

DIRECTOR OF THE DEPARTMENT OF LABOR & INDUSTRIES
STATE OF WASHINGTON

In re:

DOLLA SIGN AUTO SERVICES, LLC,
and KEEGAN PATTERSON and KYLE
YORK, as individuals

Appellants,

Citation and Notice of Assessment No. W-
129-21

OAH Docket No. 02-2021-LI-01610

NO. 2022-020-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 Dolla Sign Auto Services, LLC, Kyle York, and Keegan Patterson (Appellants) regarding the Initial Order on Summary Judgment dated September 17, 2021, and having reviewed the 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 issued and served the Initial Order on Summary Judgment on September, 17, 2021.

NO. 2022-020-WPA

1

DIRECTOR'S ORDER

RCW 49.48.084(4); RCW 34.05

2. The Office of Administrative Hearings mailed the Initial Order on Summary Judgment to the Appellants' addresses of record.

3. The Director's Office received the petition for administrative review on October 22, 2021.

4. Mr. York was incarcerated at the time the Office of Administrative Hearings issued the Initial Order on Summary Judgment. The Appellants produced nothing to show that bad faith, deception, or false assurances by prison officials resulted in the late filing of the petition for administrative review.

II. CONCLUSIONS OF LAW

1. RCW 49.48.084(3) 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."

2. The Appellants did not file his petition for administrative review within the time period specified by RCW 49.48.084(3), and the petition is untimely.

3. Incarceration, standing alone, is insufficient to extend statutory filing deadlines. The Washington State Supreme Court has noted that equitable tolling does not apply when there is no evidence of bad faith, deception, or false assurances by prison officials. *In re Carlstad*, 150 Wn.2d 583, 591-92, 80 P.3d 587 (2003). There is no indication of such malfeasance here.

4. 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." 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.

5. The appeal is dismissed.

III. DECISION AND ORDER

Consistent with the above Findings of Fact and Conclusions of Law, the October 22, 2021 petition for administrative review is dismissed and the September 17, 2021 Initial Order on Summary Judgment is the final agency order.

DATED at Tumwater this 1 day of November, 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 1 day of November 2022, to the following via U.S. Mail, postage prepaid.

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DATED this 1 day of November, 2022, at Tumwater, Washington.

Lisa Deck