

In the Matter of
SCOTT A. ANDERSSON
and Sally Andersson, dba Ace Computer Consulting Co., Respondents.

Case Number 48-98
Final Order of the Commissioner
Jack Roberts
Issued May 14, 1998.

SYNOPSIS

Respondents, who operated a computer consulting business as partners, employed wage claimant as a computer service and sales technician. Claimant's wage rate, determined in an agreement with the Workers' Compensation Division Preferred Worker Program, was \$12.00 per hour. Respondents failed to pay claimant all wages when due, in violation of ORS 652.140 (2), after claimant quit employment. Respondents' failure to pay the wages was willful, and the commissioner ordered respondents to pay civil penalty wages, pursuant to ORS 652.150. Because respondent Sally Andersson was in default for failing to appear at hearing, an amendment of the charging document to increase the alleged civil penalty wages did not apply to her. ORS 652.140(2), 652.150.

The above-entitled contested case came on regularly for hearing before Douglas A. McKean, designated as Administrative Law Judge (ALJ) by Jack Roberts, Commissioner of the Bureau of Labor and Industries for the State of Oregon. The hearing was held on March 24, 1998, in the offices of the Bureau of Labor and Industries, Portland, Oregon.

The Bureau of Labor and Industries (the Agency) was represented by Linda Lohr, an employee of the Agency. Tommy Harold Patterson (Claimant) was present throughout the hearing. Scott Andersson (Respondent) was present throughout the hearing. Sally Andersson (Respondent Sally Andersson) did not appear at hearing.

The Agency called the following witnesses: Vicki King, a former compliance specialist with the Wage and Hour Division of the Agency; and Tommy Patterson, Claimant. Respondent called himself as a witness.

Administrative exhibits X-1 to X-11, Agency exhibits A-1 to A-9, and Respondents' exhibits R-1 to R-10 were offered and received into evidence. The record closed on March 24, 1998.

Having fully considered the entire record in this matter, I, Jack Roberts, Commissioner of the Bureau of Labor and Industries, hereby make the following Findings of Fact (Procedural and on the Merits), Ultimate Findings of Fact, Conclusions of Law, Opinion, and Order.

FINDINGS OF FACT -- PROCEDURAL

1) On June 2, 1997, Claimant filed a wage claim with the Agency. He alleged that he had been employed by Respondent and that Respondent had failed to pay wages earned and due to him.

2) At the same time that he filed the wage claim, Claimant assigned to the Commissioner of Labor, in trust for Claimant, all wages due from Respondent.

3) On November 4, 1997, the Agency served on Respondent an Order of Determination based upon the wage claim filed by Claimant and the Agency's investigation. The Order of Determination alleged that Respondent owed Claimant a total of \$3,474 in wages and \$2,160 in civil penalty wages. The Order of Determination

required that, within 20 days, Respondent either pay these sums in trust to the Agency or request an administrative hearing and submit an answer to the charges.

4) On November 13, 1997, the Agency received an answer and request for a contested case hearing, dated November 7, 1997, from Respondent Sally Andersson. In her answer, she disputed the number of work hours claimed and the alleged rate of pay. Mrs. Andersson described herself as "Owner" of Ace Computer Consulting Co. On February 27, 1998, the Agency notified Respondent that he was named in the Order of Determination and personal service had been made on him; therefore, the Agency advised him that he was required to personally answer the order. On March 9, 1998, the Agency received Respondent's request of a hearing and answer, in which he disputed the wages claimed and the period of employment.

5) On March 11, 1998, the Agency requested a hearing from the Hearings Unit of the Bureau of Labor and Industries. With its request, the Agency moved to add Sally Andersson as a respondent, pursuant to OAR 839-050- 0170(4). The ALJ granted the motion because Sally Andersson had filed an answer and identified herself as an owner of the business.

