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FILED

SEP 28 2009

Chief Financial Officer
Docketed by: BAB

REPRESENTING
ALEX SINK
CHIEF FINANCIAL OFFICER
STATE OF FLORIDA

FILED
2009 SEP 29 A 10:35
DIVISION OF
ADMINISTRATIVE
HEARINGS

IN THE MATTER OF:

SHANE MCNEAL, D/B/A LABRADOR
CONSTRUCTION CO. OF NORTH
CAROLINA

Case Number: 94965-09-WCE

FINAL ORDER

THIS PROCEEDING came on for final agency action and Alex Sink, Chief Financial Officer of the State of Florida, or her designee, having considered the record in this case, including the Stop-Work Order and Order of Penalty Assessment, the Amended Order of Penalty Assessment and the Second Amended Order of Penalty Assessment served in Division of Workers' Compensation Case No. 07-044-1A, and being otherwise fully advised in the premises, hereby finds that:

1. On January 25, 2007, the Department of Financial Services, Division of Workers' Compensation (hereinafter "Department") issued a Stop-Work Order and Order of Penalty Assessment in Division of Workers' Compensation Case No. 07-044-1A to SHANE MCNEAL, D/B/A LABRADOR CONSTRUCTION CO. OF NORTH CAROLINA.

2. On February 15, 2007, the Department issued an Amended Order of Penalty Assessment to SHANE MCNEAL, D/B/A LABRADOR CONSTRUCTION CO. OF NORTH CAROLINA in Case No. 07-044-1A. The Amended Order of Penalty Assessment assessed a total penalty of \$173,512.42 against SHANE MCNEAL, D/B/A LABRADOR CONSTRUCTION CO. OF NORTH CAROLINA.

3. On March 26, 2008, both the Stop-Work Order and Order of Penalty Assessment and the Amended Order of Penalty Assessment were served by process server on SHANE MCNEAL, D/B/A LABRADOR CONSTRUCTION CO. OF NORTH CAROLINA. Copies of the Stop-Work Order and Order of Penalty Assessment and the Amended Order of Penalty Assessment are attached hereto as "Exhibit A" and "Exhibit B," respectively, and incorporated herein by reference.

4. On April 2, 2008, SHANE MCNEAL, D/B/A LABRADOR CONSTRUCTION CO. OF NORTH CAROLINA filed a petition requesting an administrative review with the Department. The Department forwarded the petition to the Division of Administrative Hearings on April 15, 2008, and the matter was assigned DOAH Case No. 08-1922.

5. On May 2, 2008, the Department served its discovery request on SHANE MCNEAL, D/B/A LABRADOR CONSTRUCTION CO. OF NORTH CAROLINA, which included interrogatories, requests for admissions, and requests for production. Responses or objections to the discovery were required to be served on the Department within thirty days. SHANE MCNEAL, D/B/A LABRADOR CONSTRUCTION CO. OF NORTH CAROLINA failed to respond to the discovery request within thirty days.

6. On June 18, 2008, the Department filed a Motion to Deem Matters Admitted and Motion to Dismiss.

7. On July 2, 2008, the Honorable Suzanne F. Hood, the Administrative Law Judge, entered an Order Deeming Matters Admitted and an Order Closing File which relinquished jurisdiction of the case to the Department. A copy of the Order Closing File is attached hereto as "Exhibit C" and incorporated herein by reference.

8. Subsequently, the Department referred the matter for an informal proceeding pursuant to section 120.57(2), Florida Statutes, and designated Donald A. Dowdell as the

Hearing Officer. The matter was assigned Case No. 97770-08-WC, and the Hearing Officer issued a Notice of Assignment and Order for a 120.57(2) Proceeding on November 7, 2008.

9. On January 13, 2009, the Department filed a Motion in Limine and Motion to Take Judicial Notice in which the Department requested that the Hearing Officer instruct the parties that, pursuant to section 120.57(1)(i), Florida Statutes, no disputed issues of material fact could be asserted in the informal proceeding.

10. On January 15, 2009, the Hearing Officer entered an Order Denying Department's Motion in Limine and Requiring Proffer. The Order required SHANE MCNEAL, D/B/A LABRADOR CONSTRUCTION CO. OF NORTH CAROLINA to file a written submission identifying witnesses to be called and facts to be elicited from each witness.

11. On January 30, 2009, SHANE MCNEAL, D/B/A LABRADOR CONSTRUCTION CO. OF NORTH CAROLINA filed the required written submission, and on February 10, 2009, the Department filed a Response to Proffer of Evidence and Motion to Relinquish Jurisdiction to the Division of Administrative Hearings. On February 12, 2009, the Hearing Officer granted the Department's Motion to Relinquish Jurisdiction to the Division of Administrative Hearings and entered an Order Closing File which directed the Department to transfer the matter back to the Division of Administrative Hearings for a formal proceeding pursuant to section 120.57(1), Florida Statutes. A copy of the Order Closing File is attached hereto as "Exhibit D" and incorporated herein by reference.

12. Pursuant to the Hearing Officer's Order Closing File, the matter was forwarded to the Division of Administrative Hearings on April 9, 2009, and was assigned DOAH Case No. 09-1796.

