BEFORE THE ARKANSAS DEPARTMENT OF LABOR

EDWARD CLAYTON **CLAIMANT**

vs. **CASE NO. 2012-0003**

ALLGOOD CONSTRUCTION **RESPONDENT**

ORDER

This matter came before the Arkansas Department of Labor on Wednesday, May 30, 2012. Allgood Construction has appealed any agency order that $1,096.00 in unpaid wages is owed to Edward Clayton. David Allgood appeared on behalf of Allgood Construction. Edward Clayton did not appear.

FINDINGS OF FACT

Clayton filed a wage claim with the Labor Standards Division of the Arkansas Department of Labor on October 6, 2011. He claimed $1,096.00 in unpaid wages earned between August 24 and August 31, 2011. After investigation, the Labor Standards Division issued a Preliminary Wage Determination Order on February 16, 2012, finding that Clayton was owed $1,096.00. Allgood Construction filed an appeal of this finding on February 29, 2012.

The hearing was set for 10:00 a.m. The hearing convened at approximately 10:05 a.m. The Respondent appeared, and the Claimant, appeared not. Therefore, judgment is entered for the Respondent.

IT IS SO ORDERED.

James L. Salkeld
Director of Labor

BY:_____
Barry Strange, Labor Mediator
Hearing Officer
Arkansas Department of Labor
10421 West Markham
Little Rock, AR 72205

DATE:_____

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

MICHAEL CLAYTON **CLAIMANT**

vs. **CASE NO. 2012-0004**

ALLGOOD CONSTRUCTION **RESPONDENT**

ORDER

This matter came before the Arkansas Department of Labor on Wednesday, May 30, 2012. Allgood Construction has appealed any agency order that $1,636.00 in unpaid wages is owed to Michael Clayton. Michael Clayton appeared on his own behalf. David Allgood appeared on behalf of Allgood Construction.

FINDINGS OF FACT

Clayton filed a wage claim with the Labor Standards Division of the Arkansas Department of Labor on October 26, 2011. He claimed $1,636.00 in unpaid wages earned between September 1 and September 7, 2011. After investigation, the Labor Standards Division issued a Preliminary Wage Determination Order on February 16, 2012, finding that Clayton was owed $1,636.00.

At the appeal hearing, Mr. Clayton testified that his rate of pay was $22.00 per unit serviced and that he was employed as an HVAC technician and his duties included servicing of air conditioning units in various public school districts. Mr. Clayton stated that he has not been paid for 53 units serviced between September 1 and September 7, 2011 plus bonuses and per diems.

David Allgood testified that his company hired technicians to service air conditioner units in various public school districts under a program or partnership with Entergy Corporation. Mr. Allgood stated that an audit of the work performed by his company had been completed and that

severe deficiencies had been noted and the audit finding was that service was either improperly performed or that it had not been performed at all and therefore his contract was cancelled and he was now being investigated for fraud.

CONCLUSIONS OF LAW

1. Upon application of either an employer or employee, the Director of the Department of Labor or any person authorized by the director shall have authority to inquire into, hear, and decide disputes arising from wages earned and shall allow or reject any deduction from wages. Ark. Code Ann. § 11-4-303(a). The statute also covers "physical work actually performed by an independent contractor." Ark. Code Ann. § 11-4-301.

2. The amount of the award of the director shall be presumed to be the amount of wages or remuneration, if any, due and unpaid to the employee. Ark. Code Ann. 1-4-303(c).

3. Mr. Clayton carried his burden of proving that he worked from September 1 through September 7, 2011 at the rate of $22.00 per unit serviced.

4. David Allgood failed to provide evidence to support an affirmative defense for an offset or for non-payment. Mr. Allgood referenced hotel charges that had been advanced to the Claimant, although no documentation was submitted to substantiate that a loan was made directly to Mr. Clayton or that any repayment arrangement had been agreed to.

5. No evidence was submitted to document the claims by Mr. Allgood that service had not been performed on the units in question, nor was evidence provided to document that Mr. Clayton individually was responsible for the failure to service, or poorly service, the units involved.