6) On March 11, 1998, the Hearings Unit issued a Notice of Hearing to the Respondents, the Agency, and the Claimant indicating the time and place of the hearing. Together with the Notice of Hearing, the forum sent a document entitled "Notice of Contested Case Rights and Procedures" containing the information required by ORS 183.413, and a copy of the forum's contested case hearings rules, OAR 839-050-0000 to 839-050-0440.

7) On March 11, 1998, the Administrative Law Judge issued a discovery order to the participants directing them each to submit a summary of the case, including a list of the witnesses to be called, and the identification and description of any physical

evidence to be offered into evidence, together with a copy of any such document or evidence, according to the provisions of OAR 839-050-0200 and 839-050- 0210. The Agency and Respondent each submitted a summary.

8) At the beginning of the hearing on March 24, 1998, the Agency requested that the ALJ find Respondent Sally Andersson in default for failing to appear at hearing. The ALJ granted that request and found Respondent Sally Andersson in default, pursuant to OAR 839-050-0330.

9) At the start of the hearing, Respondent said he had reviewed the "Notice of Contested Case Rights and Procedures" and had no questions about it.

10) Pursuant to ORS 183.415(7), the ALJ explained the issues involved in the hearing, the matters to be proved or disproved, and the procedures governing the conduct of the hearing.

11) During the hearing, the Agency moved to amend the charging document to increase the civil penalties claimed. The increase resulted from an arithmetic error by the Agency's compliance specialist. Respondent objected because he disputed the underlying rate of pay upon which the penalty wages were calculated. Finding that evidence had been presented without objection about Claimant's alleged wage rate and about the correct calculation, the ALJ granted the motion.¹ As amended, the charging document alleged that Claimant's rate per day was \$96.00 (eight hours times \$12.00 per hour) and that there was due and owing the sum of \$2,880 as penalty wages (\$96.00 times 30 days).

12) On March 31, 1998, the Administrative Law Judge issued a Proposed Order in this matter. Included in the Proposed Order was an Exceptions Notice that allowed ten days for filing exceptions to the Proposed Order. On April 10, 1998, the Hearings Unit received Respondent's timely exceptions. He said he had "discovered

more information very relevant to these issues that was not available at the time of the hearing." On April 13, 1998, the ALJ wrote to the participants and described the requirements for reopening the contested case record. The ALJ required Mr. Andersson to file an affidavit and any new exhibits by April 20, 1998, in order for the ALJ to determine whether to reopen the record. The Hearings Unit never received the required affidavit with exhibits. Accordingly, the record remained closed. The forum has addressed Respondent's exceptions in the Opinion section of this Final Order.

FINDINGS OF FACT -- THE MERITS

1) During all times material herein, the Respondents, husband and wife, did business as Ace Computer Consulting Company. As partners, they had the right to share in the profits, the liability to share in the losses, and the right to exert some control over the business.

2) From January 13 to May 23, 1997, Respondents employed Claimant as a computer service and sales technician. Claimant's duties included phone sales, computer hardware assembly, and technical assistance to customers.

3) Before his employment with Respondents, Claimant had a disabling on-the-job injury to his right knee. Respondent applied to the Workers' Compensation Division's Preferred Worker Program for a wage subsidy for Claimant. As part of a wage subsidy agreement with the Division, Respondent agreed to and did pay Claimant at the rate of \$12.00 per hour. The Division agreed to reimburse Respondent for Claimant's work at \$6.00 per hour. A representative from the Preferred Worker Program advised Respondent that reimbursement would not be possible if Claimant were paid on a commission basis.

