

**STATE OF VERMONT
DEPARTMENT OF LABOR**

Workers' Compensation and Safety Division,
Petitioner

Docket No. 07-10WCPen

v.

By: Sal Spinosa, Esq.
Hearing Officer

Robert & Dolores Labrie d/b/a Friesians of Majesty,
Respondents

For: Valerie Rickert
Acting Commissioner

OPINION AND ORDER

Hearing held in Montpelier, Vermont on September 8, 2010
Record closed on October 29, 2010

APPEARANCES:

Rebecca Smith, Esq., for Petitioner
Robert and Dolores Labrie, *pro se*, Respondents

Mailed
State of Vermont
DEC 15 2010
Department of Labor
Workers' Compensation

ISSUES PRESENTED:

1. Did Respondents fail to secure workers' compensation insurance coverage for their employees during the period between July 17, 2009 and December 16, 2009 and if so, what administrative penalty should be assessed?
2. Did Respondents fail to timely and properly adjust an employee's workers' compensation claim during the above period, and if so, what administrative penalty should be assessed?

EXHIBITS:

Defendant's Exhibit 1: People's United Bank Complaint for Foreclosure
Defendant's Exhibit 2: Donald Chase Complaint of Foreclosure
Defendant's Exhibit 3: Co-Operative Insurance Notice of Policy Cancellation
Defendant's Exhibit 4: Sovereign Bank Notice of Complaint of Foreclosure

STIPULATED FACTS:

The parties have jointly stipulated to the following facts:

1. Robert and Dolores Labrie, doing business as Friesians of Majesty (hereinafter "Respondents"), did not have workers' compensation insurance between the dates of July 17, 2009 and December 16, 2009.
2. During this period, Respondents had one or more covered employees.

3. In approximately mid-November 2009 Respondents received a medical bill pertaining to treatment rendered to their employee, Alyson Dengler, on September 28, 2009.
4. In approximately mid-February 2010 Respondents received a second medical bill, this one pertaining to treatment rendered to Ms. Dengler on October 9, 2009.
5. Respondents paid both of these bills by checks written on April 21, 2010.
6. Respondents assert that they did not know it was a requirement that they carry workers' compensation insurance, and that they thought that if they did not do so they had the option to merely pay legitimate workers' compensation claims.
7. Respondents assert that they never believed that Ms. Dengler's workers' compensation claim was legitimate.

FINDINGS OF FACT:

8. I accept the parties' jointly stipulated facts as true.
9. Respondents own and operate a horse farm in Townshend, Vermont. They breed, raise and train some 45 to 60 Fresian horses. This is, at times, somewhat hazardous work. Respondents have been engaged in this business for nine years.
10. Respondents have financed their operation through mortgages on their farm property, their personal residence and a home they own in Massachusetts. Having defaulted on all three of these loans, in 2010 they received foreclosure notices on all three properties. They also are in arrears on property taxes owed to the Town of Townshend.
11. Respondents maintained workers' compensation insurance covering their employees until it was cancelled for non-payment of premium effective July 16, 2009.
12. Respondents continued to employ workers to operate their business from July 17, 2009 through December 16, 2009 but failed to maintain workers' compensation insurance coverage during this period, a total of 153 days. By doing so Respondents avoided approximately \$2,550.00 in workers' compensation insurance premium that they otherwise would have had to pay.
13. In 35 years of owning and operating both this and other businesses, Respondents had never before failed to maintain the required workers' compensation insurance coverage.
14. Respondents again secured workers' compensation insurance coverage effective December 17, 2009. Their current estimated annual premium is \$3,076.00.

15. On or about September 28, 2009 Alyson Dengler, an employee of the horse farm, notified Respondent Robert Labrie that she had sustained a cut to her forehead after a horse kicked her, and that she wanted to be evaluated medically. Later that same day, Ms. Dengler sought treatment at a medical center in Greenfield, Mass., where she received stitches. On October 9, 2009 Ms. Dengler sought additional treatment, and the stitches were removed.
16. Mr. Labrie did not believe Ms. Dengler's account of how the injury occurred.
17. Upon receiving the bill for Ms. Dengler's first treatment, Respondent Dolores Labrie wrote to the medical provider to contest the amount charged, as she thought it was excessive. She did not notify either Ms. Dengler or the Department of Labor that she was contesting the bill.
18. After being alerted by the Department of Labor to the existence of the Workers' Compensation Medical Fee Schedule, on April 21, 2010 Ms. Labrie paid both of Ms. Dengler's medical bills at the appropriate fee schedule rates.
19. Respondents did not file a First Report of Injury pertaining to Ms. Dengler's alleged September 28, 2009 injury until mid-December 2009. No evidence was introduced to establish whether or not they provided a copy of the First Report to Ms. Dengler.
20. At some point after her claimed injury Ms. Dengler sued Mr. Labrie for defamation, alleging that he had made comments to another employee about her illicit drug use. The combined cost of (a) defending that action; and (b) paying Ms. Dengler's medical bills has well exceeded any premium savings Respondents garnered by failing to maintain workers' compensation insurance coverage for the period in question.
21. On May 11, 2010 Petitioner issued an Administrative Citation and Penalty to Respondents in which it asserted various statutory violations and proposed penalties totaling \$6,250.00, computed as follows:
 - (a) For failing to maintain workers' compensation insurance coverage, a penalty of \$5,100.00, which approximates two times the amount of Respondents' premium avoidance during the period in question;
 - (b) For failing to pay, dispute or deny Ms. Dengler's medical bills within the prescribed time limit for doing so, a penalty of \$500.00 for each bill, or \$1,000.00;
 - (c) For failing to file a timely First Report of Injury with the Department of Labor, and for failing to provide Ms. Dengler with a copy of it once Respondents did so, penalties of \$100.00 and \$50.00 respectively.¹

