

DIRECTOR OF THE DEPARTMENT OF LABOR & INDUSTRIES
STATE OF WASHINGTON

In re:	2019-003-WPA
DALE ERVIN dba CUSTOM DECKS, INC.,	DIRECTOR'S ORDER
APPELLANT,	RCW 49.48.084(4); RCW 34.05
Citation and Notice of Assessment No. W- W-114-18	
OAH Docket No. 07-2018-LI-00832	

Joel Sacks, Director of the Washington State Department of Labor & Industries, having considered the Order Dismissing Appeal (Order) served on September 11, 2018, having considered the petition for administrative review by Dale Ervin (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 Director makes the following Findings of Fact, Conclusions of Law, and Final Decision and Order.

I. FINDINGS OF FACT

1. The Department issued Citation and Notice of Assessment W-411-18 to the Appellant on March 30, 2018. The Appellant appealed, and the matter was referred to the Office of Administrative Hearings.

2. On August 20, 2018, the Office of Administrative Hearings sent notice of a status conference scheduled for September 10, 2018. The notice advised the Appellant: “If you fail to call in, the administrative law judge may hold you in default and dismiss your appeal. RCW 34.05.440(2).” (emphasis omitted).

3. On September 10, 2018, the Appellant failed to appear.

4. The Office of Administrative Hearings issued and served the Order dismissing the appeal on September 11, 2018.

5. On October 9, 2018, the Director received a timely filed petition for administrative review from Appellant.

6. The Appellant was asked to explain why the status conference was missed, but provided no explanation.

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. RCW 34.05.440(2) provides: “If a party fails to attend or participate in a hearing or other stage of an adjudicative proceeding . . . , the presiding officer may serve upon all parties a default or other dispositive order, which shall include a statement of the grounds for the order.”

3. Because Appellant has alleged no circumstances that would constitute good cause to miss the conference, the appeal is dismissed under RCW 34.05.440(2).

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III. DECISION AND ORDER

Consistent with the above Findings of Fact and Conclusions of Law, the Citation and Notice of Assessment is AFFIRMED.

ISSUED By:



JOEL SACKS
Director

1/17/19

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 mailed on the 17 day of January 2019, to the following via regular mail, postage prepaid.

Dale Ervin
Custom Decks, Inc.
7388 S. Revere Pkwy., Suite 704
Centennial, CO 80112

Julie Sanchez Larson, AAG
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Steven Reinhart
6901 Enoch Drive, Apt #201
Caldwell, ID 83607

DATED this 17 day of January, 2019, at Tumwater, Washington.

Lisa Deck

Lisa Deck