

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**FILE NO. UE-2006-02-17.5**

**IN THE MATTER OF  
CITY OF GOULD**

**OPINION AND ORDER FILED May 16, 2006**

Proceeding before Administrative Law Judge Barbara W. Webb on May 11, 2006, at Little Rock, Pulaski County, Arkansas.

Commission's Compliance Division appeared by and through its Compliance Investigator, Ms. Frankie Brand.

Employer appeared by and through its counsel, Mr. Howard Holthoff.

**STATEMENT OF THE CASE**

Following an investigation by the Compliance Division of the Arkansas Workers' Compensation Commission, the employer was charged with violations of the Arkansas Workers Compensation Law; specifically, failing and/or refusing to secure workers' compensation coverage for its employees. Following unsuccessful efforts by the Compliance Division to insure coverage for the employer's employees, and after communication advising the employer that it was in violation of the law, the matter was ultimately referred to this Administrative Law Judge for a review and determination concerning what action, if any, should be taken.

On February 24, 2006, the initial Order and Notice of Hearing was filed, charging the employer with non-compliance of the law and assessing the maximum statutory penalty of Ten Thousand Dollars (\$10,000.00) pursuant to

Ark. Code Ann. §11-9-406 (Repl.2002). The Order provided that it would become final twenty (20) days after the employer's receipt, unless a written request for a hearing was filed with the Commission. In addition, the employer was directed and ordered to obtain and show proof of workers' compensation insurance within the same twenty (20) days, unless a written request for a hearing was filed, at which time the employer would be permitted to appear and show cause, if any there be, why the employer should not be required to obtain workers' compensation insurance and/or pay the penalty assessed. A copy of the February 24, 2006 Order and Notice of Hearing was sent both certified mail and first-class mail. The certified mail was delivered on February 28, 2006, as evidenced by the signed receipt.

On April 3, 2006, the Employer appeared by and through its attorney, Phillip Green, and requested that the hearing scheduled for April 12, 2006 be continued until April 18, 2006. On April 12, 2006, the Commission was notified that the Employer had retained new counsel. At the request of the new attorney, the hearing was rescheduled to April 27, 2006. On April 27, 2006, the hearing was rescheduled to May 11, 2006, due to a scheduling conflict.

Prior to the hearing, the Compliance Division and the Employer reached a settlement in connection with this matter and recommended the agreement be approved. Pursuant to the terms of the agreement of May 10, 2006, the Employer would procure and maintain Workers' Compensation coverage for it's

employees, pay all adjudicated claims during the period of non-coverage, and be monitored for compliance with the agreement and appropriate law. In exchange, the fine of \$10,000.00 would be suspended pending full compliance for a period of two years.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

- 1) The Arkansas Workers' Compensation Commission has jurisdiction in this matter.
- 2) The City of Gould has failed to secure the payment of compensation for its employees as required under Arkansas Law.
- 3) The aforementioned Employer has been in violation of the law for sufficient time after notification of non-compliance to warrant a statutory penalty pursuant to Ark. Code Ann. §11-9-406(b)(1)-(b)(5).

### **DISCUSSION**

Arkansas Code Ann. § 11-9-406(a) (Repl.2002) provides:

Any employer required to secured the payment of compensation under this chapter who fails to secure compensation shall be subject to a fine of up to Ten Thousand Dollar (\$10,000.00) as determined by the Workers' Compensation Commission, payable to the Death and Permanent Total disability Trust Fund, or be guilty of a Class D Felony. This sub-section shall not affect any other liability of the employer under this Act.

Ark. Code Ann. §14-60-101, et seq., provides, in pertinent part, as follows:

“(a) All municipalities shall be required to provide workers' compensation coverage for their officials, employees, and volunteer fire fighters.”

Ark. Code Ann. § 11-9-102(1) (Repl. 2002) defines the payment of compensation under this chapter. It states:

Every employer shall secure the payment of compensation under this chapter:

- (1) By insuring and keeping insured the payment of the compensation with any carrier authorized to write Workers' Compensation Insurance;
- (2) By furnishing satisfactory proof to the commission of his financial ability to pay compensation and receiving an authorization from the Commission to pay compensation directly.

Ark. Code Ann. § 11-9-102(1) (Repl.2002) defines carrier as follows:

'Carrier' means any stock company, mutual company, or reciprocal or interinsurance exchange authorized to write or carry on the business of Workers' Compensation Insurance in this state; whether required by the context, the term 'carrier' shall deemed to include duly qualified self-insured or self-insured groups.

This Employer has at all times had the requisite number of employees necessary to require workers' compensation coverage for its employees. It has been previously held by this Commission that employers are subject to a One Thousand Dollar (\$1,000.00) a day penalty for failure to secure workers' compensation insurance. The Commission held that an employer can be subject to the maximum statutory penalty if it remains uninsured for more than ten (10) days. See, *In re Valu Line Company, Inc.*, 1995 AWCC 70, Full Workers' Compensation Commission Opinion filed March 16, 1995, (Employer #00089148).

After full consideration of the facts, issues, and the law, and acting within the sound discretion permitted for a hearing official, I have elected to approve

the recommended settlement and to set aside and hold in abeyance the imposition of the full statutory penalty, contingent upon the following:

- 1) That the Employer has secured and provided proof of Workers' Compensation coverage. The Compliance Division will continue to monitor the Employer to ensure that it provides coverage for its employees.
- 2) That the Employer will pay any valid claims which may be filed against it during the period of its non-compliance based upon any final determination and award, if any, to any of its employees.
- 3) That the Employer will pay all costs incurred in connection with this proceeding.

Conditioned on the compliance of all the aforementioned provisions, the Ten Thousand Dollar (\$10,000.00) penalty for non-compliance will be suspended for a period of two years. Failure to comply with all conditions may result in enforcement of the entire maximum statutory penalty.

**ORDER**

\_\_\_\_\_ Pursuant to Ark. Code Ann. §§ 11-9-406(a) and 14-60-101, the City of Gould has secured and provided satisfactory proof of Workers' Compensation coverage. The Compliance Division is directed to continue to monitor the employer to ensure that it continues to provide workers' compensation coverage for its employees. Any lapse of coverage will result in additional sanctions.

Employer will pay any valid claims which may be filed against it during the period of its non-compliance based upon any final determination and award, if any, to any of its employees. Conditioned on the compliance of all the aforementioned provisions, the Ten Thousand Dollar (\$10,000.00) penalty for non-compliance will be suspended for a period of two years. Failure to comply with all conditions may result in enforcement of the entire maximum statutory penalty.

In the event that the Employer fails to comply with the provisions of this Order, this Commission may assess and enforce the full statutory penalties for non-compliance allowable by law and petition the Circuit Court of Pulaski, Arkansas for an order enjoining the Employer from engaging in further employment until such time as the Employer makes full payment of all civil penalties as provided by Arkansas Code Annotated §11-9-406(b)(6) (Repl.2002)

**IT IS SO ORDERED.**

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**HONORABLE BARBARA W. WEBB**  
**Administrative Law Judge**