

DIRECTOR OF THE DEPARTMENT OF LABOR & INDUSTRIES  
STATE OF WASHINGTON

In re: Earl James Lee dba Hammer Time  
Restoration,

Appellant.

Citation and Notice of Assessment No. W-  
623-17

OAH Docket No. 10-2017-LI-00600

No. 2019-002-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 served on May 31, 2018, having considered the petition for review filed by the Department of Labor & Industries and the briefing submitted to the Director's Office, and having reviewed the record created at hearing, 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 May 31, 2018. The Initial Order reversed the Department's Citation and Notice of Assessment No. W-623-17.
2. On June 25, 2018, the Department timely filed a petition for review with the Director.
3. The Director adopts and incorporates the Initial Order's findings of facts 4.1 through 4.37 and 4.39 through 4.58.

4. Earl Lee did not hire Blake Kringle; nor did Mario Duke do so on Lee's behalf. If Kringle actually performed some work such as picking up roof debris, it was not with Lee's knowledge or permission. Lee did not engage, suffer, or permit Kringle to work.
5. The Administrative Law Judge did not fail to consider or weigh the testimony of Melony Lindquist. While Lindquist minimized her relationship with the wage claimant, the evidence shows that Kringle was frequently at the Buckeye property where Lindquist lived. And Lindquist was not disinterested in the case, as the Department argues. In an online review of Hammer Time Restoration, Lindquist accused the company of breaking the windshield of her car and refusing to replace it, and of stealing personal property. Lee's testimony was more credible than Lindquist's testimony.
6. The Director adopts and incorporates the Initial Order's "Issues" statement, the "Order Summary," and the "Hearing" summary.

## II. CONCLUSIONS OF LAW

1. Based on the Department'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 the Initial Order's Conclusions of Law.

## III. DECISION AND ORDER

Consistent with the above Findings of Fact and Conclusions of Law, the Citation and Notice of Assessment No. W-623-17 is reversed. The Initial Order of May 31, 2018, is incorporated by reference herein.

DATED at Tumwater, Washington this 8 day of January 2019.

  
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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](mailto: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 mailed on the 8 day of January 2019, to the following via regular, postage prepaid:

Roger W. Bailey  
Bailey & Busey PLLC  
411 North 2nd Street  
Yakima, WA 98901

Blake Kringel  
4427 N Monroe  
Spokane, WA 99205

Earl J. Lee  
Hammer Time Restoration  
5606 Englewood Avenue  
Yakima, WA 98908

Kevin Elliott, AAG  
Office of the Attorney General  
1116 West Riverside Ave., Suite 100  
Spokane, WA 99201

DATED this 8 day of January, 2019, at Tumwater, Washington.

*Lisa Deck*

\_\_\_\_\_  
Lisa Deck

**WASHINGTON STATE  
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Docket No. 10-2017-LI-00600

Earl James Lee dba Hammer Time  
Restoration,

**INITIAL ORDER**

Appellant/Employer.

Agency: Department of Labor and Industries  
Program: Wage Payments  
Agency No. W-623-17

**1. ISSUES**

- 1.1. Did Appellant, Earl James Lee dba Hammer Time Restoration, violate RCW 49.52.050 by failing to pay Blake Kringel agreed and final wages in the amount of \$8,235 for work performed between July 31, 2016 through September 28, 2016?
- 1.2. If so, what is the appropriate penalty and interest owed?
- 1.3.

**2. ORDER SUMMARY**

- 2.1. The Appellant, Earl James Lee dba Hammer Time Restoration did not violate RCW 49.52.050 by failing to pay agreed wages to Blake Kringel from July 31, 2016 through September 28, 2016.
- 2.2. The Department of Labor and Industries Citation and Notice of Assessment No.W-623-17 is reversed.
- 2.3. Earl James Lee dba Hammer Time Restoration is not liable for payment of \$8,235 in unpaid wages to Blake Kringel pursuant to Chapter 49.48 RCW because the parties did not enter into an agreement for Employer to pay wages to Blake Kringel.

