

**DIRECTOR OF THE DEPARTMENT OF LABOR & INDUSTRIES
STATE OF WASHINGTON**

In re:

ULADZIMIR DZIAMKOVICH,

Appellant,

Determination of Compliance No.
DOC-162-23

OAH Docket No. 08-2023-LI-01924

No. 2024-006-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 Uladzimir Dziamkovich, (Appellant), 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 January 29, 2024.
2. The Director received a timely filed petition for review from the Appellant.
3. The Director adopts and incorporates the Initial Order's "Issues," "Order Summary," and "Hearing" sections.

NO. 2024-006-WPA

DIRECTOR'S ORDER

RCW 49.48.084(4); RCW 34.05

1

OFFICE OF THE DIRECTOR
DEPARTMENT OF LABOR & INDUSTRIES
P.O. BOX 44001
OLYMPIA, WA 98504-4001

4. The Director adopts and incorporates the Initial Order's findings of facts 4.1 through 4.18.

II. CONCLUSIONS OF LAW

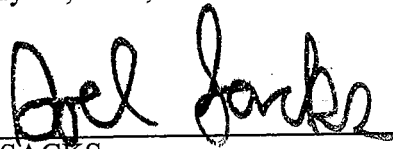
1. Based on the Appellant's timely filed petition for review, there is authority to review and decide this matter under RCW 49.48.084 and RCW 34.05.

2. The Director adopts and incorporates the Initial Order's conclusions of law 5.1 through 5.16.

III. DECISION AND ORDER

Consistent with the above Findings of Fact and Conclusion of Law, the Determination of Compliance is **AFFIRMED**. The Initial Order dated January 29, 2024, is **AFFIRMED**.

DATED at Tumwater this 9 day of July, 2024.



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

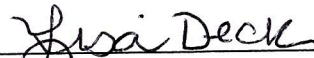
I, Lisa Deck, hereby declare under penalty of perjury under the laws of the State of Washington, that the **DIRECTOR'S ORDER** was e-mailed and mailed on the 9 day of July 2024, to the following via regular, postage prepaid:

Cindy Gaddis, AAG
Office of the Attorney General
7141 Cleanwater Dr SW
Tumwater, WA 98501
cindy.gaddis@atg.wa.gov
mary.street@atg.wa.gov
lniolyeservice@atg.wa.gov

Pinnacle Technical Resources, Inc.
Attn: Jason Regas, Associate General Counsel
10670 North Central Expressway, Ste. 600
Dallas, TX 75231
Jason.regas@pinnacle1.com

Uladzimir Dziamkovich
201 SW 5th Pl
Apt L-303
Renton, WA 98057
vdemkovich@gmail.com

DATED this 9 day of July, 2024, at Tumwater, Washington.



LISA DECK

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Uladzimir Dziarkovich,

Appellant/Wage Claimant.

Docket No. 08-2023-LI-01924

INITIAL ORDER

Agency: Labor and Industries

Program: Wage Payments

Agency No. DOC-162-23

1. ISSUES

- 1.1. Did Employer, Pinnacle Technical Resources, Inc. violate RCW 49.48.010 and RCW 49.52.050 by failing to pay agreed wages for Wage Claimant, Uladzimir Dziarkovich' during the final pay period of June 11 through July 11, 2022, for 160 hours at the regular hourly pay rate of \$85.00?
- 1.2. If so, what is the appropriate penalty and interest?

2. ORDER SUMMARY

- 2.1. Employer, Pinnacle Technical Resources, Inc. did not violate RCW 49.48.010 and RCW 49.52.050 by failing to pay agreed wages for Wage Claimant, Uladzimir Dziarkovich' during the final pay period of June 11 through July 11, 2022, for 160 hours at the regular hourly pay rate of \$85.00.
- 2.2. No penalty and interest are owed by Employer, Pinnacle Technical Resources, Inc.
- 2.3. Determination of Compliance No. 162-23 issued May 18, 2023 is **AFFIRMED**.

