BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

FILE NO. **UE-2021-08-028-EB**

IN THE MATTER OF:

JILL WILES, INDIVIDUALLY

AND OZARK ADULT PERSONAL CARE, LLC

OPINION AND ORDER FILED FEBRUARY 16, 2023

Hearing before ADMINISTRATIVE LAW JUDGE TERRY DON LUCY on July 29, 2022, in Little Rock, Pulaski County, Arkansas. Reassigned for purpose of Opinion to ADMINISTRATIVE LAW JUDGE JOSEPH C. SELF, in Springdale, Washington County, Arkansas.

Commission's Compliance Division was represented by DAVID L. PAKE, Attorney, Little Rock, Arkansas

Jill Wiles, individually and Ozark Adult Personal Care, LLC were represented by JAMES M. SCURLOCK, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On July 29, 2022, this matter was heard before Administrative Law Judge Terry Don Lucy in Little Rock, Pulaski County, Arkansas. Before an opinion was issued, Judge Lucy was no longer employed by the Commission, and this matter was assigned to this Administrative Law Judge for consideration of the record.

Following an investigation conducted by the Operations and Compliance Division of the Workers' Compensation Commission (hereinafter O&C), which began on or about July 27, 2021, an Order and Notice of Hearing was filed on August 20, 2021, charging the employer Jill Wiles, Individually, and d/b/a/ Ozark Adult Personal Care, LLC. (hereinafter OAPC or Wiles), as follows:

> The aforesaid Jill Wiles, Individually, and d/b/a/ Ozark Adult Personal Care, LLC., failed to secure the payment of compensation as defined in Sub-Chapter 4 of the Arkansas Workers' Compensation Act, Ark. Code Ann. §§11-9-401 *et seq.*
>
> The Employer was in violation of the law for sufficient time to warrant the maximum statutory penalty of Ten Thousand Dollars (($10,000.00) pursuant to Ark. Code Ann. §(a)(1)-(b)(5).

Upon being served with the Order and Notice, OAPC made a timely request for a hearing. At that proceeding, both parties announced they were litigating the application of the 20-factor test as per Ark. Code. Ann. §11-1-201 *et seq.* In its post-trial brief, O&C addressed issues that were not specifically enunciated as issues, including the applicability of the doctrine of inconsistent positions and the applicability of the common law to the facts of this case to alleged violations prior to the enactment of the Empower Independent Contractor Act of 2019. As the briefs were submitted simultaneously, OAPC did not have a reason to address the issues that were not announced as being litigated, and I believe it would be unfair to consider those matters in this opinion.[1] Thus, I will only address the 20-factor test that the parties stated was at issue at the hearing.

REVIEW OF THE EVIDENCE PRESENTED

The only witness called to testify was Ms. Erica Bryant, an investigator with O&C. She outlined the events that led to the issuance of the Order and Notice of Hearing. An employee named Hoffman had called O&C about a Certificate of Non-Coverage (CNC), and it was discovered that despite having been previously fined for failing to cover its aides, OAPC was again not providing workers' compensation insurance coverage for its aides. Ms. Bryant also provided information about how the documentary evidence from O&C was grouped. On cross-examination, OAPC elicited matters that were not investigated before the Order and Notice of

[1] There was communication between Ms. Wiles and Ms. Bryant in 2019 (OAPC X. 9) regarding how OAPC was classifying its aides. From what I see in the record, O&C began no investigation at that time.

Hearing was issued, and inquired about the various factors that are to be considered in determining if someone should be classified as an employee or an independent contractor.

Both O&C and OAPC presented two binders of documentary evidence. O&C termed its documents as a single exhibit with 63 subparts, while OAPC numbered its submissions as 24 different exhibits. Both sets were introduced without objection.

Looking first at the exhibits of OAPC, eight of them are tax returns or other tax documents (# 4, 5, 6, 7, 10, 11, 12 and 14). These do not serve to prove the aides are contractors so much as it shows they were treated as such. In examining them, I note that none of the 1099 forms were made out to a business entity, and all had 9-digit taxpayer identification numbers; these would be Social Security numbers rather than employer identification numbers used by businesses.

