



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES

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

April 8, 2025

Via E-mail and U.S. Mail

Marta Araujo
5412 76th Ave. E. #L
Puyallup, WA 98371
martaaraujo129@gmail.com

San Miguel, LLC
c/o Marta Araujo
2024 54th Ave. E., Unit B
Puyallup, WA 98371
martaaraujo129@gmail.com

Heather Klein Leibowitz, AAG
Office of the Attorney General
800 5th Ave., Ste. 2000
Seattle, WA 98104
heather.leibowitz@atg.wa.gov
eileen.west@atg.wa.gov
lniseaeservice@atg.wa.gov

Nora Arreguin Zuniga
1902 A St. SE, Apt D308
Auburn, WA 98002

**RE: San Miguel, LLC and Marta Araujo
OAH Docket No. 02-2023-LI-01850
Director No. 2025-011-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 Dan Gerard
Haley Bobbitt, Tacoma OAH
Anastasia Sandstrom, AAG

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

In re:

SAN MIGUEL, LLC and MARTA
ARAUJO,

Appellants/Employer,

Appeal of Amended Citation and Notice
of Assessment No. W-208-20

OAH Docket No. 02-2023-LI-01850

No. 2025-011-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 appeal filed by San Miguel, LLC and Marta Araujo (Appellants), 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 Order Denying Petition to Vacate Order Dismissing Appeal on December 5, 2024.
2. The Director received a timely filed petition for administrative review from the Appellants.

NO. 2025-011-WPA

DIRECTOR'S ORDER

RCW 49.48.084(4); RCW 34.05

3. All the Findings of Fact in the Order Denying Petition to Vacate Order Dismissing Appeal are adopted and incorporated by reference.

II. CONCLUSIONS OF LAW

1. Based on the Appellants' timely filed petition for administrative review, there is authority to review and the Conclusions of Law in the Order Denying Petition to Vacate Order Dismissing Appeal are adopted and incorporated by reference.

2. Marta Araujo initially gave as her excuse for missing the status conference that she had thought the conference was on a different date and put the wrong date in her diary or calendar. "A party's mismarking of a hearing date on their personal calendar is not good cause requiring vacation of an order of default" *See Graves v. Emp. Sec. Dep't*, 144 Wn. App. 302, 311, 182 P.3d 1004 (2008).

3. In her petition for administrative review, Marta Araujo asserts that "A few days prior to the scheduled conference on April 11, I had a doctor's appointment due to feeling unwell. My blood levels were found to be extremely high, causing fatigue, nausea, and disorientation. I have documentation to verify this medical condition and appointment. Ultimately causing me not to be in the right headspace and likely contributed to my confusion and miscalendaring of the status conference, leading to an unintentional oversight." Pet. for Rev. 1 (Jan. 3, 2025). This claim is new evidence on appeal. But the Director cannot consider evidence not produced at the administrative hearing. *Towle v. Dep't of Fish & Wildlife*, 94 Wn. App. 196, 205, 971 P.2d 591 (1999). Therefore, this assertion will not be considered. In any event, the excuse does not explain why the status conference was miscalendared when Appellants received the Notice of Status Conference in April 2024 for the October 2024 status conference, which was months before the missed date.

III. DECISION AND ORDER

Consistent with the above Findings of Fact and Conclusion of Law, and the Order Denying Petition to Vacate Order Dismissing Appeal of December 5, 2024, is incorporated by reference and is AFFIRMED

DATED at Tumwater this 8th day of April, 2025.



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 8th day of April 2025, to the following via regular, postage prepaid:

Marta Araujo
5412 76th Ave. E. #L
Puyallup, WA 98371
martaaraujo129@gmail.com

San Miguel, LLC
c/o Marta Araujo
2024 54th Ave. E., Unit B
Puyallup, WA 98371
martaaraujo129@gmail.com

Heather Klein Leibowitz, AAG
Office of the Attorney General
800 5th Ave., Ste. 2000
Seattle, WA 98104
heather.leibowitz@atg.wa.gov
eileen.west@atg.wa.gov
lniseaeservice@atg.wa.gov

Nora Arreguin Zuniga
1902 A St. SE, Apt D308
Auburn, WA 98002

DATED this 8th day of April, 2025, at Tumwater, Washington.



LISA DECK

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

San Miguel, LLC and Marta Araujo,

Appellants/Employer.

Docket No. 02-2023-LI-01850

**ORDER DENYING PETITION TO VACATE
ORDER DISMISSING APPEAL**

Agency: Labor and Industries
Program: Wage Payments
Agency No. W-208-20

1. ISSUE

- 1.1. Should the Order Dismissing Appeal issued October 8, 2024, be vacated under RCW 34.05.440(3)?

2. ORDER SUMMARY

- 2.1. No. Appellant, San Miguel, LLC and Marta Araujo, has presented insufficient grounds for vacating the October 8, 2024, Order Dismissing Appeal.
- 2.2. The Appellant's Petition to Reinstate Hearing and Vacate Default Order is **DENIED**.