13. On May 22, 2009, the Department served another discovery request on SHANE MCNEAL, D/B/A LABRADOR CONSTRUCTION CO. OF NORTH CAROLINA, which

included interrogatories, requests for admissions, and requests for production. Responses or objections to the discovery were required to be served on the Department within thirty days. SHANE MCNEAL, D/B/A LABRADOR CONSTRUCTION CO. OF NORTH CAROLINA failed to respond to the discovery request within thirty days.

14. On May 28, 2009, the Department issued a Second Amended Order of Penalty Assessment to SHANE MCNEAL, D/B/A LABRADOR CONSTRUCTION CO. OF NORTH CAROLINA. The Second Amended Order of Penalty Assessment assessed a total penalty of \$188,288.48 against SHANE MCNEAL, D/B/A LABRADOR CONSTRUCTION CO. OF NORTH CAROLINA. A copy of the Second Amended Order of Penalty Assessment is attached hereto as "Exhibit E" and incorporated herein by reference.

15. On June 17, 2009, the Department filed a Motion to Amend Order of Penalty Assessment with the Division of Administrative Hearings. The Administrative Law Judge entered an Order Granting Motion to Amend Order of Penalty Assessment on June 30, 2009, which ordered the case proceed with the Second Amended Order of Penalty Assessment as the amended charging document. A copy of the Order Granting Motion to Amend Order of Penalty Assessment is attached hereto as "Exhibit F" and incorporated herein by reference.

16. On July 10, 2009, the Department filed a Motion to Compel Discovery. The Honorable Barbara J. Staros, the Administrative Law Judge, entered an Order Granting Motion to Compel on July 22, 2009, which required SHANE MCNEAL, D/B/A LABRADOR CONSTRUCTION CO. OF NORTH CAROLINA to serve responses to the requests for admission, interrogatories, and requests for production on or before August 14, 2009.

17. On August 25, 2009, the Department filed a Motion to Deem Matters Admitted and to Relinquish Jurisdiction Pursuant to Section 120.57(1)(i), Florida Statutes, with the Division of Administrative Hearings after SHANE MCNEAL, D/B/A LABRADOR

CONSTRUCTION CO. OF NORTH CAROLINA failed to respond to the discovery request by August 14, 2009.

18. On September 9, 2009, the Administrative Law Judge entered an Order Granting Motion to Relinquish Jurisdiction and Closing File which relinquished jurisdiction of the matter to the Department for final disposition. A copy of the Order Granting Motion to Relinquish Jurisdiction and Closing File is attached hereto as "Exhibit G" and incorporated herein by reference.

FINDINGS OF FACT

19. The factual allegations contained in the Stop-Work Order and Order of Penalty Assessment issued on January 25, 2007, the Amended Order of Penalty Assessment issued February 15, 2007, and the Second Amended Order of Penalty Assessment issued on May 28, 2009, which are fully incorporated herein by reference, are hereby adopted as the Department's Findings of Fact in this case.

CONCLUSIONS OF LAW

20. Based upon the Findings of Fact adopted herein, the Department concludes that SHANE MCNEAL, D/B/A LABRADOR CONSTRUCTION CO. OF NORTH CAROLINA violated the specific statutes and rules alleged in the Stop-Work Order and Order of Penalty Assessment, the Amended Order of Penalty Assessment, and the Second Amended Order of Penalty Assessment and hereby adopts the violation(s) charged in the Stop-Work Order and Order of Penalty Assessment, the Amended Order of Penalty Assessment, and the Second Amended Order of Penalty Assessment as the Conclusions of Law in this case.

PENALTY IMPOSED

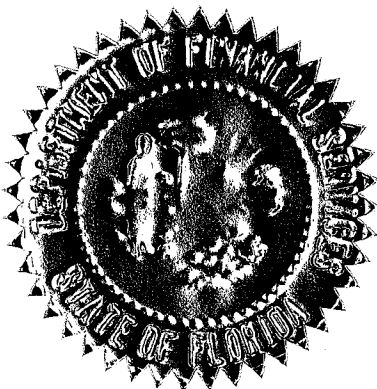
21. The dismissal of the petition for hearing submitted in reference to the Stop-Work Order and Order of Penalty Assessment, the Amended Order of Penalty Assessment, and the Second Amended Order of Penalty Assessment, taken together with the Findings of Fact and Conclusions of Law adopted herein, constitute grounds for the Chief Financial Officer to impose the penalty and order the cessation of business operations as set forth herein.

IT IS THEREFORE ORDERED that:

a. SHANE MCNEAL, D/B/A LABRADOR CONSTRUCTION CO. OF NORTH CAROLINA shall immediately pay the total penalty of \$188,288.48 in full to the Department of Financial Services for deposit into the Workers' Compensation Administration Trust Fund; and

b. SHANE MCNEAL, D/B/A LABRADOR CONSTRUCTION CO. OF NORTH CAROLINA shall immediately cease all business operations in the State of Florida until such time as the Department issues an order releasing the Stop-Work Order and Order of Penalty Assessment. The Department shall not issue an Order releasing the Stop-Work Order and Order of Penalty Assessment until SHANE MCNEAL, D/B/A LABRADOR CONSTRUCTION CO. OF NORTH CAROLINA has come into compliance with the coverage requirements of Chapter 440, Florida Statutes, and has paid the total penalty of \$188,288.48 to the Department.

DONE and ORDERED this 28th day of September, 2009.




