

DIRECTOR OF THE DEPARTMENT OF LABOR & INDUSTRIES
STATE OF WASHINGTON

In re:

EUGENE WESTRICK

APPELLANT,

Determination of Compliance
No. DOC-277-18

OAH Docket No. 04-2018-LI-00736

NO. 2019-006-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 Eugene Westrick (the Appellant) regarding the Initial Order dated November 27, 2018, 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 (OAH) served the Initial Order on November 27, 2018.

2. OAH mailed the Initial Order to the address of record of the Appellant. The Initial Order was not returned as undeliverable. Nor was any other correspondence to the address of record returned as undeliverable.
3. On January 3, 2019, the Appellant called OAH about the appeal. OAH emailed a copy of the Initial Order to him, and then mailed it to a new address he gave OAH the next day.
4. The Director's Office received the petition for administrative review on February 8, 2019.

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 an Initial Order is completed when placed in the U.S. Mail and sent to the address of record. RCW 34.05.010(19).
 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 February 8, 2019 petition for administrative review is dismissed and the November 27, 2018 Initial Order is the final agency order.

DATED at Tumwater, Washington this 1 day of May, 2019.



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 Deck, hereby declare under penalty of perjury under the laws of the State of Washington, that the DIRECTOR'S ORDER was mailed on the 1 day of May 2019, to the following via U.S. Mail, postage prepaid.

Eugene Westrick
331 – 2nd Ave. S, Suite 890
Minneapolis, MN 55401

Eugene Westrick
10201 Wayzata Blvd., Suite 2600
Minnetonka, MN 55035

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

Halcon Corp.
c/o Deborah Smith
14625 West 95th Street
Lenexa, KS 66215

DATED this 1 day of May, 2019, at Tumwater, Washington.

Lisa Deck