



Bureau of Labor Standards
VS.
William Faulkingham

2025 - BLS - 02

FINAL DECISION OF THE HEARING OFFICER

HISTORY OF THE CASE

After an investigation, on May 1, 2025, the Bureau of Labor Standards, Maine Department of Labor issued a citation letter to William Faulkingham (Appellant). The citation was issued on the basis of alleged violations of 26 MRS §772 Hazardous Occupations; 26 MRS §774 (7) Record of work hours of minors; and 26 MRS §665 (1) Pay Statement. It assessed penalties in the total amount of \$6,136.00.

The Appellant timely appealed the violations and penalties. The BLS assigned an Order of Reference to the Undersigned Hearing Officer. The Appellant is represented by Attorney Joshua Tardy. The BLS is represented by Anne Macri, Assistant Attorney General.

After prehearing conferences, a hearing was scheduled and held on November 12, 2025.

Witnesses for BLS

Scott Cotnoir, Director Wage and Hour

Bartlett Hutchinson, Chief Labor and Safety Inspector

Witnesses for Appellant:

William Faulkingham

Exhibits

The following BLS WHD Exhibits were admitted without objection

Exhibit WHD #D-1 Citation letter May 1, 2025 (4 pages)

Exhibit WHD #D-2 email August 2, 2024 from Jason Moyer-Lee (5 pages)

Exhibit WHD #D-3 February 12, 2025 notes on interview of Appellant (2 pages)

Exhibit WHD #D-4 February 12, 2025 letter to Appellant (7 pages)

Exhibit WHD #D-5 February 6, 2025-May 1, 2025, case notes(3 pages)

Exhibit WHD #D-6 Chapter 11 BLS 170

Exhibit WHD #D-7 Title 29 Part 570 Child Labor Regulations Part 570

Exhibit WHD #D-8 USDOL Wage and Hour Division Field Operations Handbook 33c20

The following Defendant's Exhibits were admitted without Objection

Defendant's Exhibit 1: Social media children lobstering (8 pages)

Defendant's Exhibit 2: Student lobster and crab application

Defendant's Exhibit A: Bangor Daily News January 2, 2026; article (Midcoast Lobsterman) (6 pages)

The parties submitted Post Hearing and Reply Briefs. BLS and the Appellant also submitted objections and comments to the Hearing Officer's Recommended Decision. The Appellant requested the Hearing Officer to admit as evidence a social media posting with its objections and comments. That posting was not authenticated and therefore not considered

Issues

Whether the Appellant employed █████ a 14-year-old minor, as an employee in 2024.

Whether █████ a 14-year-old minor performed hazardous work on Appellant's fishing boat.

Whether the Appellant failed to maintain proper records of █████'s employment on the fishing boat.

Findings of Facts

1. Appellant is a lobsterman. He has been a lobsterman for over 20 years. He fishes out of his home anchorage in Winter Harbor, Maine. The name of his boat is F/V Grampy's Bird.
2. Appellant operates Grampy's Bird either alone or with one or more Sternmen, who are usually independent subcontractors and not employees of the Appellant.
3. █████ is a close friend of the Appellant's son.
4. █████ was 14 years old during the summer of 2024.
5. Prior to the summer of 2024, █████ had no previous experience working on a lobster boat.
6. The Appellant and his son assisted and instructed █████ on how to perform work on Grampy's Bird.
7. █████ duties on the boat included hauling traps, baiting traps, and binding claws. These are routine tasks performed by the Appellant or Sternman.
8. On four summer days in 2024, █████ worked on the Grumpy Bird.
9. He worked about 5 hours per day. Each day he was paid between \$80 and \$140 a day. The Appellant paid █████ with paper checks. The checks did not have any information about total payments.
10. It is common practice in the lobstering business to have minors work on fishing boats.
11. Minors as young as 8 may be licensed to work on a lobster boat. See examples of minors fishing in Defendant's Exhibit 1.

12. Prior to being cited for employing [REDACTED] the Appellant was not aware that it was a violation of Maine child labor laws, and he could be penalized for employing a 14-year-old minor.
13. The BLS received a tip that the Appellant allowed [REDACTED] to work on Grampy's Bird.
14. BLS investigated the tip and concluded there was a number of violations that subjected the Appellant to penalties for employing [REDACTED] in a Hazardous Occupation.

Reasoning:

I. INDEPENDENT CONTRACTOR

Appellant did not present evidence of [REDACTED] being an independent contractor. [REDACTED] worked under the direction and control of the Appellant and his son. He did not have the experience, skill or ability to perform the duties of a Sternman without their assistance.

The Appellant does not dispute that [REDACTED] worked as an employee on Grampy's Bird. As an employee, he took direction and control from the Appellant or his son.

II. HAZARDOUS OCCUPATION

The BLS maintains that being on a boat is a hazardous occupation for 14- and 15-year-old minors. It relies upon federal rules to ascertain if occupations are prohibited for minors 14 and 15 years of age.

