



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES

P.O. Box 44000 • Olympia, Washington 98504-4000

December 30, 2024

Via E-mail and U.S. Mail

Jafar Imam
Northwest Auto Broker
1211 Central Ave N
Kent, WA 98032

8587 Emdad, LLC
dba Gyros & Kebabs
23723 126th Pl SE
Kent, WA 98031

Mahesh Pahari
26111 108th Ave SE
Kent, WA 98030

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1250 Pacific Avenue Ste 105
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**RE: 8587 Emdad, LLC dba Gyros & Kebabs, and Jafar Imam
OAH Docket No. 06-2024-LI-02172
Director No. 2024-018-WPA**

Dear Parties:

Please find the enclosed Director's Order, which is served on the date of mailing. A copy of the Initial Order is enclosed for your convenience.

Sincerely,

Joel Sacks
Director

Enclosures

cc: Judge Lisa Dublin
Haley Bobbitt, Tacoma OAH
Anastasia Sandstrom, AAG

**DIRECTOR OF THE DEPARTMENT OF LABOR & INDUSTRIES
STATE OF WASHINGTON**

In re:

8587 EMDAD, LLC dba GYROS &
KEBABS, and JAFAR IMAM,

Appellant,

Citation and Notice of Assessment No.
W-248-24

OAH Docket No. 06-2024-LI-02172

No. 2024-018-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 appeal filed by Jafar Imam (Appellant), 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 Denying Petition to Reinstate Hearing (Initial Order) on August 13, 2024.
2. The Director received a timely filed petition for review from the Appellant.
3. The Director adopts and incorporates by reference Findings of Fact No. 4.1 to 4.14.

NO. 2024-018-WPA

DIRECTOR'S ORDER

RCW 49.48.084(4); RCW 34.05

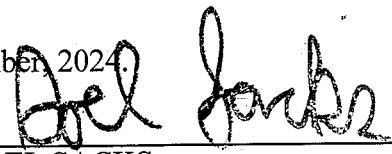
II. CONCLUSIONS OF LAW

1. Based on the Appellant's timely filed petition for review, there is authority to review and decide this matter under RCW 49.48.084 and RCW 34.05.
2. The Director adopts and incorporates by reference Conclusions of Law No. 5.1 to 5.12 of the Initial Order and the Initial Order 6.1 to 6.2

III. DECISION AND ORDER

Consistent with the above Findings of Fact and Conclusion of Law, the Order Dismissing Appeal is affirmed.

DATED at Tumwater this 30 day of December, 2024.



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 emailing it to directorappeal@lni.wa.gov or 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 30 day of December 2024, to the following via regular, postage prepaid:

Jafar Imam
Northwest Auto Broker
1211 Central Ave N
Kent, WA 98032

8587 Emdad, LLC
dba Gyros & Kebabs
23723 126th Pl SE
Kent, WA 98031

Mahesh Pahari
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1250 Pacific Avenue Ste 105
Tacoma, WA 98042
Max.Olarsch@atg.wa.gov
Eileen.West@atg.wa.gov
LITacCal@atg.wa.gov

DATED this 30 day of December, 2024, at Tumwater, Washington.



LISA DECK

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

8587 Emdad, LLC dba Gyros &
Kebabs, and Jafar Imam,

Appellant/Employer.

Docket No. 06-2024-LI-02172

**INITIAL ORDER DENYING PETITION TO
REINSTATE HEARING**

Agency: Labor and Industries
Program: Wage Payments
Agency No. W-248-24

1. ISSUES

1.1. Should the Order Dismissing Appeal, issued July 17, 2024, be vacated?

2. ORDER SUMMARY

2.1. No. The Order Dismissing Appeal, issued July 17, 2024, shall remain in full force and effect.

2.2. The Appellant's Petition to Reinstate Hearing is DENIED.

3. MOTION HEARING

3.1. Hearing Date: August 12, 2024

3.2. Administrative Law Judge: Dan Gerard

3.3. Appellant: 8587 Emdad, LLC dba Gyros & Kebabs, and
Jafar Imam ("Appellant")

3.3.1 Representative: Jafar Imam

3.4. Agency: Labor and Industries ("Department")

3.4.1. Representatives: Heather Lebowitz, Assistant Attorney General
Max Olarsch, Assistant Attorney General

3.5. Wage Claimant: Mahesh Pahari

3.6. Documents: I considered the following documents:

[Continued]

Doc. No.	Document Name	Document Date	No. Pages
1	Notice of Prehearing Conference	06/27/24	3
2	Order Dismissing Appeal - Default	07/17/24	4
3	Appellant's Petition to Reinstate Hearing	07/22/24	1

4. FINDINGS OF FACT:

The following facts are established by a preponderance of the evidence:

- 4.1. The Office of Administrative Hearings ("OAH") issued to the parties a Notice of Prehearing Conference ("Notice") on June 27, 2024, setting a prehearing conference in this matter for July 16, 2024, at 1:00 p.m. Pacific Time. *Document ("Doc.") 1.*
- 4.2. The Notice advised Appellant, "[y]ou must call in to the conference. If you fail to call in, the administrative law judge may hold you in default and dismiss your appeal." *Doc. 1.* (emphasis in original).
- 4.3. The Notice further stated, "If you are unable to call in, you may request a continuance of the Prehearing Conference. A request must include a reason. The continuance will only be granted if you can show good cause. Please send your request to the assigned administrative law judge at..." *Id.*
- 4.4. OAH served the Notice to Appellant, by first class mail, to Appellant's addresses of record at 23723 126th PI SE, Kent, WA 98031 and 1211 Central Ave N, Kent, WA 98032. *Id.*
- 4.5. Appellant received the Notice prior to the prehearing conference on July 16, 2024. *Testimony of Jafar Imam ("Imam Testimony").*
- 4.6. The prehearing conference convened as scheduled on July 16, 2024, at 1:00 p.m. The Department and wage claimant appeared at the hearing. However, Appellant did not appear. At 1:20 p.m., when no one had appeared on behalf of Appellant, the Department made an oral motion that Appellant be held in default due to their failure to appear.
- 4.7. The undersigned granted the Department's oral motion and issued an Order Dismissing Appeal – Default in this matter on July 17, 2024. *Doc. 2.* The Order advised Appellant that they may file a Petition to Reinstate Hearing within seven days. *Id.*
- 4.8. On July 22, 2024, Appellant filed a timely Petition to Reinstate Hearing ("Petition"). *Doc. 3.* In the Petition, Mr. Imam alleged he did not appear "due to being sick". *Id.*

- 4.9. Mr. Imam was suffering from symptoms related to a common cold and fever. *Imam Testimony*. Mr. Imam did not seek medical treatment for this malady. *Id.*
- 4.10. Mr. Imam left the Notice of Hearing at his business and did not feel well enough to travel to work to retrieve the documents. *Id.* Mr. Imam's business is approximately five minutes from his residence. *Id.*
- 4.11. Mr. Imam did not contact either the Office of Administrative Hearings ("OAH") or the Department of Labor and Industries to recover the prehearing conference contact information. *Id.*
- 4.12. Mr. Imam did not ask any of his employees or family members to travel to his business to retrieve the Notice of Hearing. *Id.*
- 4.13. If Mr. Imam had the call in information, he was well enough to have participated. *Id.*
- 4.14. As a result of not having the call-in information, Appellant did not participate in the prehearing conference on July 16, 2024.

5. CONCLUSIONS OF LAW

Based upon the facts above, I make the following conclusions:

Jurisdiction

- 5.1. I have jurisdiction over the persons and subject matter of this case under RCW 49.48 and Chapter 34.05 RCW.

Applicable Law

- 5.2. "If a party fails to attend or participate in a hearing or other stage of an adjudicative proceeding . . . the presiding officer may serve upon all parties a default or other dispositive order." RCW 34.05.440(2).
- 5.3. The Administrative Procedure Act, Chapter 34.05 RCW, does not provide standards or guidance for reviewing a petition to vacate a default judgment. See RCW 34.05.440; *Ogden v. Washington State Criminal Justice Training Commission*, No. 69662-9-I, 2014 Wn. App. Lexis 544, 16-17 (2014). The Model Rules of Procedure, Chapter 10-08 WAC, are equally silent.
- 5.4. Although state superior court civil rules are not binding in this case, Civil Rule 55(c) provides for setting aside a default judgment "for good cause shown," "upon such terms as the court deems just," and "in accordance with rule 60(b)." Civil Rule 60(b) in turn provides that "the court may relieve a party or the party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order."

- 5.5. Circumstances which are within a person's control do not support a finding of good cause. For example, the failure to check one's mail or a mistake in calendaring, being a matter of **carelessness or oversight, are not good cause reasons for failing to appear for a hearing**. *Graves v. Employment Security Dep't*, 144 Wn. App. 302, 309 (2008); *White v. Holm*, 73 Wn.2d 348 (1968). (emphasis added).
- 5.6. The law favors determinations of controversies on their merits; default judgments are disfavored. *Griggs v. Averbek Realty*, 92 Wn.2d 576, 581 (1979); *Little v. King*, 160 Wn.2d 696, 704 (2007). However, the Washington Supreme Court noted that "we also value an organized, responsive, and responsible judicial system where litigants acknowledge the jurisdiction of the court to decide their cases and comply with court rules." *Little*, 160 Wn.2d at 704. It explained: "[t]he fundamental principle when balancing these competing policies is 'whether or not justice is being done.'" *Id.*