3. HEARING

- 3.1. Hearing Date: November 29, 2023
- 3.2. Administrative Law Judge: Travis Dupree
- 3.3. Appellant: Uladzimir Dziarkovich, *pro se*
 - 3.3.1. Witness: Uladzimir Dziarkovich
- 3.4. Agency: Labor and Industries
 - 3.4.1. Representative: Cindy Gaddis, Assistant Attorney General

- 3.4.2. Witnesses: Jordan Schramm and Tam Huynh
- 3.4.3. Observers: Sean Frymire and Charles Ison
- 3.5. Employer: Pinnacle Technical Resources
- 3.5.1. Representative: Jason Regas, Associate General Counsel
- 3.6. Exhibits: Department's Exhibits 1 through 20 and Appellant's 0 through 12 were admitted.
- 3.7. Other: Jacqueline Stopyak, Court Reporter.

4. FINDINGS OF FACT

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

Jurisdiction

- 4.1. On May 18, 2023, the Department issued a Determination of Compliance No. 162-23. The Department determined the Employer, Pinnacle Technical Resources, Inc. paid Uladzimir Dzimkovich all wages due. *Department's Exhibit 1.*
- 4.2. On May 22, 2023, Uladzimir Dzimkovich submitted an appeal of the Determination of Compliance. *Department's Exhibit 2.*
Pinnacle Technical Resources, Inc.
- 4.3. Pinnacle Technical Resources, Inc. is a staffing agency. *Jordan Schramm Schramm testimony.*
- 4.4. Jordan Schramm was the Senior Payroll Specialist for Pinnacle Technical Resources, Inc. *Schramm testimony.*

Pinnacle Technical Resources, Inc. and Uladzimir Dzimkovich

- 4.5. Uladzimir Dzimkovich worked for Pinnacle Technical Resources, Inc. as a developer/software engineer. Mr. Dzimkovich began this employment on October 27, 2021. *Schramm and Uladzimir Dzimkovich testimony and Department's Exhibit 5.*
- 4.6. Mr. Dzimkovich was assigned to work for Pinnacle Technical Resources, Inc.'s client, JP Morgan Chase. *Schramm testimony and Department's Exhibit 5.*

- 4.7. Mr. Dziarkovich's position was remote and his employment was at will. *Schramm testimony and Department's Exhibit 5.*
- 4.8. Mr. Dziarkovich reported his time in JP Morgan Chase's management system called "B-line". Then, his time was reported to Pinnacle Technical Resources, Inc.'s system, Bullhorn. *Schramm testimony and Department's Exhibit 5.*
- 4.9. The Client, JP Morgan provided Mr. Dziarkovich with a laptop. *Dziarkovich testimony.*
- 4.10. Pinnacle Technical Resources, Inc. paid Mr. Dziarkovich from October 27, 2021 to June 12, 2022, at a rate of \$85.00 per hour. *Schramm testimony and Exhibit 5.*

Uladimir Dziarkovich's Earnings

- 4.11. The parties dispute whether Mr. Dziarkovich worked the hours in question. Mr. Dziarkovich testified that he worked 160 hours from June 11 through July 11, 2022. However, Mr. Dziarkovich also testified that he did not keep documentation of the extra hours he worked during this time. Further, Mr. Dziarkovich Lacked specificity regarding the job tasks performed. On the other hand, the Employer provided the timekeeping records regarding the work Mr. Dziarkovich performed during the relevant period. On this point, I find the testimony and documentation from the Employer to be more credible than Mr. Dziarkovich's because it is consistent with the documented hours at the time they were worked and submitted to the Employer. *Dziarkovich, Schramm, and Huynh testimony and Department's Exhibit 19.*

Based on this above-cited credibility finding, the following facts were established by a 'preponderance of the evidence', more likely than not:

