

DIRECTOR OF THE DEPARTMENT OF LABOR & INDUSTRIES
STATE OF WASHINGTON

In re:

FIRST QUALITY BUILDS, LLC and
SEYED FARSHID HOSSENI, as an
individual,

APPELLANTS,

Citation and Notice of Assessment No.
W-363-19

OAH Docket No. 07-2019-LI-01135

2020-002-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 Order Denying Petition to Vacate Order Dismissing Appeal (Order) served on August 26, 2019 having considered the petition for administrative review filed by First Quality Builds, LLC, and Seyed Farshid Hosseni (Appellants) with 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 Director adopts findings of fact no. 4.1 to 4.5 in the Order.
2. On August 26, 2019, OAH denied the Appellants' petition to vacate order.

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DIRECTOR'S ORDER

RCW 49.48.084(4); RCW 34.05

3. On September 20, 2019, the Director received the Appellants' timely petition for administrative review.

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. The Director adopts conclusions of law no. 5.1 to 5.4 in the Order.

4. No good cause for missing the scheduling conference has been shown. The Appellants admit the notice was received. Calendar mismanagement is not an excuse for missing a scheduled conference. *Graves v. Dep't of Employment Sec.*, 144 Wn. App. 302, 310, 182 P.3d 1004 (2008).

5. The Director would take judicial notice that given the workload of OAH, timely appearances to scheduling conferences are essential for the administration of justice for employers and workers in individual cases and all litigant as a whole. To further obtaining justice for all parties and to further judicial economy, the Legislature adopted RCW 34.05.440. The Director would also take notice that appearing before the Director are many pro se litigants who are held to the standards of attorneys, where their defaults for failing to attend scheduled conferences are upheld. The Appellants argue that it would be unfair and unjust to uphold the dismissal, but both the pre-hearing conference notice and RCW 34.05.440(2) spell out the consequences for failing to attend a scheduled conference. No "repeat dilatory conduct" is required.

III. DECISION AND ORDER

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

DATED at Tumwater, Washington this 18 day of February, 2020.



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 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 18 day of February 2020 to the following via regular mail, postage prepaid.

David Linville
Linville Law Firm, PLLC
800 Fifth Avenue, Suite 3850
Seattle, WA 98104

Heather Leibowitz
Office of the Attorney General
800 Fifth Avenue, Suite 2000
Seattle, WA 98104

Naveedullah Ayoub
25005 98th Place S., Apt. #C201
Kent, WA 98030

DATED this 18 day of February 2020, at Tumwater, Washington.



Lisa Deck

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

First Quality Builds, LLC and Seyed
Farshid Hosseni, as an individual,

Appellants.

Docket No. 07-2019-LI-01135

**ORDER DENYING PETITION TO VACATE
ORDER DISMISSING APPEAL**

Agency: Department of Labor and Industries
Program: Wage Payments
Agency No. W-363-19

1. ISSUE

- 1.1. Should the Order Dismissing Appeal issued August 6, 2019 be vacated under RCW 34.05.440(3)?

2. ORDER SUMMARY

- 2.1. No. Appellants First Quality Builds, LLC and Seyed Farshid Hosseni, as an individual, have presented insufficient grounds for vacating the August 6, 2019 Order Dismissing Appeal.

3. MOTION HEARING

- 3.1. Motion Hearing Date: August 22, 2019
- 3.2. Administrative Law Judge: Jane Cantor Shefler
- 3.3. Appellants: First Quality Builds, LLC and Seyed Farshid Hosseni, as an individual ("Appellants")
- 3.3.1. Representative: David Linville, Attorney at Law
- 3.4. Agency: Department of Labor and Industries
("Labor and Industries")
- 3.4.1. Representative: Heather Leibowitz, Assistant Attorney General
- 3.5. Record relied upon: Presentation by the parties at the motion hearing; the Appellants' petition to vacate; and the pleadings and documents filed to date.

4. FINDINGS OF FACT AS A MATTER OF LAW

The documents establish the following facts as a matter of law:

- 4.1. On July 24, 2019, the Office of Administrative Hearings (OAH) sent the Appellants, First Quality Builds, LLC and Seyed Farshid Hosseni, and their attorney of record, David Linville, a notice of prehearing conference (Notice), providing the date and time

of the prehearing conference (August 5, 2019 at 9:00 a.m.), and instructions for participation.