**3. HEARING**

- 3.1. Hearing Dates: March 22 & 23, 2018
- 3.2. Administrative Law Judge: Robert M Murphy
- 3.3. Agency: Department of Labor and Industries
  - 3.3.1. Representative: Angela R Zurlini, Assistant Attorney General
  - 3.3.2. Witnesses (in the order of appearance):
    - 3.3.2.1. Brittany Bolser, Industrial Relations Agent
    - 3.3.2.2. Blake Kringel, Wage Claimant
    - 3.3.2.3. Tim Phillips

- 3.3.2.4. Melony Lindquist
- 3.3.2.5. Patrick Kristensen
- 3.4. Appellant: Earl James Lee dba Hammer Time Restoration
  - 3.4.1. Representative: Roger Bailey, Bailey & Busey attorney
  - 3.4.2. Witnesses (in the order of appearance):
    - 3.4.2.1. Mario Duke
    - 3.4.2.2. Jaime Lee
    - 3.4.2.3. Mohammad Saladin
    - 3.4.2.4. Earl James Lee, Appellant
    - 3.4.2.5. Blake Kringel, Wage Claimant
- 3.5. Exhibits: Department Exhibits 1 through 28 and Appellant Exhibits A through W admitted.
- 3.6. Other: Court Reporters d'Anne Meyers and Caryn E Winters provided professional court reporting services upon arrangement of the Attorney General's Office. They both work through Spokane Reporting Service, Inc., and may be contacted at (509) 624-6522 and (509) 624-6255 respectively.

#### 4. FINDINGS OF FACT

##### *Jurisdiction*

- 4.1. Under RCW 49.48.083, the Department of Labor and Industries ("L&I" or "the Department") issued a Citation and Notice of Assessment (NOA), W-623-17 to the party Employer, Earl James Lee, doing business as Hammer Time Restoration, on May 5, 2017. The NOA stated that an appeal must be received by June 4, 2017. (Exhibit 17). The NOA was sent to Mr. Lee at 5606 Englewood Ave, Yakima, WA 98908-2332 and was returned as undeliverable. Mr. Lee called the Department as to the status of his appeal and was advised that the NOA was sent on May 5, 2017. Lee responded that he did not receive same or he would have appealed. Department decided to resend the NOA on June 23 and advised Mr. Lee "Due to a department error on your address information, you will have until July 23, 2017 to appeal the citation. . ." (Department Exhibit 2, pages 27-29 of 29).
- 4.2. The Department timely received Employer's appeal from that citation on July 24, 2017. (July 23, 2017 was a Sunday). WAC 10-08-080.
- 4.3. Under RCW 49.48.084, the Office of Administrative Hearings assigned an administrative law judge (ALJ) to conduct a *de novo* adjudicative hearing in

accordance with RCW 34.05, and issue an initial order resolving the issues presented.

*Facts*

- 4.4. Earl James Lee and his wife Jaime Lynn Lee had a business known as Hammer Time Restoration. The business is no longer active. ((The Washington State Department of Labor & Industries (L & I) suspended the business on April 8, 2016, for not having a current bond or insurance account). (Dept. Exhibit 3, page 2 of 7)).
- 4.5. In 2015, the Spokane area experienced a serious wind storm that damaged thousands of homes. Integrity Restoration Company (Integrity) received a number of bids to repair many of these properties. (Testimony of Saladin).
- 4.6. Integrity hired Mohammad Saladin (Moe)<sup>1</sup> to obtain workers to complete the needed work. Moe had known Earl Lee (Earl) for a number of years as their children played sports together. Moe also knew that Earl was an experienced roofer from Yakima. Although Earl lived more than 200 miles away, with the number of homes in need of repair, it was necessary to go outside the local area to obtain skilled workers. (Testimony of Saladin).
- 4.7. Moe contacted Earl in the late summer of 2016 to work two jobs for Integrity. The jobs were located at 112 S. Fiske St. (Fiske) and 612 W. Buckeye (Buckeye) both located in Spokane. (Testimony of Saladin).
- 4.8. Moe met with Earl on August 23, 2016, to view the worksites. After visiting the properties, they agreed that Earl would replace the roofs on both properties for \$4,500. Integrity would process the necessary permitting and provide materials. (Testimony of Saladin).
- 4.9. Although not specifically stated, Earl and Moe understood that these were “one man” projects and that Integrity was the employer. Moe estimated that the roof could be replaced within 3 to 5 days with one person working at the Fiske location. For the Buckeye job, he estimated it would be slightly more time. The breakdown was \$1,900 for the Fiske project and \$2,600 for the Buckeye project, for a total of \$4,500. (Testimony of Saladin and Lee).
- 4.10. The Fiske property is a two bedroom, single unit dwelling built in 1908 with a detached garage added in 1940. The home is 878 square feet and the garage 784 square feet. (Exhibit J).
- 4.11. Earl returned to Yakima, gathered his equipment (most notably a trailer) and came back to Spokane on August 25. He began work on the Fiske location on Friday, August 26. It took Earl 6 to 8 hours to remove the old roof. In doing so, Earl would

