

DIRECTOR OF THE DEPARTMENT OF LABOR & INDUSTRIES
STATE OF WASHINGTON

In re:

AMELIA BUTLER

APPELLANT,

Department No. 249-19

OAH Docket No. 09-2019-LI-01173

2020-004-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 Dismissing Appeal (Order) served on October 22, 2019, having considered the petition for review filed by Amelia Butler (Appellant) with the Director's Office, and briefing submitted to the Director's Office, and having reviewed the record, issues this Director's Order.

I. FINDINGS OF FACT

1. On June 7, 2019, the Department served a Determination of Compliance on the Appellant. The Appellant appealed and the matter was referred to the Office of Administrative Hearings.
2. On October 8, 2019, the Office of Administrative Hearings sent notice of a pre-hearing conference scheduled for October 21, 2019, at 9:15 am. 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).”

3. On October 21, 2019, the Appellant failed to appear.

4. The Office of Administrative Hearings issued and served the Order dismissing the appeal on October 22, 2019.

5. On October 29, 2019, the Director received a timely filed petition for administrative review from Appellant.

6. The Appellant does not deny in her petition that she received the notice from Office of Administrative Hearings. Instead, she reports that she missed the hearing “on the grounds of medical reasons. Due to privacy, I am not attaching any medical documentation for this case. However, I would like to state in more detail that I had a personal medical situation that needed urgent care and also I need to obtain legal advice for this situation.” Butler Br. (Dec. 7, 2019).

7. On February 24, 2020, she was advised that she did “not need to provide documentation of what the medical condition was or what, if any, treatment you received, but in order to give fair consideration to your appeal, it is suggested that you provide a note from a medical professional that explains why you were unable to call in and request a continuance from OAH. The note should also state whether you were medically unable to attend. The standard the Director uses to determine whether a default order should stand is “good cause.”

8. She produced no documentation but said that she had “scalp and nerve pain that stop[ped] me from attending.” Butler Resp. (Mar. 20, 2020).

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.

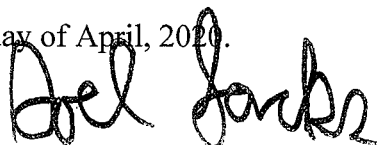
2. RCW 34.05.440(2) provides: "If a party fails to attend or participate in a hearing or other stage of an adjudicative proceeding . . . , the presiding officer may serve upon all parties a default or other dispositive order, which shall include a statement of the grounds for the order."

3. The Appellant has provided no verification that she had a personal medical situation that needed urgent care. She provides no explanation as to why she could not inform Office of Administrative Hearings that she could not attend, nor does she explain why someone on her behalf could not do that.

III. DECISION AND ORDER

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

DATED at Tumwater, Washington, this 7 day of April, 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 7 day of April 2020, to the following via regular mail, postage prepaid.

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DATED this 7 day of April, 2020, at Tumwater, Washington.



Lisa Deck