

DIRECTOR OF THE DEPARTMENT OF LABOR & INDUSTRIES  
STATE OF WASHINGTON

In re:

MOHAMED EL TAHER,

APPELLANT,

Determination of Compliance No. DOC-  
050-19

OAH Docket No. 12-2019-LI-00933

NO. 2019-012-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 appeal filed by the Appellant 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 Office of Administrative Hearings issued and served the Initial Order on July 3, 2019.
2. On July 22, 2019, the Director received a timely filed petition for review from the Appellant.
3. The Director adopts and incorporates all the Order's Findings of Fact.

4. The Director also adopts and incorporates the Order's "Issues," "Order Summary," and "Hearing" summary.

5. The testimony of the Appellant's witnesses is not credible because it does not account for time when the Appellant was not working. The testimony is also biased. Exhibit No. 7 is not credible for these same reasons.

## 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. The Director adopts and incorporates all the Conclusions of Law and Order.

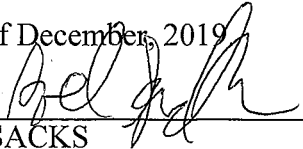
3. When an employer has kept inadequate records, the burden shifts to the employer to come forward with evidence of the precise amount of work performed. *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 687, 66 S. Ct. 1187, 90 L. Ed. 1515 (1946). But before the burden shifts, the employee must show "he has in fact performed work for which he was improperly compensated." *Id.* To make this showing, the employee must produce "sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference." *Id.*

The Appellant has failed to produce sufficient evidence to make this showing. Appellant argues that he produced a timesheet of the hours worked. Reply 2. Although he does not cite an exhibit, it appears he is referencing Appellant's Exhibit No. 7. But this exhibit does not show hours worked for specific days or even weeks. Given the documented evidence that Appellant quit his job at least six times, with these breaks in employment lasting up to five months, this document is not credible.

## III. DECISION AND ORDER

Consistent with the above Findings of Fact and Conclusions of Law, the Determination of Compliance is AFFIRMED and the Order of July 3, 2019, is incorporated by reference herein.

DATED at Tumwater, Washington this 16 day of December, 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 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 16 day of December 2019, to the following via regular, postage prepaid:

Jimmy Garg  
Seattle Litigation Group  
500 Union Street, Suite 510  
Seattle, WA 98101

Sarah Reyneveld, AAG  
Attorney General's Office  
800 Fifth Avenue, Suite 2000  
Seattle, WA 98104

Shahid Anis  
Seattle International Market & Meat  
dba Garam Masala and Spices  
12401 58th Avenue SE  
Snohomish, WA 98296

DATED this 16 day of December 2019, at Tumwater, Washington.

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

**WASHINGTON STATE  
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Mohamed El Taher,

Appellant/Wage Claimant.

Docket No. 12-2019-LI-00933

**INITIAL ORDER**

Agency: Labor and Industries

Program: Wage Payments

Agency No. DOC-050-19

**1. ISSUES**

- 1.1 Should the Department's Determination of Compliance, No. 050-19, issued on August 24, 2018, be affirmed?
- 1.2 If not, what wages, including interest, are owed?

**2. ORDER SUMMARY**

- 2.1 Determination of Compliance No. 050-19, issued August 24, 2018, is **AFFIRMED**.
- 2.2 No wages or interest are owed Mohamed El Taher for work he performed for Seattle International Market & Meat dba Garam Masala and Spices from May 24, 2015 to September 24, 2016.

**3. HEARING**

- 3.1 Hearing Dates: June 11 – 12, 2019
- 3.2 Administrative Law Judge: Jane Cantor Shefler
- 3.3 Appellant: Mohamed El Taher, Wage Claimant (*pro se*)
- 3.4 Agency: Department of Labor and Industries
  - 3.4.1 Representative: Sarah Reyneveld, Assistant Attorney General
  - 3.4.2 Witnesses:
    - 3.4.2.1 Shahid Anis
    - 3.4.2.2 Saima Salim Gondal
    - 3.4.2.3 Mohammad Abdul Hafeez
    - 3.4.2.4 Mazhaz Iqbal
    - 3.4.2.5 Abrar Omer
    - 3.4.2.6 Zeeshan Qazi

3.4.2.7 Raj Bir Singh

3.4.2.8 Ana Vilchez, Industrial Relations Agent

3.5 Exhibits: Department Exhibits 1 through 19 are admitted. Appellant Exhibits 1, 2, 4 – 5, 7, 9, 12, 14 – 17 are admitted. Appellant Exhibits 3, 6, 8, 10, 11, 13, 18 – 20 are excluded.

