

In the Matter of
SHARON KAYE PRICE dba WILLOW BAY MANOR

Case No. 101-00

October 3, 2000

SYNOPSIS

Respondent willfully failed to pay two employees all wages they earned. The commissioner ordered Respondent to pay the employees their unpaid wages plus civil penalty wages. ORS 652.140, ORS 652.150, ORS 653.025, ORS 653.055, ORS 653.261, OAR 839-001-0470, OAR 839-020-0010, OAR 839-020-0042.

The above-entitled case came on regularly for hearing before Erika L. Hadlock, 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 June 29, 2000, at the Salem office of the Bureau of Labor and Industries, located at 3865 Wolverine Street NE, Building E-1, Salem, Oregon.

Cynthia Domas, an employee of the Bureau of Labor and Industries ("BOLI" or "the Agency") represented the Agency. Wage claimant Tina Walker was present during the hearing. She was not represented by counsel. Wage claimant Tamara Cox was not present during the hearing and was not represented by counsel. Respondent did not appear at hearing either personally or through counsel.

The Agency called as witnesses: Claimant Tina Walker, Agency compliance specialist Newell Enos, Minnie Berset (a friend of Tina Walker) and Charles Walker. (Tina Walker's brother).

The forum received:

a) Administrative exhibits X-1 through X-12 (received by the Hearings Unit or generated prior to hearing) and X-13 through X-17 (received or generated by the Hearings Unit after the hearing).

b) Agency exhibits A-1 through A-9 (filed with the Agency's case summary).

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 or about May 26, 1999, Claimant Tina Walker filed a wage claim form in which she stated that Respondent had employed her from April 5, 1999, until May 9, 1999. Walker asserted that her pay rate was \$7.50 per hour, that she should have been paid a total of \$703.00, and that Respondent had not paid her any of the wages she earned. Walker filed a form assigning her wage claim to the commissioner at the same time she filed her wage claim form.

2) On or about May 27, 1999, Claimant Tamara Cox filed a wage claim form in which she stated that Respondent had employed her from September 11, 1998, until May 3, 1999. Cox asserted that her pay rate was \$160.00 per weekend, which lasted from 8:00 a.m. Saturday through 8:00 a.m. Monday, and that Respondent had failed to pay her \$640.00 of the wages she had earned during April and May 1999. Cox filed a form assigning her wage claim to the commissioner at the same time she filed her wage claim form.

3) On or about August 31, 1999, the Agency served Respondent with an Order of Determination. The Agency alleged that Respondent had employed Claimant Walker from April 5 to May 9, 1999, at the rate of \$7.50 per hour and had failed to pay her \$746.25 in wages. The Agency further alleged that Respondent had employed Claimant Cox from September 11, 1998, to May 3, 1999, at the rate of \$6.50 per hour and had failed to pay her \$897.00 in wages. Finally, the Agency alleged that

Respondent's failure to pay the overtime wages was willful and that Respondent, therefore, owed Claimants penalty wages totaling \$3360.00.

4) Respondent filed an Answer and Request for Hearing in which she denied both that "the amount of \$1643.25 is owed" and that she willfully failed to pay wages.

5) On May 2, 2000, the Agency requested a hearing. On May 4, 2000, the Hearings Unit issued a Notice of Hearing stating that the hearing would commence at 9:00 a.m. on June 29, 2000. With the Notice of Hearing, the forum included a copy of the Order of Determination, a "SUMMARY OF CONTESTED CASE RIGHTS AND PROCEDURES" and a copy of the forum's contested case hearings rules, OAR 839-050-0000 to 839-050-0440.

6) On May 18, 2000, the ALJ issued a case summary order requiring the Agency and Respondent to submit summaries of the case that included: lists of all persons to be called as witnesses; identification and copies of all documents to be offered into evidence; a brief statement of the elements of the claim (for the Agency only); and any wage and penalty calculations (for the Agency only). The ALJ ordered the participants to submit their case summaries by June 15, 2000, and notified them of the possible sanctions for failure to comply with the case summary order. The ALJ also included a form that Respondent could use to comply with the order.

