

DIRECTOR OF THE DEPARTMENT OF LABOR & INDUSTRIES
STATE OF WASHINGTON

In re:

NHTC INVESTMENT, INC. dba MALRI
HYANG TACOMA, and JAE W. KIM, as
an individual,

APPELLANTS,

Citation and Notice of Assessment No. W-
219-20

OAH Docket No. 03-2020-LI-01332

2020-011-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 served on April 20, 2020, having considered the petition for review filed by NHTC Investment, Inc. (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. On November 15, 2019, the Department issued a Citation and Notice of Assessment to the Appellant. The Appellant appealed and the matter was referred to the Office of Administrative Hearings.
2. The Office of Administrative Hearings sent notice of a pre-hearing conference scheduled for March 6, 2020 at 3:00 pm. 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 March 6, 2020, the Appellant failed to appear.
4. The Office of Administrative Hearings issued and served the Order dismissing the appeal on March 23, 2020.
5. The Appellant moved to vacate the order of dismissal. The Administrative Law Judge set a motion hearing. The appellant did not appear and on April 20, 2020, the Administrative Law Judge denied the motion to vacate.
6. On April 24, 2020 the Director received a timely filed petition for administrative review from Appellant.
7. The Appellant does not deny receiving the notice of the prehearing conference. Instead, its president gave the following reason for missing the prehearing conference, “[u]nder the current circumstances with COVID-19 Virus I missed hearing date.”
8. In the context of explaining why the president missed the hearing on the motion to vacate the order dismissing appeal, he recounts difficulties in responding to COVID-19 in his business and that it has affected revenue and caused layoffs, and he said that he was sleep deprived, which impaired his memory.

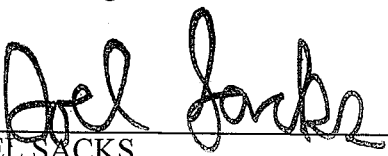
II. CONCLUSIONS OF LAW

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. A party's mishandling of the party's calendar is not good cause for missing an event. *See Graves v. Dep't of Emp't Sec.*, 144 Wn. App. 302, 311, 182 P.3d 1004 (2008). A general claim of lack of sleep causing memory issues is not sufficient to constitute good cause. 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).

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 11 day of August, 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 11 day of August 2020, to the following via e-mail and regular mail, postage prepaid.

NHTC Investment, Inc. dba
Malri Hyang Tacoma
2340 130th Avenue NE, Suite D202
Bellevue, WA 98005
francesca.kim@shkgroup.com
seong.kim@shkgroup.com

Aryna Anderson, AAG
Office of the Attorney General
P.O. Box 2317
Tacoma, WA 98401
Aryna.Anderson@atg.wa.gov
LITacCal@atg.wa.gov

Jae W. Kim
2340 130th Avenue NE, Suite D202
Bellevue, WA 98005
zeuskim@gmail.com

Kevin Chunsa
33132 41st Lane S.
Federal Way, WA 98001
kevinchunsa@gmail.com

DATED this 11 day of August, 2020, at Tumwater, Washington.



Lisa Deck