4) According to Respondent's instructions, Claimant completed time sheets on a weekly basis. He signed and delivered them to Respondent. Respondent kept no

other record of Claimant's work. Claimant was supposed to be paid every two weeks. There is no record of Respondent paying Claimant for his work between January 13 and January 26, 1997.² Respondent gave Claimant his first pay check around March 1, 1997, for the periods January 27 to February 9 and February 10 to March 1, 1997. Between January 27 and February 9, 1997, Claimant worked 71 hours, which is reflected on his time sheets and on the itemized deduction statement that accompanied his paycheck. Respondent paid him \$12.00 per hour. Between February 10 and March 1, 1997, Claimant worked 77 hours, which is reflected on his time sheets and on the itemized deduction statement that accompanied his paycheck. Respondent again paid him \$12.00 per hour. There is no record of Respondent paying Claimant for the period March 3 to 16, 1997.³ Between March 17 and March 30, 1997, Claimant worked 79.5 hours, which is reflected on his time sheets and on his paycheck for that period, dated May 2, 1997.⁴

5) Between March 31 and May 23, 1997, Claimant worked 289.5 hours. He recorded his hours on time sheets for the period March 31 to May 18, 1997, and gave these to Respondent. There is no time sheet in the record for Claimant's final week, May 19 to 23, 1997. Respondent paid Claimant nothing for these 289.5 work hours.

6) Claimant asked Respondent for his wages many times. Respondent never disputed the work time Claimant recorded on his time sheets or that wages were due. Respondent said he could not afford to pay Claimant until he received money from customers or Safeway, the grocery chain, where Respondent had been employed as a truck driver. Nevertheless, Respondent was paying other bills. Because Respondent was not paying Claimant and his savings had run out, Claimant quit his employment with Respondent on May 23, 1997.

7) On July 25, 1997, the Agency sent Respondent a Notice of Wage Claim. The notice said that Claimant had filed a wage claim for unpaid wages of \$3,474 at the rate of \$12.00 per hour earned from March 31 to May 23, 1997. The Agency required Respondent to either pay this claim, if it was correct, or complete a response form and return it with documentation supporting his position, if he disputed the claim. Respondent did not respond to the notice. He never submitted any documentation to the Agency until the day before the hearing in this matter. When a compliance specialist contacted Respondent about the claim, Respondent agreed that he owed Claimant around \$3,000. He did not dispute the claim or the rate of pay, and he said on several occasions he would pay Claimant.

8) The forum computed civil penalty wages, in accordance with ORS 652.150 and OAR 839-001-0470, as follows: \$12.00 (Claimant's hourly rate) multiplied by 8 (hours per day) equals \$96.00. This figure of \$96.00 is multiplied by 30 (the maximum number of days for which civil penalty wages continued to accrue) for a total of \$2,880. The Agency set forth this figure in the Amended Order of Determination.

9) The forum carefully observed Claimant's demeanor and found his testimony to be credible. He had the facts readily at his command. There is no reason to determine Claimant's testimony to be anything except reliable and credible.

10) Respondent's testimony was not reliable or credible. His testimony was inconsistent on important points, often contradicted by Claimant's and King's testimony, and sometimes contradicted by Respondent's own records. For example, he testified that he never had a wage rate agreement with Claimant. He claimed that the \$12.00 rate of pay was merely a goal, a figure insisted upon by a representative from the Preferred Worker Program. He said it was a rate Claimant could earn after his training was complete. However, his own records (the itemized statements that accompanied

Claimant's paychecks) showed that he paid Claimant at a rate of \$12.00 per hour for precisely the number of hours Claimant recorded on his time sheets. In addition, Respondent claimed that he disputed the number of hours Claimant put on his time sheets. He pointed to a March 23, 1997, e-mail message to Claimant complaining about the recorded hours. However, Respondent paid Claimant on May 2, 1997, for exactly the number of hours Claimant recorded on his time sheets for the period March 16 to 30, 1997. Likewise, Respondent never disputed Claimant's alleged rate of pay or hours worked when he spoke with an Agency compliance specialist on several occasions. Accordingly, the forum has disbelieved all of Respondent's testimony except that which was corroborated by other credible evidence.

ULTIMATE FINDINGS OF FACT

1) During all times material herein, Respondents were persons who, as partners, engaged the personal services of one or more employees in the state of Oregon.

2) Respondents employed Claimant from January to May 23, 1997.