3.6 Other:

3.6.1 Shireen Farahani, Law Clerk, Office of the Attorney General, attended and observed.

3.6.2 Daniel Ehrlich, Attorney at Law, attended and observed on behalf of the Employer (June 11, 2019).

3.6.3 On June 11, 2019, Court Reporter Daria McKeever, Central Court Reporting & Video, appeared and provided stenographic reporting services.

3.6.4 On June 12, 2019, Court Reporter Patrick Heard, Central Court Reporting & Video, appeared and provided stenographic reporting services.

3.7 Close of Record: The record was closed on June 12, 2019.

#### 4. FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

##### *Jurisdiction*

4.1 On May 24, 2018, the Department of Labor and Industries ("Department" or "L&I") received a Worker Rights Complaint Form filed by Mohamed El Taher ("Claimant" or "El Taher"). *Department ("Dept.") Exhibit 4.*

4.2 The Department issued Determination of Compliance No. 050-19 on August 24, 2018. *Dept. Exhibit 1.*

4.3 Mr. El Taher appealed the determination on September 10, 2018. *Dept. Exhibit 2.* This matter was referred to the Office of Administrative Hearings on December 3, 2018.

##### *Claimant's Employment with Garam Masala.*

4.4 Seattle International Market & Meat dba Garam Masala and Spices ("Employer" or "Garam Masala") is a restaurant and catering business located in the University District of *Seattle*, owned and operated by Shahid Anis and his wife, Saima Salim Gondal. Mr. El Taher was employed as a server with Garam Masala beginning in April 2012. *Testimony of Shahid Anis (Anis Testimony).*

4.5 Mr. El Taher last worked as a server in the restaurant in mid-June 2015, when he quit. *Anis Testimony; Testimony of Saima Salim Gondal (Gondal Testimony).*

Throughout his employment, he generally worked split shifts, during the lunch service (11:00 – 11:30 a.m. to 2:00 p.m.) and the dinner service (5:30 p.m. to 9:30 p.m.), six days per week. *Anis Testimony; Gondal Testimony*. The restaurant is closed on Mondays.

- 4.6 During the period of April 2012 through June 2015, Mr. El Taher was paid a flat rate each month, starting at \$1,200 per month. Over the years, the pay was increased in increments to \$1,800 per month. *Dept. Exhibit 2, page 1; Testimony of Mohamed El Taher (El Taher Testimony)*. Mr. El Taher was paid in cash and the Employer did not keep any time or pay records. The Employer did not pay Mr. El Taher any tips throughout his employment. *Anis Testimony*.
- 4.7 During the time Mr. El Taher worked for Garam Masala, he quit at least six times, returning after a hiatus of one to five months. *See, e.g., Dept. Exhibit 9, pages 3 – 4; Anis Testimony, Gondal Testimony; El Taher Testimony*. Also, during his employment, he took time off due to illness or for vacations. *Dept. Exhibit 9, pages 2 – 3; El Taher Testimony*.
- 4.8 After he quit the restaurant in mid-June 2015, Mr. El Taher continued to work for the Employer as a server for catering events, until September 2016. For these catering events, Mr. El Taher was paid in cash, at varying rates (\$15 to \$20 per hour) depending on the event. He was generally paid for the catering service within one to two weeks of the event. The time of payment varied depending on when the Employer was paid by the customer. *Anis Testimony*.
- 4.9 On or about September 22, 2016, Mr. El Taher quit working for the Employer for its catering events. *Dept. Exhibit 9, page 1*. He was paid for the last catering event worked on or about September 28, 2016. *Id.*

#### *Investigation of Wage Complaint*

- 4.10 The Claimant filed a Worker's Rights Complaint Form on May 24, 2018. *Dept. Exhibit 4*. He asserted that, during the years of 2012 through 2016, he was owed minimum wages, overtime wages, agreed wages, paid sick leave, and unpaid tips. During this period, the Claimant asserted that he worked 13 hours per day, 26 days each month, for five years, and had received \$1200 per month, but had not received any tips. *Dept. Exhibit 4, page 6*.
- 4.11 The Department assigned Industrial Relations Agent Ana Vilchez to investigate the claim.
- 4.12 Ms. Vilchez initially determined that the claim period began on May 24, 2015, because of the three-year statute of limitations from the date a complaint is received.<sup>1</sup> *Dept. Exhibit 3, page 1; Testimony of Ana Vilchez (Vilchez Testimony)*.

---

<sup>1</sup> RCW 49.48.083(2).  
INITIAL ORDER  
Docket No. 12-2019-LI-00933  
8500-SCP



She also determined that the Department did not have authority to enforce payment of tips during the time the Claimant was employed by Garam Masala.