3. MOTION HEARING

- 3.1. Motion Hearing Date: November 25, 2024
- 3.2. Administrative Law Judge: Travis Dupree
- 3.3. Appellant: San Miguel, LLC and Marta Araujo
- 3.3.1. Representative: Marta Araujo, *pro se*
- 3.4. Agency: Department of Labor and Industries
("Labor and Industries")
- 3.4.1. Representative: Heather Leibowitz, Assistant Attorney General
- 3.5. Interpreter: Ines Venturini
- 3.6. Record relied upon: Presentation by the parties at the motion hearing; Appellant's Petition to Reinstate Hearing; and the documents filed to date.

4. FINDINGS OF FACT

The documents establish the following facts as a matter of law:

- 4.1. On April 12, 2024, the Office of Administrative Hearings (“OAH”) sent Appellant, San Miguel, LLC and Marta Araujo, a Notice of Status Conference (“Notice”), for the status conference scheduled for Tuesday, October 8, 2024, at 9:00 a.m.
- 4.2. Below the call-in instruction on the front page, the Notice stated in bold: **“You must call in to the Status Conference. If you fail to call in, the administrative law judge may hold you in default and dismiss your appeal. RCW 34.05.440(2).”**
- 4.3. The Notice was mailed to Appellant’s address of record at 2024 54th Ave E, Unit B Fife, WA 98424 and 5412 76th Ave. E. #L Puyallup, WA 98371. The Notice was not returned as undelivered by the US Postal Service.
- 4.4. On October 8, 2024, at 9:00 a.m., counsel for Labor and Industries appeared for the status conference. Appellant did not appear. When Appellant did not appear by 9:20 a.m., Labor and Industries moved for a default order, which was granted on the record and issued in writing on October 08, 2024.
- 4.5. On October 14, 2024, the Office of Administrative Hearings received the Appellant’s Petition to Reinstate Appeal.
- 4.6. In the Appellant’s Petition to Reinstate Hearing, the Appellant did not appear for the October 8, 2024, status conference because it “was unintentional, and I take full responsibility for this oversight.”
- 4.7. At the motion hearing on November 25, 2024, Marta Araujo testified that she missed the status conference because she was confused and thought it was scheduled for October 15, 2024. Ms. Araujo wrote the wrong date on the calendar.

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 chapters 34.05 RCW, and 10-08 WAC.

Appellant Has Shown Insufficient Basis for Vacating the Default Order.

- 5.2. Under the Administrative Procedures Act (APA), chapter 34.05 RCW, an appellant subject to a default and dismissal order may petition the issuing tribunal for an order vacating the default and dismissal order. RCW 34.05.440(3). The APA, though, is silent as to the basis for granting or denying petition to vacate a default order. The Model Rules of Procedure, chapter 10-08 WAC, are equally silent. Therefore, Civil Rule (“CR”) 60(b)(1), CR 55(c)(1), and the court’s analysis in *White v. Holm*, 73 Wn.2d 348, 438 P.2d 581 (1968), provide guidance.

- 5.3. Each of those authorities requires the petitioning appellant to demonstrate good cause for failing to appear. CR 55(c) provides for the setting aside of a default judgment “for good cause shown”, “upon such terms as the court deems just”, and “in accordance with rule 60(b).” CR 60(b) provides: “[T]he 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.” The *White* court provides substantial discussion and detail. However, there is a common theme: Good cause for failing to appear implies a circumstance reasonably beyond the control of the appellant who failed to appear.
- 5.4. In the present case, the Appellant failed to appear at the status conference because she was confused about the date and wrote the wrong one on the calendar. The Appellant argues that failing to appear was a good faith mistake and requests vacation of the default order. However, mis-calendarling is not a circumstance reasonably beyond the Appellant’s control and does not establish good cause for the failure to appear. The Appellant has provided insufficient cause to vacate the order of dismissal. The Appellant’s Petition to Reinstate Hearing and Vacate Default Order is DENIED.
- 5.5. Accordingly, the Order Dismissing Appeal entered on October 8, 2024, will be DENIED.

6. INITIAL ORDER

IT IS HEREBY ORDERED THAT:

- 6.1. The Appellant’s Petition to Reinstate Hearing and Vacate Default Order is **DENIED**.
- 6.2. The Order Dismissing Appeal issued October 8, 2024, remains in full force and effect.

Issued from Olympia, Washington on the date of mailing.



Travis Dupree
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.

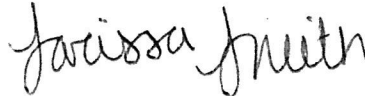
CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 02-2023-LI-01850

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.

San Miguel, LLC c/o Marta Araujo 2024 54th Ave E, Unit B Fife, WA 98424 Appellant/Employer	<input type="checkbox"/> First Class Mail <input checked="" type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> E-mail
San Miguel, LLC c/o Marta Araujo 5412 76th Ave. E. #L Puyallup, WA 98371 Appellant/Employer	<input 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 MS: TB-14 800 5th Ave Ste 2000 Seattle, WA 98104 Agency Representative	<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.Lebowitz@atg.wa.gov Eileen.West@atg.wa.gov Iniseaeservice@ATG.WA.GOV
Nora Arreguin Zuniga 1902 A St SE Apt #D308 Auburn, WA 98002 Intervenor/Wage Claimant	<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: Thursday, December 05, 2024

OFFICE OF ADMINISTRATIVE HEARINGS



Larissa Smith
Legal Assistant 2