6. THERFORE, IT IS CONSIDERED AND ORDERD that judgment is entered for the Claimant in the amount of $1,636.00. This amount represents 52 units at $22.00 per unit, 2

unpaid bonuses as offered in the HVAC Lead Technician Piece Work Agreement, and 6 days of per deim rates at $45.00 per day as offered in the HVAC Lead Technician Piece Work Agreement. The Respondent is directed to issue a check payable to Mr. Clayton in the amount of $1,636.00 within ten (10) days of the receipt of this Order and mailed to the Department of Labor.

IT IS SO ORDERED.

James L. Salkeld
Director of Labor

BY:_____
Barry Strange, Labor Mediator
Hearing Officer
Arkansas Department of Labor
10421 West Markham
Little Rock, AR 72205

DATE:_____

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

RANDY DAMRON **CLAIMANT**

Vs. **CASE NO.: 2012-0001**

EJ TRUCKING **RESPONDENT**

ORDER

The Claimant, Randy Damron, filed a claim for unpaid wages with the Arkansas Department of Labor on August 18, 2011, in which he claimed the Respondent, EJ Trucking, failed or refused to pay him $936.75 for work Mr. Damron performed on behalf of EJ Trucking from July 18 through July 22, 2011. The Respondent filed a timely response disputing the claim. A preliminary Wage Determination Order was entered by the Labor Standards Department of the Arkansas Department of Labor on December 1, 2011 in favor of the Claimant, which was followed by the Respondent's December 16, 2011 Notice of Appeal and Request for Hearing.

The matter came before the Arkansas Department of Labor on Wednesday, May 30, 2012. Claimant, Randy Damron, appeared and testified on his own behalf. Steve Ferguson appeared on behalf of EJ Trucking.

FINDINGS OF FACT

The Claimant was employed by EJ Trucking as an over-the-road truck driver. Mr. Damron testified that he began having mechanical problems with his truck in the days surrounding the time period in question. He made arrangements with Donnie Hutchison, owner of EJ Trucking, to bring the truck to EJ's terminal for service or repairs. Mr. Damron stated that he cleaned his personal belongings out of the truck and parked it at the terminal on or about July 23, 2011. He received a call the next day inquiring if he had quit his employment. Mr. Damron stated that he did not intend to quit his job at EJ but that in the days surrounding this incident, he had been contacted by a previous employer and had considering going back to work for them.

Steve Ferguson, testifying on behalf of the Respondent, did not dispute the Claimant's calculation of the miles he had driven or the dollar amount he was owed. The Respondent claimed an entitlement to offset the amounts owed to the Claimant by EJ against amounts the Respondent claimed as damages incurred by EJ because of loss of profit for Mr. Damron's failure to return to work and deliver the load he had been dispatched with. Mr. Ferguson acknowledged that EJ Trucking had deducted $500 from the Claimant's wages for estimated lost-profit damages caused by their allegation that Damron quit his job without notice.

CONCLUSIONS OF LAW

1. Upon application of either an employer or employee, the Director of the Department of Labor or any person authorized by the director shall have authority to inquire into, hear, and decide disputes arising from wages earned and shall allow or reject any deduction from wages. Ark. Code Ann. 11-4-303(a).

2. The amount of the award of the director shall be presumed to be the amount of wages, if any, due and unpaid to the employee. Ark. Code Ann. 11-4-303(c).

3. The employee, Randy Damron, carried his burden of proving that he worked from July 18 through July 22, 2011 and that he had driven a total of 2595 miles and had paid $28.50 in scale tickets on his employer's behalf.

4. Arkansas law specifically prohibits employer deductions for "lateness, misconduct, or quitting by an employee without notice."

5. The evidence and testimony show that Mr. Damron is entitled to recover $936.75, representative of 2595 miles at $0.35 per mile plus $28.50 in scale tickets, less $222.20 paid as Mr. Damron's last paycheck on July 29, 2011 for a total due of $714.55.

6. THERFORE, IT IS CONSIDERED AND ORDERD that judgment is entered for the Claimant in the amount of $714.55.

7. The Respondent is directed to issue a check payable to Mr. Damron in the amount of $714.55 within ten (10) days of the receipt of this Order and mailed to the Department of Labor.

IT IS SO ORDERED.

James L. Salkeld
Director of Labor

BY: _____
Barry Strange
Hearing Officer
Arkansas Department of Labor
10421 West Markham
Little Rock, AR 72205

DATE:_____

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

WILLIAM IVEY **CLAIMANT**

vs. **CASE NO. 2012-0005**

ALLGOOD CONSTRUCTION **RESPONDENT**

ORDER

This matter came before the Arkansas Department of Labor on Wednesday, May 30, 2012. Allgood Construction has appealed any agency order that $1,144.00 in unpaid wages is owed to William Ivey. William Ivey appeared by telephone on his own behalf. David Allgood appeared on behalf of Allgood Construction.

