

DIRECTOR OF THE DEPARTMENT OF LABOR & INDUSTRIES
STATE OF WASHINGTON

In re:

MCLAIN MOTORS LLC dba Big Dawg
Motors and JERRY MCLAIN, as an
individual,

Appellants,

Citation No. W-406-17

OAH Docket No. 07-2017-LI-00492

NO. 2018-008-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 petition for administrative review filed by McLain Motors LLC and Jerry McLain (the Appellant) regarding the Initial Order dated December 5, 2017, 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 December 5, 2017.

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2. The Office of Administrative Hearings mailed the Initial Order to the address of record of the Appellant. The Appellant routinely received mail at this address. The Appellant attended the hearing and other conferences in this matter, showing that he received the mail notifying him of these proceedings.

3. The Director's Office received the petition for administrative review on January 22, 2018.

4. The Appellant claims he received the Initial Order on January 8, 2018, because of problems with his local post office. But the Initial Order instructed the parties to appeal within 30 days of mailing of the Initial Order. Had the Appellant actually received the appeal on January 8, the Appellant would have known to act quickly because the appeal period had already run. The delay in filing the appeal points to other reasons for the delay in filing an appeal and not non-receipt of the appeal.

II. CONCLUSIONS OF LAW

1. RCW 49.48.084(3) provides, "Any party who seeks to challenge an initial order shall file a petition for administrative review with the director within thirty days after service of the initial order." Service of the Initial Order is the date of mailing. RCW 34.05.010(19). There is no need to reach the question of whether the law permits additional filing time for an appeal if a party does not receive the Initial Order until after the appeal deadline runs because the Appellant's claims of late receipt of the appeal are not credible considering the context of routinely receiving mail for proceedings in this matter and the significant time delay in attempting to appeal.

2. The Appellant did not file his petition for administrative review within the time period specified by RCW 49.48.084(3), and his petition is untimely.

3. 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.” Because the petition is untimely, the Initial Order became the final agency decision and there is no authority to review the Initial Order under RCW 49.48.084 and RCW 34.05.

4. The appeal is dismissed.

III. DECISION AND ORDER

Consistent with the above Findings of Fact and Conclusions of Law, the January 22, 2018 petition for administrative review is dismissed and the December 5, 2017 Initial Order is the final agency order.

DATED at Tumwater this 18 day of April 2018



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 18 day of April 2018, to the following via U.S. Mail, postage prepaid.

Jerry McLain
McLain Motors, LLC
31705 West Lake Ketchum Rd.
Stanwood, WA 98292

Katy Dixon
Attorney General's Office
800 Fifth Ave., Ste. 2000
Seattle, WA 98104

Robert Kuchan
17324 58th Street SE
Snohomish, WA 98290

DATED this 18 day of April 2018, at Tumwater, Washington.

Lisa Rodriguez