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Vol. m98 Page 40964CERTIFIED TRUE COPY
Susan Dix
Authorized Representative
Bureau of Labor & Industries

95 10-9 P2:16 BEFORE THE BUREAU OF LABOR AND INDUSTRIES

OF THE STATE OF OREGON

In the Wage Claim Matter of:

OREGON BUREAU OF LABOR AND INDUSTRIES as
assignee of Shain L. Skillen,
Wage Claimant,

v.

Daniel Jefferson Bigby
Employer,)
)
) ORDER OF DETERMINATION
)
) NO. 98-110
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)
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I.

This Order of Determination is prepared pursuant to Oregon Revised Statutes (hereinafter referred to as "ORS") 652.310 to 652.405.

II

The Order is based upon the assigned wage claim filed by Shain L. Skillen, hereinafter referred to as the wage claimant, claiming unpaid wages from Daniel Jefferson Bigby, hereinafter referred to as the employer. The wage claimant was employed by the employer in Oregon for 173 hours during the period October 24, 1997 through December 11, 1997. Although the employer was required to compensate the wage claimant at the rate not less than \$5.50 per hour for each hour worked in that period by the provisions of ORS 653.025, the employer paid the wage claimant only the sum of \$3.80, leaving a balance due and owing in the sum of \$294.50. The Bureau of Labor and Industries, hereinafter referred to as the Bureau, has determined that the employer owes the wage claimant the sum of \$294.50 in unpaid wages, together with interest thereon at the legal rate per annum from January 1, 1998 until paid.

After recording, return to:
Susan Dix, Order Processor
BUREAU OF LABOR & INDUSTRIES
WAGE AND HOUR DIVISION, ROOM 1160
800 NE OREGON STREET # 32
PORTLAND, OR 97232

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call
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III.

Pursuant to ORS 652.150 the Bureau has also determined that the employer willfully failed to pay the wages referred to in Paragraph II and that more than thirty days have elapsed since the wages became due and owing pursuant to ORS 652.140. The Bureau has further determined that the wage claimant's rate per day during the period of employment pursuant to ORS 652.150 was \$44.00 and there is now due and owing to the wage claimant the sum of \$1,320.00 as penalty wages with interest thereon at the legal rate per annum from February 1, 1998 until paid.

IV.

Pursuant to ORS 652.332, the employer is hereby directed to pay the Commissioner of the Bureau of Labor and Industries the amount of the wage claim, described in Paragraph II above, and the penalty amount, described in Paragraph III above. This payment is due within 20 days after the receipt of this Order of Determination.

V.

The employer is entitled to a contested case hearing in connection with this Order of Determination. This hearing, at which both the employer and the wage claimant may be represented by counsel, will be conducted in accordance with ORS 652.310 to ORS 652.405, ORS chapter 183 and the Bureau's Administrative Rules pertaining to such hearings. NOTE: If the employer is a corporation, it must be represented by an attorney. If the employer desires a hearing, the undersigned must be notified in writing of such request within 20 days of the employer's receipt of this Order of Determination. The employer is also entitled, as an alternative to the Administrative Hearing described above, to demand a trial in a court of law. If the employer demands a trial in a court of law, the undersigned must be notified in writing of such demand within 20 days of receipt of this Order of Determination.

VI.

If the employer requests a contested case hearing, the employer and the wage claimant will be notified of the time and place of such hearing and furnished with an Order of the Bureau designating the officer who will preside at such hearing and indicating whether such officer shall have authority to enter a final order in the case.

VII.

SHOULD THE EMPLOYER FAIL TO REQUEST EITHER A CONTESTED CASE HEARING OR TO DEMAND A TRIAL IN A COURT OF LAW IN WRITING TO THE UNDERSIGNED WITHIN 20 DAYS FROM THE RECEIPT OF THIS ORDER OF DETERMINATION, SUCH FAILURE SHALL CONSTITUTE A WAIVER OF THE EMPLOYER'S RIGHT TO A CONTESTED CASE HEARING OR A TRIAL IN A COURT OF LAW. If the employer fails to file an answer and request a hearing within the time specified, or if the employer makes a timely request for hearing but later withdraws that request, the Agency's file will be designated as the record of the case and no hearing will be held. This Order of Determination shall become final immediately upon expiration of the time provided for herein for making such request or demand.

VIII.

If the employer requests a contested case hearing, such a request must also include a written "Answer" to the factual determinations contained in Paragraphs II and III above. Such written "Answer" must include an admission or denial of each factual allegation contained in those paragraphs and shall affirmatively allege a short and plain statement of each affirmative defense which the employer will assert at the contested case hearing. For example, the affirmative defense of the financial inability to pay the wages or compensation at the time they accrued must be included in the written "Answer."