BRIAN LONDON
DEPUTY CHIEF FINANCIAL OFFICER

NOTICE OF RIGHTS

Any party to these proceedings adversely affected by this Order is entitled to seek review of this Order pursuant to Section 120.68, Florida Statutes, and Florida Rule of Appellate Procedure 9.110. Review proceedings must be instituted by filing a Notice of Appeal with Tracey Beal, DFS Agency Clerk, Department of Financial Services, Room 612 Larson Building, 200 East Gaines Street, Tallahassee, Florida 32399-0390, and a copy of the Notice of Appeal, a copy of this Order and filing fee with the appropriate District Court of Appeal within thirty (30) days of rendition of this Order.

COPIES FURNISHED TO:

SHANE MCNEAL
LABRADOR CONSTRUCTION CO. OF NORTH CAROLINA
519 OCI DRIVE
JACKSONVILLE, NORTH CAROLINA 28540

JUSTIN FAULKNER
DEPARTMENT OF FINANCIAL SERVICES
DIVISION OF LEGAL SERVICES
200 EAST GAINES STREET
TALLAHASSEE, FLORIDA 32399-4229

HONORABLE BARBARA J. STAROS
DIVISION OF ADMINISTRATIVE HEARINGS
THE DESOTO BUILDING
1230 APALACHEE PARKWAY
TALLAHASSEE, FLORIDA 32399-3060

**STATE OF FLORIDA, DEPARTMENT OF FINANCIAL SERVICES
DIVISION OF WORKERS' COMPENSATION**

EMPLOYER NAME: SHANE MCNEAL DBA LABRADOR CONSTRUCTION CO OF NC		STOP-WORK ORDER No.: 07-044-1A
FEIN:		ISSUANCE DATE: 1/25/2007
EMPLOYER ADDRESS: 519 OCI DRIVE		
CITY: JACKSONVILLE	STATE: NC	ZIP: 28540
WORKSITE POSTING ADDRESS: 5344 W TENNESSEE STREET		
CITY: TALLAHASSEE	STATE: FL	ZIP: 32304
INDUSTRY OF EMPLOYER: <input checked="" type="checkbox"/> Construction <input type="checkbox"/> Non-construction <input type="checkbox"/> Agriculture		

STOP-WORK ORDER

Pursuant to section 440.107, F.S., the above-referenced Employer is hereby **ORDERED TO CEASE ALL BUSINESS OPERATIONS FOR ALL WORKSITES IN THE STATE** based on the following violation(s):

Failure to secure the payment of workers' compensation in violation of sections 440.10(1), 440.38(1), and 440.107(2) F. S., by:

- failing to obtain coverage that meets the requirements of chapter 440, F. S., and the Insurance Code;
- materially understating or concealing payroll;
- materially misrepresenting or concealing employee duties so as to avoid proper classification for premium calculations;
- materially misrepresenting or concealing information pertinent to the computation and application of an experience rating modification factor.

- Failure to produce required business records within 5 business days in violation of section 440.107(7)(a), F.S.
- Failure to produce required documents within 3 business days in violation of section 440.05(11), F.S.

THIS STOP-WORK ORDER MAY BE AMENDED TO INCLUDE ADDITIONAL VIOLATIONS AND SHALL REMAIN IN EFFECT UNTIL THE DIVISION ISSUES AN ORDER RELEASING THE STOP-WORK ORDER FOR ALL WORKSITES.

IF THE EMPLOYER CONDUCTS ANY BUSINESS OPERATIONS IN VIOLATION OF THIS STOP-WORK ORDER, A PENALTY OF \$1,000.00 PER DAY FOR EACH DAY OF VIOLATION SHALL BE ASSESSED.

ORDER OF PENALTY ASSESSMENT:

A penalty against the Employer is hereby **ORDERED** in an amount:

- Equal to 1.5 times the amount the employer would have paid in premium when applying approved manual rates to the employer's payroll during periods for which it failed to secure the payment of workers' compensation required by this chapter within the preceding 3-year period, or \$1,000, whichever is greater. Section 440.107(7)(d), F.S.
- Up to \$5,000 for each employee who the Employer misclassified as an independent contractor. Sections 440.10(1)(f) and 440.107(7)(f), F. S.

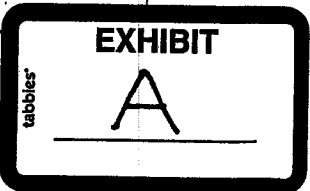
The penalty may be amended until a Final Order or an Order of Conditional Release from Stop-Work Order is issued. Pursuant to section 440.107(11), F.S., the Department may initiate lien proceedings to collect any penalty due that has not been paid. In addition, the Department may refer any unpaid penalty that is due to a collection agency for the initiation of proceedings to collect the unpaid penalty.

CERTIFICATE OF SERVICE

Pursuant to section 440.107(4), F.S., Louise Gwynette Turner, Compliance Investigator
(print name and title of server)

served a true copy of this Stop-Work Order:

- By posting at the Worksite: Date: 1/25/2007 Time: 2:08:20 PM Server: L G TURNER
- By hand delivery: Date: _____ Time: _____ Server: _____
- By certified mail: Date: 1/26/2007 Time: 9:30:20 AM Article: 7004 1350 0000 8767 2224



NOTICE OF RIGHTS

You, the Employer, have a right under sections 120.569 and 120.57, F.S., to initiate proceedings by filing a written petition for hearing.

