

FILED

MAY 25 2016

Chief Financial Officer
Docketed by: TRC



CHIEF FINANCIAL OFFICER
JEFF ATWATER
STATE OF FLORIDA

DEPARTMENT OF FINANCIAL SERVICES,
DIVISION OF WORKERS' COMPENSATION

Petitioner,

v.

DOAH CASE NO.: 15-3168
DWC CASE NO.: 15-038-D2-WC

BARGAIN BOB'S CARPETS, INC.,

Respondent.

FINAL ORDER

THIS CAUSE came on for entry of a final order. The recommended order finds respondent failed to secure workers' compensation insurance as required by chapter 440, Florida Statutes, but that the Department did not produce clear and convincing evidence to support portions of the Department's intended penalty of \$31,061.68. The administrative law judge (ALJ) recommended the Department recalculate the penalty.

The ALJ recommended the Department remove Mike Smith, Amber Krembs, Jacqueline Skwarek, and Monica Stahl from the penalty calculation. Although the ALJ found the Department applied incorrect class codes to these employees, the ALJ made no findings regarding the appropriate class codes. The Department is not authorized to reopen the record, receive additional evidence, or make additional findings. *Lawnwood Med. Ctr. v. Ag. for Health Care Admin*, 678 So. 2d 421 (Fla. 1st DCA 1996). As a result, \$607.11 is subtracted from the penalty.

The ALJ recommended the Department reclassify Andy Calideen to class code 8810. To calculate respondent's penalty for the period of January 24, 2013, to June 30, 2013, the \$24,737.65 gross payroll attributed to Andy Calideen is divided by 100, then multiplied by the approved manual rate of 0.27 for class code 8810, then multiplied by the penalty factor of two, to reach a penalty of \$133.58. Regarding the penalty period of July 1, 2013, to December 31, 2013, the Department did not introduce any evidence of the approved manual rate. Therefore, a penalty cannot be calculated for this period. *Lawnwood*. Regarding the penalty period of January 1, 2014, to December 31, 2014, the \$59,703.25 gross payroll attributed to Andy Calideen is divided by 100, then multiplied by the approved manual rate of 0.26 for class code 8810, then multiplied by the penalty factor of two, to reach a penalty of \$310.46. Regarding the penalty period of January 1, 2015, to January 23, 2015, the \$5,530.32 gross payroll imputed¹ to Andy Calideen based on the statewide average weekly wage² multiplied by two, is divided by 100, then multiplied by the approved manual rate of 0.25 for class code 8810, then multiplied by the penalty factor of two, to reach a penalty of \$27.65. Consequently, respondent is imposed a \$471.69 penalty for its failure to secure the payment of workers' compensation for its employee Andy Calideen between January 24, 2013, and January 23, 2015. As a result, \$796.27 is subtracted from the penalty.

The ALJ's "Recommendation" contains a transposition error. Although the ALJ recommended the Department reclassify Alexander Stark to NCCI class code 5784, there is no record evidence regarding class code 5784. Rather, there is competent substantial evidence relating to class code 5478. Consequently, the penalty is recalculated in accordance with the

¹ Pursuant to the methodology prescribed by section 440.107(7)(e), Florida Statutes, and Rule 69L-6.028, *Florida Administrative Code*.

² As defined by section 440.12(2)(b), Florida Statutes, and evinced by the Department's exhibit 9.

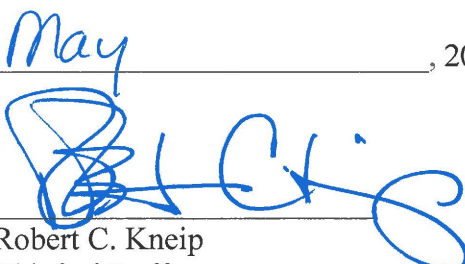
ALJ's recommendation in light of this clear transposition error. Regarding the penalty period of January 24, 2013, to June 30, 2013, the \$5,887.31 gross payroll attributed to Alexander Stark is divided by 100, then multiplied by the approved manual rate of 6.28 for class code 5478, then multiplied by the penalty factor of two, to reach a penalty of \$739.45. Regarding the penalty period of July 1, 2013, to December 31, 2013, the Department did not introduce any evidence of the approved manual rate. Therefore, a penalty cannot be calculated for this period. *Lawnwood*. Regarding the penalty period of January 1, 2014, to December 31, 2014, the \$13,310.43 gross payroll attributed to Alexander Stark is divided by 100, then multiplied by the approved manual rate of 5.51 for class code 5478, then multiplied by the penalty factor of two, to reach a penalty of \$1,466.81. Regarding the penalty period of January 1, 2015, to January 23, 2015, the \$5,530.32 gross payroll imputed to Alexander Stark based on the statewide average weekly wage multiplied by two, is divided by 100, then multiplied by the approved manual rate of 5.19 for class code 5478, then multiplied by the penalty factor of two, to reach a penalty of \$574.05. Consequently, respondent is imposed a \$2,780.31 penalty for its failure to secure the payment of workers' compensation for its employee Alexander Stark between January 24, 2013, and January 23, 2015. As a result, \$288.91 is added to the penalty.

The recommended order, except as modified herein, is approved and adopted.

Accordingly, a \$29,947.21 penalty is imposed against Bargain Bob's Carpets, Inc., for its failure to secure workers' compensation coverage.

DONE and ORDERED this 25th day of May, 2016.




Robert C. Kneip
Chief of Staff

NOTICE OF RIGHT TO APPEAL

A party adversely affected by this final order may seek judicial review as provided in section 120.68, Florida Statutes, and Florida Rule of Appellate Procedure 9.190. Judicial review is initiated by filing a notice of appeal with the Agency Clerk, and a copy of the notice of appeal, accompanied by the filing fee, with the appropriate district court of appeal. The notice of appeal must conform to the requirements of Florida Rule of Appellate Procedure 9.110(d), and must be filed (i.e., received by the Agency Clerk) within thirty days of rendition of this final order.

Filing with the Department's Agency Clerk may be accomplished via U.S. Mail, express overnight delivery, hand delivery, facsimile transmission, or electronic mail. The address for overnight delivery or hand delivery is Julie Jones, DFS Agency Clerk, Department of Financial Services, 612 Larson Building, 200 East Gaines Street, Tallahassee, Florida 32399-0390. The facsimile number is (850) 488-0697. The email address is Julie.Jones@myfloridacfo.com.

Copies furnished to:

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