

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
IN THE MATTER OF

FILE NO. UE-2006-01-24

MICKEY WRIGHT, D/B/A
WRIGHT CONSTRUCTION

OPINION AND ORDER FILED MARCH 15, 2006

Proceeding before Administrative Law Judge Barbara Webb on March 14, 2006 at Little Rock, Pulaski County, Arkansas. Commission's Compliance Division appeared by and through its Compliance Investigator, Mr. Dale Bennett. Employer appeared *pro se*.

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 secure 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 January 26, 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) 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 January 26, 2006 Order and Notice of Hearing was sent both certified mail and first class mail. The certified mail was received by Mickey Wright on January 27, 2006, as evidenced by the return receipt. The copy sent first class mail was not returned. On February 8, 2006, the Employer appeared and submitted a written request for a hearing and advised the Commission that the Employer was no longer in business. In addition, the Employer states that he had no employees and would not have any in the future. Prior to the hearing, the Compliance Division and the Employer reached a settlement in connection with this matter and recommended the agreement be approved. This matter was set for a telephone conference on Tuesday, March 14, 2006 at 4:00 p.m. to discuss the

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proposed settlement. Pursuant to the terms of the agreement, the Employer agreed that he had ceased doing business. He further agreed that if he went back into business, he would abide by the applicable workers' compensation laws by securing workers' compensation insurance for his employees. He further agreed that he would pay all adjudicated claims during the period of non-coverage and be monitored for compliance with this agreement and appropriate law. In exchange, the original \$10,000 fine will be suspended.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this matter.
2. That Mickey Wright d/b/a Wright Construction 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

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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.

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. Mickey Wright has closed the business of Wright Construction and has become an employee paid by the hour for a general contractor. In the event

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that Mr. Wright resumes doing business, he will secure and provide proof of workers' compensation coverage for his employees as required by Arkansas law.

2. Mickey Wright d/b/a Wright Construction will pay any adjudicated and valid claims which may be filed against it during the period of its non-compliance to any of its employees.

Conditioned on the compliance of all of the aforementioned provisions, the \$10,000 penalty for non-compliance will be suspended. Failure to comply with all conditions may result in enforcement of the entire maximum statutory penalty.

ORDER

_____The settlement agreement reached between Mickey Wright and the Compliance Division is approved.

Mickey Wright ceased doing business as Wright Construction as of February 6, 2006. In the event Mickey Wright resumes doing business, he shall secure and provide proof of workers' compensation coverage for any employees as required by Arkansas Law.

Further, Employer will pay any valid claims which may be filed against it during the period of its non-compliance, based upon any final determination or award,

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if any, to any of its employees (i.e., from its inception in 1988 through February 6, 2006).

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 further petition the Circuit Court of Pulaski County, 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.

HONORABLE BARBARA WEBB
Administrative Law Judge