7) On May 24, 2000, the Agency moved for an extension of time until June 19, 2000, in which to file its case summary. The ALJ granted the motion and issued an order changing the deadline to June 19, 2000, for both participants.

8) On May 31, 2000, the Hearings Unit received notice from the United States Postal Service that Respondent's address had changed from 235 44th Avenue, NE, Salem, Oregon, to 4172 Sylvia Street, SE, Salem. The ALJ ordered Respondent to provide her correct mailing address to the Hearings Unit and the Agency no later than

June 8, 2000. Respondent never notified the Hearings Unit of her correct address and, from June 1, 2000, forward, the forum sent all documents it issued to both of Respondent's Salem addresses.

9) The Agency filed a motion for discovery order on June 8, 2000. On June 12, 2000, the ALJ granted the Agency's motion as to eight of nine categories of documents sought and ordered Respondent to produce the information to the Agency no later than June 22, 2000. The ALJ did not grant the Agency's motion as to the remaining information because the relevance of the requested information (names, phone numbers, and addresses of all of Respondent's employees between April 1, 1999, and June 1, 1999) was not apparent from the motion. On June 14, the Agency filed a supplemental motion for discovery order in which it explained the relevancy of that information. The ALJ granted the supplemental motion by order dated June 15, 2000. The ALJ noted that "the Agency's request [was] not actually a request for documents, but [was] more similar to an interrogatory." The ALJ stated that the distinction made no difference to her ruling and required Respondent to produce the requested information by June 23, 2000.

10) The Agency filed a timely case summary on June 14, 2000. Respondent did not file a case summary.

11) Respondent did not appear at the time set for hearing and nobody appeared on her behalf. Pursuant to OAR 839-050-0330(2), the ALJ waited thirty minutes past the time set for hearing. When Respondent still did not appear, the ALJ declared Respondent to be in default and commenced the hearing.

12) Pursuant to ORS 183.415(7), the ALJ verbally advised the Agency of the issues to be addressed, the matters to be proved, and the procedures governing the conduct of the hearing.

13) During the hearing, the Agency moved for a protective order preventing the participants from disclosing the contents of Exhibit A-9 outside of the contested case hearing process and requiring that Exhibit A-9 be placed in a sealed envelope as part of the record. The ALJ granted that motion because Exhibit A-9 contains medical records of residents at Willow Bay Manor.

14) At the close of the hearing, the Agency moved to amend the Order of Determination to increase the amount of unpaid wages sought. The ALJ denied the motion, but said that the Agency had until 5:00 p.m. on Wednesday, July 5, to file written argument asking the ALJ to reconsider her ruling. The Agency later withdrew the motion.

15) The ALJ issued a proposed order on July 7, 2000, that notified the participants they were entitled to file exceptions to the proposed order within ten days of its issuance. The Agency filed a timely exception on July 11, 2000, noting that the proposed order did not mention the fact that the ALJ had granted the Agency's motion for an order protecting Exhibit A-9. This Final Order includes a new procedural finding of fact reflecting that protective order.

FINDINGS OF FACT – THE MERITS

1) At all material times, Respondent owned and operated an adult foster care home in Salem, Oregon, called Willow Bay Manor.

2) Claimant Tamara Cox worked for Respondent at Willow Bay Manor starting in September 1998. Cox's primary responsibility was caring for the residents of Willow Bay Manor. Her duties included bathing, dressing and feeding the residents, giving the residents their medications, cleaning the foster care facility, doing laundry, and cooking meals. Cox typically worked the weekend shift from 8:00 a.m. Saturday morning through 8:00 a.m. Monday morning. Cox stayed at Willow Bay Manor for the

full 48 hours of each weekend shift and was the only employee on the premises during that time. Respondent agreed to pay Cox \$160.00 for each of these shifts.

3) Respondent did not pay Claimant Cox for three weekend shifts she worked in April 1999 and did not pay her for one weekend shift she worked on May 1st through 3rd, 1999. May 3, 1999, was Cox's last day as Respondent's employee.