If you dispute a material fact contained in this Stop-Work Order, you are entitled to a hearing under section 120.57(1), F.S., at which you may be represented by counsel, present evidence and argument on the issue(s), examine witnesses, submit a proposed recommended order, and file exceptions to the recommended order of the administrative law judge. If you do not dispute a material fact contained in this Stop-Work Order, you are entitled to a hearing under section 120.57(2), F.S., at which you may be represented by counsel, present documentary evidence, and present a written statement in opposition to this Stop-Work Order.

A petition for a hearing under section 120.57, F.S. must conform to rules 28-106.201(2) and 28-106.301(2), Florida Administrative Code. The petition shall contain a) the name and address of each agency affected and each agency's file or identification number, if known; b) the name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, and an explanation of how the petitioner's substantial interests will be affected by the agency determination; c) a statement of when and how the petitioner received notice of the agency decision; d) if you dispute a material fact, a statement of all disputed issues of material fact (if there are none, then the petition must so indicate), and if you do not dispute a material fact, a concise statement of ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action; e) a concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action; f) a statement of the specific rules or statutes the petitioner contends require a reversal or modification of the agency's proposed action; and g) a statement of the relief sought by the petition with respect to the agency's proposed action.

You must file a petition for hearing so that it is **received** by the Division at the address identified below, within twenty-one (21) days of receipt of this Stop-Work Order. **FAILURE TO FILE A PETITION FOR HEARING WITHIN THE TWENTY-ONE (21) DAYS OF RECEIPT OF THIS STOP-WORK ORDER CONSTITUTES A WAIVER OF YOUR RIGHT TO REQUEST A HEARING.**

Mediation under section 120.573, F.S., is not available.

ISSUING AGENCY NAME AND ADDRESS

Division of Workers' Compensation, Bureau of Compliance:

2012 CAPITAL CIRCLE SE

Attn: Louise Gwynette Turner, Compliance Investigator, Telephone: (850) 413-1837

EMPLOYER NAME: SHANE MCNEAL DBA LABRADOR CONSTRUCTION CO OF NC FEIN:	STOP-WORK ORDER No.: 07-044-1A ISSUANCE DATE: 2/15/2007
EMPLOYER ADDRESS: 519 OCI DRIVE CITY: JACKSONVILLE STATE: NC ZIP: 28540	

AMENDED ORDER OF PENALTY ASSESSMENT

The Division of Workers' Compensation issued a Stop-Work Order in this case on 1/25/2007. The Stop-Work Order included an Order of Penalty Assessment that identified the penalties assessable under sections 440.10 and 440.107, F.S. The Division hereby amends the Order of Penalty Assessment based on the following penalties:

- Failure to secure the payment of workers' compensation within the meaning of section 440.107(2), F.S., by:
 - failing to obtain coverage that meets the requirements of Chapter 440, F.S., and the Insurance Code;
 - materially understating or concealing payroll;
 - materially misrepresenting or concealing employee duties so as to avoid proper classification for premium calculations;
 - materially misrepresenting or concealing information pertinent to the computation and application of an experience rating modification factor.

For such violation(s) the Employer is assessed a penalty of \$ 173,512.42 (section 440.107(7)(d), F.S.) as detailed in the attached PENALTY WORKSHEET, which is incorporated herein by reference;

Conducting business operations in violation of the Stop-Work Order as detailed in the attached PENALTY WORKSHEET, which is incorporated herein by reference, for which the Employer is assessed a penalty of \$ _____ (section 440.107(7)(c), F.S.);

Misrepresenting the status of the employee(s) as an independent contractor(s), as detailed on the attached PENALTY WORKSHEET, which is incorporated herein by reference, for which the Employer is assessed a penalty of _____ (section 440.10(1)(f), F.S.).

It is hereby ORDERED that the Employer is assessed a TOTAL PENALTY of \$ 173,512.42

The penalties assessed herein supersede any penalties previously assessed in this case. The Employer shall pay the TOTAL PENALTY by money order or cashier's check, made payable to the DFS-Workers' Compensation Administration Trust Fund.

The Stop-Work Order issued in this case shall remain in effect until either (a) The Division issues an order releasing the Stop-Work Order upon finding that the employer has come into compliance with the coverage requirements of the workers' compensation law and pays the total penalty in full, or (b) The Division issues an Order of Conditional Release From Stop-Work Order pursuant to the employer coming into compliance with the coverage requirements of the workers' compensation law and entering into a Payment Agreement Schedule For Periodic Payment of Penalty.

Pursuant to section 440.107(11), F.S, the Department may initiate lien proceedings to collect any penalty due that has not been paid. In addition, the Department may refer any unpaid penalty that is due to a collection agency for the initiation of proceedings to collect the unpaid penalty.

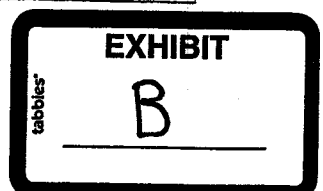
CERTIFICATE OF SERVICE

Pursuant to section 440.107(4), F.S., LOUISE GWYNETTE TURNER, Compliance Investigator
(print name and title of server)

served a true copy of this Amended Order of Penalty Assessment:

By hand delivery: Date: _____; Time: _____; Server: _____

By certified mail: Date: 2/15/2007; Time: 3:15:27 PM; Article: 7004135000087672002



NOTICE OF RIGHTS

You, the Employer, have a right under sections 120.569 and 120.57, F.S., to initiate proceedings by filing a written petition for hearing.