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<sup>1</sup> Parties and witnesses are referred to by their first names as this is how they were distinguished in the testimony in the record. No disrespect is intended.

drop the material from the roof into his trailer on the ground below. Earl did all the work without assistance from any other persons. (Exhibit A page 6 the photo of the Fiske roof being torn off). (Testimony of Lee).

- 4.12. The next day, Earl placed oriented strand board (OSB) in order to “deck” the roof prior to installing shingles. He finished the deck of the roof and called the inspector. It took Earl 5 to 6 hours to do so. (Testimony of Lee).
- 4.13. On August 29 the inspector determined the deck of the roof was satisfactory. (Exhibit K).
- 4.14. Earl called Moe to have the roofing material (shingles) delivered. On August 31 Integrity Restoration delivered 39 packages that covered 12 squares. (Exhibit 14).
- 4.15. Earl installed the roof in one day including the garage roof. At that time the Fiske project was completed. (Exhibit A is a picture of the garage, Exhibit B pictures of the roof showing it completed on 08/31, Exhibit C shows the completed pictures of the Fiske property and Exhibit P at pages 4 garage and page 6 is the home). (Exhibit 14, page shows that the Fiske property was inspected and approved).
- 4.16. Earl began work on the Buckeye property. On September 2, Earl took pictures of the Buckeye property. (Exhibits D and E). The Buckeye property is also a single unit dwelling built in 1909 with a detached garage completed in 1951. The home has 1,222 square feet and the garage 440 square feet. (Exhibit I).
- 4.17. Earl returned home to Yakima and stayed there for a few days. On September 7, he began work on the Buckeye house. (Testimony of Lee).
- 4.18. As there were several layers of roofing material on the Buckeye property it took Earl two days to tear off the roof. As it began to rain he put a tarp on the roof and then returned to Yakima.
- 4.19. Integrity delivered 111 packages of materials on September 9. (Exhibit F, pages 2 and 5).
- 4.20. Because of the wet conditions Earl did not return to Spokane until September 19. He spent 2 ½ hours preparing the roof, and began the shingling process. (Exhibit G).
- 4.21. On September 19, because of the excessive roofing materials ~~that were~~ removed, Earl took the debris to Spokane County Waste Management to dump the property. (Exhibit R, check for \$109.22 made payable to “WM” page 18 of 18). On September 21, Earl finished the back slope. (Exhibit H, page 2 shows the front slope). Earl continued working through September 22. Earl, as on the Fiske job, performed all of the labor. (Testimony of Lee).
- 4.22. On September 28, Moe called and advised Earl to stop working because Integrity said Earl was too slow in completing the work. Earl only had one square left to do



at that time. As advised, Earl did not perform any more work and returned to Yakima. (Testimony of Saladin and Lee).