4) In 1999, Oregon law required employers to pay employees a minimum wage of \$6.50 per hour. The rate at which Respondent agreed to pay Cox came to less than minimum wage, even assuming that Cox was able to get two eight-hour periods of uninterrupted sleep during each 48-hour weekend shift.¹

5) On April 4, 1999, Claimant Walker interviewed for a job with Respondent, who hired her at \$7.50 per hour. Respondent trained Walker for two hours on April 5, 1999, and Walker worked her first full day on April 6, 1999. Walker's duties at Willow Bay Manor were the same as Cox's.

6) Claimant Walker did not have a regular work schedule. Instead, she worked at Willow Bay Manor whenever Respondent called and said she was needed. Claimant frequently worked split shifts at Willow Bay, working from 8:00 a.m. until noon, and then from early afternoon until evening. Claimant worked most days during the week, excluding weekends.

7) Claimant Walker's brother, Charles Walker, sometimes drove Claimant Walker to or from work at Willow Bay. Walker's friend, Minnie Berset, once met Claimant at Willow Bay at the end of her shift so they could go shopping together. Berset and Walker spoke to each other by telephone two or three times each day that Walker worked at Willow Bay.

8) Each day she worked for Respondent, Claimant Walker recorded her hours on two calendars at Willow Bay Manor – one in the kitchen and another in Respondent's office. Claimant Walker also recorded her hours on her own calendar in a residence she shared with Berset, who babysat Walker's children. Walker needed to

record how many hours Berset babysat her children, which coincided with the number of hours Walker worked, so Walker could receive money from AFS to pay Berset for watching the children.

9) In late April 1999, Claimant Walker and Berset determined from their home calendar that Walker had worked a total of 66 hours in April. At some point after that, Walker and Berset moved to a new residence. They have been unable to locate their old calendar since then.

10) When Respondent hired Claimant Walker, she anticipated that Walker would take over Cox's weekend duties in May, because Cox planned to stop working for Respondent. Respondent told Walker that she would earn \$160.00 for working from Saturday morning until Monday morning. Respondent told Walker that she would be getting paid for working 16 hours each day, because she could spend eight hours each day sleeping. This rate of pay came to less than the minimum wage.ⁱⁱ

11) In May 1999, Claimant Walker worked her first weekend shift, starting at 9:00 a.m. on Friday, May 7. Walker was supposed to continue working until Monday morning. However, she injured herself at work and called Respondent to come finish her shift. Respondent showed up at Willow Bay Manor at 3:30 on Sunday, May 9, and took over for Walker. May 9, 1999, was Walker's last day as Respondent's employee.

12) Respondent never paid Claimant Walker any wages for the work Walker performed at Willow Bay Manor.

13) Other than Respondent's daughter, Claimants were Respondent's only employees during April and May 1999.

14) After Walker and Cox filed their wage claims in May 1999, the Agency sent a letter to Respondent notifying her of the claims. Enclosed with that letter was an

employer response form that Respondent was asked to use to either confirm or deny that the wages were owed. The Agency did not receive a response to that letter.

15) Agency compliance specialist Newell Enos was assigned to investigate the two wage claims. Enos had conversations with both Claimants regarding their claims. He also called Respondent, who said she'd mailed checks to both Claimants. Enos asked her to complete the employer response form and return it to the Agency by July 16, 1999. Respondent did not return the form.

16) On July 15, 1999, Enos sent Respondent another letter reminding her of her obligation to maintain time records and asked her to provide the records by July 23, 1999. Respondent did not provide any time or payroll records.

17) Enos later sent Respondent a letter informing her of the amounts of wages he believed Respondent owed Claimants. Respondent did not answer that letter, so Enos sent another letter stating that the administrative process of collecting wages had been initiated. At that point, Respondent called Enos and requested a meeting, which they scheduled. The morning the meeting was to take place, Respondent called Enos and said she was not going to be able to make it. Enos requested that she mail him any records she had that would show what hours the Claimants worked. Respondent never provided Enos with any such records. Nor did she ever provide proof that she had paid Claimants the wages they had earned.