The deposition of Ms. Bryant (#20) and five exhibits to that deposition were another six documents submitted by OAPC. Of those exhibits to the deposition, only #16—O&C's answers to interrogatories propounded by OAPC-- seem to have any relevance to the issues in this case. Exhibit 13 was a blank application form for applying for a CNC; a spoliation letter directed to the Arkansas Workers' Compensation was #15; #17 contained two emails from OAPC counsel referring to an email from a Ms. Taylor at the Department of Labor (but Ms. Taylor's email was not attached) and a transmittal letter; the initial letter of investigation was #18.

The remaining 10 exhibits are: #1, an Independent Choices Brochure, the relevance of which was not explained; #2, OAPC notice to aides about DHS requirements; #3 were five applications submitted by persons seeking to become aides; #19 were called affidavits (although none were notarized) that were completed by aides in 2019, evidently as part of a Department of Labor investigation, all of which were identical in content except the name of the signer #21 is a duplicate of #18, #22 is the Order and Notice of Hearing, #23 is Ark. Code. Ann §11-1-204, the "20-factor test;" #24 is a document from San Jose State University College of Business, which

was prepared to help someone understand if an individual was an employee under the common law rules for the purposes of certain sections of the Internal Revenue Code. #8 and #9 both had internal documents from OAPC about its operations, some of which are referred to in this opinion.

The documents submitted by O&C had duplications with those from OAPC, and included many that I believe were introduced to prove either OAPC had failed to provide coverage before the enactment of §11-1-201 *et seq.* or to show OAPC had advanced inconsistent positions in its designation of its aides as employees and contractors. As I have determined those issues were not raised at trial and will not be considered in this opinion, those will not be relied upon in making this decision. The ones that are germane to the 20-factor test will be referred to in the adjudication section of this opinion.

ADJUDICATION

Ark. Code. Ann. §11-9-406 provides, in pertinent part:

(**b)(1)** Whenever the commission has reason to believe that any employer required to secure the payment of compensation under this chapter has failed to do so, the commission shall serve upon the employer a proposed order declaring the employer to be in violation of this chapter and containing the amount, if any, of the civil penalty to be assessed against the employer pursuant to subdivision (b)(5) of this section…

(2)(D) A proposed order by the commission pursuant to this section is *prima facie* correct, and the burden is upon the employer to prove that the proposed order is incorrect.

My reading of these sections of the statute caused me to wonder if OAPC had the burden of proof in this matter. At the hearing, O&C went first with its proof, and OAPC rested without calling any witnesses. I sent an email to the parties asking for their position on the matter, and that email, along with the answers to my query, are blue backed as a part of the record. OAPC simply stated that it believed O&C had the burden of proof; O&C provided a longer explanation

as to why it felt O&C had the burden of proof at the hearing.[2] While I do not totally accept the reading of the statute adopted by O&C, I find it would be fundamentally unfair to OAPC for me to examine the evidence in a different manner than how the parties (and the ALJ that conducted the hearing) thought who had the burden of proof when the case was presented. As such, I will accept that O&C has the burden of proof in this case and my rulings on the evidence will reflect that.

There have been no appellate decisions regarding the application of Ark. Code. Ann §11-1-204, and hence no guidance as to how the 20 factors are to be weighed. I agree with OAPC that the nine factors that comprised the common law test as set forth in appellate decisions (such as *Riddell Flying Serv. v. Callahan*, 90 Ark. App. 388, 206 S.W.3d 284 (2005)) are no longer applicable as to whether an individual is an employee or independent contractor.[3] However, I do not believe that the cases that addressed the issue were completely overruled by this legislation; the statute simply substituted the 20-factor test for the nine common law factors. Thus, the approach to determining whether someone is an employee or an independent contractor remains the same, with the factors to now be considered being those in the statute. *Franklin v. Arkansas Kraft, Inc.*, 5 Ark. App. 264, 635 S.W.2d 286 (1982), cited in *Riddell*, contained this instructive passage:

> "There are numerous factors which may be considered in determining whether an injured person is an employee or an independent contractor for purposes of workers' compensation coverage. Obviously, the relative weight to be given the various factors must be determined by the Commission. Some of the factors which might be considered, depending on the facts of a given case, are [the nine factors omitted] These are not all the factors which

[2] OAPC raised another issue in its answer to my query that was not responsive to the questions I had asked, and which was beyond the scope of my knowledge. Chief Judge O. Milton Fine responded to that issue, and his letter is also blue backed as part of the record.

[3] It is interesting that the IRS regulation cited in this statute is no longer used by that agency. See https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-self-employed-or-employee which refers back to the common law rules. However, as that regulation was codified into state law, it is controlling regardless that the IRS no longer uses it.