- 4.23.** Integrity paid Earl \$4,500 for both jobs, as agreed. (Exhibit R page 13 of 18 shows a bank deposit of that amount on September 9). Moe also arranged for Integrity to provide Earl with a \$500 gift card to pay his expenses while he was in Spokane. Integrity paid no additional monies to Earl. (Testimony of Saladin).
- 4.24.** These job sites were located in high crime areas of Spokane. Several people, including Blake, congregated around the site while Earl worked. Some smoked marijuana. Earl (who did not smoke marijuana) engaged in social conversation with them. Blake and Patrick were interested in his work and he explained to them the roofing process. (Testimony of Lee and see Dept. Exhibit 18).
- 4.25.** Earl has been married to Jamie for seven years. She is an assistant principal at a school in Yakima. Earl has never hired outside employees since she has known him. Jamie had no personal knowledge of the project and she did not come to Spokane to observe any of the work. She never advertised on Facebook or any other medium for workers for Earl. (Testimony of Ms. Lee).

*Wage Claimant*

- 4.26.** Blake Kringel (Wage Claimant or Blake) is now 20 years of age (Testimony of Kringel).
- 4.27.** Blake dropped out of school in the 10<sup>th</sup> grade. He moved from Nebraska to Spokane six years ago. He stopped living with his mother when he turned 18 at the end of October 2015. (Testimony of Kringel).
- 4.28.** In summer of 2016 Blake was unemployed and homeless. His mother found an ad in free classifieds advertising for a person to do roofing that read, "No experience necessary." Blake's mother answered the ad. She responded to "Mario." The ad was on Facebook and was written by a person named "Jan." (Testimony of Kringel, see generally Dept. Exhibit. 2).
- 4.29.** Mario Duke was Earl's roommate at Spokane Community College a number of years ago and they remain friends. While Mario visited Earl at jobsites on occasion they never had a business relationship. Mario works full time in the restaurant business. (Testimony of Duke).
- 4.30.** Blake testified he made phone contact with Mario, who advised him to come as soon as possible to begin work. This was July 31, 2016, a Sunday. Blake said he collected some work tools and reported to the worksite on Fiske Street. (Testimony of Kringel).
- 4.31.** Blake explained that he rode to work with his friend Patrick Kristensen as he did not have a car. Patrick took him to work on his first day and several days after that. (Testimony of Kringel and Kristensen).

- 4.32.** This testimony is not credible as it contrasts with Patrick's later testimony that he, Patrick, worked as a volunteer at a juvenile diabetes summer camp throughout the month of July and that while he did take Blake to the location it was not until sometime later in August.
- 4.33.** Blake also testified that after a brief introduction, Mario told Blake that the starting pay was \$12 an hour. (During 2016 and 2017 the Washington state minimum wage was \$9.47 per hour. WSR 15-20-047). (Testimony of Kringel).
- 4.34.** This testimony is not believable. Mario denied that he ever met with Blake at the job site to discuss employment. It also contrasts with the report of the Department's auditor, Mike Diefel, who told the investigator, "Blake's mother found the job on Facebook and originally spoke with Earl's wife. Earl picked up Blake for his first job." (Dept. Ex. 2, p.6 of 29). There is no evidence that Earl ever picked Blake up to take him to work.
- 4.35.** Mario did not instruct Blake as to what work he was to do. Rather, Blake testified, "Being a Nebraska farm boy I immediately went to work and worked for several hours until it was too dark to work any longer." (Testimony of Kringel).
- 4.36.** Blake testified that at the end of the day, Blake asked Mario what to do next and was told to come back at eight in the morning and continue working. Mario did not advise Blake as to what the normal work hours were or days of work. Blake, nonetheless, came back and worked 12 hours the following Monday. He claimed Mario told him he would not get paid right away as he was being paid "under the table." Blake said he continued to come back and work daily. He did not fill out any forms, give his Social Security number or any identifying information. He said Mario appeared to be in charge but did not do any work and spent most the time sitting in his car with the air conditioning running as it was hot outside. (Testimony of Kringel).
- 4.37.** Blake's testimony that he began work on July 31 and continued thereafter is not believable. Earl had not met with Moe by that time, and had not begun work until much later (August 25). Mario, while a social friend of Earl's, was not a business associate. Earl and Mario's testimony is consistent with each other's and inconsistent with Blake's.
- 4.38.** I find that Earl did not hire Blake and that Mario did not do so on Earl's behalf, either. If Blake actually performed some work such as picking up roof debris, he did so voluntarily.
- 4.39.** Blake testified that he continued to go to the Fiske site to work and learned from the other people also working there that Mario was not the main person in charge, but somebody named "Earl" that was the main employer. Blake testified Mario told him and others that Earl would be coming soon. Blake believed that Earl had a company known as "Hammer Time." (Testimony of Kringel)