FINDINGS OF FACT

Ivey filed a wage claim with the Labor Standards Division of the Arkansas Department of Labor on October 13, 2011. He claimed $1,144.00 in unpaid wages earned between September 1 and September 7, 2011. After investigation, the Labor Standards Division issued a Preliminary Wage Determination Order on February 16, 2012, finding that Ivey was owed $1,144.00.

At the appeal hearing, Mr. Ivey testified that his rate of pay began at $12.00 per unit serviced and then increased to $22.00 per unit after he was moved to lead technician.. He worked as an HVAC technician and his duties were to service of air conditioning units in various public school districts. Mr. Ivey stated that he has not been paid for that time period, but he was unable to specify how many units he serviced. Through testimony and questioning, it was determined that he serviced somewhere between 40 and 49 units because he was eligible for the per diem offered in the Lead Technician Piece Work Agreement but that he had not completed enough tune-ups to qualify for the bonus offered in the same agreement.

David Allgood testified that his company hired technicians to service air conditioner units in various public school districts under a program or partnership with Entergy Corporation. Mr. Allgood stated that an audit of the work performed by his company had been completed and that severe deficiencies had been noted and the audit finding was that service was either improperly performed or that it had not been performed at all and therefore his contract was cancelled and he was now being investigated for fraud.

CONCLUSIONS OF LAW

1. Upon application of either an employer or employee, the Director of the Department of Labor or any person authorized by the director shall have authority to inquire into, hear, and decide disputes arising from wages earned and shall allow or reject any deduction from wages. Ark. Code Ann. § 11-4-303(a). The statute also covers "physical work actually performed by an independent contractor." Ark. Code Ann. § 11-4-301.

2. The amount of the award of the director shall be presumed to be the amount of wages or remuneration, if any, due and unpaid to the employee. Ark. Code Ann. 1-4-303(c).

3. Mr. Ivey carried his burden of proving that he worked from September 1 through September 7, 2011 at the rate of $22.00 per unit serviced. However, neither party was able to document or testify regarding the number of pieces serviced, only that it was a minimum of 40 units because he did qualify for the per diem.

4. David Allgood failed to provide evidence to support an affirmative defense for an offset or for non-payment. Mr. Allgood referenced hotel charges that had been advanced to the Claimant, although no documentation was submitted to substantiate that a loan was made directly to Mr. Ivey or that any repayment arrangement had been agreed to. Mr. Ivey denied knowledge of any outstanding loan balance owed to Allgood Construction.

5. No evidence was submitted to document the claims by Mr. Allgood that service had not been performed on the units in question, nor was evidence provided to document that Mr. Ivey individually was responsible for the failure to service, or poorly service, the units involved.

6. THERFORE, IT IS CONSIDERED AND ORDERD that judgment is entered for the Claimant in the amount of $1,150.00. This amount represents 40 units at $22.00 per unit, and 6 days of per deim rates at $45.00 per day as offered in the HVAC Lead Technician Piece Work Agreement. The Respondent is directed to issue a check payable to Mr. Ivey in the amount of $1,150.00 within ten (10) days of the receipt of this Order and mailed to the Department of Labor.

IT IS SO ORDERED.

James L. Salkeld
Director of Labor

BY:_____
Barry Strange, Labor Mediator
Hearing Officer
Arkansas Department of Labor
10421 West Markham
Little Rock, AR 72205

DATE:_____

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

DANNY JOHNSON **CLAIMANT**

vs. **CASE NO. 2012-0007**

MARLA SQUARE LIMITED PARTNERSHIP **RESPONDENT**
MARLA SQUARE II LIMITED PARTNERSHIP

ORDER

This matter came before the Arkansas Department of Labor on Wednesday, May 31, 2012. Marla Square Limited Partnership and Marla Square II Limited Partnership (hereafter referred to as "Marla Square") has appealed an agency finding of unpaid wages due to Mr. Danny Johnson. Mr. Johnson appeared in person on his own behalf in a joint hearing along with his wife, Ms. Tresha Johnson. Mr. Russell Altizer, President of Sunbelt Development and agent/manager for Marla Square appeared on behalf of Marla Square.

