



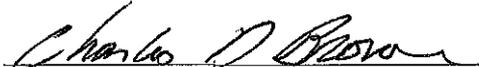
FILED

OFFICE OF
INSURANCE COMMISSIONER 2011 FEB 11 A 8:19

In the Matter of:	)		Hearing Unit, DIC
	)	No. 10-0126	Patricia D. Petersen
KENNETH T. JEPSON,	)		Chief Hearing Officer
	)	MOTION FOR RECONSIDERATION OF	
Licensee	)	FINAL ORDER DENYING DEFAULT	
	)	JUDGMENT	
_____)		

The OIC staff respectfully moves for reconsideration of the Final Order Denying Default Judgment entered in this matter February 7th, 2011, which Order sets aside the Initial Order of Dismissal Due to Appellant's Failure to Appear entered by Administrative Law Judge Terry A. Schuh on October 18, 2010. This Motion is based upon the records and files herein and the subjoined Declaration of Charles Brown and is brought for the reason that Judge Schuh's Order granting the OIC's motion for default was correctly entered in accordance with RCW 34.05.440 and should be upheld as a matter of law.

Submitted this 11th day of February, 2011.



 Charles D. Brown, OIC Staff Attorney



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INSURANCE COMMISSIONER

2011 FEB 11 A 8:49

In the Matter of:)	No. 10-0126	<i>Hearing Unit, DIC</i>
	)		<i>Patricia D. Peterson</i>
KENNETH T. JEPSON,	)	MEMORANDUM SUPPORTING	<i>Chief Hearing Officer</i>
	)	MOTION FOR RECONSIDERATION OF	
Licensee	)	FINAL ORDER DENYING DEFAULT	
	)	JUDGMENT	
_____)		

This memorandum of authorities is submitted in support of the OIC staff's request that the Presiding Hearing Officer reconsider her Final Order Denying Default Judgment entered in this matter February 7th, 2011, which Order sets aside the Initial Order of Dismissal Due to Appellant's Failure to Appear entered by Administrative Law Judge Terry A. Schuh on October 18, 2010.

OIC staff respectfully submits that the administrative record in this matter is fully sufficient to support Judge Schuh's Initial Order and that Mr. Jepson's due process rights have been fully protected.

It is uncontroverted that Mr. Jepson was properly served with the Notice of Pre-Hearing Conference by Telephone setting a prehearing conference for October 12, 2010, at 11:00 AM, instructing the parties to call the designated OAH telephone number and advising the parties that a party's failure to attend or participate might result in default under RCW 34.05.440, since the Notice bears a Certificate of Service reflecting that it was duly served by mail on Mr. Jepson at his address of record on September 29, 2010. It is likewise uncontroverted that Mr. Jepson failed to appear at that prehearing conference. Initial Order of Dismissal Due to Appellant's Failure to Appear, Paragraph 2; Declaration of Charles Brown.



RCW 34.05.440(2) provides that if a party fails to attend or participate in a hearing or other stage of an adjudicative proceeding, other than failing to timely request an adjudicative proceeding, “the presiding officer may serve upon all parties a default or other dispositive order, which shall include a statement of the grounds for the order.” RCW 34.05.440(3) then provides in pertinent part as follows:

Within seven days after service of a default order under subsection (2) of this section, or such longer period as provided by agency rule, the party against whom it was entered may file a written motion requesting that the order be vacated, and stating the grounds relied upon.

In *Graves vs. the Employment Security Department*, 144 Wn. App. 302, 182 P.3d 1004 (2008), Division Two of the Court of Appeals upheld a default judgment denying unemployment benefits and ordering reimbursement of \$12,896 in unemployment benefits previously paid to an appellant in an adjudicative proceeding who failed to appear for hearing, called the OAH office the day after the scheduled hearing and asked to reschedule, filed a motion to reconsider, although late, and timely appealed the OAH default order to the Commissioner’s Review Office. *Graves*, supra, at 144 Wn. App. 307. The Court held that a party’s mismarking of the hearing date on their calendar is not good cause requiring vacation of an order of default and rejected the Appellant’s due process claim in pertinent part as follows:

Contrary to Grave’s assertion, he was afforded sufficient procedural due process. Here, Graves received two notices clearly informing him of the hearing’s scheduled date and time ... We note that Graves does not argue that he did not timely receive the notices, only that he mismarked the date on his calendar. The notice emphasized that any failure to appear would result in a default judgment. It was Graves’s responsibility to properly note the correct hearing date on his calendar or to timely contact the agency and request a postponement of the hearing if he was unable to appear. Graves did neither. In addition, the default order clearly outlined the deadlines and procedure Graves should follow if he chose to file for reconsideration... Again, Graves failed to meet the deadlines. Under the record as submitted, ESD provided Graves with timely and adequate notices which detailed the reasons for its proposed termination of his unemployment benefits as well provided Graves with several opportunities to be heard. *Mathews v. Eldridge*, 424 U.S...