18) During the time that Walker worked for her, Respondent maintained logs of medications given to residents. Each time an employee gave a resident medicine, the employee was required to initial the log. Claimant Walker initialed such logs every day she worked for Respondent. Consequently, the medication logs would provide evidence regarding the days on which Claimants worked at Willow Bay. Respondent did not provide the logs to Enos.

19) As part of his investigation, Enos determined that Claimant Cox had worked 138 hours in April and May 1999 for which Respondent had not compensated her. Enos's calculation was based on a determination that, during each weekend shift, Cox was able to get two eight-hour periods of uninterrupted sleep, for which Respondent was not required to compensate her. No evidence in the record refutes Enos's determination that Claimant Cox received those sleep periods. Nevertheless, the forum disagrees with his calculation of the number of uncompensated hours Cox worked in April and May 1999. Cox worked four identical weekend shifts, from 10:00 a.m. Saturday morning until 10:00 a.m. Monday morning. In each of the 48-hour periods, she received 16 hours of sleep for which Respondent was not required to compensate her. Consequently, each shift included 32 hours of compensable time. Claimant Cox worked four of these shifts during April and May 1999, for a total of only 128 hours of work.

20) Enos determined that Claimant Walker had worked 66 hours in April 1999, as Walker reported. The forum agrees with Enos that Walker's determination of the total number of hours she worked in April is credible, and bases its damage award on that number.

21) Enos also determined that Walker worked 33.5 hours in May 1999 – 13 hours on Friday, May 7, 18 hours on Saturday, May 8, and 2.5 hours on Sunday, May 9. That determination was based on Enos's belief that Claimant had eight hours of sleep on Friday and Saturday nights for which Respondent was not required to pay her. Claimant Walker testified that the hearing, however, that she had not had eight hours of uninterrupted sleep during the nights she slept at Willow Bay Manor. Both nights, a resident with Alzheimer's Disease woke her two or three times during the night and required assistance. Unfortunately, there is no evidence in the record of the amount of

time Walker spent assisting the resident during the night. Moreover, there is no evidence that, despite these interruptions, Walker was not able to get at least five continuous hours of sleep each night. Consequently, Enos was correct in determining that Claimant was not entitled to be compensated for the two eight-hour sleeping periods on Friday and Saturday nights. Enos did make one mistake in his calculation of Walker's hours because he believed, from looking at a somewhat sloppy entry on Walker's wage calendar, that she had worked only until 8:30 on Sunday, May 9. In fact, Walker had worked until 3:30 that afternoon.

22) The forum calculates the hours Walker worked in May 1999 as follows. From 9:00 a.m. Friday, May 1, until 3:30 p.m. Sunday, May 3, is a period of 54.5 hours. After subtracting 16 hours for sleep periods, Walker worked a total of 38.5 hours for which Respondent was required to compensate her.

23) The forum calculates penalty wages in accordance with ORS 652.150, OAR 839-001-0470, and Agency policy as follows:

“Total earned during the wage claim period divided by the total number of hours worked during the wage claim period, multiplied by eight hours, multiplied by 30 days.’ * * * Statement of Agency Policy, July 23, 1996.”

In the Matter of Belanger General Contracting, 19 BOLI 17, 26 (1999). Claimant Cox worked a total of 128 hours during the claim period, earning a total of \$832.00 (128 hours x \$6.50/hour). Respondent, therefore, owes her penalty wages of \$1560.00 ($\$832.00/128 \times 8 \times 30$).

24) Claimant Walker worked a total of 104.5 hours during the claim period, earning a total of \$745.25 ((66 hours x \$7.50/hour) + (38.5 hours x \$6.50/hour)). Respondent owes Walker penalty wages of \$1711.58 ($\$745.25/66 \times 8 \times 30$).

