

DIRECTOR OF THE DEPARTMENT OF LABOR & INDUSTRIES  
STATE OF WASHINGTON

In re:

COMMERCE COOPERATIVE and  
JOHN WANTZ,

APPELLANT,

Citation and Notice of Assessment  
Nos. W-429-19, W-430-19, W-431-19

OAH Docket No. 08-2019-LI-01163

NO. 2022-011-WPA

DIRECTOR'S ORDER

RCW 49.48.084(4); RCW 34.05

Joel Sacks, Director of the Washington State Department of Labor & Industries, having considered the petition for administrative review filed with the Director's Office by Commerce Cooperative Corp. and John Wantz (the Appellant) regarding the Initial Order dated October 5, 2021, and briefing submitted to the Director's Office, and having reviewed the record, issues this Director's Order.

The Director makes the following Findings of Fact, Conclusions of Law, and Final Decision and Order.

**I. FINDINGS OF FACT**

1. The Office of Administrative Hearings served the Initial Order on October 5, 2021.
2. The Appellant does not dispute service of this order.

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3. RCW 49.48.084 provides “Any party who seeks to challenge an initial order shall file a petition for administrative review with the director within thirty days after service of the initial order.”). Because the Office of Administrative Hearings served the Initial Order on October 5, 2021, the 30-day appeal deadline was November 4, 2021. But Director’s office received a petition for administrative review in this case one day late on November 5, 2021. The Appellant does not dispute that the appeal was untimely. Appellant’s Br. on Timeliness of Appeal 1, 3.

4. The Appellant consulted an attorney about the advisability of an appeal. This attorney filed the notice of appeal. The reason offered by the Appellant for the delay was that John Wantz needed to determine whether an appeal would be viable and whether it made good business sense to appeal, and that this internal deliberation took time. Appellant’s Br. on Timeliness of Appeal 4; *see id.* at 1-2. Failure to file an appeal because it took time to deliberate is not good cause because all appellants must deliberate over a decision whether to appeal within the time granted by the Legislature.

## II. CONCLUSIONS OF LAW

1. As the Appellant admits, the Appellant did not file his petition for administrative review within the time period 30-day time period specified by RCW 49.48.084(3), so the petition is untimely. Appellant’s Br. on Timeliness of Appeal 1, 3.

2. RCW 49.48.084(5) provides, “Orders that are not appealed within the time period specified in this section and chapter 34.05 RCW are final and binding, and not subject to further appeal.” It is the Legislature’s intent that after 30 days of service of an Initial Order an Initial Order is final. This accords with principles of finality, and, as is the case here, allows workers to receive their wages in a timely fashion.

3. The Appellant cites *Wells v. Employment Security Department*, 61 Wn. App. 306, 809 P.2d 1386 (1991), for the proposition that “Administrative appeals are often heard despite their

untimeliness upon a showing of good cause by the petitioner.” Appellant’s Br. on Timeliness of Appeal 3. This case involves a statute that allowed for an Employment Security Department commissioner to waive a 30-day time limit in certain ESD appeals. *Wells* does not apply in the absence of a similar statute applicable to the Wage Payment Act context under RCW 49.84.082-.87, and it shows that the intent of the Legislature as to whether to excuse a delay is key. Here, the Legislature has not chosen to have a good cause provision. This choice must be viewed as deliberate.

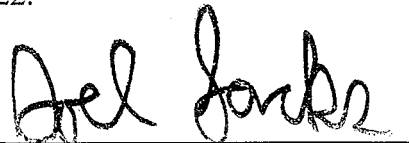
5. There is no good cause provision in RCW 49.48.084. But even if there were, no good cause is demonstrated as found above. Deliberation time is inherent in filing an appeal and the Legislature gave 30 days in which to accomplish it. A party’s failure to manage appeal deadlines is not good cause for missing a deadline. *See Graves v. Dep’t of Emp’t Sec.*, 144 Wn. App. 302, 311, 182 P.3d 1004 (2008).

4. Because the petition is untimely, the Initial Order became the final agency decision and there is no authority to review the Initial Order under RCW 49.48.084 and RCW 34.05. The appeal is dismissed.

### III. DECISION AND ORDER

Consistent with the above Findings of Fact and Conclusions of Law, the petition for administrative review is dismissed and the Initial Order is the final agency order.

DATED at Tumwater this 12 day of April, 2022.



JOEL SACKS  
Director

## SERVICE

This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19).

## APPEAL RIGHTS

**Reconsideration.** Any party may file a petition for reconsideration. RCW 34.05.470. Any petition for reconsideration must be filed within 10 days of service of this Order and must state the specific grounds on which relief is requested. No matter will be reconsidered unless it clearly appears from the petition for reconsideration that (a) there is material clerical error in the order **or** (b) there is specific material error of fact or law. A petition for reconsideration, together with any argument in support thereof, should be filed by mailing or delivering it directly to Joel Sacks, Director of the Department of Labor and Industries, P. O. Box 44001 Olympia, Washington 98504-4001, with a copy to all other parties of record and their representatives. Filing means actual receipt of the document at the Director's Office. RCW 34.05.010(6).

**NOTE: A petition for reconsideration is not required before seeking judicial review.** If a petition for reconsideration is filed, however, the 30-day period will begin to run upon the resolution of that petition. A timely filed petition for reconsideration is deemed to be denied if, within twenty (20) days from the date the petition is filed, the Director does not (a) dispose of the petition **or** (b) serve the parties with a written notice specifying the date by which it will act on the petition. RCW 34.05.470(3).

**Judicial Review.** Any petition for judicial review must be filed with the appropriate court and served within 30 days after service of this Order. RCW 34.05.542. RCW 49.48.084(5) provides: "Orders that are not appealed within the time period specified in this section and Chapter 34.05 RCW are final and binding, and not subject to further appeal." Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement.

**DECLARATION OF MAILING**

I, Lisa Deck, hereby declare under penalty of perjury under the laws of the State of Washington, that the DIRECTOR'S ORDER was mailed on the 12 day of April 2022 to the following via U.S. Mail, postage prepaid.

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DATED this 12 day of April 2022, at Tumwater, Washington.

  
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LISA DECK