> may conceivably be considered in a given case, and it may not be necessary in some cases for the Commission to consider all of these factors. Traditionally, the "right to control" test has been sufficient to decide most of the cases, although many variations of "control" have probably been squeezed into that test."

I also found instructive the preface to IRS regulation Revenue Ruling 87-41, 1987-1 C.B. 296 from which §11-1-204 was drawn:

> As an aid to determining whether an individual is an employee under the common law rules, twenty factors or elements have been identified as indicating whether sufficient control is present to establish an employer-employee relationship. The twenty factors have been developed based on an examination of cases and rulings considering whether an individual is an employee. The degree of importance of each factor varies depending on the occupation and the factual context in which the services are performed. The twenty factors are designed only as guides for determining whether an individual is an employee; special scrutiny is required in applying the twenty factors to assure that formalistic aspects of an arrangement designed to achieve a particular status do not obscure the substance of the arrangement (that is, whether the person or persons for whom the services are performed exercise sufficient control over the individual for the individual to be classified as an employee).

And as the Arkansas legislature looked to the IRS regulations for the language of its statute, I found this IRS definition provided guidance in determining if someone is an employee or an independent contractor:

> People such as doctors, dentists, veterinarians, lawyers, accountants, contractors, subcontractors, public stenographers, or auctioneers who are in an independent trade, business, or profession in which they offer their services to the general public are generally independent contractors. However, whether these people are independent contractors or employees depends on the facts in each case. The general rule is that an individual is an independent contractor if the payer has the right to control or direct only the result of the work and not what will be done and how it will be done. https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-defined

With the Arkansas case law and the IRS regulations in mind, I now turn to the 20-factors in Ark. Code. Ann §11-1-204.

(1) A person for whom a service is performed has the right to require compliance with instructions, including without limitation when, where, and how a worker is to work:

In its brief, O&C pointed out many areas where the aides were told how to perform their duties, citing many DHS requirements that OAPC is to ensure that its aides are performing. The State Operations Manual contains numerous requirements for OAPC to exert control over its aides. Among those are OAPC develops the patient's Plan of Care, and the aide is required to follow that plan; that plan of care determines the frequency and duration of the visits to be made to the patient and the aide is required to meet that schedule. Further, the aide is required to keep time records and a list of the duties performed during the visit. There is no degree of free-lancing allowed under the DHS regulations covering OAPC, and OAPC must monitor the aides to ensure there are no violations of those regulations.

In response, OAPC simply relied on the testimony of Ms. Bryant that she hadn't reviewed or received any assignment sheets from OAPC that sent an aide to a specific client to provide services. OAPC presented no evidence as to the independent nature of the aides' place, time and method of working to accomplish his or her task for those receiving aid. The fact that Ms. Bryant had not seen a document such as the one asked about did not mean that OAPC did not give instructions to the aide; I find there is sufficient evidence to support O&C's contention that the aides receive instructions as to when, where and how they are to carry out their assignments, and that OAPC is charged by DHS with ensuring compliance with DHS regulations.

(2) A worker is required to receive training, including without limitation through:

(A) Working with an experienced employee;

(B) Corresponding with the person for whom a service is performed;

(C) Attending meetings; or

(D) Other training methods;

O&C pointed out in its brief that in addition to classroom training, the agency must ensure that its aides receive supervised practical training from the agency's RN in skills not covered in the basic check list and ensuring that the aides providing services are trained once a year. If the aide did not receive the required training, he or she could not serve in that capacity for OAPC. The DHS manual supplies the necessary proof that the aides are required to receive training, and OAPC therefore also required it. See O&C Exhibit 1.43, Response to Request for Production #8 where, in referring to the DHS requirements, OAPC stated "The company has adopted all such policies as required by law or regulation…" Thus, the DHS policies are the policies of OAPC.

On this point, OAPC said in its brief: "At no time did Wiles require any independent contractors to attend training other than training required by state law." Nothing in this section of the statute is so restrictive to limit the training to only that which Wiles required in addition to state law. O&C presented sufficient evidence that aides receive training from OAPC in order to serve in that role for OAPC.

(3) A worker's services are integrated into the business operation of the person for whom a service is performed and are provided in a way that shows the worker's services are subject to the direction and control of the person for whom a service is performed:

The testimony at the hearing showed it is the work performed by the aides that allows OAPC to exist; OAPC is the billing provider. As such, the services provided by the aides are tightly integrated into the business operations of OAPC; without those services, there would be no OAPC. The direction and control of the aides under this subsection is the same as was discussed in (1) above. Under this section, the aides would be considered employees.