¹ Petitioner has since withdrawn the proposed \$100.00 penalty for failure to timely file a First Report of Injury. The total penalty now proposed, therefore, is \$6,150.00.

22. Respondents filed a timely notice of contest and request for hearing.

CONCLUSIONS OF LAW:

1. According to Vermont's workers' compensation statute, unless an employer is approved to self-insure it must maintain workers' compensation insurance coverage for its employees. 21 V.S.A. §687.
2. As of the relevant dates in this proceeding, the statute provided that an employer who failed to comply with the requirements of §687 would be assessed an administrative penalty of not more than \$100.00 for each day that it neglected to secure and maintain coverage. 21 V.S.A. §692(a). The maximum penalty that could be imposed against Respondents here, therefore, is \$15,300.00.
3. An administrative penalty is mandatory in all instances in which an employer is determined to have violated the provisions of §687. *Workers' Compensation and Safety Division v. Darcy Hodgdon and Quick Fix Truck Parts, Inc.*, 171 Vt. 526, 529 (2000). Pursuant to Workers' Compensation Rule 45.5100, however, the Commissioner has discretion to reduce the amount of any penalty assessed if the employer demonstrates:
 - That failure to obtain or maintain insurance was inadvertent or the result of excusable neglect and was promptly corrected;
 - That the penalty amount exceeds the amount of any premium expenditures that would have been paid if a policy was properly obtained or maintained; or
 - That the small size of the employer and the non-hazardous nature of the employment presented minimal risk to employees.
4. I conclude that Respondents have failed to demonstrate sufficient mitigating circumstances to justify any reduction in the proposed penalty. Their failure to maintain insurance was calculated and intentional. The penalty amount, though more than the premium they avoided, is substantially less than the maximum allowed by statute. And the business in which they are engaged is undeniably hazardous.
5. I conclude that the proposed penalty of \$5,100.00 for failure to maintain insurance for the period in question is justified.

6. Vermont's workers' compensation statute provides for an administrative penalty of up to \$5,000.00 against an employer who fails to comply with the reasonable rules and regulations of the Department of Labor, or to adjust and pay compensation and medical bills as required. 21 V.S.A. §688. The Workers' Compensation Rules provide more specific guidance, including:
 - A mandatory \$50.00 penalty for an employer's failure to provide an employee with a copy of its First Report of Injury, *Workers' Compensation Rule 45.5510.1*; and
 - A \$500.00 penalty for "any administrative or technical violation not otherwise noted in this section," *Workers' Compensation Rule 45.5900*.
7. As no evidence was introduced to establish that Respondents failed to provide Ms. Dengler with a copy of their First Report of Injury, I conclude that the proposed \$50.00 penalty under Workers' Compensation Rule 45.5510.1 is unjustified.
8. I conclude that the \$1,000.00 penalty proposed on account of Respondents' failure to pay, dispute or deny Ms. Dengler's medical bills in a timely fashion is justified. The statute and rules clearly mandate a 30-day time frame within which to do so. 21 V.S.A. §640a; *Workers' Compensation Rule 40.021(C)*. Respondents admittedly did not comply.
9. Although I have sympathy for Respondents' unfortunate financial circumstances, I cannot excuse them from the consequences of their decision not to maintain the insurance coverage that the law deems necessary to protect their employees. Had Respondents kept their coverage in force, their insurance carrier would have been responsible for properly evaluating the compensability of Ms. Dengler's claim and if appropriate, properly paying her associated medical bills. They are accountable for the fact that this did not occur.

ORDER:

The May 11, 2010 Administrative Citation and Penalty is sustained with respect to the following violations:

- (a) For failure to maintain workers' compensation insurance coverage under 21 V.S.A. §687, a penalty of \$5,100.00 is imposed; and
- (b) For failure to pay, dispute or deny workers' compensation-related medical bills in accordance with 21 V.S.A. §640a and Workers' Compensation Rule 40.021(C), a penalty of \$500.00 per bill, or \$1,000.00 is imposed.

DATED at Montpelier, Vermont this 14 day of December 2010.


Valerie Rickert
Acting Commissioner

Appeal:

Within 30 days after copies of this opinion have been mailed, either party may appeal questions of fact or mixed questions of law and fact to a superior court or questions of law to the Vermont Supreme Court. 21 V.S.A. §§670, 672.