- 4.12. The last time sheet submitted by the Appellant was from June 6, 2022 through June 12, 2022. *Schramm testimony and Department's Exhibit 12.*
- 4.13. The Appellant's last day of employment was June 10, 2022. *Huynh and Schramm testimony and Department's Exhibit 3.*
- 4.14. On June 17, 2022, a termination of employment notice was sent through the workday payroll system to the Appellant. *Schramm testimony and Department's Exhibit 12.*
- 4.15. From June 11, 2022 through July 11, 2022, Mr. Dziarkovich did not work any hours. *Schramm testimony and Department's Exhibit 12.*

Investigation of Wage Complaint

- 4.16. On July 18, 2022, the Department of Labor and Industries received a Worker Rights Complaint from Mr. Dziarkovich. Mr. Dziarkovich alleged he worked 160 unpaid hours for Employer from June 11 through July 11, 2022. *Huynh testimony and Department's Exhibit 4.*
- 4.17. On July 25, 2022, the Department assigned Industrial Relations Agent, Tam Huynh to investigate the claim. Agent Huynh called Mr. Dziarkovich and requested documentation from him. Agent Huynh also requested documentation from the Employer. *Huynh testimony and Department's Exhibit 3.*
- 4.18. After considering all information submitted, Agent Huynh determined that Mr. Dziarkovich was paid all the wages he was owed. The Department issued a Determination of Compliance No. 162-23 that Pinnacle Technical Resources, Inc. did not violate Washington State Wage Payment Act and/or Minimum Wage Act concerning the Appellant. *Huynh testimony and Department's Exhibits 1 and 3.*

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, RCW 49.48, and RCW 49.52.

Wage Complaints and Applicable law

- 5.2. If an employee files a wage complaint, L&I must investigate. RCW 49.48.083(1).
- 5.3. If the Department determines that the employer violated one or more wage payment requirements, the Department issues a Citation and Notice of Assessment. RCW 49.48.083(1); RCW 49.48.082(1), (7). If not, the Department issues a Determination of Compliance. RCW 49.48.083(1); RCW 49.48.082(3).
- 5.4. Wage payment requirements are those "set forth in RCW 49.46.020, 49.46.130, 49.48.010, 49.52.050, or 49.52.060, and any related rules adopted by the department." RCW 49.48.082(10). These wage payment requirements include, but are not limited to, requirements to pay minimum wages, overtime wages, agreed wages, and wages for final pay periods. RCW 49.48.082(12).

- 5.5. RCW 49.52.050(2) provides that it is unlawful to willfully withhold an agreed wage, which includes any wage an “employer is obligated to pay such employee by any statute, ordinance, or contract.” The provisions of RCW 49.52.050(2) include oral or written agreements for hourly wages in excess of the minimum wage.
- 5.6. RCW 49.46.010(7) defines “wage” as: Compensation 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.
- 5.7. 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 may include meal periods. RCW 49.48, 49.46 and 49.52.
- 5.8. RCW 49.52.050(2) provides that it is unlawful to willfully withhold an agreed wage, which includes any wage an “employer is obligated to pay such employee by any statute, ordinance, or contract.”
- 5.9. 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).
- 5.10. 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.*
- 5.11. Unpaid wages may accrue interest at the rate of 1% of the unpaid wage amount per month until payment is received by the Department, calculated from the first date wages were owed to the employee. RCW 49.48.083(2).
- 5.12. An administrative agency has only the powers conferred to it, either expressly by the Constitution or by statute. An administrative agency must act within those powers conferred upon it by law and may not act in excess of those powers. *American Federation of Labor v. Unemployment Ins. Appeals Bd.*, 13 Cal. 4th 1017, 920 P.2d 1314 (1996); *Crosswhite v. Dep’t of Soc. & Health Servs.*, 197 Wn. App. 539, 389 P.3d 731 (2017); and *Stewart v. Dep’t of Soc. & Health Servs.*, 162 Wn. App. 266, 252 P. 3d 920 (2011).
- 5.13. An administrative tribunal is without authority to determine the constitutionality of a statute or the implementation and/or enforcement of that statute and/or regulation. *Yakima County Clean Air Authority v. Glascam Builders, Inc.*, 85 Wn.2d 255, 257, 534 P.2d 33 (1975).