3) Claimant quit without notice on May 23, 1997.

4) During the wage claim period, that is, from March 31 to May 23, 1997, Respondents and Claimant had an agreement whereby Claimant's rate of pay was \$12.00.

5) During the wage claim period, Claimant worked 289.5 hours for Respondents. At the wage rate of \$12.00 per hour, Claimant earned \$3,474 in wages. Respondents have paid Claimant nothing and owe him \$3,474 in earned and unpaid compensation.

6) Respondents willfully failed to pay Claimant all wages within five days, excluding Saturdays, Sundays, and holidays, after he quit, and more than 30 days have elapsed from the date his wages were due.

7) Civil penalty wages, computed in accordance with ORS 652.150 and OAR 839-001-0470, equal \$2,880.

8) Respondents did not allege in their answers an affirmative defense of financial inability to pay the wages due at the time they accrued. Respondents made no showing that they were financially unable to pay Claimant's wages at the time they accrued.

CONCLUSIONS OF LAW

1) During all times material herein, Respondents were employers and Claimant was an employee subject to the provisions of ORS 652.110 to 652.200, 652.310 to 652.414, and 653.010 to 653.261.

2) The Commissioner of the Bureau of Labor and Industries has jurisdiction over the subject matter and the Respondents herein. ORS 652.310 to 652.414.

3) Before the start of the contested case hearing, the forum informed Respondent of his rights as required by ORS 183.413(2). The Administrative Law Judge complied with ORS 183.415(7) by explaining the information described therein to the participants at the start of the hearing.

4) The actions or inactions of Respondent Scott Andersson, a partner of Respondent Sally Andersson, are properly imputed to Respondent Sally Andersson. ORS 68.210, 68.250, 68.270.

5) ORS 652.140(2) provides:

"When an employee who does not have a contract for a definite period quits employment, all wages earned and unpaid at the time of quitting become due and payable immediately if the employee has given to the employer not less than 48 hours' notice, excluding Saturdays, Sundays and holidays, of intention to quit employment. If notice is not given to the

employer, the wages shall be due and payable within five days, excluding Saturdays, Sundays and holidays, after the employee has quit, or at the next regularly scheduled payday after the employee has quit, whichever event first occurs."

Respondents violated ORS 652.140(2) by failing to pay Claimant all wages earned and unpaid within five days, excluding Saturdays, Sundays, and holidays, after Claimant quit employment without notice.

6) ORS 652.150 provides:

"If an employer willfully fails to pay any wages or compensation of any employee whose employment ceases, as provided in ORS 652.140 and 652.145, then, as a penalty for such nonpayment, the wages or compensation of such employee shall continue from the due date thereof at the same hourly rate for eight hours per day until paid or until action therefor is commenced; provided, that in no case shall such wages or compensation continue for more than 30 days from the due date; and provided further, the employer may avoid liability for the penalty by showing financial inability to pay the wages or compensation at the time they accrued."

Respondents are jointly and severally liable for a civil penalty under ORS 652.150 for willfully failing to pay Claimant all wages or compensation when due as provided in ORS 652.140.

7) Under the facts and circumstances of this record, and according to the law applicable to this matter, the Commissioner of the Bureau of Labor and Industries has the authority to order Respondents to pay Claimant his earned, unpaid, due, and payable wages and civil penalty wages, plus interest on both sums until paid. ORS 652.332.

OPINION

Default

Respondent Sally Andersson failed to appear at the hearing and thus defaulted to the charges set forth in the Order of Determination. In a default situation, pursuant to ORS 183.415(5) and (6), the task of this forum is to determine whether the Agency has

made a prima facie case supporting the Order of Determination. See *In the Matter of John Cowdrey*, 5 BOLI 291, 298 (1986); *In the Matter of Art Farbee*, 5 BOLI 268, 276 (1986); *In the Matter of Judith Wilson*, 5 BOLI 219, 226 (1986); see also OAR 839-050-0330(2).