- 4.2. Below the call-in information on the front page, in bold-face type, the Notice stated: **"You must call in to the conference. If you fail to call in, the administrative law judge may hold you in default and dismiss your appeal. RCW 34.05.440(2)"**
- 4.3. On August 5, 2019 at 9:00 a.m., counsel for Labor and Industries appeared for the prehearing conference. Neither the Appellants nor Mr. Linville were present. When the Appellants had not yet appeared by 9:15 a.m., Labor and Industries moved for a default order, which was granted on the record and issued in writing on August 6, 2019.
- 4.4. On August 9, 2019, OAH received Appellants' Petition to Vacate Order (Petition).
- 4.5. In the Petition, Mr. Linville states that he failed to appear for the prehearing conference because, at the time, he was in the midst of an extended meeting with another client. He acknowledged that he had received the Notice and had recorded the event on his calendar. However, while meeting with his client, he forgot to attend the prehearing conference in this matter.

5. CONCLUSIONS OF LAW

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

Jurisdiction

- 5.1. I have jurisdiction over the persons and subject matter of this case under chapters 34.05 RCW, and 10-08 WAC.

Appellants Have Shown Insufficient Basis for Vacating the Default Order.

- 5.2. Under the Administrative Procedures Act (APA), chapter 34.05 RCW, an appellant subject to a default and dismissal order may petition the issuing tribunal for an order vacating the default and dismissal order. RCW 34.05.440(3). The APA, though, is silent as to the basis for granting or denying petition to vacate a default order. The Model Rules of Procedure, chapter 10-08 WAC, are equally silent. Therefore, I refer to Civil Rule ("CR") 60(b)(1), CR 55(c)(1), and the court's analysis in *White v. Holm*, 73 Wn.2d 348, 438 P.2d 581 (1968), for guidance.
- 5.3. Each of those authorities requires the petitioning appellant to demonstrate good cause for failing to appear. CR 55(c) provides for the setting aside of a default judgment "for good cause shown", "upon such terms as the court deems just", and "in accordance with rule 60(b)." CR 60(b) provides: "[T]he court may relieve a party or the party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order." The *White* court provides substantial

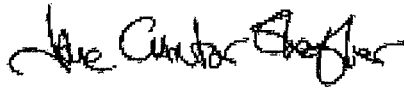
discussion and detail. However, there is a common theme: Good cause for failing to appear implies a circumstance reasonably beyond the control of the appellant who failed to appear.

- 5.4. Here, counsel for the Appellants failed to appear at the prehearing conference because he was occupied with another client and forgot about it. He argues that failing to appear was "excusable neglect" because the meeting with the other client lasted longer than expected, which caused him to forget about the prehearing conference. Forgetting about the prehearing conference, though, is not a circumstance reasonably beyond counsel's control and does not establish good cause for the failure to appear. Although mistakes happen, forgetting about a scheduled event is not "excusable neglect." The Appellants have provided insufficient cause to vacate the order of dismissal. The Appellants' petition to vacate is DENIED.

6. INITIAL ORDER

IT IS HEREBY ORDERED THAT:

- 6.1. The Appellants' Petition to Vacate Default Order is DENIED.
- 6.2. The Order Dismissing Appeal issued August 6, 2019 remains in full force and effect.
- Issued from Tacoma, Washington on the date of mailing.



Jane Cantor Shefler
Administrative Law Judge
Office of Administrative Hearings

CERTIFICATE OF SERVICE ATTACHED

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.¹ You may e-mail your Petition for Administrative Review to the Director at 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.²

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

¹ RCW 49.48.084 and RCW 34.05.464.

² RCW 49.48.084 and Chapter 34.05 RCW.

CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 07-2019-LI-01135

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

<p>First Quality Builds, LLC c/o Seyed Farshid Hosseni 2409 Cliffside Lane NW Apt. E201 Gig Harbor, WA 98335 Appellant/Employer</p>	<p><input checked="" type="checkbox"/> First Class Mail <input checked="" type="checkbox"/> Certified Mail, Return Receipt 9489 0090 0027 6081 4139 40 <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>
<p>David Linville Linville Law Firm PLLC 800 5th Avenue, Suite 3850 Seattle, WA 98104 Appellant Representative</p>	<p><input checked="" type="checkbox"/> First Class Mail <input checked="" type="checkbox"/> Certified Mail, Return Receipt 9489 0090 0027 6081 4139 57 <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>
<p>Heather Leibowitz, AAG Office of the Attorney General MS: TB-14 800 5th Ave Suite 2000 Seattle, WA 98104 Respondent Representative</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>Naveedullah Ayoub 25005 98th Place S. Apt. C201 Kent, WA 98030 Intervenor/Wage Claimant</p>	<p><input checked="" type="checkbox"/> First Class Mail <input checked="" type="checkbox"/> Certified Mail, Return Receipt 9489 0090 0027 6081 4139 64 <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>

Date: Monday, August 26, 2019

OFFICE OF ADMINISTRATIVE HEARINGS

Carla Sullivan

Carla Sullivan
Legal Assistant 2