29 C.F.R. § 570.33 Occupations that are prohibited to minors 14 and 15 years of age.

"The following occupations, which is not an exhaustive list, constitute oppressive child labor within the meaning of the Fair Labor Standards Act when performed by minors who are 14 and 15 years of age:

(n) Occupations in connection with:

(1) Transportation of persons or property by rail, highway, air, water, pipeline, or other means

Also See USDOL Field Operations interpretive guidance, jobs performed on a "boat" is by definition prohibited. 33c20 (c)(1) jobs performed on "boats".

The Appellant disagrees with the interpretation of these rules that prohibits minors working on a fishing boat. He claims there is no conflict with federal rules because the above cited regulations do not apply to "fishing boats" nor to transporting people and property on the water.

In **Smith v. United States** 110 F. Supp 892 (N.D. Fla 1953) a federal court recognized a distinction between transportation on the water and "fishing." See: "USC 2101(12) "fishing vessel" means a vessel that commercially engages in the catching, taking, or harvesting of fish or an activity that can reasonably be expected to result in the catching, taking, or harvesting of fish. The federal child labor regulations do not distinguish between a dinghy, a lobster boat, or a ferry.

12 MRS section 6421 specifically allows minors between ages 8 and 23 to work on a lobster boat. It is common in Maine for minors to work on fishing boats. See Defendant's Exhibit 1.

12 MRS section 6421(3-A and E) authorizes 14-year-olds to haul up to 150 traps. It also allows a lobster license holder to have up to 3 unlicensed crew members to assist in licensing activities under the direct supervision of a Class III license holder

“C. A Class III license authorizes the license holder to engage in the licensed activities under subsection 2. A Class III license holder may engage 4 unlicensed crew members to assist in the licensed activities under the direct supervision of the Class III license holder, except as provided in section 6445 A.” 12 MRS section 6421 (3-A).”

“E. A student license authorizes the license holder to engage in the licensed activities under ... (1) Ten lobster traps in the coastal waters of the State if the person is 8 years of age or older and under 11 years of age;

(2) Fifty lobster traps in the coastal waters of the State if the person is 11 years of age or older and under 14 years of age; or

(3) One hundred and fifty lobster traps in the coastal waters of the State if the person is 14 years of age or older and under 23 years of age.”

There was a difference in the interpretation of the federal law. The Appellant believed that [REDACTED] working on a lobster boat is “fishing” and not transporting people and property. He relied upon his understanding that a minor can perform fishing tasks under Title 12 chapter 169.

Given the conflicting interpretations of the federal rules, **see Smith v United States**, it would not be appropriate to penalize the Appellant for employing [REDACTED] in a hazardous occupation.

The Hearing Officer has no jurisdiction to void a state or federal law on preemption grounds. To the extent there are conflicts between the hazardous occupation rules and chapter 169, the BLS and other interested parties may investigate if there is a need for revised rulemaking to address whether “fishing” is a hazardous occupation for minors.

III. RECORD VIOLATIONS

Maine law requires employers of minors to keep a time record for every minor employed, stating the number of hours worked by each minor on each day of the week 26 MRS. Section 774(4). The Appellant did not keep records of the hours worked by the minor in violation of section 774(4). Appellant paid [REDACTED] by personal check and the checks did not include the hours worked by [REDACTED] total earnings and itemized deductions.

CALCULATION OF VIOLATIONS AND PENALTIES

Hazardous occupations and record of hours of minors are treated as following:

In this case, there were 4 violations upheld. Chapter 9 Rules require starting at \$1,000.00. The \$1,000.00 is multiplied by the 4 violations resulting in a penalty amount of \$4,000.00. A 33.3% reduction based on employer size is then applied, resulting in a total penalty amount of \$2668.00 for violations in this category.

Because the hazardous occupation violation is not upheld, there are 4 violations (instead of 8). The penalty amount is $4 \times \$1,000 = \$4,000$. The 33.3% reduction based on employer size is then applied to 4K (\$1,332), resulting in a total penalty amount of \$2,668.00 for violations in this category.

The Pay Statement violations remain exactly the same, resulting in a total penalty amount of \$800 for the violations in this category.

The total violation then is $\$2,668 + \$800 = \$3,468$.

Conclusions of Law

The Appellant has violated Labor statutes and rules as discussed in Part III.

Because the Appellant violated the Labor statutes and regulations, it is subject to penalties in the amount of \$3468.

Decision:

For the reasons stated above, the Appellant violated Labor Laws and Rules resulting in a penalty of \$3468.00 that is assessed against the Appellant. That amount shall be paid to the BLS.

The Hearing Officer considered BLS written objections to the Recommended Decision

This is a Final Decision. It will be sent by U.S. mail, hand delivery or by email to all parties. This Final Decision of the Hearing Officer is subject to review by the Superior Court, pursuant to 5 M.R.S. §11001.

Allan Toubman
Hearing Officer
Date 02/09/2026