FINDINGS OF FACT

Danny Johnson, employee, filed a wage claim with the Labor Standards Division of the Arkansas Department of Labor on August 4, 2011. He claimed $1,327.50 of unpaid wages earned between June 16, 2011 and July 11, 2011. The Labor Standards Division, after an investigation, issued a Preliminary Wage Determination Order on February 27, 2012 finding that Johnson was owed $1,327.50. Marla Square filed an appeal of this finding on March 14, 2012.

Mr. Johnson testified that he worked as a as the maintenance man and groundskeeper for Marla Square for 6 years along with his wife. His duties included maintenance and landscaping. His wife worked as the site manager. Testimony from Mr. Johnson indicated that he was paid $9.00 per hour and that he was expected to work 40 hours per week. Mr. and Ms. Johnson and their family had planned a short vacation for a baseball tournament in Crossett, Arkansas that

their sons were playing in. The case file contains a time off request signed by Danny Johnson on June 27, 2011 requesting time off for July 7 and 8 of 2011. Mr. Johnson stated that upon their return from vacation, he and his wife were notified that their employment had been terminated.

Mr. Altizer along with witness Linda Singleton testified that the Johnson's had worked at Marla Square for several years but that in the months preceding the time period in question, their work quality had become unacceptable and they believed that the number of hours being claimed were not actually being worked. Ms. Singleton testified that she visited the property on 4 separate days in May and was only able to make contact with Mr. Johnson on one of those days. She did not visit the property in June, but resumed visits in July. She visited on July 5, 7, 9, 10 and 11, 2011. She did not specify the time that she was at the property during any of those dates. She stated that Danny Johnson was on site on July 7 and 11. She stated that the property was inspected on July 9 and it was determined that the Johnsons were no longer living in the site manager's apartment which was a condition of their employment. Inspection of the grounds revealed poor maintenance and general negligence in upkeep and therefore the decision was made to terminate their employment. Photographs of the site manager's apartment were taken to show that the apartment was in disarray and that it was not in a "livable" condition. Photographs were also taken of the general property grounds. At that time, the locks to the apartment were changed. During her visit on July 11, the Johnsons were notified that their employment was terminated. Shortly after, the Johnsons brought a truck and trailer to remove the remainder of their property from the apartment.

CONCLUSIONS OF LAW

1. Upon application of either an employer or employee, the Director of the Department of Labor or any person authorized by the director shall have authority to inquire into,

hear, and decide disputes arising from wages earned and shall allow or reject any deduction from wages. Ark. Code Ann. 11-4-303(a).

2. After final hearing by the director or person appointed by him, a copy of findings and facts and any award shall be filed in the office of the Department of Labor. Ark. Code Ann. 11-4-303(b).

3. The amount of the award of the director shall be presumed to be the amount of wages, if any, due and unpaid to the employee. Ark. Code Ann. 1-4-303(c).

4. The wage claimant carries the burden of proof for any claim of unpaid wages.

5. The employer carries the burden of proof for any set-off or affirmative defense.

6. In the present case, the documents in the record indicate Mr. Johnson was paid hourly at a rate of $9.00 per hour.

7. Mr. Johnson was located at the property on different occasions. Although Marla Square provided photographs to document the condition of the grounds, Mr. Johnson's work log indicates that he completed a wide range of duties in several different areas, and that the lawns in different areas were tended on different days. The photographs do not indicate which areas are being represented and are not representative of the entire property; therefore sufficient proof that Mr. Johnson was not completing the duties he claimed was not presented. In fact, Ms. Singleton's testimony that she saw Mr. Johnson with a weed-eater in hand on July 7 corresponds with his timesheet that stated he was mowing and weed-eating on that day. Therefore, it is determined that Mr. Johnson is awarded the worked hours documented on his time sheet in full.

8. Testimony and evidence in the file indicates that Mr. Johnson had requested vacation days for July 7 and 8. However, no evidence was submitted to show that the vacation time had been approved in advance as required by the company's benefit policy. Mr. Johnson's

signed timesheets show work time claimed on July 7, indicating that, in fact, there was a controversy with the requested time being approved. Therefore, vacation time for July 8 or July 11 is not awarded.