IX.

Except for good cause, the factual determinations set out in Paragraphs II and III above and not denied in the "Answer" shall be deemed admitted; failure to raise an affirmative defense in the "Answer" shall be deemed a waiver of such affirmative defense; any affirmative defense alleged in the "Answer"

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shall be deemed denied by the wage claimant without necessity of further pleading; evidence shall not be taken on any factual or legal issue not raised in this Order of Determination or the employer's "Answer."

X.

If the employer files a request for hearing and an answer, but later notifies the Agency or the Hearings Unit that the employer will not appear at the time and place specified for hearing, or, without such notification, fails to appear at hearing, the Agency's file will automatically become part of the contested case record for the purpose of proving a prima facie case.

DATED this 11th day of September, 1998.

JACK ROBERTS, Commissioner
Bureau of Labor and Industries

Christine N. Hammond
CHRISTINE N. HAMMOND, Administrator
Wage and Hour Division
Bureau of Labor and Industries

ALL PAYMENTS, REQUESTS FOR ADMINISTRATIVE HEARING, DEMANDS FOR TRIAL IN A COURT OF LAW OR INQUIRIES SHOULD BE MADE TO:

Susan Dix, Order Processor
Bureau of Labor and Industries
Wage and Hour Division
800 NE Oregon Street # 32
Portland, Oregon 97232
Phone: 731-4074, ext. 246
WHI-61 (Rev. 10/97)

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Susan [Signature]
 Authorized Representative
 Bureau of Labor & Industries

BEFORE THE BUREAU OF LABOR AND INDUSTRIES

OF THE STATE OF OREGON

In the Wage Claim Matter of:

OREGON BUREAU OF LABOR AND
 INDUSTRIES as Assignee of
 Shain L. Skillen,
 Wage Claimant,

FINAL ORDER OF DETERMINATION
 (DEFAULT)

NO. 98-110

vs

Daniel Jefferson Bigby,
 Employer

ON SEPTEMBER 13, 1998, an Order of Determination in the within-captioned proceeding was duly served in the manner provided for by the law. Said Order of Determination provided employer, hereinafter known as Daniel Jefferson Bigby, with an opportunity to make written request for a hearing before the Commissioner of the Oregon Bureau of Labor and Industries or, alternatively, request a trial in a court of law within twenty days after service of the Order of Determination. No such request was received within the time allowed, and that Order of Determination became final by default on OCTOBER 30, 1998.

BASED UPON THE FOREGOING and the investigative information and documentary material on file herein, the Commissioner of the Oregon Bureau of Labor and Industries finds that the amount of the wages claimed as set forth in the Order of Determination herein are now due and owing.

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NOW, THEREFORE, IT IS HEREBY ORDERED that:

Said Daniel Jefferson Bigby, pay to the Commissioner of the Oregon Bureau of Labor and Industries the full sum of \$294.50 as and for unpaid wages, together with interest thereon at the legal rate per annum from January 1, 1998 until paid, and the further sum of \$1,320.00 as and for penalty wages, together with interest thereon at the legal rate per annum from February 1, 1998, until paid.

Dated and mailed this 2nd day of November, 1998.

JACK ROBERTS, Commissioner
Oregon Bureau of Labor and Industries

By Christine N. Hammond
Christine N. Hammond, Administrator
Wage and Hour Division
Bureau of Labor and Industries

JUDICIAL NOTICE

Pursuant to ORS Chapter 183, you are entitled to judicial review of this Final Order. To obtain Judicial review, you must file a Petition for Judicial Review with the Court of Appeals in Salem, Oregon, within sixty (60) days of the issuance of this Order.

If you file a Petition for Judicial Review,
YOU MUST ALSO SERVE A COPY OF THE PETITION FOR JUDICIAL REVIEW
ON THIS AGENCY AT THE FOLLOWING ADDRESS:

Susan Dix, Judgment Unit
Wage and Hour Division, Room #1160
Bureau of Labor and Industries
800 NE Oregon Street, #32
Portland, OR 97232

If you file a Petition for Judicial Review and if you wish to stay the enforcement of this final order pending judicial review, you must file a request with the Bureau of Labor and Industries, at the address above. Your request must contain the information described in ORS 183.482(3) and OAR 137-003-0090 to 137-003-0092.

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STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Oregon Bureau of Labor and Ind. the 9th day
of November A.D., 19 98 at 2:16 o'clock PM. and duly recorded in Vol. M98
of County Lien Docket on Page 40964.

FEE \$30.00

Bernetha G. Letsch, County Clerk
By Kathleen Ross