- 4.40.** Blake testified about his wages. After a few days of working Mario told Blake that he was a better worker than anticipated and that he was raising his pay to \$15 per hour. Each day he would turn his hours into Mario who recorded same in a black notebook. There were no timecards. Blake also kept his own log in similar type notebook commensurate with his working. He began keeping his own hours after about three weeks of employment. Unfortunately, Blake no longer had his notebook as he kept it in his car and when he sold his car he had neglected to retrieve his black notebook. (Testimony of Kringel). This testimony is not believable.
- 4.41.** Blake testified that sometime later but within the month of August, the person named Earl finally appeared at the jobsite. By this time Blake said he was no longer picking up trash but was on the rooftop preparing the roof with the decking material so it could be shingled. (Testimony of Kringel).
- 4.42.** Blake testified that Mario introduced Blake to Earl and advised him that he was a good worker and what his rate of pay was. Earl told Blake that he and the other workers would get paid when the job was completed. (Testimony of Kringel).
- 4.43.** This testimony as to the underlying issue is not credible. While Earl and Mario admitted that they were aware of who Blake was they both stated that Blake as well as several other individuals would be in the vicinity “smoking marijuana” but did not do any work for Earl or Mario.
- 4.44.** Blake testified he worked three hours in July, 60 hours from August 1 through August 5; 63 hours from August 8 through 13; 52 hours from August 15 through August 21; 40 hours from August 22 through August 26; and 26 hours from August 29 through August 31 for a total of 245 hours all on the Fiske property. (Testimony of Kringel and Dept. Exs. 4 & 12). 245 hours at the then minimum wage of \$9.47 per hour equals \$2,320.
- 4.45.** Blake’s testimony is not credible. First Blake testified that he began work on the Fiske property on July 31 and put in almost 200 hours of work before Earl had even seen the property with Moe on August 23. If work had started as testified to by Blake and as underscored in his Wage Complaint most certainly Moe would have noticed that when he and Earl examined the site.
- 4.46.** After the Fiske job was completed no one received any wages including Blake. Earl then moved the operation to the Buckeye property. Blake testified he and another individual named Tim Phillips were the only individuals that went from the Fiske to the Buckeye property. Tim had another job as a concrete finisher and testified he would arrive to work for Earl in the mid afternoon and work until it became too dark. (Testimony of Kringel and Phillips).
- 4.47.** Blake’s story as to the Buckeye job was that it was taking a long time to complete so he recruited other workers to assist. Among those recruited were his friend Patrick

Kristensen (the same person that took him to the Fiske location when he first began working), Tim Phillips, Storm Fissette and Kenny Storm (friends from middle school), "three guys in a silver Mitsubishi" that lasted only one week, that Mario hired. These workers left as Blake was assembling the crew. Blake's testimony is not credible. Patrick and Tim both had full time jobs with other employers. They testified they would arrive at the Buckeye site in the midafternoon to work for Earl and likewise never received any compensation. (Testimony of Kristensen and Phillips). Tim in particular said he would really like to see L&I stick it to Earl but as far as he was concerned it was not worth the effort for him to file a wage claim. Patrick felt likewise. Neither Phillips or Kristensen are credible. Both could have easily filed claims.