If you dispute a material fact contained in this Amended Order of Penalty Assessment, you are entitled to a hearing under section 120.57(1), F.S., at which you may be represented by counsel, present evidence and argument on the issue(s), examine witnesses, submit a proposed recommended order, and file exceptions to the recommended order of the administrative law judge. If you do not dispute a material fact contained in this Amended Order of Penalty Assessment, you are entitled to a hearing under section 120.57(2), F.S., at which you may be represented by counsel, present documentary evidence, and present a written statement in opposition to this Amended Order of Penalty Assessment.

A petition for a hearing under section 120.57, F.S. must conform to rules 28-106.201(2) and 28-106.301(2), Florida Administrative Code. The petition shall contain a) the name and address of each agency affected and each agency's file or identification number, if known; b) the name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, and an explanation of how the petitioner's substantial interests will be affected by the agency determination; c) a statement of when and how the petitioner received notice of the agency decision; d) if you dispute a material fact, a statement of all disputed issues of material fact (if there are none, then the petition must so indicate), and if you do not dispute a material fact, a concise statement of ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action; e) a concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action; f) a statement of the specific rules or statutes the petitioner contends require a reversal or modification of the agency's proposed action; and g) a statement of the relief sought by the petition with respect to the agency's proposed action.

You must file a petition for hearing so that it is **received** by the Division at the address identified below, within twenty-one (21) days of receipt of this Amended Order of Penalty Assessment. **FAILURE TO FILE A PETITION FOR HEARING WITHIN THE TWENTY-ONE (21) DAYS OF RECEIPT OF THIS AMENDED ORDER OF PENALTY ASSESSMENT CONSTITUTES A WAIVER OF YOUR RIGHT TO REQUEST A HEARING.**

Mediation under section 120.573, F.S., is not available.

ISSUING AGENCY NAME AND ADDRESS

Division of Workers' Compensation, Bureau of Compliance: _____
2012 CAPITAL CIRCLE SE TALLAHASSEE FLORIDA 32399-4288

Attn: LOUISE GWYNETTE TURNER, Compliance Investigator, Telephone: (850) 413-1837

State of Florida, Department of Financial Services
 Division of Workers' Compensation, Bureau of Compliance
 Penalty Worksheet

BUSINESS NAME: SHANE MCNEAL DBA LABRADOR CONSTRUCTION CO OF NC

DWC Case No. 07-044-1A

Part 1. Penalty for failure to obtain coverage that meets the requirements of Chapter 440, F.S. and the Insurance Code.

Employee Name	(a) Class Code	(b) Period of Non-Compliance	(c) Gross Payroll*	(d) Column /100	(e) Approved Manual Rate	(f) Premium (d) x (e)	(g) Penalty** (f) x 1.15
2ND UNK HISPANIC MALE	05645	01/01/2007	3,811.50	38.12	27.71	1,056.17	1,584.26
1ST UNK HISPANIC MALE	05645	01/01/2006	48,828.00	488.28	35.12	17,148.39	25,722.59
1ST UNK HISPANIC MALE	05645	01/01/2005	50,778.00	507.78	38.40	19,498.75	29,248.13
1ST UNK HISPANIC MALE	05645	01/01/2004	53,274.00	532.74	37.91	20,196.17	30,294.26
1ST UNK HISPANIC MALE	05645	01/01/2007	3,811.50	38.12	27.71	1,056.17	1,584.26
2ND UNK HISPANIC MALE	05645	01/01/2004	48,828.00	488.28	37.91	18,510.69	27,766.04
2ND UNK HISPANIC MALE	05645	01/01/2005	50,778.00	507.78	38.40	19,498.75	29,248.13
2ND UNK HISPANIC MALE	05645	01/01/2006	53,274.00	532.74	35.12	18,709.83	28,064.75
Part 1 Penalty Sub-Totals: ***			313,383.00			115,674.92	173,512.42

* If the employer has failed to provide business records sufficient to enable the Department to determine the employer's payroll, payroll shall be imputed to be the statewide average weekly wage as defined in s.440.12(2) F.S. multiplied by 1.5. (440.107(7)(e)).

** Premium multiplied by statutory factor of 1.5

*** Greater of penalty under column (g) or \$1000. s440.107(d)(1)

TOTAL PENALTY for Parts 1, 2, 3, 4, 5: \$173,512.42

RETURN OF SERVICE

Amended Order of Penalty Assessment and Penalty Worksheet

Case Number: 07 044 1A

Plaintiff:
STATE OF FLORIDA
vs.
Defendant:
SHANE MCNEAL

For:
CHIEF FINANCIAL OFFICER

Received by Process Service of America, Inc. on the 10th day of March, 2008 at 5:53 pm to be served on **SHANE MCNEAL, 519 OCI DRIVE, JACKSONVILLE, NC 28540**. I, K W Plume, do hereby affirm that on the 26 day of March, 2008 at 1640 p.m., executed service by delivering a true copy of the **Amended Order of Penalty Assessment and Penalty Worksheet** in accordance with state statutes in the manner marked below:

PUBLIC AGENCY: By serving Shane Mcneal as owner of the within-named agency.

SUBSTITUTE SERVICE: By serving _____ as _____

CORPORATE SERVICE: By serving _____ as _____

OTHER SERVICE: As described in the Comments below by serving _____ as _____

NON SERVICE: For the reason detailed in the Comments below.