- 4.13 Ms. Vilchez requested wage and hour records from the Employer, which Mr. Anis was unable to provide. The Employer had not maintained any records of the Claimant's employment because he was paid in cash. *Dept. Exhibit 3, page 2; Anis Testimony*. However, Mr. Anis submitted copies of text messages spanning the period of May 29, 2013 through September 28, 2016, which indicated that the Claimant had not worked consistently during the period at issue. *Dept. Exhibit 9, pages 1 – 5*.
- 4.14 In support of his claim, Mr. El Taher submitted written statements from friends, confirming that he worked for the Employer. *Dept. Exhibit 12, pages 1 – 3 and 5*. The Claimant did not provide a reconstruction of hours worked.
- 4.15 Due to the sparse information provided by the Claimant and the Employer, Ms. Vilchez did not have enough evidence to support Mr. El Taher's claim that he consistently worked 13-hour days, six days per week, during the period at issue. She also did not have sufficient evidence to determine the actual hours worked by him. Ms. Vilchez was unable to determine how much, if anything, was owed to the Claimant. She considered the complaint to be a bona fide dispute. *Dept. Exhibit 3, page 3; Dept. Exhibit 15, page 3; Vilchez Testimony*.
- 4.16 For these reasons, L&I issued Determination of Compliance No. 050-19, here under appeal. *Dept. Exhibit 1; Dept. Exhibit 15; Vilchez Testimony*.

## 5. CONCLUSIONS OF LAW

Based upon the facts above, I make the following conclusions:

### *Jurisdiction*

- 5.1 The Office of Administrative Hearings has jurisdiction over the persons and subject matter of this case under RCW 34.05, RCW 49.46, and RCW 49.48.

### *Wage Complaints*

- 5.2 The Department is responsible for implementing and enforcing the provisions of Chapters 49.46, 49.48 and 49.52 of the Revised Code of Washington (RCW) and Title 296 Washington Administrative Code (WAC), pertaining to wages, in the exercise of the police powers of the state for the purpose of protecting the immediate and future health, safety, and welfare of the people of the State of Washington.
- 5.3 If an employee files a wage complaint, the Department must investigate. RCW 49.48.083(1). If the Department finds the employer has violated one or more wage payment requirements, it shall 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).

- 5.4 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(1).

#### *Burden of Proof*

- 5.5 In appealing a determination of compliance, the party challenging the Department's decision has the burden of proof, by a preponderance of the evidence. The standard of review of a determination of compliance by the Administrative Law Judge is *de novo*. RCW 49.48.084(3).
- 5.6 A preponderance of the evidence is that evidence which, when fairly considered, produces the stronger impression, has the greater weight, and is more convincing as to its truth when weighed against the evidence in opposition to it. *Yamamoto v. Puget Sound Lumber Co.*, 84 Wash. 411, 146 P. 861 (1915).
- 5.7 Substantial evidence must be presented and must be "sufficient to persuade a fair-minded person of the truth or correctness of the matter." *Ongom v. Dept. of Health*, 124 Wn. App. 935, 948-49, 104 P.3d 29 (2005), *reviewed on other grounds*, 155 Wn.2d 1001, 122 P.3d 185 (2005)
- 5.8 "If the employer fails to keep records, the burden is on the employer to prove the claimed hours were not worked." *MacSuga, supra*, at 445. If the employee shows by "reasonable inference" the number of hours worked, then the burden shifts to the employer. *Id.*
- 5.9 In the present case, the Claimant has the burden of proof to establish, by a preponderance of the evidence, that the Department's Determination of Compliance No. 050-19 is in error.

#### *Wage Payment Laws*

- 5.10 RCW 49.46.020 requires that every employer shall pay to each of its employees a rate of minimum wage for hours worked. *See also*, WAC 296-126.
- 5.11 RCW 49.46.010(7) defines "wage" as:
- [C]ompensation due to an employee by reason of employment, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to such deductions, charges, or allowances as may be permitted by rules by director. RCW 49.46.010(7).
- 5.12 "Hours worked" means all hours which the worker is authorized or required by the business to be on the premises or at a prescribed work place. WAC 296-126-002(8). This could include travel time, training, and meeting time, wait time, on-call time, and

time for putting on and taking off uniforms and also may include meal periods. RCW 49.48, 49.46 and 49.52.