THERFORE, IT IS CONSIDERED AND ORDERD that judgment is entered for the claimant in the amount of $1,183.50. This represents 92 allowed hours for the period of June 16 through June 30 and 39.5 allowed hours for the period of July 1 through July 11 for a total of 131.5 hours at $9.00 per hour. The Respondent is directed to issue a check payable to Mr. Johnson in the amount of $1,183.50 within ten (10) days of the receipt of this Order and mailed to the Department of Labor.

James L. Salkeld
Director of Labor

BY: _____
Barry Strange
Labor Mediator
Arkansas Department of Labor
10421 West Markham
Little Rock, AR 72205

DATE:_____

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

TRESHA JOHNSON **CLAIMANT**

vs. **CASE NO. 2012-0006**

MARLA SQUARE LIMITED PARTNERSHIP **RESPONDENT**
MARLA SQUARE II LIMITED PARTNERSHIP

ORDER

This matter came before the Arkansas Department of Labor on Wednesday, May 31, 2012. Marla Square Limited Partnership and Marla Square II Limited Partnership (hereafter referred to as "Marla Square") has appealed an agency finding of unpaid wages due to Ms. Tresha Johnson. Ms. Johnson appeared in person on her own behalf in a joint hearing along with her husband, Mr. Danny Johnson. Mr. Russell Altizer, President of Sunbelt Development and agent/manager for Marla Square appeared on behalf of Marla Square.

FINDINGS OF FACT

Tresha Johnson, employee, filed a wage claim with the Labor Standards Division of the Arkansas Department of Labor on August 4, 2011. She claimed $1,116.00 of unpaid wages earned between June 16, 2011 and July 11, 2011. The Labor Standards Division, after an investigation, issued a Preliminary Wage Determination Order on February 27, 2012 finding that Johnson was owed $1,116.00. Marla Square filed an appeal of this finding on March 14, 2012.

Ms. Johnson testified that she worked as a site manager for Marla Square for 6 years along with her husband. Her duties included the office management and cleaning or general site maintenance. Her husband worked as the maintenance man and groundskeeper. Testimony from Mrs. Johnson indicated that she was paid $8.00 per hour and that she was expected to work 40 hours per week. She stated that her office hours had been modified at one point because her

duties were split between 2 properties, but during the time period in question, the visibly posted office hours when tenants could expect her to be in the office remained 9:00 a.m. until 11:00 a.m. Her duties required that she sometimes left the property frequently to visit the post office, bank, etc. She stated that her family had planned a short vacation for a baseball tournament in Crossett, Arkansas that her sons were playing in. The case file contains a time off request signed by Tresha Johnson on June 27, 2011 requesting time off for July 6, 7, 8 and 11 of 2011. Ms. Johnson stated that upon their return from vacation, she and her husband were notified that their employment had been terminated.

Mr. Altizer along with witness Linda Singleton testified that the Johnson's had worked at Marla Square for several years but that in the months preceding the time period in question, their work quality had become unacceptable and they believed that the number of hours being claimed were not actually being worked. Ms. Singleton testified that she visited the property on 4 separate days in May and was not able to locate or make contact with Tresha Johnson on any of those occasions. She did not visit the property in June, but resumed visits in July. She visited on July 5, 7, 9, 10 and 11, 2011. She did not specify the time that she was at the property during any of those dates. She stated that she was unable to locate or make contact with Tresha Johnson on any of those dates but that Danny Johnson was on site on July 7 and 11. She stated that the property was inspected on July 9 and it was determined that the Johnsons were no longer living in the site manager's apartment which was a condition of their employment. Inspection of the grounds revealed poor maintenance and general negligence in upkeep and therefore the decision was made to terminate their employment. Photographs of the site manager's apartment were taken to show that the apartment was in disarray and that it was not in a "livable" condition. Photographs were also taken of the general property grounds. At that time, the locks to the

apartment were changed. During her visit on July 11, the Johnsons were notified that their employment was terminated. Shortly after, the Johnsons brought a truck and trailer to remove the remainder of their property from the apartment.

CONCLUSIONS OF LAW

1. Upon application of either an employer or employee, the Director of the Department of Labor or any person authorized by the director shall have authority to inquire into, hear, and decide disputes arising from wages earned and shall allow or reject any deduction from wages. Ark. Code Ann. 11-4-303(a).