(4) A worker's services are required to be performed personally, indicating an interest in the methods used and the results:

OAPC conceded that the work had to be performed personally by an aide but argued that O&C did not produce proof that "Wiles monitored, controlled or had any other specific interest in the methods used by any independent contractor, or the results achieved." Ms. Wiles personally may not have done that, but as per the OAPC Operational Policies (O&C X 1.58), managers were to "approve a quality assurance plan where potential problems are identified, monitored and corrected." If managers were working to identify potential problems, then OAPC had an interest in the methods and results. O&C established the aides were employees as per this subsection.

(5) A person for whom a service is performed hires, supervises, or pays assistants:

Wiles employs assistants to help in the administration of OAPC operations, but I don't believe this is what this section refers to. Perhaps this section would be applicable if aides were themselves able to hire, supervise and pay assistants—a sub-contractor relationship of sorts—which would show they were in business for themselves,[4] but if OAPC is the "person for whom a service is performed," that doesn't exactly fit. I am unconvinced by O&C's assertation that the application for the Small Business Administration loan is determinative; O&C exhibit 1.34 is a print-out from a webpage maintained by the SBA. OAPC provided more information regarding that loan in its exhibit 8 in which the loan forgiveness application stated OAPC had 11 employees at the time of the loan application and 17 at the time of the forgiveness application. This document, unlike the printout from the SBA webpage, bears the signature of Jill Wiles (albeit electronic) and is more persuasive as to what she represented at the time she applied for the loan. Ultimately, as I am unsure what is meant by this section, I cannot find it mandates a finding either way on the issue of the aides being employees or independent contractors.

[4] This is consistent with the explanation contained in OAPC X. 24 under the heading "5. Hiring, supervising, and paying assistants."

(6) A continuing relationship exists between a worker performing services and a person for whom a service is performed:

I do not accept O&C's position that the contract needed to state the length of the relationship, a definite time for completion of the job and a specific cost. An accountant at a private firm could perform duties for a customer for years with or without a contract and not become an employee. Likewise, a private attorney that bills by the hour can give an estimate of the time and cost to complete a job, but the billing may be much less or more than initially thought.

In its brief, OAPC referred to the answers to interrogatories Wiles submitted. However, the specific interrogatory that discussed the continued relationship aspect of the arrangement between aides and OAPC was not cited in the brief, and I did not see it in reviewing those answers. As Arkansas is an employment at will state, I cannot see how the ability of an aide to "come and go" means such a person is an independent contractor. In the end, neither party persuaded me by the evidence submitted that this section favors their position, and having the burden of proof on this point, O&C did not prove it by a preponderance of the evidence.

(7) A worker performing a service has hours set by the person for whom a service is performed:

O&C cited the patient's plan of care as satisfying this section, as that plan included the number of days per week and the amount of time an aide would need to complete the required tasks. There is an expectation of a set number of days and hours, but it appears the aide has some flexibility about when to arrive and depart from the patient's residence. This falls somewhere between the factory worker punching a clock at a set time (clearly an employee) and the private attorney working at his or her desk at night or weekends to finish up a brief (an independent contractor). I find that setting the number of hours is sufficient to find this section shows the aides are employees, even though the precise time for carrying out the tasks may not be specified.

(8) A worker is required to devote substantially full time to the business of the person for whom a service is performed, indicating the person for whom a service is performed has control over the amount of time the worker spends working and by implication restricts the worker from obtaining other gainful work:

O&C is correct that it is a requirement that "workers compensation coverage be extended to part-time and short-time workers," but that assumes a particular worker is considered an employee and not an independent contractor. OAPC did not produce any evidence as to the ability of its aides to work for wages from another entity. In reviewing the 1099 forms, I noted many were paid less than $10,000 per year, but I could not tell if those that made $10,000 or less had only worked a few months of the year, or if they were working only a few hours a week for the entire year. However, as the burden of proof is on O&C, I find it did not prove that an aide could not have also worked at another gainful occupation while also working for OAPC.

(9)(A) The work is performed on the premises of the person for whom a service is performed, or the person for whom a service is performed has control over where the work takes place.