25) Enos testified that the Agency has received additional wage claims against Respondent and has issued Orders of Determination asserting that Respondent owes wages to other employees. In those cases, Respondent has defaulted by not

requesting contested case hearings. The forum gives that testimony no weight and has not relied on it in determining the relevant facts in this case. The forum believes the testimony to be credible, but finds the other evidence in the record is sufficient to establish the Agency's case with regard to both Walker and Cox.

26) The testimony of all witnesses was credible.

ULTIMATE FINDINGS OF FACT

1) At all material times, Respondent owned and operated the Willow Bay Manor adult foster care home in Salem, Oregon. Respondent employed Claimants to care for residents and perform housekeeping work at Willow Bay Manor during 1999.

2) In April and May 1999, Claimant Cox rendered personal services to Respondent by working 128 hours at Willow Bay Manor. Respondent never paid Claimant Cox any wages for those services.

3) The rate at which Respondent agreed to pay Claimant Cox was less than the statutory minimum wage of \$6.50 per hour. Consequently, Respondent was legally required to pay Claimant Cox \$6.50 per hour for the work she did in April and May 1999.

4) Claimant Walker rendered personal services to Respondent by working at Willow Bay Manor for 66 hours in April 1999 and for 54.5 hours in May 1999. Respondent never paid Claimant Walker any wages for those services.

5) Respondent had agreed to pay Claimant Walker \$7.50 per hour for her work in April 1999. The rate at which Respondent had agreed to pay Claimant Walker for her work in May 1999 was less than the statutory minimum wage. Consequently, Respondent was legally required to pay Claimant Walker \$6.50 per hour for the work she performed that month.

6) Respondent's failure to pay wages to both Claimants was willful and more than 30 days have passed since those wages became due.

7) Civil penalty wages for Claimant Cox, calculated in accordance with ORS 652.150, OAR 839-001-0470, and Agency policy, equal \$1560.00. Civil penalty wages for Claimant Walker equal \$1711.58.

CONCLUSIONS OF LAW

1) ORS 653.010 provides, in pertinent part:

"(3) 'Employ' includes to suffer or permit to work * * * .

"(4) 'Employer' means any person who employs another person * * * ."

Respondent employed both Claimant Cox and Claimant Walker.

2) ORS 653.055(1) provides:

"(1) Any employer who pays an employee less than the wages to which the employee is entitled under ORS 653.010 to 653.261 is liable to the employee affected:

"(a) For the full amount of the wages, less any amount actually paid to the employee by the employer; and

"(b) For civil penalties provided in ORS 652.150."

Respondent owes Claimant Cox \$832.00 (128 hours x \$6.50/hour) in unpaid wages plus penalty wages. Respondent owes Claimant Walker \$745.25 ((66 hours x \$7.50/hour) + (38.5 hours x \$6.50/hour)) in unpaid wages plus penalty wages.

3) ORS 652.140 provides, in pertinent part:

"(2) 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."

Claimant Cox's last day of work was Monday, May 3, 1999. Consequently, her wages were due and payable no later than Monday, May 10, 1999. Claimant Walker's last day of work was Sunday, May 9, 1999. Consequently, her wages were due and payable no

later than Monday, May 17, 1999. Respondent violated ORS 652.140 by not paying Claimants all wages they were owed by those dates.

4) 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."

OAR 839-001-0470 provides:

"(1) When an employer willfully fails to pay all or part of the wages due and payable to the employee upon termination of employment within the time specified in OAR 839-001-0420, 839-001-0430 and 839-001-0440, the employer shall be subject to the following penalty:

"(a) The wages of the employee shall continue from the date the wages were due and payable until the date the wages are paid or until a legal action is commenced, whichever occurs first;

"(b) The rate at which the employee's wages shall continue shall be the employee's hourly rate of pay times eight (8) hours for each day the wages are unpaid;

"(c) Even if the wages are unpaid for more than 30 days, the maximum penalty shall be no greater than the employee's hourly rate of pay times 8 hours per day times 30 days.