In a default situation where a respondent's total contribution to the record is a request for a hearing and an answer that contains nothing other than unsworn and unsubstantiated assertions, those assertions are overcome wherever they are controverted by other credible evidence on the record. *In the Matter of Jack Mongeon*, 6 BOLI 194 (1987).

Respondents Were Partners

ORS 68.110(1) defines a partnership as "an association of two or more persons to carry on as coowners a business for profit." The Oregon Supreme Court has held that "[t]he essential test in determining the existence of a partnership is whether the parties intended to establish such a relation"; that "in the absence of an express agreement * * * the status may be inferred from the conduct of the parties," and "when faced with intricate transactions that arise, this court looks mainly to the right of a party to share in the profits, his liability to share losses, and the right to exert some control over the business." *Stone-Fox, Inc. v. Vandehey Development Co.*, 290 Or 779, 626 P2d 1365, 1367 (1981) (quoting from *Hayes v. Killinger*, 235 Or 465, 470, 385 P2d 747 (1963)).

In this matter, the evidence is persuasive that Respondents' former corporation, Ace Computer Consulting, Inc., was involuntarily dissolved on November 2, 1995. Respondent Scott Andersson admitted that Sally Andersson, his wife, had the right to share in the profits, the liability to share losses, and the right to exert some control over the business. She characterized herself as an "owner" of the business in her answer. Respondent said she had been the president of the corporation. No evidence suggested

that Respondents operated the business in some form other than a partnership during times material. Accordingly, the forum concludes that Respondents were partners.

Claimant's Rate of Pay

Claimant testified credibly that his agreed rate of pay was \$12.00 per hour. Respondent contended that he and Claimant never had an agreement, and the \$12.00 rate was only used to satisfy the representative of the Preferred Worker Program.

The preponderance of credible evidence establishes that Claimant worked for \$12.00 per hour. As noted in Finding of Fact -- The Merits, number 10, the forum found Respondent's testimony not credible. Despite Respondent's protestations to the contrary, credible evidence, including the itemized deductions statements Respondent gave Claimant, shows Respondent paid Claimant \$12.00 per hour. He claimed that around April 1, 1997, he changed whatever agreement he previously had with Claimant, and he put Claimant on a commission-only basis. No other evidence supports Respondent's testimony. Claimant testified that he never saw the e-mail message purporting to change his rate of pay, and his wage rate was never changed. The forum disbelieved Respondent and, accordingly, found no credible evidence establishing a change in the \$12.00 per hour wage rate.

Work Time

"Employ" includes to suffer or permit to work. ORS 653.010(1). Training time is considered a cost of doing business for an employer and is compensable work time. See OAR 839-020-0044; *In the Matter of Dan's Ukiah Service*, 8 BOLI 96, 106 (1989).

Hours Worked

In wage claim cases such as this, the forum has long followed policies derived from *Anderson v. Mt. Clemens Pottery Co.*, 328 US 680 (1946). The US Supreme Court stated therein that the employee has the "burden of proving that he performed work for

which he was not properly compensated." In setting forth the proper standard for the employee to meet in carrying this burden of proof, the court analyzed the situation as follows:

"An employee who brings suit under 16(b) of the [Fair Labor Standards] Act for unpaid minimum wages or unpaid overtime compensation, together with liquidated damages, has the burden of proving that he performed work for which he was not properly compensated. The remedial nature of this statute and the great public policy which it embodies, however, militate against making that burden an impossible hurdle for the employee. Due regard must be given to the fact that it is the employer who has the duty under 11(c) of the Act to keep proper records of wages, hours and other conditions and practices of employment and who is in position to know and to produce the most probative facts concerning the nature and amount of work performed. Employees seldom keep such records themselves; even if they do, the records may be and frequently are untrustworthy. It is in this setting that a proper and fair standard must be erected for the employee to meet in carrying out his burden of proof.