- 4.48.** Blake testified that at the Buckeye location he worked the following days and hours: September 1 through September 3 -31 hours; September 5 through September 11- 75 hours; September 12 through September 18- 67 hours; September 19 through September 24- 62 hours; September 26 through September 28- 19 hours for a total of 254 hours. At minimum wage of \$9.47 per hour this would compute to total wages of \$2,405 straight time. (Testimony of Kringel Dept. Exs. 4 & 12).
- 4.49.** Blake's testimony is not believable that he worked this many hours on either location. The houses were not that large and did not require this amount of time to complete. Blake's claim that he worked this many hours if at all is not credible. If he had the straight time wages for his labor alone would have been \$2,320 (Fiske) plus \$2,405 (Buckeye) for total wages of \$4,725. The total amount contracted for these projects was \$4,500.
- 4.50.** Most importantly Mario who has a full time job working in a restaurant was not a business associate of Earl. Mario did not hold himself out as an employee or agent. Earl and Mario both consistently testified that they were social friends and nothing more. Mario would visit Earl at the work locations. They were roommates in college. Mario denied ever contracting with anyone on behalf of Earl to do work at the locations. Mario also denied that he did any work on the locations either. (Testimony of Duke and Lee).

*Other inconsistencies in evidence relating to credibility*

- 4.51.** "Mitch Haag car wreck incident." At the Fiske location a person named Mitch Haag drove his vehicle into a parked vehicle owned by Earl. Blake testified that the cops were called and took Mitch away in handcuffs. Earl acknowledged the incident but stated Mitch was not apprehended and remains "at large." Blake admitted that he did not witness the incident but simply repeated what he was told.
- 4.52.** "Mario providing Blake cash payments for work." Blake testified that he played "the Pity Card" several times telling Mario he was homeless and could use money. As a result, Mario would feel sorry for him and take him out to eat or give him cash. He

said over time he probably received at least \$400 cash from Mario. Mario admitted that he did take Blake to eat lunch on occasion and picked up the check. He also admitted that he gave Blake a \$20 bill one time. Blake also worked on a family member's car and Mario paid him for the work of less than \$100 but other than that he did not make cash payments to Blake and certainly not anything close to \$400 as claimed by Blake. The testimony of Mario Duke is more believable than the testimony of Blake Kringel.

#### *Investigator's Report*

- 4.53.** Blake filed a "Worker Rights Complaint" with the Department of Labor and Industries. It was received on December 12, 2016. In the complaint Blake claimed that he was owed wages. He claimed \$5,085 in regular wages plus \$3,532 in overtime from July 31, 2016 to September 28, 2016 from a company known as Hammer Time Restoration. (Dept. Ex. 4, p. 1 of 8).
- 4.54.** The Department assigned Brittani Bolser to investigate the complaint.
- 4.55.** After investigating, Bolser made a preliminary finding on March 24, 2017, finding no violation and recommending a "Determination of Compliance." (Department Exhibit 15).
- 4.56.** Bolser reviewed the matter with her supervisor, Ana Sanchez, at the Central Office on March 27, 2017. Ms. Sanchez advised Bolser that as employer kept no record on "Blake's employment," it was more likely than not that Blake's version of events should be accepted. Thereupon the Department issued a "Citation and Notice of Assessment for Wage Payment Violations." (NOA) (Department Exhibits 16 and 17).
- 4.57.** The NOA listed two violations.

#### Violation 1: Agreed Wage/Obligated Wage

Blake Kringel performed work for his employer, Earl James Lee dba Hammer Time Restoration from July 31, 2016 August 31, 2016. Blake Kringel should have been paid \$3,870 for 189 regular hours and 46 overtime hours at the agreed rate of \$15 per regular hour. For this work Blake Kringel received no payment.

The Employer, Earl James Lee dba Hammer Time Restoration violated RCW 49.52.050 by failing to pay Blake Kringel at the agreed rate of pay.

For Violation 1: Blake Kringel is owed \$3,870 for work performed during the period from July 31, 2016 to August 31, 2016.

#### Violation 2: Final Paycheck

Blake Kringel did not receive a final paycheck for work performed for his employer, Earl James Lee dba Hammer Time Restoration, from September 1, 2016 to September 28, 2016. Blake Kringel should have been paid \$4,365 for 150 regular hours and 94 overtime hours at a rate of \$15 per regular hour. For this work, Blake Kringel received no payment.