"(2) The wages of an employee that are computed at a rate other than an hourly rate shall be reduced to an hourly rate for penalty computation purposes by dividing the total wages earned while employed or the total wages earned in the last 30 days of employment, whichever is less, by the total number of hours worked during the corresponding time period."

Respondent owes Claimant Cox penalty wages of \$1560.00. Respondent owes Claimant Walker penalty wages of \$1711.58.

OPINION

DEFAULT

Respondent failed to appear at hearing and the forum held her in default pursuant to OAR 839-050-0330. When a respondent defaults, the Agency must establish a prima facie case to support the allegations of the charging document. *In the Matter of Belanger General Contracting*, 19 BOLI 17, 25 (1999). The Agency met that burden in this case, as discussed *infra*.

RESPONDENT FAILED TO PAY CLAIMANTS ALL WAGES THEY EARNED

A. Respondent Owes Claimant Cox \$832.00 in Unpaid Wages

To establish a prima facie case supporting a wage claim, the Agency must prove: 1) that Respondent employed Claimant; 2) any pay rate upon which Respondent and Claimant agreed, if it exceeded the minimum wage; 3) that Claimant performed work for Respondent for which she was not properly compensated; and 4) the amount and extent of work Claimant performed for Respondent. *In the Matter of Barbara Coleman*, 19 BOLI 230, 262-63 (2000). In this case, Claimant Cox asserted in her wage claim that she had worked four weekend shifts at Willow Bay Manor for which Respondent had not compensated her. The fact that Respondent employed Cox was corroborated by Claimant Walker, who testified credibly that she twice saw Cox at work at Willow Bay. In addition, Walker testified that Respondent hoped that Walker would take over Cox's weekend shifts after Cox stopped working at Willow Bay. Cox's wage claim forms and Walker's testimony establish a prima facie case that Respondent employed Cox to work 48-hour weekend shifts at Willow Bay Manor.

Cox's wage claim also is sufficient to establish the rate at which Respondent agreed to pay Cox and the fact that Respondent paid her no wages for four weekend shifts. Oregon law requires employers to maintain accurate records of the hours their

employees work and the wages they are paid. See, e.g., *In the Matter of Barbara Coleman*, 19 BOLI at 265. Despite several requests from the Agency, Respondent provided no records of the hours Cox had worked or any pay she had received. In the absence of any evidence to the contrary, the forum has no reason to disbelieve Cox's assertion that Respondent failed to pay her for four weekend shifts she worked at Willow Bay.

Enos testified that he believed that Cox received two eight-hour sleep periods during each 48-hour weekend shift. Employers are not required to compensate their employees for such sleeping time. OAR 839-020-0042(2). However, employees are entitled to compensation for any interruptions of their sleep periods and must be compensated for the entire sleeping period if the interruptions are so frequent that they cannot get at least five continuous hours of sleep. OAR 839-020-0042(2), (3). There is no evidence in the record that Cox's sleep periods were interrupted. Consequently, the forum finds that Respondent was required to compensate Cox for 32 hours she worked during each of the four weekend shifts, for a total of 128 hours.

ORS 653.025 prohibits employers from paying employees less than the Oregon minimum wage, which was \$6.50 in 1999. Respondent had promised to pay Cox \$160.00 for each of her weekend shifts, which comes to only \$5.00 per hour. Accordingly, Respondent must pay Cox the minimum wage of \$6.50 per hour for each of the 128 hours she worked without compensation, for a total of **\$832.00**.

B. Respondent Owes Claimant Walker \$745.25 in Unpaid Wages

The credible testimony of Claimant Walker establishes that she worked 66 hours for Respondent in April 1999. Respondent agreed to pay Walker \$7.50 for each of those hours, but paid her nothing, leaving \$495.00 due and owing for that month.

Walker also worked a long weekend shift for Respondent in May 1999, working a total of 38.5 hours, not counting her two eight-hour sleeping periods.ⁱⁱⁱ The amount Respondent agreed to pay Walker for the weekend shift was less than the minimum wage. Accordingly, Respondent was required to pay Claimant \$6.50 for each of the 38.5 hours she worked in May, for a total of \$250.25. Adding together the wages Respondent owes Claimant Walker for the hours she worked in April and May 1999, Respondent must pay Walker a total of **\$745.25**.