2. After final hearing by the director or person appointed by him, a copy of findings and facts and any award shall be filed in the office of the Department of Labor. Ark. Code Ann. 11-4-303(b).

3. The amount of the award of the director shall be presumed to be the amount of wages, if any, due and unpaid to the employee. Ark. Code Ann. 1-4-303(c).

4. The wage claimant carries the burden of proof for any claim of unpaid wages.

5. The employer carries the burden of proof for any set-off or affirmative defense.

6. In the present case, the documents in the record indicate Ms. Johnson was paid hourly at a rate of $8.00 per hour.

7. Ms. Johnson's own testimony indicated that the posted office hours during the time period in question were 9:00 a.m. through 11:00 a.m. Ms. Johnson failed to provide credible evidence that she performed work for office hours in excess of this or that she arrived for office hours early at any point. Marla Square provided witness testimony that indicated she did not work hours in excess of her posted office hours and that her submitted timesheets are likely incorrect. However, no evidence was presented by either side to show what hours actually

were worked. Therefore, it is determined that Ms. Johnson is awarded 2 hours per day for office hours, plus 1 hour for errands for each day indicated that they were performed. Hours for June 18 and June 19 indicate that she performed maintenance or cleaning work in a particular apartment, therefore those hours are awarded in full.

8. Testimony and evidence in the file indicates that Ms. Johnson had requested vacation days for July 6, 7, 8 and 11. However, no evidence was submitted to show that the vacation time had been approved in advance as required by the company's benefit policy. Ms. Johnson's signed timesheets show work time claimed on July 6 and 7, indicating that, in fact, there was a controversy with the requested time being approved. Therefore, vacation time for July 8 and July 11 is not awarded.

THERFORE, IT IS CONSIDERED AND ORDERD that judgment is entered for the claimant in the amount of $340.00. This represents 29.5 allowed hours for the period of June 16 through June 30 and 13 allowed hours for the period of July 1 through July 11 for a total of 42.5 hours at $8.00 per hour. The Respondent is directed to issue a check payable to Ms. Johnson in the amount of $340.00 within ten (10) days of the receipt of this Order and mailed to the Department of Labor.

James L. Salkeld
Director of Labor

BY: _____
Barry Strange
Labor Mediator
Arkansas Department of Labor
10421 West Markham
Little Rock, AR 72205

DATE:_____

BEFORE THE ARKANSAS DEPARTMENT OF LABOR

APRIL SHELTON **CLAIMANT**

vs. **CASE NO. 2012-0008**

MARTIN PLACE LIMITED PARTNERSHIP, PRESCOTT NO. TWO LIMITED PARTNERSHIP AND PRESCOTT APARTMENTS LIMITED PARTNERSHIP **RESPONDENT**

ORDER

This matter came before the Arkansas Department of Labor on Wednesday, May 31, 2012. Martin Place Limited Partnership, Prescott Number Two Limited Partnership and Prescott Apartments Limited Partnership (hereafter referred to as "Martin/Prescott Apartments") has appealed an agency finding of unpaid wages due to Ms. April Shelton. Ms. Shelton appeared in person on her own behalf. Mr. Russell Altizer, President of Sunbelt Development and agent/manager for Martin/Prescott Apartments appeared on behalf of Martin/Prescott Apartments.

FINDINGS OF FACT

April Shelton, employee, filed a wage claim with the Labor Standards Division of the Arkansas Department of Labor on August 30, 2011. She claimed 7 weeks of unpaid wages during her employment with Martin/Prescott Apartments spanning from September 7, 2010 through April 13, 2011. The Labor Standards Division, after an investigation, issued a Preliminary Wage Determination Order on February 27, 2012 finding that Shelton was owed $1,938.46. Martin/Prescott Apartments filed an appeal of this finding on March 14, 2012.

