

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF LABOR AND INDUSTRY

Ken B. Peterson, Commissioner,  
Minnesota Department of Labor and  
Industry,

Complainant,

**ORDER UPON RESPONDENT'S  
MOTION FOR RECONSIDERATION**

v.

City of Bloomington,

Respondent.

On June 8, 2016, Administrative Law Judge Jim Mortenson issued Findings of Fact, Conclusions of Law and Order Upon Default (Order) as a result of the City of Bloomington's (Respondent) failure to appear for a prehearing conference convened on June 3, 2016, via telephone.

On June 27, 2016, Respondent filed a Notice of Motion and Motion to Vacate the June 8, 2016 Order. On July 1, 2016, the Department of Labor and Industry (Department or Complainant) filed a response to the motion.

Aaron Dean, Moss & Barnett, PA, appeared on behalf of the Respondent. Rachel E. Bell, Assistant Attorney General, appeared on behalf of the Department.

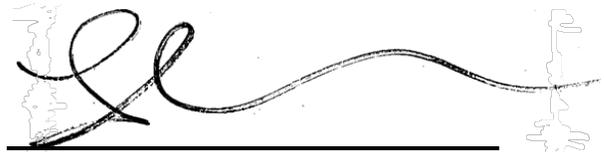
Based upon the administrative record, law, and proceedings in this matter, and for the reasons explained in the memorandum below,

**IT IS HEREBY ORDERED,**

1. Respondent's motion is **GRANTED**; and
2. A prehearing will convene at **9:30 a.m. on Friday, July 29, 2016**, via telephone. At the appointed time, counsel for the parties will:
  - a. Call **1-888-742-5095** and, when prompted,

b. Enter the Conference Code: **685 684 1864#**.

Dated: July 19, 2016



JIM MORTENSON  
Administrative Law Judge

### MEMORANDUM

The Respondent failed to appear for a duly noticed prehearing conference on June 3, 2016. The Department moved for a default order. The order was granted because the Respondent failed to appear and provided no notice to either the Administrative Law Judge or the Department that it was unavailable to appear at the scheduled prehearing.

The Respondent subsequently moved for reconsideration of the Order. The motion was made pursuant to Minnesota Rule of Civil Procedure 60.02, permitting a district court to grant relief from a final judgment based on, among other things, mistake, inadvertence, surprise, or excusable neglect.

The Rules of Civil Procedure are not applicable to administrative proceedings under Minn. Stat. ch. 14 (2014), unless the rules for administrative proceedings at Minn. R. 1400.5100-.8400 (2015) are silent.<sup>1</sup> Respondent erroneously filed its motion under Minn. R. Civ. Pro. 60.02 because Minn. R. 1400.8300 is the applicable rule for requesting reconsideration. "In ruling on a motion for reconsideration..., the judge shall grant reconsideration or rehearing if it appears that to deny it would be inconsistent with substantial justice and any one of the following has occurred: ...E. mistake, inadvertence, or excusable neglect[.]"<sup>2</sup> Thus, this motion is considered based on Minn. R. 1400.8300.

Because the administrative rules and court rules for reconsideration are so similar, it is logical to apply the same analysis the courts have applied in this administrative proceeding. The Minnesota Supreme Court developed a four part analysis in looking at reconsideration in district court proceedings, known as the *Hinz* factors.<sup>3</sup> The *Hinz* factors require a party seeking to vacate a default judgment to show: (1) a reasonable defense on the merits; (2) a reasonable excuse for its failure or neglect to act; (3) it has acted with due diligence after notice of entry of default judgment; and (4) no substantial prejudice will result to the opposing party.<sup>4</sup>

---

<sup>1</sup> Minn. R. 1400.6600.

<sup>2</sup> Minn. R. 1400.8300.

<sup>3</sup> See *Hinz v. Northland Milk & Ice Cream Co.*, 53 N.W.2d 454 (1952).

<sup>4</sup> *Galatovich v. Watson*, 412 N.W.2d 758, 760 (Minn. Ct. App. 1987), citing *Hinz*, 53 N.W.2d at 455-56 (1953).

First, the Respondent has presented a reasonable defense on the merits. Respondent argues that there was no violation of the Minnesota Occupational Health and Safety Administration (OSHA) rules because the injured employee was never closer than ten feet from the machinery being used at the job site where he was injured. If Respondent can prove the facts upon which this argument is based, it has a reasonable defense on the merits of the case.

Second, Respondent has attempted to show a reasonable excuse for its failure to appear at the scheduled prehearing conference on June 3, 2016. Counsel for the Respondent was to appear and asserts he failed to do so due to illness. While it is unclear why an attorney from a large firm with support staff could not have ensured the Administrative Law Judge was notified that he would not be available for a prehearing conference, the Administrative Law Judge will not second guess Counsel's explanation because the other three factors provide sufficient weight to grant the motion.<sup>5</sup>

Respondent filed its motion within three weeks of the default order. The motion was well reasoned and reasonably supported with factual assertions. The effort made by the Respondent demonstrates due diligence following notice of the default judgment.

Finally, while the Department maintains that the default order was correct, it does not take a position on whether excusable neglect occurred and whether the motion for reconsideration should be granted. Given the stance of the Department, it can only be concluded that no substantial prejudice will result to the Department upon the granting of the motion.

For these reasons, Respondent's motion for reconsideration is granted and the matter is set for a prehearing conference accordingly. If Respondent fails again to appear without the prior consent of the Administrative Law Judge, another default order may be issued.

**J. R. M.**

---

<sup>5</sup> See *Galatovich* at 412 N.W.2d 758, 761 (Minn. Ct. App. 1987) ("While it would have been more compelling had there been a strong showing on the reasonable excuse factor '[i]t must be remembered that the goal of all litigation is to bring about judgments after trials on the merits.' *Sommers v. Thomas*, 251 Minn. 461, 468, 88 N.W.2d 191, 196 (1958).")