"When the employer has kept proper and accurate records, the employee may easily discharge his burden by securing the production of those records. But where the employer's records are inaccurate or inadequate and the employee cannot offer convincing substitutes, a more difficult problem arises. The solution, however, is not to penalize the employee by denying him any recovery on the ground that he is unable to prove the precise extent of uncompensated work. Such a result would place a premium on an employer's failure to keep proper records in conformity with his statutory duty; it would allow the employer to keep the benefits of an employee's labors without paying due compensation as contemplated by the Fair Labor Standards Act. In such a situation we hold that an employee has carried out his burden if he proves that he has in fact performed work for which he was improperly compensated and if he produces sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference. The burden then shifts to the employer to come forward with evidence of the precise amount of work performed or with evidence to negative the reasonableness of the inference to be drawn from the employee's evidence. If the employer fails to produce such evidence, the court may then award damages to the employee, even though the result be only approximate." 328 US at 686-88.

Here, ORS 653.045 requires an employer to maintain payroll records. Respondents permitted Claimant to keep track of his work time. Claimant prepared

detailed time sheets and presented these to Respondent each week. Respondents kept no other time records of Claimant's work.

Pursuant to the analysis, the employee, or in this case the Agency, has the burden of first proving that the employee "performed work for which he was improperly compensated." The burden of proving the amount and extent of that work can be met by producing sufficient evidence from which a just and reasonable inference may be drawn. This forum has previously accepted, and will accept, the testimony of a claimant as sufficient evidence to prove such work was performed and from which to draw an inference of the extent of that work -- where that testimony is credible. See *In the Matter of Sheila Wood*, 5 BOLI 240, 254 (1986); *Dan's Ukiah Service*, 8 BOLI 96, 106 (1989).

As part of his claim for wages, Claimant filled out a calendar form for the Agency to show the number of hours he worked. On the basis of this calendar, Claimant's time sheets, and his credible testimony, the forum has concluded that Respondents employed and improperly compensated Claimant. The forum may rely on the evidence produced by the Agency regarding the number of hours worked and rate of pay for Claimant.

Where the forum concludes that an employee was employed and improperly compensated, it becomes the burden of the employer "to come forward with evidence of the precise amount of work performed or with evidence to negative the reasonableness of the inference to be drawn from the employee's evidence." *Anderson v. Mt. Clemens Pottery Co.*, 328 US at 687-88; *In the Matter of Dan's Ukiah Service*, 8 BOLI at 106. Respondents did not maintain any record of hours or dates worked by Claimant beyond what Claimant provided them.

Respondent produced no credible evidence to contradict Claimant's evidence. While Respondent testified that Claimant did not work the number of hours claimed,

Respondent's testimony was exceedingly vague, inconsistent, and unreliable. Therefore, the forum gave his testimony little or no weight. The forum concludes that Respondent's evidence did not sufficiently undermine the credible evidence produced by the Agency.

Wages Due

Claimant's credible testimony, time sheets, itemized pay stubs, and calendar form established both his hourly rate of pay and the number of hours he worked. From the credible evidence and the applicable law, the forum concludes that Claimant worked 289.5 hours at \$12.00 per hour, and that Respondents owe Claimant \$3,474 in unpaid wages.

Penalty Wages

Awarding penalty wages turns on the issue of willfulness. Willfulness does not imply or require blame, malice, wrong, perversion, or moral delinquency, but only requires that that which is done or omitted is intentionally done with knowledge of what is being done, and that the actor or omittor be a free agent. *Sabin v. Willamette Western Corp.*, 276 Or 1083, 557 P2d 1344 (1976). Respondents, as employers, had a duty to know the amount of wages due to their employee. *McGinnis v. Keen*, 189 Or 445, 221 P2d 907 (1950); *In the Matter of Jack Coke*, 3 BOLI 238, 242 (1983). Here, evidence established that Respondents knew they had not paid Claimant's wages and intentionally failed to pay those wages. Evidence showed that Respondents acted voluntarily and were free agents. Under this test, the forum finds that Respondents acted willfully and thus they are liable for penalty wages under ORS 652.150.