Ms. Shelton testified she began her employment with Martin/Prescott Apartments in September of 2010. The actual start date was disputed. Ms. Shelton was of the opinion that her employment began on or about September 7, 2010 when she signed her initial hire

paperwork. Martin/Prescott Apartments contends the employment began when she actually began working. Mr. Altizer testified that Ms. Shelton was to begin working on September 17, 2010 but she actually arrived a number of days after the anticipated start day. She worked up until the pay period of November 15-30. Her testimony was that she was completely absent from work during that pay period because of the birth of her child which occurred earlier than expected and subsequently resulted in extended medical care. She returned to work for the pay period of December 1 through 15, 2010 and worked until her termination on April 13, 2011. Testimony offered by both parties during the hearing indicated that there were periodic absences during her employment for various reasons, but the actual dates of her absences were not substantiated by any evidence. Neither party provided any records of her actual days worked or not worked during the course of her employment. The respondent indicated that she was a salary employee and did not submit timesheets. Her rate of pay was $1,200.00 per month, plus accommodations and utilities in an on-site apartment. She was paid on the first and 15th day of each month and she received checks from each of the 3 apartment complexes that she was responsible for managing. Martin/Prescott Apartments did not present a copy of any sick leave policy that was in effect during her employment. Martin/Prescott Apartments requested an offset for various reasons including a $275 balance on her security deposit, $150 in petty cash that was missing from the office and $4,700 in missing items as documented in a report to the Prescott Police Department.

CONCLUSIONS OF LAW

1. Upon application of either an employer or employee, the Director of the Department of Labor or any person authorized by the director shall have authority to inquire into,

hear, and decide disputes arising from wages earned and shall allow or reject any deduction from wages. Ark. Code Ann. 11-4-303(a).

2. After final hearing by the director or person appointed by him, a copy of findings and facts and any award shall be filed in the office of the Department of Labor. Ark. Code Ann. 11-4-303(b).

3. The amount of the award of the director shall be presumed to be the amount of wages, if any, due and unpaid to the employee. Ark. Code Ann. 1-4-303(c).

4. The wage claimant carries the burden of proof for any claim of unpaid wages.

5. The employer carries the burden of proof for any set-off or affirmative defense.

6. In the present case, the documents in the record indicate Ms. Shelton was a salaried employee who was paid a salary of $1,200.00 per month.

7. Signed new-hire documents contained in the file do not stipulate a start date. As there is no dispute that no work was performed by Ms. Shelton for the pay period of September 1 through September 15, 2010, no wages for that pay period are due.

8. ADL Labor Standards Regulation 010.14-112 provides "The department may rely on the interpretations of the U. S. Department of Labor and federal precedent established under the Fair Labor Standards Act in interpreting and applying the provisions of the [state] Act." There is no contract or employer policy in the present case defining "salaried" or outlining when deductions from a salary may be made. In construing the federal Fair Labor Standards Act, the U. S. Department has examined what it means to be paid on a salary basis. 29 C.F. R. § 541.602 (2) states "Deductions from pay may be made for absences of one or more full days occasioned by sickness or disability if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for loss of salary occasioned by such sickness or disability."

Testimony from both parties indicated procedures for reporting absences due to sickness or illness, therefore it is interpreted that a general practice was in effect. No written policy was presented by either party that documents any benefits for neither paid leave for sickness or disability, nor the length of time that an employee would have to be employed before such benefits were available. There is no dispute that no work was performed by Ms. Shelton for the pay period of November 15-30, 2010, therefore it is determined that no wages are due for that pay period.

9. Deductions made from Ms. Shelton's paychecks substantiate the schedule of payments being made towards credit of her $500 security deposit that is noted in the agreement regarded the apartment that was provided for her. The deductions were classified as "voluntary deduction" and were taken in $25.00 increments. There are a total of 9 documented deductions for a total of $225.00. Therefore, the offset for the remaining $275.00 is allowed.

10. Testimony by both parties during the hearing acknowledge the existence of a petty cash fund. Ms. Shelton failed to provide receipts for purchases made with petty cash, therefore the offset for missing petty cash is allowed.

11. The police report offered in support of an offset for missing items does not list Ms. Shelton as a suspect, therefore an offset for that amount is disallowed.

THERFORE, IT IS CONSIDERED AND ORDERD that judgment is entered for the claimant for full salary for the pay period of March 15-31, 2011 and April 1-15, 2011 for a total of $1,200.00, minus the previously mentioned allowed offsets in the amount of $275.00 for the remaining security deposit and $150.00 for the undocumented missing petty cash for a total remaining of $775.00. The Respondent is directed to issue a check payable to Ms. Shelton in the

amount of $775.00 within ten (10) days of the receipt of this Order and mailed to the Department of Labor.

James L. Salkeld
Director of Labor

BY: _____
Barry Strange
Labor Mediator
Arkansas Department of Labor
10421 West Markham
Little Rock, AR 72205

DATE:_____