- 5.13 An "employee" is defined as "any individual employed by an employer." RCW 49.46.010. The term "employee" is further defined as "an employee who is employed in the business of his employer whether by way of manual labor or otherwise." WAC 296-126-002.
- 5.14 An employer is required to pay overtime when an employee works over 40 hours in a work week. RCW 49.46.130(1). The overtime rate is not less than one and a half times the regular rate at which the worker is employed. *Id.* A work week is defined as a fixed and regularly reoccurring seven day period. WAC 296-128-015.
- 5.15 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).
- 5.16 The evidence must establish that the failure to pay by the employer was "willful" in that it was "knowing and intentional" and not the result of a bona fide dispute regarding the contested wages. *Pope v. University of Wash.*, 121 Wn.2d. 479 (1993).
- 5.17 The initial burden is on the employee to establish prima facie evidence of wages which were agreed to, but willfully failed to be paid by the employer. *MacSuga v. Spokane County*, 97 Wn. App. 435 (1999) citing *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680 (1946).
- 5.18 In the present case, the Claimant contends the Employer failed to pay him for all hours worked, including overtime, and did not pay him any tips throughout the course of his employment.

### *Analysis*

- 5.19 Here, the Claimant did not provide any evidence as to specific hours worked or that he was owed wages beyond what he had already been paid by the Employer. The assertion that he worked 13-hours days, six days per week, over the course of several years is not substantiated by the little documentation provided by either the Claimant or the Employer.
- 5.20 Because of the insufficient documentation provided by the Claimant and the Employer, the Department was unable to determine whether any wages were owed to Mr. El Taher. The Department did not have authority to enforce payment of tips to him. Under RCW 49.48.083(1), the Department must issue either a citation and notice of assessment when finding wages are owing or a determination of compliance if it finds that the employer did not violate any wage payment laws. Here, the Department issued a determination of compliance because it could not establish that the Employer violated the wage payment laws. The Department found

that there was bona fide dispute regarding the amount wages, if any, owed to the Claimant.

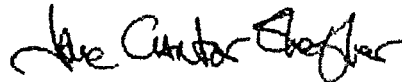
- 5.21 The Claimant has failed to meet his burden, by a preponderance of the evidence, in showing the Employer willfully failed to pay him, pursuant to the applicable Washington State wage payment laws. As a result, the Department's Determination of Compliance No. 050-19 is **affirmed**.

## 6. INITIAL ORDER

IT IS HEREBY ORDERED THAT:

- 6.1 Determination of Compliance No. 050-19, issued August 24, 2018, is **AFFIRMED**.
- 6.2 No wages or interest are owed Mohamed El Taher for work he performed for Seattle International Market & Meat dba Garam Masala and Spices from May 25, 2015 to September 24, 2016.

Issued from Tacoma, Washington on the date of mailing.



---

Jane Cantor Shefler  
Administrative Law Judge  
Office of Administrative Hearings

**APPEAL RIGHTS – READ CAREFULLY**

**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>2</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>3</sup>

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

**CERTIFICATE OF SERVICE ATTACHED**

---

<sup>2</sup> RCW 49.48.084 and RCW 34.05.464.

<sup>3</sup> RCW 49.48.084 and Chapter 34.05 RCW.

**CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 12-2018-LI-00933**

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

<p>Mohamed Eltaher 100 Melrose Avenue East #510 Seattle, WA 98102 <b>Appellant/Wage Claimant</b></p> <p>9489 0090 0027 6021 0134 14</p>	<p><input checked="" type="checkbox"/> First Class Mail <input checked="" type="checkbox"/> Certified Mail, Return Receipt 9489 0090 0027 6021 0134 14 <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>
<p>Sarah Reyneveld, AAG Office of the Attorney General MS: TB-14 800 Fifth Avenue, Ste. 2000 Seattle, WA 98104 <b>Respondent Representative</b></p>	<p><input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input checked="" type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>
<p>Seattle International Market &amp; Meat dba Garam Masala and Spices c/o Shahid Anis 12401 58th Avenue SE Snohomish, WA 98296 <b>Employer Representative</b></p> <p>9489 0090 0027 6021 0134 21</p>	<p><input checked="" type="checkbox"/> First Class Mail <input checked="" type="checkbox"/> Certified Mail, Return Receipt 9489 0090 0027 6021 0134 21 <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>
<p>Seattle International Market &amp; Meat dba Garam Masala and Spices c/o Shahid Anis 12401 58th Avenue SE Snohomish, WA 98296 <b>Employer/Intervenor</b></p> <p>9489 0090 0027 6021 0134 38</p>	<p><input checked="" type="checkbox"/> First Class Mail <input checked="" type="checkbox"/> Certified Mail, Return Receipt 9489 0090 0027 6021 0134 38 <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>

Date: Wednesday, July 03, 2019

OFFICE OF ADMINISTRATIVE HEARINGS

*Carla Sullivan*

Carla Sullivan  
Legal Assistant 2