As noted above, Respondent Sally Andersson was in default. Therefore, she is liable for the amount of civil penalty wages alleged in the original charging document:

\$2,160. Respondent Scott Andersson, however, is liable for the amount of civil penalty wages alleged in the amended charging document: \$2,880.

Respondent's Exceptions

Respondent Scott Andersson filed timely exceptions to the Proposed Order. He contended that "[w]e have since [the hearing] discovered more information very relevant to these issues that was not available at the time of the hearing." Although the ALJ gave him the opportunity to reopen the record, Mr. Andersson did not submit the affidavit or exhibits requested by the ALJ. Accordingly, the ALJ did not reopen the record.

OAR 839-050-0380 provides in part:

"(1) Any participant may file specific written exceptions to the proposed order. No oral argument is allowed on exceptions unless requested by the administrative law judge. Any new facts presented or issues raised in such exceptions shall not be considered by the commissioner in preparation of the final order.

Since the record was not reopened, this order is based exclusively on the record made at hearing. Aside from claiming that he had discovered more evidence, Respondent's exceptions do not challenge the facts found, the conclusions of law reached, or the reasoning explained in the opinion of the proposed order. Accordingly, the forum denies Respondent's exceptions.

ORDER

NOW, THEREFORE, as authorized by ORS 652.332, the Commissioner of the Bureau of Labor and Industries hereby orders SCOTT A. ANDERSSON and SALLY ANDERS- SON to deliver to the Fiscal Services Office of the Bureau of Labor and Industries, 800 NE Oregon Street, Portland, Oregon 97232-2162, the following:

A certified check payable to the Bureau of Labor and Industries IN TRUST FOR TOMMY HAROLD PATTERSON in the amount of FIVE THOUSAND SIX HUNDRED AND THIRTY FOUR DOLLARS (\$5,634), less appropriate lawful deductions, representing \$3,474 in gross earned, unpaid, due, and payable wages; and \$2,160 in penalty wages; plus interest at the rate of nine percent per year on the sum of \$3,474 from June 1, 1997, until paid

and nine percent interest per year on the sum of \$2,160 from July 1, 1997, until paid.

FURTHERMORE, as authorized by ORS 652.332, the Commissioner of the Bureau of Labor and Industries hereby orders SCOTT A. ANDERSSON to deliver to the Fiscal Services Office of the Bureau of Labor and Industries, 800 NE Oregon Street, Portland, Oregon 97232-2162, the following:

A certified check payable to the Bureau of Labor and Industries IN TRUST FOR TOMMY HAROLD PATTERSON in the amount of SEVEN HUNDRED AND TWENTY DOLLARS (\$720), less appropriate lawful deductions, representing additional civil penalty wages, plus interest at the rate of nine percent per year on that sum from July 1, 1997, until paid.

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¹The amendment to the charging document applies only to Respondent Scott Andersson. Because Respondent Sally Andersson defaulted, she had no notice of the increased civil penalty. In a default situation, the charging document sets the limit on the issues and relief that the forum can consider. *In the Matter of Jack Mongeon*, 6 BOLI 194, 201-02 (1987). Accordingly, the amount of civil penalty wages alleged in the original charging document, \$2,160, is the limit of the civil penalty wage liability the forum can consider against Respondent Sally Andersson.

²Claimant's wage claim did not include this period of his employment.

³Again, Claimant did not include this period of his employment in his wage claim.

⁴Respondent wrote on the check that it was for "Payroll 3-16 to 3-30-97 79.50 hrs." Since the hours on Claimant's time sheets for the March 17 to March 30 period match exactly with the hours noted on the check, the forum attaches no significance to the one-day difference in the recorded pay period, that is, the

difference between March 16 and March 17 as the beginning day of the period. The forum concludes that the May 2 check compensated Claimant for his work recorded on the time sheets.