

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Penalty Order and
Order to Comply with Demand Issued to
Damon Construction, LLC

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

This matter came on for a prehearing conference before Administrative Law Judge James E. LaFave on December 27, 2013.

Eric J. Beecher, Assistant Attorney General, appeared on behalf of the Department of Labor and Industry (Department). There was no appearance by, or on behalf of Respondent Damon Construction, LLC (Respondent).

STATEMENT OF THE ISSUES

1. Did Respondent violate Minn. Stat. § 177.27, subd. 2, by failing to submit or deliver the records required by the April Demand?
2. Must Respondent pay a civil penalty of \$1,000 for its failure to submit or deliver records as required by the April Demand?
3. Must Respondent comply with Minn. Stat. §§ 177.27, subd. 2 and 177.43, subd. 6, by submitting the records required by the April Demand and the Penalty and Records Order?

Based upon relevant authority and all of the files, records and proceedings in this matter, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On November 14, 2013, a copy of the Notice and Order for Prehearing Conference in this matter was mailed to Respondent at the Respondent's last known address.¹
2. The Notice and Order for Hearing indicated that a prehearing conference would be held in this matter on December 27, 2013, at 1:30 p.m., by teleconference.²

¹Affidavit of Diane McMahon.

² Notice and Order for Hearing, at p.1.

3. In conformity with Minn. R. 1400.5700 the Notice and Order for Hearing requires that any party intending to “appear at the prehearing conference and hearing must file a Notice of Appearance form and return it to the Administrative Law Judge within 20 days of the date of service” of the Notice and Order for Prehearing Conference.³

4. In conformity with Minn. R. 1400.6000, the Notice and Order for Prehearing Conference in this matter also includes the following statements:

Respondents’ failure to appear at the prehearing conference, settlement conference, or hearing may result in a finding that the Respondent is in default, that the allegations contained in this Notice and Order for Prehearing Conference and Hearing may be accepted as true, and its proposed action may be upheld.

5. Respondent did not file a Notice of Appearance with the undersigned.

6. No one appeared at the December 27, 2013 prehearing conference on behalf of Respondent. No request was made for a continuance.

7. The Notice and Order for Prehearing Conference sets forth specific factual allegations, all of which are set forth in paragraphs 1 through 19 of Attachment A and are hereby expressly adopted and incorporated by reference.

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

CONCLUSIONS OF LAW

1. The Department of Labor and Industry and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50 and 177.26, subds 1 and 2 (2012).

2. The Respondent received timely and proper notice of the prehearing conference in this matter when the Department of Labor and Industry sent the Notice and Order for Prehearing Conference to the Respondent’s last known address.

3. The Department of Labor and Industry has complied with all relevant procedural requirements of statute and rule.

4. Under Minn. R. 1400.6000, the Respondent 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 and Hearing may be

³ *Id.* at 5.

taken as true and deemed proved. The Administrative Law Judge therefore deems the allegations to be true except as specifically exempted in the Findings above.

6. Under Minn. Stat. §§ 177.27, subd. 2 and 177.43, subd. 6, the Commissioner requires the employer of employees working in the state to submit to the Commissioner photocopies, certified copies, or, if necessary, the originals of employment records which the Commissioner deems necessary or appropriate. Those statements may include sworn statements by the employer, in writing, containing information relating to wages, hours, names, addresses, and any other information pertaining to the employer's employees and the conditions of their employment as the commissioner deems necessary or appropriate.

7. Under Minn. Stat. § 177.27, subd. 2, the Commissioner may fine an employer up to \$1,000 for each failure to submit or deliver records as required by that section.

8. The Department of Labor and Industry has sufficient factual and legal grounds to levy an appropriate civil penalty because of the Respondent's failure to deliver records as required by the Commissioner.

9. The Department of Labor and Industry has sufficient factual and legal grounds to order the Respondent to comply by submitting the requested records as required by the Commissioner in his April Demand and the Penalty and Records Order.

10. An order by the Department of Labor and Industry taking disciplinary action against the Respondents is in the public interest.

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

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Department of Labor and Industry take disciplinary action, including the levy of an appropriate fine, against the above-named Respondent.

Dated: January 22, 2014

S/James E. LAFave

JAMES E. LAFAVE
Administrative Law Judge

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Labor and Industry will make the final decision after reviewing the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the Commissioner's decision shall not be made until this Report has been available to the parties to the proceeding for at least ten (10) days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Commissioner Ken Peterson, Attention: Wendy Willson Legge, Director of Legal Services, Minnesota Department of Labor & Industry, 443 Lafayette Road, St. Paul, MN 55155; telephone number: 651-284-5126, to ascertain the procedure for filing exceptions or presenting argument to the Commissioner.

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. 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 the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency 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. If the Commissioner fails to issue a final decision within 90 days of the close of the record under Minn. Stat. § 14.61, this report becomes a final decision.