

**FILED**

JUN 17 2011

001306



Chief Financial Officer  
Docketed by:                     

CHIEF FINANCIAL OFFICER  
JEFF ATWATER  
STATE OF FLORIDA

IN THE MATTER OF:

MARK DUNLAP, d/b/a MARK DUNLAP  
MASONRY OF CENTRAL FL, INC. A  
DISSOLVED FLORIDA CORPORATION AND  
MARK DUNLAP MASONRY OF CENTRAL FLORIDA, INC.

Case No. 10-007-D4-WC

**FILED**  
2011 JUN 20 PM 1:49  
DIVISION OF  
ADMINISTRATIVE  
HEARINGS

FINAL ORDER

THIS CAUSE came on for consideration of and final agency action on the Recommended Order rendered by Administrative Law Judge Lawrence P. Stevenson on March 22, 2011, subsequent to a hearing held on August 25, 2010, in Daytona Beach and Tallahassee, Florida. An exception was timely filed by the Division of Workers' Compensation (Division). No response to that exception was filed.

**RULINGS ON THE DIVISION'S EXCEPTIONS**

The Division's exception is directed to what it believes are misstatements of the law regarding the calculation of penalties in Paragraph 14 of the Recommended Order. The specific concern is that said paragraph makes it appear that the statewide average wage is found in the Scope's Manual, rather than by the State's own determination of that average. That concern is alleviated by the record testimony of the Division's penalty calculator who testified that the statewide weekly average is statutorily derived, after using the Scope's Manual to determine the classification of the work in question, and that in this case, because of the lack of employer's information, the penalty was calculated on an imputed payroll basis. (Tr. 40-41, 43-45.) To the extent that later

questioning (at Tr. 52) clouds that testimony, the latter is discredited as erroneous as a matter of law, but inconsequential to the outcome of this case.

The challenged statement in the Recommended Order does not state that the statewide weekly average is *found* in the Scope's Manual, but states that it is *derived* through the use of that manual. That is a correct statement. It is by using the Scope's Manual to determine the classification of work being performed by an employee, and then using the statewide average wage set forth in the State's own data base for that classification, that the penalty calculation is performed. Accordingly, the Division's exception, while not without some merit, is ultimately rejected.

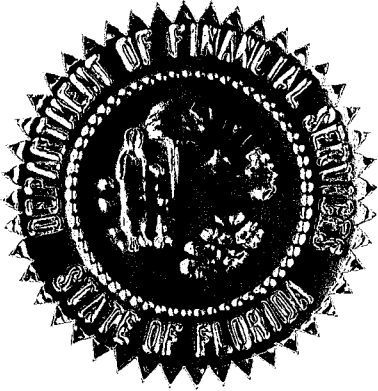
After review of the record, including the transcript of proceedings and admitted exhibits, and being otherwise fully apprised in all material premises,

IT IS HEREBY ORDERED that the ALJ's Findings of Fact and Conclusions of Law set forth in the Recommended Order are adopted as the Department's Findings of Fact and Conclusions of Law.

IT IS HEREBY FURTHER ORDERED that the Mark Dunlap Masonry of Central Florida, Inc. shall pay to the Department the assessed penalty of \$64,315.28 within 30 days from the date hereof, or enter into a Payment Agreement Schedule for Periodic Payment of Penalty with the Division of Workers' Compensation for the penalty imposed.

IT IS HEREBY FURTHER ORDERED that Mark Dunlap Masonry of Central Florida, Inc., shall cease all business operations unless and until she provides evidence satisfactory to the Division of Workers' Compensation of having now complied with the workers' compensation law by securing the necessary workers' compensation insurance coverage for covered employees and, pursuant to Section 440.107(7)(a), Florida Statutes, paying the civil penalty imposed herein.

DONE AND ORDERED this 17<sup>th</sup> day of June, 2011.



  
Robert C. Kneip  
Chief of Staff

#### 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 Rule 9.110, Fla. R. App. P. Review proceedings must be instituted by filing a petition or notice of appeal with Julie Jones, DFS Agency Clerk, at 612 Larson Building, Tallahassee, Florida, 32399-0390 and a copy of the same with the appropriate district court of appeal within thirty (30) days of rendition of this Order.

Copies to:

Mark Dunlap  
Justin H. Faulkner, Esquire. (For the Department)  
Lawrence P. Stevenson (ALJ)