COMMENTS: _____

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made. Pursuant to Florida Statute 92.525 and under penalty of perjury, I declare that the facts set forth are true and correct, executed on March 26, 08

KWR (KWPLume)

PROCESS SERVER # 2409
Appointed in accordance
with State Statutes

Process Service of America, Inc.
P.O. Box 5848
Tallahassee, FL 32314-5848
(850) 877-9809

Our Job Serial Number: 2008006737

34

3-24-08

39

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SHANE MCNEAL, d/b/a LABRADOR)
CONSTRUCTION CO. OF NORTH)
CAROLINA,)
)
Petitioner,)
)
vs.) Case No. 08-1922
)
DEPARTMENT OF FINANCIAL)
SERVICES, DIVISION OF WORKERS')
COMPENSATION,)
)
Respondent.)
)

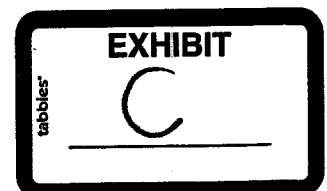
ORDER CLOSING FILE

On January 25, 2007, Respondent issued a Stop-Work Order, alleging that Petitioner had failed to secure payment of worker's compensation in violation of Sections 440.10(1), 440.38(1), and 440.107(2), Florida Statutes. On February 15, 2007, Respondent issued an Amended Order of Penalty Assessment, alleging that Petitioner had failed to obtain coverage that meets the requirements of Chapter 440, Florida Statutes, and the Insurance Code.

By letter dated March 27, 2008, Petitioner requested a formal administrative hearing to contest the above referenced Amended Penalty Assessment.

On April 15, 2008, Respondent referred the case to the Division of Administrative Hearings. A Notice of Hearing by Video Teleconference dated May, 7, 2008, scheduled the hearing for July 2, 2008,

On May 2, 2008, Respondent served, by overnight delivery, its First Interlocking Discovery Request, including request for admissions. The subject matter related in the request for admissions addressed the facts and circumstances in association with the Stop-Work Order and Amended Order of Penalty Assessment. The request clearly stated that failure by Petitioner to respond or object to a request for admission in



writing within 30 days from service would result in that matter being conclusive admitted pursuant to Florida Rule of Civil Procedure 1.370.

On June 18, 2008, Respondent filed a Motion to Deem Matters Admitted and Motion to Dismiss. (The Motion to Deem Matters Admitted is resolved in an order entered contemporaneously herewith.

The Motion to Dismiss is premised upon those facts established through matters deemed admitted in accordance with Florida Rule of Civil Procedure 1.370. As a consequence, the motion alleges that no disputes of material fact remain to be resolved. See § 120.57(1)(i), Fla. Stat.

Upon consideration, it is

ORDERED:

1. No genuine issue of material fact exists to be resolved.
2. The file of the Division of Administrative Hearings is closed.
3. Jurisdiction of the case is relinquished to Respondent for disposition.

DONE AND ORDERED this 2nd day of July, 2008, in Tallahassee, Leon County, Florida.

Suzanne F. Hood

SUZANNE F. HOOD
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 2nd day of July, 2008.

COPIES FURNISHED:

Kristian E. Dunn, Esquire
Department of Financial Services
Division of Workers' Compensation
200 East Gaines Street
Tallahassee, Florida 32399-4229

Anthony B. Miller, Esquire
Department of Financial Services
Division of Workers' Compensation
200 East Gaines Street
Tallahassee, Florida 32399-4229

Shane McNeal
Labrador Construction Co. of North Carolina
519 OCI Drive
Jacksonville, North Carolina 28540

IN THE MATTER OF:

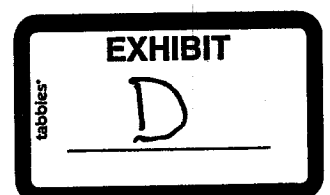
CASE NO. 97770-08-WC

SHANE MCNEAL D/B/A
LABRADOR CONSTRUCTION OF NORTH CAROLINA

ORDER CLOSING FILE

On January 25, 2007, a Department compliance investigator issued a Stop Work Order and Order of Penalty Assessment to the Petitioner, Shane McNeal d/b/a Labrador Construction Co Of North Carolina. The Department entered an Amended Order of Penalty Assessment on February 15, 2007. In a letter dated March 27, 2008, the Petitioner requested an administrative review of the Department action and the matter was referred to the Division of Administrative Hearings(DOAH) for the conduct of a formal administrative hearing pursuant to the provisions of Section 120.57(1), Florida Statutes. The Petitioner's request for an administrative hearing indicated that he had subcontracted all work at the construction site in question to another person, that he had no employees at that construction site and that he did not employ any Hispanic men.

In the DOAH proceeding the Department served a discovery request including requests for admissions on the Petitioner. The Department discovery request contained a statement indicating that failure to respond or object to the requests for admission within thirty days of service would result in the matter being conclusively admitted in accordance with the provisions of Rule 1.370, Florida Rules of Civil Procedure. The Petitioner did not file a timely response to the Department Discovery Request and on June 18, 2008, the Department filed a Motion to Deem Matters Admitted and a Motion to Dismiss in the DOAH proceeding. Following a hearing on the Department Motions, on July 2, 2008, the Administrative Law Judge entered an Order granting the Motion to Deem Matters Admitted as well as Order Closing File which relinquished



jurisdiction to the Department. The Department then provided Petitioner with a point of entry for an informal administrative proceeding, and as a result the current informal administrative proceeding was initiated.

