

JACK ROBERTS
COMMISSIONER



CERTIFIED TRUE COPY
Susan Dix
Authorized Representative
of Labor

SUITE 1045
800 NE OREGON, # 32
PORTLAND, OREGON 97232
3865 WOLVERINE AVE. NE, E-1
SALEM, OREGON 97310
165 E 7TH, ROOM 220
EUGENE, OR 97401

BUREAU OF LABOR AND 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
John Lawrence Matkowski and
Kimberly Rene Matkowski, Wage Claimants,

FINAL ORDER OF DETERMINATION
(DEFAULT)

NO. 99-4055

vs

Camp Fire Grill, Inc., an Oregon Corporation,
dba Camp Fire Grill, Employer

ON **March 30, 2000**, 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 Camp Fire Grill, Inc., an Oregon Corporation, dba Camp Fire Grill, 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 **MAY 1, 2000**.

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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-1- FINAL ORDER OF DETERMINATION (DEFAULT)

AFTER RECORDING, RETURN TO:
SUSAN DIX, ORDER PROCESSOR
BUREAU OF LABOR AND INDUSTRIES
WAGE AND HOUR DIVISION
800 NE OREGON STREET # 32
PORTLAND, OR 97232

pr.

NOW, THEREFORE, IT IS HEREBY ORDERED that:

Said Camp Fire Grill, Inc., an Oregon Corporation, dba Camp Fire Grill, pay to the Commissioner of the Oregon Bureau of Labor and Industries the full sum of \$15,238.66 as and for unpaid wages, together with interest thereon at the legal rate per annum from June 1, 1999, until paid, and the further sum of \$3,840.00 as and for penalty wages, together with interest thereon at the legal rate per annum from July 1, 1999, until paid.

Dated and mailed this 14th day of June, 2000.

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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BEFORE THE BUREAU OF LABOR AND INDUSTRIES
OF THE STATE OF OREGON

22098

In the Wage Claim Matter of:)
)
OREGON BUREAU OF LABOR AND)
INDUSTRIES AS assignee of) ORDER OF DETERMINATION
John Lawrance Matkowski and) No. 99-4055
Kimberly Rene Matkowski,)
Wage Claimants,)
)
v.)
)
Camp Fire Grill, Inc., an)
Oregon corporation, dba)
Camp Fire Grill, Employer.)

I.

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

II.

This order is based upon wage claims assigned to the Oregon Bureau of Labor and Industries (hereinafter referred to as the "Bureau") by those wage claimants referred to in Exhibit A attached hereto and incorporated herein by this reference. During the periods referred to in Exhibit A, the wage claimants were employed in Oregon by Camp Fire Grill, Inc., an Oregon corporation, dba Camp Fire Grill, hereinafter referred to as the employer. During the periods referred to in Exhibit A, the wage claimants performed work, labor and

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PORTLAND, OR 97232

services for the employer at the rates set out in Exhibit A. The employer was required to compensate the wage claimants at the rate not less than \$6.50 per hour for each hour worked in that period by the provision of ORS 653.025. In addition, during the periods set out in Exhibit A, the employer was required by the provisions of OAR 839-020-0030 to compensate the wage claimants at one and one half times the regular rates of pay for each hour worked over 40 hours in a given work week. The wage claimants worked a total of 4,990 hours, 2,096 of which were hours worked over 40 hours in a given work week, and are entitled to \$39,933.66, no part of which has been paid except the sum of \$24,695.00 leaving a balance due and owing of \$15,238.66 in unpaid wages. The Bureau has determined that the employer owes the wage claimants \$15,238.66 in unpaid wages, together with interest thereon at the legal rate per annum from 6/1/99, until paid.

III.

The Bureau has also determined that the employer willfully failed to pay those 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 claimants' rates per day during the periods of employment pursuant to ORS 652.150 were as set out in Exhibit B attached hereto and there is now due

and owing to the wage claimants from the employer the sum of \$3,840.00 along with interest set out in Exhibit B.

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 claims, described in Paragraph II above, and the penalty amounts, 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 claimants 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. All corporations, unincorporated associations and government agencies MUST be represented either by an attorney or by an "authorized representative" at all stages of the hearing, including the filing of an Answer. OAR 839-050-0110. Other employers, such as individuals, may choose whether or not to be represented by an attorney. Any attorney appearing on your behalf must be a member in good standing with the Oregon State Bar, or a member in good standing of the bar of another state

or United States court who is permitted to appear in this proceeding by order of the Administrative Law Judge. OAR 839-050-0020(8). Once the hearing begins, the employer will not be allowed a recess to obtain an attorney. OAR 839-050-0110(2). 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 claimants 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" shall be deemed denied by the wage claimants 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 28th day of March, 2000.

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: (503) 731-4679
WH-61 (Rev. 10/99)

EXHIBIT A

MATKOWSKI, John
Lawrance

Period of Employment:
8/20/98 through 4/25/99
Rate: \$2,000 per month
and \$6.50 per hour
Earned: \$21,041.41
Paid: \$16,035.00
Balance Due: \$5,016.41
With interest thereon at
the legal rate per annum
from 6/1/99, until paid.

MATKOWSKI, Kimberly
Rene

Period of Employment:
8/20/98 through 4/25/99
Rate: \$6.50 per hour
Earned: \$18,892.25
Paid: \$8,660.00
Balance Due: \$10,232.25
With interest thereon at
the legal rate per annum
from 6/1/99, until paid.

TOTAL: \$15,238.66

EXHIBIT B

MATKOWSKI, John
Lawrance

Termination Date: 4/25/99
Hourly Rate: \$8.19
8 hours pay: \$65.52
Penalty wages at the rate of
\$65.52 for 30 days: \$1,965.60
Plus interest at the legal
rate per annum from 7/1/99,
until paid.

MATKOWSKI, Kimberly
Rene

Termination Date: 4/25/99
Hourly Rate: \$7.81
8 hours pay: \$62.48
Penalty wages at the rate of
\$62.48 per day for 30 days: \$1,874.40
Plus interest at the legal
rate per annum from 7/1/99,
until paid.

TOTAL \$3,840.00

State of Oregon, County of Klamath
Recorded 06/19/00, at 10:33 a. m.
In Vol. M00 Page 22096
Linda Smith,
County Clerk Fee \$ 66⁰⁰