathan McCully
McCully Contracting Specialist Inc.
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Gresham, OR 97080

DATED this 6 day of September, 2017, at Tumwater, Washington.

Lisa Rodriguez