In this informal administrative proceeding the Department filed a Motion In Limine and Motion to Take Judicial Notice in which the Department requested that the assigned Hearing Officer instruct the parties that, pursuant to the provisions of Section 120.57(1)(i), Florida Statutes, no disputed issues of material fact could be asserted in the informal proceeding.

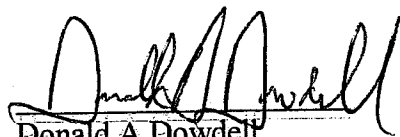
On January 15, 2009, the undersigned Hearing Officer entered an Order Denying Department's Motion In Limine and Requiring Proffer. That Order concluded that disputed issues of material fact had been raised in the formal administrative proceeding because Petitioner's request for an administrative proceeding asserted that it did not have any employees at the construction site where the Department had determined violations of Chapter 440, Florida Statutes, were presented. That Order further concluded that due to the imprecise wording of the requested admissions, even if those facts were deemed admitted, unresolved disputed issues of material fact remained to be resolved in the administrative proceeding. As a result the Order required the Petitioner to file a written submission identifying the witnesses it intended to call and the intended facts to be elicited from each witness.

The Petitioner filed the required written submission and on February 10, 2009, the Department timely filed its Response to the proffer and Motion to Relinquish Jurisdiction to the Division of Administrative Hearings. In its Motion to Relinquish Jurisdiction the Department indicated that based upon the January 15, 2009 Order, and the Petitioner's written submission filed in response thereto, issues of material fact exist in this proceeding. The Department Motion further argues that pursuant to the provisions of Section 120.569(1), Florida Statutes, this

informal administrative proceeding should be terminated and a proceeding under Section 120.57(1), Florida Statutes should be conducted.

Based upon a review of the Department Motion and the provisions of Section 120.569(1), Florida Statutes, the Department Motion is granted. This informal administrative proceeding is concluded and the Hearing Officer's file in this proceeding is closed. The Department is directed to transfer this proceeding back to the Division of Administrative Hearings for the conduct of a formal administrative hearing pursuant to Section 120.57(1), Florida Statutes.

DONE and ORDERED this 12th day of February, 2009 in Tallahassee, Florida.



Donald A Dowdell
Hearing Officer
Department of Financial Services
2124 Deerfield Drive
Tallahassee, Florida 32308

Copies furnished to:
Shane McNeal
Justin Faulkner, Esq.

STATE OF FLORIDA, DEPARTMENT OF FINANCIAL SERVICES
DIVISION OF WORKERS' COMPENSATION

EMPLOYER NAME: Shane McNeal DBA Labrador Construction Co of NC	STOP-WORK ORDER No.: 07-044-1A
FEIN: 379784873	ISSUANCE DATE: 5/28/2009
EMPLOYER ADDRESS: 519 Oci Drive	
CITY: Jacksonville	STATE: NC ZIP: 28540

2nd **AMENDED ORDER OF PENALTY ASSESSMENT**

The Division of Workers' Compensation issued a Stop-Work Order against the above-referenced Employer on 1/25/2007. The Stop-Work Order included an Order of Penalty Assessment that identified the penalties assessable under sections 440.10 and 440.107, F.S.

Based upon Penalty Calculation Corrected, the Division hereby amends the Amended Order of Penalty Assessment issued on 2/15/2007 and assesses the penalty(s) as specified in the Penalty Worksheet, which is attached hereto and made a part hereof.

It is **ORDERED** that the Employer is hereby assessed a TOTAL PENALTY of \$ 188,288.48.

The penalty(s) assessed herein supersedes any penalty(s) previously assessed in this case. The Employer shall pay the TOTAL PENALTY by money order or cashier's check, made payable to the **DFS-Workers' Compensation Administration Trust Fund**, or enter into a Payment Agreement Schedule for Periodic Payment of Penalty with the Division of Workers' Compensation.

If the total penalty assessed in this Amended Order of Penalty Assessment is less than the total penalty assessed in the Amended Order of Penalty Assessment issued on 2/15/2007 the Division will mail a refund in the amount of the difference to the Employer.

Pursuant to section 440.107(11), F.S., the Department may initiate lien proceedings to collect any penalty due that has not been paid. In addition, the Department may refer any unpaid penalty that is due to a collection agency for the initiation of proceedings to collect the unpaid penalty.

Please see the Notice of Rights on the reserve side that pertains to your rights regarding this action.

CERTIFICATE OF SERVICE

Pursuant to section 440.107(4), F.S., Torry McClellan, Compliance Investigator
(print name and title of server)

served a true copy of this 2nd Amended Order of Penalty Assessment:

By personal service: Date: _____; Time: _____; Server: _____

By certified mail: Date: _____; Time: _____; Article: _____



NOTICE OF RIGHTS

You have a right to administrative review of this action by the Department under Sections 120.569 and 120.57, Florida Statutes.

To obtain review, you must file a written petition requesting review. If you dispute a material fact contained in this action, you are entitled to a hearing under Section 120.569 and 120.57(1), Florida Statutes, at which you may be represented by counsel, present evidence and argument on the issue(s), examine witnesses, submit a proposed recommended order, and file exceptions to the recommended order of the Administrative Law Judge. If you do not dispute a material fact contained in this action, you are entitled to a hearing under section 120.57(2), Florida Statutes, at which you may be represented by counsel, present documentary evidence, and present a written statement in opposition to this action.

