

**STATE OF VERMONT
DEPARTMENT OF LABOR**

Workers' Compensation and Safety Division,
Petitioner

v.

Paul Shortt,
Respondent

Docket No. 12-10WCPen

By: Sal Spinosa, Esq.
Hearing Officer

For: Valerie Rickert
Acting Commissioner

OPINION AND ORDER

Hearing held in Montpelier, Vermont on August 3, 2010
Record closed on September 30, 2010

APPEARANCES:

Rebecca Smith, Esq., for Petitioner
Paul Shortt, *pro se*, Respondent

ISSUE PRESENTED:

Whether Respondent's failure to return the "*Vermont Workers' Compensation Compliance Statement*" within the prescribed 30 days is a violation of 21 V.S.A. §690(b)(1) and, if so, what penalty should be ordered?

EXHIBITS:

Petitioner's Exhibit 1: VOSHA Data Sheet, March 9, 2010
Petitioner's Exhibits 2-4: Work site photos
Petitioner's Exhibit 5: Sample Vermont Workers' Compensation Compliance Statement
Petitioner's Exhibit 6: Return receipt form signed by Respondent, April 9, 2010
Petitioner's Exhibit 7: Business envelope sent by Respondent and received by the
Department of Labor on May 24, 2010
Petitioner's Exhibit 8: Executed Compliance Statement, May 20, 2010

FINDINGS OF FACT:

1. Respondent operates a roofing business based in Danby, Vermont. He is the sole owner.
2. On March 9, 2010 Respondent was working on a roofing project in Manchester, Vermont when a Vermont Occupational Safety and Health Administration (VOSHA) safety officer visited the work site. The safety officer discovered that

Respondent had no workers' compensation insurance covering his employees and contacted Petitioner.

3. Through one of its investigators, Petitioner attempted to contact Respondent. When the investigator's phone calls went unanswered he mailed a Vermont Workers' Compensation Compliance Statement to Respondent on April 1, 2010. A compliance statement seeks, through a series of inquiries, proof of workers' compensation coverage.
4. The cover letter to the compliance statement directed Respondent to return the compliance statement within 30 days of its receipt. Citing to the penalty provision of 21 V.S.A. §690(b)(2), it advised Respondent of a potential \$5,000.00 per week penalty in the event he failed to comply.
5. Respondent received the compliance statement on April 9, 2010, meaning that according to the cover letter it would have to be completed and returned no later than May 9, 2010. On May 14, 2010 the investigator called Respondent to inform him that the compliance statement had not been received and was overdue. At Respondent's direction, the investigator contacted Respondent's accountant, who eventually mailed in the completed compliance statement. It had been signed by Respondent on May 20, 2010 and was received by Petitioner on May 24, 2010, fifteen days after the purported deadline.
6. On June 23, 2010 Petitioner issued an Administrative Citation and Penalty against Respondent. In it, Petitioner imposed a \$5,000.00 monetary penalty against Respondent as a consequence of his failure to return the completed compliance statement within the time period Petitioner had specified.
7. At hearing Respondent admitted that he had no workers' compensation coverage for the workers at his work site. His accountant, who normally looks after Respondent's paper work, was inattentive due to family matters. In addition, Respondent explained his own serious emotional state since a September, 2009 car accident that took the life of his son and seriously injured his daughter. Since that time he had been treated for emotional issues and experienced difficulties tending to his own affairs. Respondent was extremely emotional at the hearing.

CONCLUSIONS OF LAW:

1. 21 V.S.A. §690(b)(1) provides:

[T]he commissioner may issue a written request to an employer subject to the provisions of this chapter to provide a workers' compensation compliance statement on a form provided by the commissioner.

2. 21 V.S.A. §690(b)(2) provides the following enforcement mechanism:

Any employer who fails to comply with this subsection or falsifies information on the compliance statement may be assessed an administrative penalty of not more than \$5,000.00 for each week during which the noncompliance or falsification occurred . . .

3. The statute does not specify the time limit within which an employer who is asked to provide a compliance statement must do so. The legislature must have intended that some reasonable deadline be set, however. Otherwise the weekly penalty provision imposed on an employer who fails to comply would be rendered meaningless.
4. “It is a well-established canon of statutory construction that statutes relating to the same subject matter should be construed together and read *in pari materia*, if at all possible.” *McAlister v. Vermont Property and Casualty Insurance Guaranty Association, et al.*, 180 Vt. 203, 208 (2006), citing *Munson v. City of South Burlington*, 162 Vt. 506, 509 (1994). Reading sections (b)(1) and (b)(2) together, I conclude that it was reasonable for Petitioner to have supplied the necessary deadline beyond which a weekly penalty might be imposed. This Petitioner did, by specifying in its cover letter that the completed compliance statement was due within 30 days. I find that this was a reasonable deadline.
5. There is no dispute that Respondent failed to comply with Petitioner’s 30-day deadline. There were extenuating circumstances, however, which I find particularly compelling in this case. Given the minimal nature of the charged offense, the short overdue period and the likely effect of Respondent’s personal tragedies at the time, I conclude that it is appropriate to assess a monetary penalty against Respondent in the amount of \$100.00.

ORDER:

The basis for the June 23, 2010 Administrative Citation is hereby acknowledged. Respondent is hereby assessed a penalty in the amount of \$100.00.

Dated at Montpelier, Vermont this 18th day of October 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.