

**FILED**

AUG 11 2011

**003131**



Chief Financial Officer  
Docketed by: UBB

CHIEF FINANCIAL OFFICER  
JEFF ATWATER  
STATE OF FLORIDA

**FILED**

2011 AUG 12 P 1:02

DIVISION OF  
ADMINISTRATIVE  
HEARINGS

IN THE MATTER OF:

DEREK EYRE  
\_\_\_\_\_ /

Case No. 10-209-D2-WC

FINAL ORDER

THIS CAUSE came on for consideration of and final agency action on the Recommended Order rendered by Administrative Law Judge Eleanor M. Hunter (ALJ) on May 13, 2011, subsequent to a hearing held on March 15, 2011, in Tallahassee and West Palm, Florida, via video teleconference. The Division of Workers' Compensation (division) timely filed exceptions to the Recommended Order.

**RULING ON THE DIVISION'S EXCEPTIONS**

The Division's first exception is directed to the ALJ's finding of fact that Mr. Eyre did not pay himself a salary. A review of the record shows that Mr. Eyre took irregular sums of money from the company at irregular times as his need for money arose. Such irregular payments do not necessarily constitute a salary, the standard dictionary definition of which is a fixed compensation for services paid on a regular basis. The evidence introduced by the Division to prove that the irregular sums of money should be considered a salary, and that those sums were properly calculated by the Division, was unpersuasive to the ALJ. As the record contains competent substantial evidence to support the ALJ's finding in this regard (Tr.38), the exception is rejected.

The Division's second exception is initially directed to Conclusion of Law 32, but also takes issue with underlying Findings of Fact 1, 19, and 24.

The Division does not fully explain the nature of its dispute with Finding of Fact 1, and instead, offers a substituted jurisdictional statement that would yield no real substantive difference. The Division's quarrel with Finding of Fact 19 returns to the basis for its first exception, which is rejected. Mr. Eyre's testimony that he did not pay himself a salary has support in the record. The last portion of the Division's second exception is directed to Finding of Fact 24, to the effect that Mr. Eyre "disputed the accuracy of DFS' calculations because he used funds from his account for both business and personal expenses for his family and himself." A review of the record shows that to have been Mr. Eyre's testimony (Tr. 38), which was not refuted by the Division or contradicted by any other evidence. The issue to be resolved is not whether Mr. Eyre took money from his company account that constituted compensation, but whether the Department proved that its penalty calculation of \$12,247.62 was correct. The ALJ, after hearing the evidence, concluded that the Department had not met this burden. Based upon the factual evidence unique to this case, the ALJ's conclusion is accepted.

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

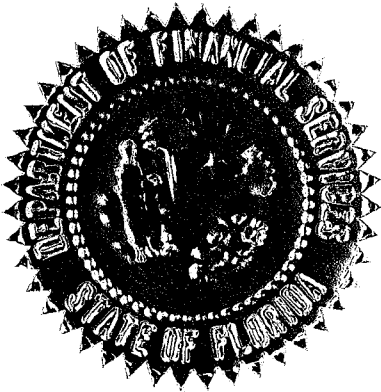
IT IS HEREBY ORDERED, based on the record evidence in this particular case, that the ALJ's Findings of Fact and Conclusions of Law set forth in the Recommended Order are adopted as the Department's Findings of Fact and Conclusions of Law.

IT IS HEREBY FURTHER ORDERED that the Stop-Work Order is affirmed and adopted, and that Derek Eyre shall pay the assessed penalty in the amount of

\$1000.00, pursuant to Section 440.107(7) (d) 1, Florida Statutes, to the Workers' Compensation Administration Trust Fund.

IT IS HEREBY FURTHER ORDERED that Derek Eyre shall cease all business operations unless and until it 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 11<sup>th</sup> day of August, 2011.



A handwritten signature in black ink, appearing to read "Robert C. Kneip". The signature is written over a horizontal line.

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:

Derek Eyre, Pro Se  
Paige Shoemaker, Esq. (For Petitioner)  
Eleanor M. Hunter (ALJ)