

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

EMPLOYER NO. UE-2005-12-21

NEWMAN DELIVERY, INC.

OPINION AND ORDER FILED JANUARY 31, 2006

Proceeding before Administrative Law Judge Barbara W. Webb on January 31, 2006, at Little Rock, Pulaski County, Arkansas.

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

Employer appeared by and through its counsel, Mr. David Landis, Attorney at Law, Little Rock, Arkansas.

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 December 15, 2005, 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 June 16, 2005 Order and Notice of Hearing was sent both certified mail and first-class mail.

On December 23, 2005, the Employer appeared by and through his attorney, David Landis, and submitted a written request for hearing. On December 28, 2005, the hearing was rescheduled from January 18, 2006 until January 25, 2006. On January 20, 2006, the hearing scheduled for January 28, 2006 was rescheduled until March 8, 2006.

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, the Employer would maintain workers'

compensation coverage for its employees as reflected on the Certificate of Insurance dated 1/01/06, pay all adjudicated claims during the period of non-coverage, and be monitored for compliance with the agreement and appropriate law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

- 1) The Arkansas Workers' Compensation Commission has jurisdiction in this matter.
- 2) Newman Delivery, Inc. has procured a workers' compensation policy effective January 6, 2006 until January 6, 2007, and provided proof of coverage to the Commission to secure the payment of compensation for its employees as required under Arkansas Law.
- 3) The Compliance Division of the Arkansas Worker's Compensation Commission contends that the aforementioned Employer was 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). The Employer contends that the insurance coverage provided by Protective Insurance Company has paid all compensation benefits due and owing to the claimant and is therefore in compliance with applicable law.

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.

Arkansas Code Annotated §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.

Arkansas Code Annotated §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. During the period of alleged non-compliance, the employer has had a workers' compensation claim filed against it by an alleged employee.

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 a statutory penalty, contingent upon the following:

- 1) Employer will maintain Workers' Compensation Insurance as evidenced by the ACORD Certificate of Insurance, effective 1/06/06 until 1/06/07, and in conformity with applicable Arkansas Law. The Compliance Division will continue to monitor the Employer to ensure that it provides coverage for its employees.
- 2) Employer will pay any valid claims which may be filed against it during the period of its alleged non-compliance (prior to January 6, 2006) 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. Failure to comply with all conditions may result in enforcement of the entire maximum statutory penalty.

ORDER

_____ Pursuant to Arkansas Code Annotated § 11-9-406(a), Newman Delivery, Inc. shall secure and provide proof of workers' compensation coverage beginning January 6, 2006, and continuing as required by applicable law. Further, the Compliance Division is directed to continue to monitor the employer to ensure that it continues to provide workers' compensation coverage for its employees. Employer shall pay any valid claims which may be filed against it during the period of its alleged non-compliance (prior to January 6, 2006) based upon any final determination and award, if any, to any of its employees. Any lapse of coverage or non-compliance with the provisions of this Order will result in additional sanctions.

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 County, Arkansas, for an order enjoining the employer from engaging in further employment until such time as the

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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 THIS 31st DAY OF JANUARY, 2006.

HONORABLE BARBARA W. WEBB
Administrative Law Judge