

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF COMMERCE

In the Matter of Command Center Inc.

v.

Minnesota Insurance Guaranty Association

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND RECOMMENDATION  
UPON DEFAULT**

This matter came on for a prehearing conference before Administrative Law Judge James E. LaFave on August 26, 2016.

Forrest K. Tahdooahnippah, Dorsey & Whitney, LLP, appeared on behalf of the Minnesota Insurance Guaranty Association (MIGA). There was no appearance by, or on behalf of Command Center, Inc. (Appellant or Command Center). The record in this matter closed on August 26, 2016.

**STATEMENT OF THE ISSUE**

Did MIGA err in denying Appellant's claim?

**SUMMARY OF RECOMMENDATION**

The Administrative Law Judge concludes that Appellant is in default and recommends that the allegations in the Notice and Order for Prehearing Conference be accepted as true and deemed proven.

Based upon the evidence in the hearing record, the Administrative Law Judge makes the following:

**FINDINGS OF FACT**

1. On August 16, 2016, the Second Prehearing Order (Aug. 16, 2016) in this matter was served by U.S. Mail on Brendan Simaytis, Corporate Attorney for Appellant at his last known address.<sup>1</sup>

2. The Second Prehearing Order indicated that a telephone prehearing conference would be held in this matter on August 26, 2016, at 10:00 a.m.<sup>2</sup>

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<sup>1</sup> See CERTIFICATE OF SERVICE of Denyse Johnson (Aug.16, 2016).

3. In conformity with Minn. R. 1400.6000 (2015), the Second Prehearing Order also included the following statement:

The Appellant's failure to appear at the hearing or any prehearing conference may result a finding that the Appellant is in default and an affirmance of MIGA's decision.<sup>3</sup>

4. No one appeared at the August 26, 2016 prehearing conference on behalf of Appellant. No request was made for a continuance, nor was any communication received by the undersigned from Appellant prior to the August 26, 2016 prehearing conference.

5. Appellant's failure to appear at the prehearing conference was without the consent of the Administrative Law Judge.

6. Because Appellant failed to appear at the prehearing conference, Appellant is in default.

7. Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice and Order for Prehearing Conference, a copy of which is attached as Attachment A, are taken as true, deemed proven without further evidence, and incorporated by reference into these Findings of Fact.

Based upon the Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS OF LAW**

1. The Commissioner of the Minnesota Department of Commerce (Commissioner) and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50 and 60C.12 (2016).

2. The Appellant received timely and proper notice of the prehearing conference in this matter when the Office of Administrative Hearings sent the Second Prehearing Order to its last known address.

3. MIGA has complied with all relevant procedural requirements of statute and rule.

4. Under Minn. R. 1400.6000, the Appellant is in default as a result of its failure to appear at the scheduled prehearing conference.

5. Under Minn. R. 1400.6000, when a party defaults by failing to appear at a prehearing conference without the prior consent of the judge, the allegations and the issues set out in the Notice and Order for Prehearing Conference may be taken as true

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<sup>2</sup> *Id.*

<sup>3</sup> SECOND PREHEARING ORDER (Aug. 16, 2016).

and deemed proved. The Administrative Law Judge therefore deems the allegations to be true.

6. Minn. Stat. § 60C.09 (2016) defines whether an employee's injury was a "covered claim."

7. MIGA has grounds to determine that the employee's injury in this matter was not a "covered claim" pursuant to Minn. Stat. § 60C.09.

8. An order by the Commissioner affirming MIGA's decision in this matter is in the public interest.

Based upon the foregoing Conclusions of Law, the Administrative Law Judge makes the following:

### RECOMMENDATION

**IT IS HEREBY RECOMMENDED** that the Commissioner **AFFIRM** MIGA's order denying Appellant's claim.

Dated: September 23, 2016

  
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JAMES E. LAFAVE  
Administrative Law Judge

Reported: Default

### NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Commerce (Commissioner) will make the final decision after a review of the record. Under Minn. Stat. § 14.61 (2014), the Commissioner shall not make a final decision until this Report has been made available to the parties for at least ten calendar days. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a final decision. Parties should contact Michael Rothman, Commissioner, Department of Commerce, Attn: Heidi Retterath, Suite 500, 85 Seventh Place East, St. Paul, MN 55101, (651) 539-1445, to learn the procedure for filing exceptions or presenting argument.

The record closes upon the filing of exceptions to the Report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and Administrative Law Judge

of the date the record closes. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a (2014). In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within ten working days to allow the Judge to determine the discipline imposed.