A petition for a hearing under Section 120.569 and 120.57, Florida Statutes, must conform to rules 28-106.2015, Florida Administrative Code. The petition shall contain a) the name, address, and telephone number, and facsimile number (if any) of the petitioner; b) the name, address, and telephone number, and facsimile number of the attorney or qualified representative of the petitioner (if any) upon whom service of pleadings and other papers shall be made; c) a statement requesting an administrative hearing identifying those material facts that are in dispute. If there are none, the petition must so indicate; d) a statement of when the petitioner received notice of the agency action; and e) a statement including the file number to the agency action;

You must file the petition for hearing so that it is received by the Department within twenty-one (21) days of your receipt of this agency action. The petition must be filed with the General Counsel acting as the Agency Clerk, Department of Financial Service, 612 Larson Building, 200 East Gaines Street, Tallahassee, Florida 32399-0333. **FAILURE TO FILE A PETITION FOR HEARING WITHIN THE TWENTY-ONE (21) DAYS CONSTITUTES A WAIVER OF YOUR RIGHT TO ADMINISTRATIVE REVIEW OF THE AGENCY ACTION.**

Mediation under section 120.573, Florida Statutes, is not available.

ISSUING AGENCY NAME AND ADDRESS

Division of Workers' Compensation, Bureau of Compliance: _____

2012 Capital Circle SE, Tallahassee, Florida 32399-4288

Attn: Torry McClellan, Compliance Investigator _____, Telephone: (850) 413-1837

State of Florida, Department of Financial Services
 Division of Workers' Compensation, Bureau of Compliance
 Penalty Worksheet

BUSINESS NAME: SHANE MCNEAL DBA LABRADOR CONSTRUCTION CO OF NC

DWC Case No. 07-044-1A

Part 1. Penalty for failure to obtain coverage that meets the requirements of Chapter 440, F.S. and the Insurance Code									
Employee Name	Imputed	(a) Class Code	(b) Period of Non-Compliance	(c) Gross Payroll *	(d) Column /100	(e) Approved Manual Rate	(f) Premium (d) x (e)	(g) Penalty** (f) x 1.5	
EMPLOYEE # 1	✓	5645	01/26/2004 12/31/2004	52,903.71	529.04	37.91	20,055.80	30,083.70	
EMPLOYEE # 2	✓	5645	01/26/2004 12/31/2004	52,903.71	529.04	37.91	20,055.80	30,083.70	
EMPLOYEE # 1	✓	5645	01/01/2005 12/31/2005	56,627.14	566.27	38.40	21,744.82	32,617.23	
EMPLOYEE # 2	✓	5645	01/01/2005 12/31/2005	56,627.14	566.27	38.40	21,744.82	32,617.23	
EMPLOYEE # 1	✓	5645	01/01/2006 12/31/2006	56,627.14	566.27	35.12	19,887.45	29,831.18	
EMPLOYEE # 2	✓	5645	01/01/2006 12/31/2006	56,627.14	566.27	35.12	19,887.45	29,831.18	
EMPLOYEE # 1	✓	5645	01/01/2007 01/25/2007	3,878.57	38.79	27.71	1,074.75	1,612.13	
EMPLOYEE # 2	✓	5645	01/01/2007 01/25/2007	3,878.57	38.79	27.71	1,074.75	1,612.13	
Part 1 Penalty Sub-Totals: ***				340,073.12			125,525.64	188,288.48	

* If the employer has failed to provide business records sufficient to enable the Department to determine the employer's payroll, payroll shall be imputed to be the statewide average weekly wage as defined in s.440.12(2) F.S. multiplied by 1.5, (440.107(7)(e)).

** Premium multiplied by statutory factor of 1.5

*** Greater of penalty under column (g) or \$1000. s440.107(d)(1)

TOTAL PENALTY for Parts 1, 2, 3, 4, 5: \$188,288.48

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF FINANCIAL)
SERVICES, DIVISION OF)
WORKERS' COMPENSATION,)

Petitioner,)

vs.)

Case No. 09-1796)

SHANE MCNEAL, d/b/a)
LABRADOR CONSTRUCTION CO.)
OF NORTH CAROLINA,)

Respondent.)
_____)

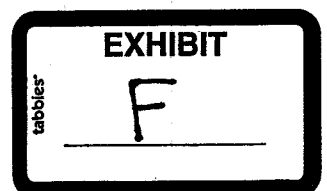
ORDER GRANTING MOTION TO AMEND ORDER OF PENALTY ASSESSMENT

This cause came before the undersigned on Petitioner's Motion to Amend Order of Penalty Assessment. The Motion states that Respondent objects to the Motion, but no response to the Motion was filed.

Having considered the Motion and having reviewed the file, it is

ORDERED:

Petitioner's Motion to Amend Order of Penalty Assessment is granted. The case will proceed with the Second Amended Order of Penalty Assessment as the amended charging document.



DONE AND ORDERED this 30th day of June, 2009, in
Tallahassee, Leon County, Florida.

Barbara J. Staros

BARBARA J. STAROS
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 30th day of June, 2009.

COPIES FURNISHED:

Justin H. Faulkner, Esquire
Department of Financial Services
Division of Legal Services
200 East Gaines Street
Tallahassee, Florida 32399

Shane McNeal
Labrador Construction Co.
of North Carolina
519 OCI Drive
Jacksonville, North Carolina 28540