The Employer, Earl James Lee dba Hammer Time Restoration, violated RCW 49.48.010 by failing to provide a final paycheck to Blake Kringel.

For Violation 2: Blake Kringel is owed \$4,365 for work performed during the period from September 1, 2016 to September 28, 2016.

Total Owed: For all violations: Blake Kringel is owed a combined total of \$8,235.

The NOA also alleged interest of \$710.80 calculated from July 31, 2016 to May 5, 2017 at a rate of 1% of the unpaid wage each month and assessed a penalty of \$1,000. The total assessment including interest and penalty was \$9,945.80. (Dept. Exhibit 17).

- 4.58.** Employer disputed the NOA claiming that he had never employed Blake Kringel and requested a hearing. (Dept. Exhibit 18).

## **5. CONCLUSIONS OF LAW**

### *Jurisdiction*

- 5.1.** The Office of Administrative Hearings, Administrative Law Judge (ALJ) has jurisdiction. RCW 49.48.084(3) and chapter 34.05 RCW.

### *Minimum Wage and Overtime*

- 5.2.** If an employee files a wage complaint, the Department must investigate. RCW 49.48.083(1). If the Department finds that the employer has violated one or more wage payment requirements, it should issue a citation and notice of assessment, which may include ordering the employer to pay all wages owed plus 1% interest per month on all unpaid wages. RCW 49.48.083(2). If the Department determines that the employer has complied with the law, the Department shall issue a Determination of Compliance. RCW 49.48.083(1).
- 5.3.** "Hours worked" shall be considered to mean all hours during which the employee is authorized or required by the employer to be on duty on the employer's premises or at a prescribed work place. WAC 296-126-002(8).

- 5.4. Any employer who pays an employee less than wages to which such employee is entitled shall be liable to such employee for the full amount of such wage rate. RCW 49.46.090.
- 5.5. It is unlawful for an employer to willfully pay an employee a lower wage than the wage the employer is obligated to pay by statute, ordinance, or contract. RCW 49.52.050(2).
- 5.6. Because the Washington Minimum Wage Act (MWA) is based upon the federal Fair Labor Standards Act (FLSA), Washington courts look to federal case law interpreting the FLSA for guidance in applying the MWA. *Drinkwitz v. Alliant Techsystems, Inc.*, 140 Wn.2d 291, 298 (2000); *Inniss v. Tandy Corp.*, 141 Wn.2d 517, 524 (2000).
- 5.7. Under the FLSA, the employer is liable if it knew or should have known the employee was performing uncompensated work. *Forrester v. Roth's I.G.A. Foodliner, Inc.*, 646 F.2d 413, 414 (9<sup>th</sup> Cir. 1981) ("An employer must have an opportunity to comply with the provisions of the FLSA. ... [W]here the acts of an employee prevent an employer from acquiring knowledge, here of alleged uncompensated overtime hours, the employer cannot be said to have suffered or permitted the employee to work in violation of [the FLSA]."); *Davis v. Food Lion*, 792 F.2d 1274, 1276 (4<sup>th</sup> Cir. 1986).
- 5.8. In wage complaints the definitions in RCW 49.46.010 apply. RCW 49.48.082.
- 5.9. For Earl James Lee or Hammer Time Restoration to be an employer as defined it must have employed Blake Kringel.
- 5.10. "Employ" as defined under the law of wage complaints means "to engage, suffer or permit to work." WAC 296-126-002 (3) and "to permit to work" RCW 49.46.010 (2).
- 5.11. Earl James Lee as an individual was not an "Employer" of Blake Kringel. An individual may be an employer but in order to be an employer the individual must have an employee. Lee at all times in question did not employ anyone, including Blake Kringel, to work for him. Under RCW 49.46.010(4) "Employer" includes any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee.
- 5.12. Hammer Time Restoration did not meet the definition of an Employer, either. During the time July 31 to September 28, 2016 it did not have an employee. It was under suspension.

