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AT \_\_\_\_\_ O'Clock \_\_\_\_\_ M  
CLERK OF DISTRICT COURT

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Deputy

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI**

**JENNIFER OSCARSON-PETERSON** )  
**(PETERSEN),** )  
 )  
 ) *Claimant/Respondent,* )  
vs. )  
 )  
**PHILIPPE PROVOST, D/B/A RESORT CITY** )  
**INN,** )  
 )  
 )  
 ) *Respondent/Appellant.* )

Case No. **CV 2016 729**  
**MEMORANDUM DECISION AND  
ORDER DISMISSING APPEAL  
FROM STATE OF IDAHO  
DEPARTMENT OF LABOR**

**I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.**

This matter is before the Court on the appeal brought by Respondent (before the State of Idaho Department of Labor)/Appellant (before this Court on appeal) Philippe Provost (Provost) who has at all times appeared *pro se*. On January 22, 2016, Provost started this appeal proceeding in District Court when Provost filed a pleading which appealed the December 14, 2015, decision of Hearing Officer Janet C. Hardy. Provost's January 22, 2016, pleading is untitled. In that pleading Provost notes that Janet C. Hardy was a hearing officer for the State of Idaho Department of Labor. Provost also notes that on December 14, 2015, following a November 18, 2015, hearing, Claimant (before the Department of Labor)/Respondent (before this Court) Jennifer Oscarson-Petersen (Oscarson-Petersen) was awarded \$258.18 against her employer Provost. Provost January 22, 2016, pleading, p. 1. (The Court notes that Provost consistently misspells Oscarson-Petersen as Oscarson-Peterson). The December 14, 2015, decision of Janet C. Hardy is attached to Provost's January 22,

2016, pleading. Provost was to make payment to Oscarson-Petersen through the Appeals Bureau of the Department of Labor within 14 days of the December 14, 2015, decision. Idaho Department of Labor December 14, 2015, Decision, p. 5. Rather than pay that amount by that date, Provost appealed that decision to District Court on January 22, 2016. In his pro se appeal, Provost listed both Jennifer Oscarson-Petersen and the Idaho Department of Labor as Claimant/Respondents.

On April 11, 2016, the Idaho Department of Labor moved to dismiss the Idaho Department of Labor as a party pursuant to I.R.C.P. 84(o). Also on April 11, 2016, the Department of Labor filed a Notice of Hearing, scheduling its motion to dismiss for hearing on May 10, 2016, with a copy shown being mailed to Provost and Oscarson-Petersen. On May 2, 2016, Provost filed his "Objection to Motion to Dismiss". On that same day, Provost also filed his "Motion to Reschedule Hearing", claiming that "I will be traveling out of the country from 8<sup>th</sup> of May until the end of may..." [sic] Motion to Reschedule Hearing, p. 1. Provost did not request to appear telephonically as allowed under I.R.C.P. 7.2, nor did he notice up his "Motion to Reschedule Hearing" for some other date. Instead, he waited over three weeks to file his "Motion to Reschedule Hearing" and then failed to attend the May 10, 2016, hearing. At the May 10, 2016, hearing, this Court granted the Department of Labor's Motion to Dismiss, and on May 17, 2016, signed an Order Dismissing Idaho Department of Labor.

On August 4, 2016, this Court entered its "Order for Hearing and Setting of Briefing Schedule on Agency Appeal." A copy of that Order was sent to Provost and Oscarson-Petersen. That Order scheduled a hearing for oral argument on Provost's appeal for October 18, 2106, later moved to October 26, 2016. That Order also required Provost to file Appellant's opening brief by August 18, 2016, and it required Oscarson-Petersen to file her Respondent's Brief by September 18, 2016. To date,

Provost has filed no Appellant's Brief and has not filed a request to continue any aspect of his appeal. On September 16, 2016, Oscarson-Petersen, *pro se*, filed a letter asking advice on how she could file her response brief when Provost had filed no brief.

## II. ANALYSIS

The Court concludes that Provost's Appeal must be dismissed pursuant to I.R.C.P. 84(n), due to Provost's failure to file his Appellant's Brief. Idaho Rule of Civil Procedure 84(n) reads:

**(n) Effect of Failure to Comply with Time Limits.** The failure to physically file a petition for judicial review or cross-petition for judicial review with the district court within the time limits prescribed by statute and these rules is jurisdictional and will cause automatic dismissal of the petition for judicial review on motion of any party, or on initiative of the district court. Failure of a party to timely take any other step in the process for judicial review will not be deemed jurisdictional, but may be grounds only for such other action or sanction as the district court deems appropriate, which may include dismissal of the petition for review.

Provost's failure to file his Appellant's Brief is "...any other step in the process for judicial review..." In reaching this decision, the District Court has weighed the possibility of other sanctions, and determines that dismissal of Provost's appeal is the only appropriate remedy for Provost's failure to prosecute his own appeal. The December 14, 2015, Decision of the Idaho Department of Labor Hearing Officer Janet C. Hardy found that Provost did not follow his own employer's policy when he shorted Oscarson-Petersen on her last paycheck. If Provost is unwilling to follow his own written employment policies, and the Idaho Rules of Civil Procedure, and this Court's Order for Hearing and Setting of Briefing Schedule on Agency Appeal, there is no likelihood that a sanction short of dismissal will cause Provost to change his conduct. From reading that December 14, 2015, Decision, and from Provost's conduct to date on his appeal, It is obvious to this Court that Provost knows his appeal has no merit, and that he filed it only to avoid, for the time being, paying Oscarson-Petersen the \$258.18

awarded to Oscarson-Petersen by the State of Idaho Department of Labor. Finally, Oscarson-Petersen is prejudiced by Provost's failure to prosecute his appeal. In *Aho v. Idaho Transportation Department*, 145 Idaho 192, 177 P.3d 406 (Ct. App. 2008), the Idaho Court of Appeals found it was error for the trial court to dismiss a petition for review when the petitioner's brief was only six days late. However, in this case, Provost is more than a month late and shows no indication that he will ever file a brief. As noted by Oscarson-Petersen, Provost's failure to file a brief leaves her with nothing to which she can respond. Thus, any response other than dismissal would leave Oscarson-Petersen in limbo on her award.

### III. CONCLUSION AND ORDER.

For the reasons stated above,

IT IS HEREBY ORDERED Provost's Appeal of the December 14, 2015, decision of Idaho Department of Labor Hearing Officer Janet C. Hardy is DISMISSED.

IT IS FURTHER ORDERED the October 26, 2016, hearing before the undersigned is VACATED.

IT IS FURTHER ORDERED that Provost comply with the directives of the December 14, 2015, Decision of the Idaho Department of Labor, and that this matter is REMANDED back to the Idaho Department of Labor for any future action.

Entered this 20<sup>th</sup> day of September, 2016.

\_\_\_\_\_  
John T. Mitchell, District Judge

#### Certificate of Service

I certify that on the \_\_\_\_\_ day of September, 2016, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

**Party pro-se**

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Jeanne Clausen, Deputy Clerk