Under Minn. Stat. § 14.62, subd. 1 (2014), the Commissioner is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

## MEMORANDUM

On August 29, 2016, three days after the prehearing conference and three days after the Administrative Law Judge granted MIGA's motion for default, Command Center requested additional time to retain local counsel. On September 1, 2016, MIGA filed a response opposing Command Center's request. A brief recap of the history of this case is necessary to put Command Center's request in perspective.

This matter was commenced by a Notice and Order for Prehearing Conference (Notice) dated March 10, 2016. The Notice set a prehearing conference for April 5, 2016.<sup>4</sup> On March 25, 2016, James K. Helling of Brown & Carlson, P.A. filed a notice of appearance on behalf of Command Center.<sup>5</sup>

The prehearing conference was held on April 5, 2016.<sup>6</sup> Mr. Helling appeared on behalf of Command Center.<sup>7</sup> At the prehearing conference the parties and the Administrative Law Judge agreed to several scheduling milestones, including a discovery deadline of July 15, 2016, and a hearing date of November 10, 2016.<sup>8</sup>

Then, on May 13, 2016, Mr. Helling withdrew as counsel of record for Command Center.<sup>9</sup> Two months later MIGA sent a letter to the Administrative Law Judge requesting a prehearing conference claiming that since the withdrawal of Mr. Helling, Command Center had not made any visible effort to prosecute the case and that Command Center's in-house counsel had been unresponsive.<sup>10</sup> The following day, MIGA informed the Administrative Law Judge that the parties had conferred and MIGA was withdrawing its request for a prehearing conference.<sup>11</sup>

After having no communications with the parties since July 14, 2016, and after the originally scheduled discovery deadline had past, a prehearing conference was

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<sup>4</sup> NOTICE AND ORDER FOR PREHEARING CONFERENCE (March 10, 2016).

<sup>5</sup> NOTICE OF APPEARANCE (March 25, 2016).

<sup>6</sup> See FIRST PREHEARING ORDER (April 6, 2016).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Letter from James K. Helling to James E. LaFave, Administrative Law Judge (May 13, 2016).

<sup>10</sup> Letter from Kirsten E. Schubert to Administrative Law Judge James E. LaFave (July 13, 2016).

<sup>11</sup> Email from Kirsten Schubert to Judge LaFave (July 14, 2016, 10:10 a.m. CDT).

scheduled for August 26, 2016.<sup>12</sup> The Order scheduling the prehearing conference cautioned Command Center that “[its] failure to appear at the hearing or and prehearing conference may result in a finding that the [Command Center] is in default and an affirmance of MIGA’s decision.”<sup>13</sup>

On August 26, 2016, no one appeared on behalf of Command Center at the prehearing conference. Further, no one from, or on behalf of, Command Center contacted the Office of Administrative Hearings or the Administrative Law Judge to request a continuance or other relief. At the prehearing conference MIGA moved, on the record, for a default under Minn. R. 1400.6000. The Administrative Law Judge granted MIGA’s motion for default.

Command Center acknowledged receipt of the Second Prehearing Order which scheduled the prehearing conference for August 26, 2016. Yet, Command Center took no steps to either appear at the prehearing conference or to contact the Administrative Law Judge or the Office of Administrative Hearings to seek a continuance prior to the prehearing conference. Further, in its letter of August 29, 2016, Command Center offered no reason for its failure to appear other than that it had been unable to obtain local counsel and that its in-house lawyer was not licensed to practice in Minnesota and therefore was reluctant to participate.

Over four months elapsed since Mr. Helling withdrew as counsel for Command Center. Command Center did not replace him. Command Center did not keep in contact with opposing counsel. Command Center did not conduct any discovery or take any steps to prosecute this case. Command Center was served with the Second Prehearing Order which set forth the time and place of the prehearing conference and also put Command Center on notice that if it failed to appear it may be found in default. Despite all of that, Command Center failed to appear at the prehearing conference.

Under Minn. R. 1400.6000, “a default occurs when a party fails to appear without the prior consent of the judge at a prehearing conference.”<sup>14</sup> Command Center failed to appear at the prehearing conference on August 26, 2016, without the prior consent of the Administrative Law Judge.

After proper notice, Command Center defaulted by failing to appear at the prehearing conference. It offered no reasons or grounds justifying its failure to appear. Command Center’s request for additional time to retain local counsel is therefore denied.

Based upon the foregoing, it is respectfully recommended that the Commissioner affirm MIGA’s order denying Appellant’s claim.

**J. E. L.**

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<sup>12</sup> SECOND PREHEARING ORDER (Aug. 16, 2016).

<sup>13</sup> *Id.*

<sup>14</sup> Minn. R. 1400.6000 (2015).