- 5.13. Blake Kringel did not meet the definition of an employee. "Employee includes any individual employed by an employer." Blake was not employed by Earl James Lee or Hammer Time Restoration. RCW 49.46.010 (3).

*Case Law*

- 5.14. While there are few cases construing this particular fact pattern, the opinion of the Washington state Supreme Court in *Anfinson v. FedEx Ground Package Sys., Inc.*, 174 Wn.2d 851, 281 P.3d 289 (2012) is instructive. In *Anfinson* the court held that under RCW 49.46.010, in determining whether persons were employees or not was subject to a broad, liberal definition.<sup>2</sup>
- 5.15. Even under this broad liberal definition, for a person such as Blake to be an employee of Earl, Earl would have to have "engaged, suffered or permitted him to do work" for him. The greater weight of evidence establishes that Earl did not engage, suffer or permit Blake to do work on either location and as such Blake was not an employee.

## 6. INITIAL ORDER

IT IS HEREBY ORDERED THAT:

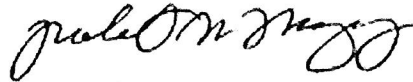
- 6.1. The Appellant, Earl James Lee dba Hammer Time Restoration did not violate RCW 49.52.050 by failing to pay agreed wages to Blake Kringel from July 31, 2016 through September 28, 2016.
- 6.2. The Department of Labor and Industries Citation and Notice of Assessment No.W-623-17 is reversed.
- 6.3. Earl James Lee dba Hammer Time Restoration is not liable for payment of \$8,235 in unpaid wages to Blake Kringel pursuant to Chapter 49.48 RCW because the parties did not enter into an agreement for Employer to pay wages to Blake Kringel.
- 6.4. The Department of Labor and Industries Notice of Assessment is **Reversed**.

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<sup>2</sup> "Under RCW 49.46.010(3), "[e]mployee' includes any individual employed by an employer" subject to multiple exceptions not relevant here. "[E]mploy' includes to permit to work." RCW 49.46.010(2). An "[e]mployer" is any individual or entity "acting directly or indirectly in the interest of an employer in relation to an employee." RCW 49.46.010(4). Taken together, these statutes establish that under the MWA (minimum wage act), an employee includes any individual permitted to work by an employer. This is a broad definition. See *Stahl v. Delicor of Puget Sound, Inc.*, 148 Wn.2d 876, 884, 64 P.3d 10 (2003) ("[T]he legislature broadly defined employee in RCW 49.46.010([3]).").



Issued from Tacoma, Washington on the date of mailing.



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Robert M Murphy  
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.<sup>3</sup> You may e-mail your Petition for Administrative Review to the Director at [directorappeal@lni.wa.gov](mailto: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.<sup>4</sup>

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

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<sup>3</sup> RCW 49.48.084 and RCW 34.05.464.

<sup>4</sup> RCW 49.48.084 and Chapter 34.05 RCW.

**CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 10-2017-LI-00600**

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

<p>Earl J. Lee dba Hammer Time Restoration 5606 Englewood Avenue Yakima, WA 98908 <b>Appellant/Employer</b> 91 7199 9991 7037 9103 7605</p>	<p><input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>
<p>Roger W. Bailey Bailey &amp; Busey, PLLC 411 North 2<sup>nd</sup> St. Yakima, WA, 98901 <b>Appellant Representative</b></p>	<p><input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>
<p>Angela Zurlini, AAG Office of the Attorney General 1116 West Riverside Ave., Suite 100 Spokane, WA 99201 <b>Agency Representative</b></p>	<p><input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>
<p>Blake Kringel 4427 N. Monroe Spokane, WA 99205 <b>Intervenor/Wage Claimant</b></p>	<p><input checked="" type="checkbox"/> First Class Mail <input checked="" type="checkbox"/> Certified Mail, Return Receipt 91 7199 9991 7037 9103 7605 <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>

Date: Thursday, May 31, 2018

OFFICE OF ADMINISTRATIVE HEARINGS

*Hailey Miles*

Hailey Miles  
Legal Assistant 2