Pinnacle Technical Resources, Inc. did not violate Washington wage payment law

- 5.14. In the present case, Mr. Dziarkovich failed to establish, by a preponderance of the evidence that he is due wages for the June 11, 2022 through July 11, 2022. The Appellant's argument that he should be compensated for the time until he received a formal letter terminating his employment is unpersuasive as this was not a physical amount of time he performed work nor could he specify the work that he was performing during this time. The wait time is not hours actually worked and it is not compensable.
- 5.15. The Appellant also argues that the Department did not conduct a thorough investigation regarding his wage complaint. However, this administrative tribunal's authority is limited to the express authority conferred to it by statute, specifically, RCW 18.27.250. As such, this tribunal only has statutory authority to determine whether the alleged violation in the Department's Notice of Non-Compliance Infraction, occurred. This tribunal does not have authority to decide whether the Department conducted a sufficient investigation.
- 5.16. The preponderance of evidence establishes Mr. Dziarkovich was paid wages for all hours worked from June 11 through July 11, 2022 per RCW 49.48. Therefore, the Department's Determination of Compliance should be affirmed.

6. INITIAL ORDER

IT IS HEREBY ORDERED THAT:

- 6.1. Pinnacle Technical Resources, Inc. did not violate RCW 49.48.010 and RCW 49.52.050 by failing to pay agreed wages for Wage Claimant, Uladzimir Dziarkovich' during the final pay period of June 11 through July 11, 2022, for 160 hours at the regular hourly pay rate of \$85.00.
- 6.2. No wages or interest are owed by Pinnacle Technical Resources, Inc.
- 6.3. Determination of Compliance No. 162-23 issued May 18, 2023 is **AFFIRMED**.

Issued from Olympia, Washington on the date of mailing.



Travis Dupree
Administrative Law Judge
Office of Administrative Hearings

CERTIFICATE OF SERVICE ATTACHED

PETITION FOR REVIEW

Any party that disputes this Initial Order may file a Petition for Review with the Director of the Department of Labor and Industries.¹ You may e-mail your Petition for Review to the Director at directorappeal@lni.wa.gov. You may also mail or deliver your Petition for 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 Review, please do not mail or deliver a paper copy to the Director.

Whether you e-mail, mail or deliver the Petition for Review, the Director *must actually receive* the Petition for 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 Review to the other parties at the same time.

If the Director does not receive a Petition for 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 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. 08-2023-LI-01924

I certify that true copies of this document were served on those listed below, from Olympia, Washington via Consolidated Mail Services by one of the following: First Class Mail, Certified Mail, Hand Delivery via Messenger, Campus Mail, Facsimile, or by email.

<p>Uladzimir Dziemkovich 201 SW 5th Pl Apt L-303 Renton, WA 98057 Appellant/Wage Claimant</p>	<p><input type="checkbox"/> First Class Mail <input checked="" type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input checked="" type="checkbox"/> E-mail: vdemkovich@gmail.com</p>
<p>Cindy Gaddis, AAG Office of the Attorney General 7141 Cleanwater Dr SW Tumwater, WA 98501 Agency Representative</p>	<p><input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input checked="" type="checkbox"/> E-mail: cindy.gaddis@atg.wa.gov mary.street@atg.wa.gov lniolyeservice@atg.wa.gov</p>
<p>Pinnacle Technical Resources, Inc. Attn: Jason Regas, Associate General Counsel 10670 North Central Expressway Ste 600 Dallas, TX 75231 Intervenor/Employer</p>	<p><input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> E-mail: Jason.regas@pinnacle1.com</p>

Date: Monday, January 29, 2024

OFFICE OF ADMINISTRATIVE HEARINGS

Hailey Bobbitt

Hailey Bobbitt
Legal Administrative Manager