

DIRECTOR OF THE DEPARTMENT OF LABOR & INDUSTRIES
STATE OF WASHINGTON

In re:	2022-014-WPA
Etkhar Balfour,	DIRECTOR'S ORDER
Appellant,	RCW 49.48.084(4); RCW 34.05
Citation No.: DOC-136-21	
<u>OAH Docket No. 09-2021-LI-01710</u>	

Joel Sacks, Director of the Washington State Department of Labor & Industries, having considered the Order Dismissing Appeal - Default served on November 2, 2021, having considered the appeal filed by the 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 parties in this matter are the Department of Labor & Industries (Department), Xpo Logistics Drayage, LLC (Employer), 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 Appellant failed to attend a November 1, 2021 prehearing conference.
2. The Office of Administrative Hearings issued and served the Order Dismissing Appeal – Default on November 2, 2022.

5. The Director received a timely filed petition for administrative review from the Appellant.

6. At the time of the scheduled conference, the Appellant claims he was waiting for a call from the Administrative Law Judge. Such a belief was unreasonable given he had been notified about the duty to affirmatively call in and had missed a previous conference.

7. Notwithstanding the unreasonableness of believing the Administrative Law Judge would call him, he has offered evidence that purports to document that when he did not receive a call by 11:15 a.m., he called in at 11:18 a.m. The Administrative Law Judge only waited 15 minutes before ruling the Appellant in default at 11:15 a.m.

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.

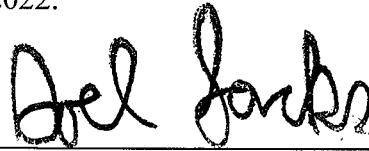
2. RCW 34.05.440(2) provides: "If a party fails to attend or participate in a hearing or other stage of an adjudicative proceeding . . . , the presiding officer may serve upon all parties a default or other dispositive order, which shall include a statement of the grounds for the order."

3. On this record, the Director is unable to determine if there was good cause to miss the hearing. And the Director declines to rule that there must be a specific amount of time granted to wait for a party to appear other than the time period must be reasonable in the circumstances in order to judge whether the party "fail[ed] to attend or participate in a hearing." RCW 34.05.440(2). At the time of the ruling the Administrative Law Judge had no reason to believe that there would be a call at 11:18 a.m. The Administrative Law Judge may weigh this fact, past attendance and notice, and other facts to be developed at the Office of Administrative Hearings to determine if there was good cause to miss the conference and whether 15 minutes was reasonable amount of time to wait under the facts and circumstances of the case.

III. DECISION AND ORDER

Consistent with the above Findings of Fact and Conclusion of Law, the Order Dismissing Appeal is vacated and this case is remanded to Office of Administrative Hearings for determination as to whether there was good cause to miss the prehearing conference. If good cause is found, the case should proceed to hearing; if good cause is not found, any aggrieved party may appeal as provided for in RCW 49.48.084.

DATED at Tumwater this 19 day of May, 2022.



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).

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 19 day of May 2022, to the following via regular mail, postage prepaid and email.

Etkhar Balfour
28 157th Ave SE
Bellevue, WA 98008
A.Balfour@hotmail.com

Peter Nohle
Jackson Lewis P.C.
520 Pike Street, Suite 2300
Seattle, WA 98101
Peter.Nohle@jacksonlewis.com

Ryan Gompertz, AAG
Office of the Attorney General
800 5th Avenue, Suite 2000
Seattle, WA 98104
Ryan.Gompertz@atg.wa.gov
lniseaeservice@atg.wa.gov
(via email only)

Xpo Logistics Drayage, LLC
13777 Ballantyne Corporate Pl, Ste. 400
Charlotte, NC 28277

DATED this 19 day of May 2022, at Tumwater, Washington.



LISA DECK

