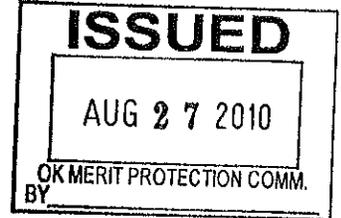


**BEFORE THE OKLAHOMA MERIT PROTECTION COMMISSION
STATE OF OKLAHOMA**

**OKLAHOMA DEPARTMENT OF
HUMAN SERVICES,**)
)
)
 Appellant,)
)
)
 v.)
)
)
 CASSANDRA R. BOYD,)
)
)
 Appellee.)

Case No. MPC 10-186



FINAL ORDER

This matter comes on for final determination before the undersigned Administrative Law Judge for the Oklahoma Merit Protection Commission. After careful consideration of the record, including all relevant evidence, testimony, and exhibits, the undersigned Administrative Law Judge issues the following findings of fact, conclusions of law, and order. The Appellant, Oklahoma Department of Human Services (hereinafter "DHS") appears by and through Assistant General Counsel, John Douglas. The Appellee, Cassandra Boyd, (hereinafter "Boyd") appears pro se.

FINDINGS OF FACT

1. Appellant DHS' Proposed Findings of Facts #1 through #7 submitted on July 29, 2010 setting forth the facts leading up to the filing of this action are accepted and are incorporated by reference herein.

2. This matter is a Payroll Claim Protest pursuant to 74 O.S. §840-2.19. Appellant DHS gave proper notice to Appellee Boyd of the amount of the overpayment, including the amounts paid in error, the dates of said payments, the options for repayment and her right to protest the decision. Appellee Boyd protested said overpayment determination.

3. On January 4, 2010, Appellant DHS filed this Payroll Claim Protest with the Merit Protection Commission. The Appellant DHS provided the Commission with copies of all supporting documents used in making that determination, along with a

certification from the payroll agent regarding the methods used in the calculation and that the calculations were correct. Several attempts were made to schedule and hold negotiation conferences. On April 6, 2010, the Commission's Executive Director issued a Scheduling Order, specifically finding that Appellant DHS had submitted all of the documents required by statute and that Appellee Boyd had failed to appear for the scheduled negotiation conferences. The Executive Director ordered that this matter be set for hearing.

4. Notice of the Prehearing Conference was issued setting the conference at 2:00 pm on May 26, 2010. The Prehearing Conference was continued to July 22, 2010 at the request of Appellee Boyd. She was given notice of the date and time of this Prehearing Conference by US Mail, postage prepaid thereon. (*See Affidavit of Mailing on file herein*).

5. Appellant DHS filed its Prehearing Conference Statement and Exhibits prior to the Conference as required by 455:10-9-1. Appellee Boyd failed to file any of the required documents.

6. On the 22nd day of July, 2010, this matter came on for prehearing conference before the undersigned Administrative Law Judge, Lydia Lee. The Appellant DHS appeared by and through Assistant General Counsel, John Douglas. The Appellee Boyd failed to appear. The hearing was held over for over 20 minutes. Boyd failed to appear and failed to contact either opposing party or the Commission to request a continuance or to report and explain her absence.

7. Appellant DHS made an oral motion for dismissal of the protest and the entry of judgment for the agency as a result of Appellee Boyd's failure to appear and failure to provide any defenses or evidence to refute the position of the Appellant DHS.

8. The motion was granted pursuant to 455:10-9-1 (b), as a result of Appellee Boyd's failure to be present, on time and prepared for the Prehearing Conference. Further, grounds for granting such motion exist pursuant to 455:10-9-2 (h) as there appears to be no dispute as to the material facts of this matter.

9. On July 26, 2010, the undersigned issued a Show Cause Order making certain findings of fact and conclusions of law. The Order was mailed to Boyd on July 27, 2010. (*See Affidavit of Mailing on file herein*). Pursuant to that Show Cause Order,

on July 29, 2010, Appellant DHS filed its Proposed Schedule for Recovery of Overpayment and Proposed Findings of Fact and Conclusions of Law.

10. Having failed to appear and having failed to file any pleadings herein, Appellee Boyd was specifically directed to show cause, within ten (10) days of the date of this Order, as to why the initial determination should not be entered as a Final Order. She has not filed any responses, objections or other pleadings.

11. No other Motions or Applications have been filed pursuant to the Show Cause Order.

12. Based upon the evidence in the record, Appellee Boyd received an overpayment of wages in the amount of \$2790.19, said amount being over and above the amounts which were due and owing to her.

13. The Appellant's Proposed Schedule for Recovery of Overpayment is reasonable, and there being no objections to it, it is accepted.

14. Any conclusion of law which is properly a finding of fact is so incorporated herein as a finding of fact.

CONCLUSIONS OF LAW

1. The Oklahoma Merit Protection Commission has jurisdiction over the parties and the subject matter in this cause. The filing of the Payroll Claim Protest was timely.

2. Any finding of fact which is properly a conclusion of law is so incorporated herein as a conclusion of law.

3. Title 74 O.S. §840-2.19 and OAC 455:10-9-2 state that the Appellee DHS as the appointing authority has the burden of proof in payroll claim protests and must prove by a preponderance of the evidence that an overpayment occurred

4. The preponderance of the evidence shows that Appellee Boyd received an overpayment of wages in the amount of \$2790.19, said amount being over and above the amounts which were due and owing to her and that Appellant DHS has properly followed the statutory provisions for recovery of said overpayment.

5. Appellee, DHS, has met its burden to prove, by a preponderance of the evidence, that it is entitled to recover its overpayment of wages to Appellee Boyd.

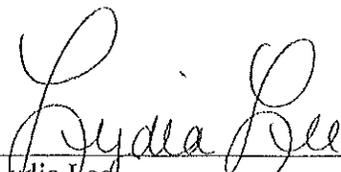
6. In accordance with the provisions of 74 O.S. §840-2.19 and OAC 455:10-9-2, the Appellant may recover such overpayment over a six month period by withholding from Appellee Boyd's salary the amount of \$465.03 each month for the next five months following the issuance of this Order, and the amount of \$456.04 in the sixth and final month. The recovery period may be extended, at the discretion of the Appellant, if Appellee Boyd fails to have sufficient payroll or is in a leave without pay status for any reason. Provided, if Appellee Boyd terminates her employment before the entire over payment is repaid, Appellant DHS has the right to deduct the remaining balance from any final pay, leave balance or other amounts owed to the Appellee.

7. Nothing in this Order limits Appellant DHS' right to collect this overpayment in any other manner permitted by law, in the event that the payroll recovery provided for herein is not successful in a complete recovery.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the undersigned Administrative Law Judge that the petition of Appellant OKLAHOMA DEPARTMENT OF HUMAN SERVICES in this payroll claim protest, MPC – 10-186 be SUSTAINED and the Objection of Appellee CASSANDRA BOYD is DENIED. The overpayment of wages is to be recovered pursuant to the terms of this Order.

This Order entered this 27th day of August, 2010.


Lydia Lee
Administrative Law Judge