Appellant Did Not Establish Good Cause for Failure to Appear

- 5.7. In this case, Appellant failed to establish good cause to set aside the Order Dismissing Appeal.
- 5.8. Appellant's failure to appear at the July 16, 2024, prehearing conference was because he failed to retain the prehearing conference order containing the conference information or make a reasonable effort to retrieve it from his office.
- 5.9. Appellant's allegation that he was too ill to drive five minutes to pick up the notice of hearing is not plausible. Appellant was suffering, as he stated, cold and flu symptoms. While these symptoms are inconvenient, they are not of such a degree that would render Appellant housebound. The mildness of the illness is further substantiated by Appellant's choice to not see a medical health professional.
- 5.10. Even if it was determined the illness was of such a degree which precluded Appellant from leaving the house, Appellant did not make any effort to either have an employee or family member retrieve the document or to contact either OAH or the Department for the necessary information. Appellant simply did not appear.
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- 5.11. The logical conclusion is that Appellant's failure to appear was because he did not maintain his necessary records to appear or make any reasonable effort to remedy that failure. These situations are well within Appellant's control.
- 5.12. Accordingly, Appellant's Petition to Reinstate Hearing will be DENIED.

6. INITIAL ORDER

IT IS HEREBY ORDERED THAT:

- 6.1. The Appellant's Petition to Reinstate Hearing is DENIED.

6.2. The Order Dismissing Appeal, issued July 17, 2024, shall remain in full force and effect.

SIGNED at Olympia, Washington on the date of mailing.



Dan Gerard
Administrative Law Judge
Office of Administrative Hearings

CERTIFICATE OF SERVICE ATTACHED

PETITION FOR REVIEW

Any party that disputes this Initial Order may file a Petition for Review with the Director of the Department of Labor and Industries.¹ You may e-mail your Petition for Review to the Director at directorappeal@lni.wa.gov. You may also mail or deliver your Petition for Review to the Director at the Department's physical address listed below.

Mailing Address:

Director
Department of Labor and Industries
PO Box 44001
Olympia, WA 98504-4001

Physical Address:

7273 Linderson Way SW
Tumwater, WA 98501

If you e-mail your Petition for Review, please do not mail or deliver a paper copy to the Director.

Whether you e-mail, mail or deliver the Petition for Review, the Director *must actually receive* the Petition for Review during office hours at the Director's office within 30 days of the date this Initial Order was mailed to the parties. You must also provide a copy of your Petition for Review to the other parties at the same time.

If the Director does not receive a Petition for Review within 30 days from the date of the Initial Order, the Initial Order shall become final with no further right to appeal.²

If you timely file a Petition for Review, the Director will conduct an administrative review under chapter 34.05 RCW.

¹ RCW 49.48.084 and RCW 34.05.464.

² RCW 49.48.084 and Chapter 34.05 RCW.

CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 06-2024-LI-02172

I certify that true copies of this document were served on those listed below, from Olympia, Washington via Consolidated Mail Services by one of the following: First Class Mail, Certified Mail, Hand Delivery via Messenger, Campus Mail, Facsimile, or by Email.

8587 Emdad, LLC dba Gyros & Kebabs 23723 126th PI SE Kent, WA 98031 <i>Appellant Employer</i>	<input checked="" type="checkbox"/> First Class Mail <input checked="" type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> E-mail
Jafar Imam Northwest Auto Broker 1211 Central Ave N Kent, WA 98032 <i>Appellant Employer</i>	<input checked="" type="checkbox"/> First Class Mail <input checked="" type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> E-mail
Heather Leibowitz, AAG Office of the Attorney General 800 Fifth Ave Ste 2000 Seattle, WA 98104 <i>Agency Representative</i>	<input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input checked="" type="checkbox"/> E-mail Heather.L Leibowitz@atg.wa.gov Eileen.West@atg.wa.gov Iniseaeservice@atg.wa.gov
Max Olarsch, AAG Office of the Attorney General 1250 Pacific Avenue Ste 105 Tacoma, WA 98042 <i>Agency Representative</i>	<input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input checked="" type="checkbox"/> E-mail Max.Olarsch@atg.wa.gov Eileen.West@atg.wa.gov LITacCal@atg.wa.gov
Mahesh Pahari 26111 108th Ave SE Kent, WA 98030 <i>Intervenor Wage Claimant</i>	<input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> E-mail

Date: Tuesday, August 13, 2024

OFFICE OF ADMINISTRATIVE HEARINGS



Tamara Roberson
Legal Assistant 2