319, 333, 96 S. Ct. 893, 47 L.Ed. 2d 18 (1976). As discussed above, Graves failed to provide the necessary documents and failed to appear for the hearing and to meet most deadlines.

Like Mr. Graves, Mr. Jepson was provided with sufficient notice of the prehearing conference, sufficient notice that his failure to appear might result in default, sufficient notice of the order of default, and sufficient notice of his right to request reconsideration. He has availed himself of none of these opportunities. Like the Appellant in *Graves*, Mr. Jepson's due process rights have been fully protected.

In reversing *sua sponte* the Initial Order entered upon the OIC staff's motion by Judge Schuh, the Chief Presiding Officer has granted Mr. Jepson an additional, unnecessary round of process to which he is not legally entitled and which he himself has not requested despite clear and adequate notice and opportunities to do so. OIC staff respectfully submits that Judge Schuh was correct in granting the OIC's motion for default under RCW 34.05.440, that the administrative record is sufficient to justify the Initial Order of Dismissal Due to Appellant's Failure to Appear, and that Reconsideration of the Final Order Denying Default Judgment is therefore appropriate.

Dated this 11th day of February, 2011.


Charles D. Brown, OIC Staff Attorney

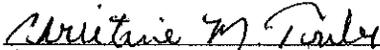
CERTIFICATE OF MAILING

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the foregoing 1) MOTION FOR RECONSIDERATION OF FINAL ORDER DENYING DEFAULT JUDGMENT; 2) DECLARATION OF CHARLES BROWN IN SUPPORT OF MOTION FOR RECONSIDERATION; AND 3) MEMORANDUM SUPPORTING MOTION FOR RECONSIDERATION OF FINAL ORDER DENYING DEFAULT JUDGMENT on the following individual via US Mail.

Kenneth T. Jepson
3415 Pacific Ave.
Tacoma, WA 98418

SIGNED this 11th day of February, 2011, at Tumwater, Washington.


Christine M. Tribe



OFFICE OF
INSURANCE COMMISSIONER

FILED

2011 FEB 11 A 8:40

Hearing Unit, OIC
Patricia D. Petersen
Chief Hearing Officer

In the Matter of:)	
	)	No. 10-0126
KENNETH T. JEPSON,)	
	)	DECLARATION OF CHARLES BROWN
Licensee	)	IN SUPPORT OF MOTION
	)	FOR RECONSIDERATION
)	

I am the OIC Staff Attorney that was assigned to present the OIC's case in support of the OIC's Order Revoking License entered July 14, 2010, revoking the producer license that had been issued to Mr. Jepson due to his failure to submit a legible finger print card with his license application and his repeated failures to respond to OIC follow-up requests for a replacement finger print card.

OIC licensing records reflect that Mr. Jepson has still not supplied a replacement finger print card, thus preventing the OIC from conducting the state and national criminal history background check required by RCW 48.17.090.

I have received no communication from Mr. Jepson since this matter was transferred to the OAH. When the matter was referred to OAH, Administrative Law Judge Terry Schuh entered a written Notice of Pre-Hearing Conference by Telephone setting a prehearing conference for October 12, 2010, at 11:00 AM, instructing the parties to call the designated OAH telephone number and advising the parties that a party's failure to attend or participate might result in default under RCW 34.05.440. This Notice reflects that it was duly served by mail on Mr. Jepson at his address of record.



I participated by telephone in the October 12, 2010 prehearing conference. My understanding is that Mr. Jepson did not call in as instructed and did not leave a number where he could be reached and that Judge Schuh's staff was unable to contact Mr. Jepson at the number listed on his notice of hearing. After a delay of approximately thirty minutes after the scheduled 11:00 AM start of the conference to allow Mr. Jepson additional time to call in and while I understand Judge Schuh's staff unsuccessfully tried to contact Mr. Jepson at the number listed on his hearing demand, I finally moved for entry of default pursuant to RCW 34.05.431, which motion was granted as set forth in Judge Schuh's Initial Order of Dismissal Due to Appellant's Failure to Appear dated October 18, 2010.

This Order granting the OIC staff's motion for default also reflects that it was duly served by mail on Mr. Jepson at his correct address of record. No motion or request to reconsider that Order has ever been submitted by Mr. Jepson or by any other party to this proceeding, and I have received no communication from Mr. Jepson since the matter was referred to OAH.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed this 11th day of February, 2011, at Tumwater, Washington.



Charles D. Brown, OIC Staff Attorney