RESPONDENT MUST PAY PENALTY WAGES TO BOTH CLAIMANTS

The forum may award penalty wages where the respondent's failure to pay wages was willful. Willfulness does not imply or require blame, malice, or moral delinquency. Rather, a respondent commits an act or omission "willfully" if he or she acts (or fails to act) intentionally, as a free agent, and with knowledge of what is being done or not done. *Sabin v. Willamette Western Corp.*, 276 Or 1083, 557 P2d 1344 (1976).

In this case, it is clear that Respondent knew the hours Claimants worked. Other than Respondent's daughter, Claimants were Respondent's only employees at Willow Bay Manor, a facility that provided round-the-clock care for elderly residents. That fact alone is sufficient to establish that Respondent must have known the hours that Claimants were present at Willow Bay Manor and caring for its residents. In addition, Claimant Walker recorded the hours she worked on calendars at Willow Bay Manor. Because that is something that Respondent required of Walker, the forum infers that Cox also recorded her hours on the calendars. Furthermore, all of Respondent's employees were required to initial medication logs whenever they gave medicine to a resident. Because this happened every day, the medication logs provided Respondent

with additional information regarding the hours her employees worked. Finally, as a sole proprietor, Respondent was directly responsible for ensuring that her employees were paid and would know whether that had happened. Based on these facts, the forum finds that Respondent voluntarily and as a free agent failed to pay Claimants the wages they earned in April and May 1999.

As this forum previously has explained, penalty wages are calculated in accordance with the relevant laws and Agency policy as follows:

"Total earned during the wage claim period divided by the total number of hours worked during the wage claim period, multiplied by eight hours, multiplied by 30 days.' * * * Statement of Agency Policy, July 23, 1996."

In the Matter of Mark Johnson, 15 BOLI 139, 143 (1996); see ORS 652.150; OAR 839-001-0470. Respondent owes Claimant Cox \$1560.00 in civil penalty wages and owes Claimant Walker \$1711.58 in civil penalty wages.

ORDER

NOW, THEREFORE, as authorized by ORS 652.332, and as payment of the unpaid wages and civil penalty wages she owes as a result of her violation of ORS 652.140, the Commissioner of the Bureau of Labor and Industries hereby orders Respondent **Sharon Kaye Price, dba Willow Bay Manor**, to deliver to the Fiscal Services Office of the Bureau of Labor and Industries, 800 NE Oregon Street, Portland, Oregon 97232-2162, the following:

- 1) A certified check payable to the Bureau of Labor and Industries in trust for Tamara Cox in the amount of \$2392.00 (TWO THOUSAND THREE HUNDRED NINETY-TWO DOLLARS) less appropriate lawful deductions, representing \$832.00 in gross earned, unpaid, due, and payable wages and \$1560.00 in penalty wages, plus interest at the legal rate on the sum of \$832.00 from July 1, 1999, until paid and interest at the legal rate on the sum of \$1560.00 from August 1, 1999, until paid.
- 2) A certified check payable to the Bureau of Labor and Industries in trust for Tina Walker in the amount of \$2456.83 (TWO THOUSAND FOUR HUNDRED FIFTY-SIX DOLLARS AND EIGHTY-THREE CENTS) less appropriate lawful deductions, representing \$745.25 in gross earned, unpaid, due, and payable

wages and \$1711.58 in penalty wages, plus interest at the legal rate on the sum of \$745.25 from July 1, 1999, until paid and interest at the legal rate on the sum of \$1711.58 from August 1, 1999, until paid.

ⁱ \$160.00/shift x 1 shift/32 hours = \$5.00/hour.

ⁱⁱ See Finding of Fact – the Merits 4, *supra*.

ⁱⁱⁱ See Finding of Fact – the Merits 22, *supra*.