(B) A person for whom a service is performed has control over where the work takes place if the person has the right to:

(i) Compel the worker to travel a designated route;

(ii) Compel the worker to canvass a territory within a certain time; or

(iii) Require that the work be done at a specific place, especially if the work could be performed elsewhere

The evidence in this case is clear that the home health aides were required to work in the home of the patients. Unlike the private attorney that could work from home, the office, the library and the courtroom, there was no other place the service could be performed. This section supports O&C's position that aides are employees.

(10) A worker is required to perform services in the order or sequence set by the person for whom a service is performed or the person for whom a service is performed retains the right to set the order or sequence:

Neither party put on substantial evidence on this factor; had I been presented an implemented plan of care, I could have seen if the assignments were placed in an order that had to be followed. It would be ridiculous for an aide to see something that needed to be done immediately upon arrival but had no latitude to vary from the sequence on the plan of care. At the same time, a secretary may have a list of tasks for the day and decide on his or her own how to prioritize those duties; such would not make the secretary an independent contractor. In the end, I find the aides had a singular task for the day—to care for the patient—and discretion about the order of the various services provided to the patient is part of that singular task. As there was only one task, there was no order or sequence to be mandated, and thus, this factor is not applicable to these facts.

(11) A worker is required to submit regular oral or written reports to the person for whom a service is performed:

The only submission of regular "reports" in the record are the entries on the Electronic Visit Verification so the aide could be paid. This would be no different than a subcontractor who was framing a house submitting an invoice to the prime contractor at the end of the week in order to receive his wages. OAPC is correct that O&C did not produce any evidence of other reports made on a regular basis, and thus I find this element was not proven by O&C.

(12) A worker is paid by the hour, week, or month except when he or she is paid by the hour, week, or month only as a convenient way of paying a lump sum agreed upon as the cost of a job:

The evidence in this case is clear that aides are paid by the hour and the number of hours per patient is determined by the plan of care; there was nothing presented that any of the aides bid for a job for a lump sum to be paid upon completion, nor could there be such in home health care. OAPC's assertion that "All time reporting is sent directly to DHS and payments are made to

the independent contractor based on the work reported" leaves out one important detail—OAPC is the one that writes the checks to the aides. This section supports O&C's position that the aides are employees.

(13) A person for whom a service is performed pays the worker's business or traveling expenses:

OAPC said that after a review of the records, O&C found no evidence of business or traveling expenses paid by OAPC. One can't find what doesn't exist; I believe OAPC did not pay any business or travel expense for the aide. On the other hand, there was no testimony that an aide had any business or travel expenses. O&C is correct that the tax records do not support the notion that any of the aides were operating their own business, and that the travel to and from the home of the patient would be no more compensable than someone driving to a factory or store to work.

(14) A person for whom a service is performed provides significant tools and materials to the worker performing services:

O&C Exhibit 1.57 was a request for reimbursement for "sanitizers, masks, and gloves" which were given "to all employees and contract workers to be able to provide services to our patients..." As OAPC represented it did provide equipment to the aides, the question is if those items would be considered "significant tools and materials." OAPC thought its expenditures were significant enough to request reimbursement, so I find such to be more than *de minimus,* and therefore supporting O&C's position that aides are employees.

(15) A worker invests in the facilities used in performing the services:

Because the facilities used to perform the services are private residences where neither OAPC nor an aide would be expected to invest, I don't believe this section is applicable to the facts of this case.

(16) A worker realizes a profit or suffers a loss as a result of the services performed that is in addition to the profit or loss ordinarily realized by an employee:

This section highlights a major difference between an employee and an independent contractor. The latter can underbid a job, see raw materials skyrocket in price after a bid is made, suffer losses from theft, etc. all of which would cause a loss. The way the aides were paid in this case situation put no risk of loss on the worker. At the same time, the only way to increase the money received was to work more hours. The proof in this case supports a finding that under this section, the aides are employees.

(17) A worker performs more than de minimis services for more than one (1) person or firm at the same time, unless the persons or firms are part of the same service arrangement:

O&C did not provide any testimony of aides that indicated if they were barred from working for other agencies. I reviewed Ms. Bryant's notes from the discussion with counsel for OAPC (O&C X 1.36) which were admitted without objection. At best, that exhibit shows that OAPC was not happy about another home health care agency "poaching" those aides from OAPC, but tells me nothing about the ability of an aide to work outside of the home health area (at Walmart on the weekend, for instance). As with #8 above, I decline to make the inference urged by O&C that those notes prove that aides were unable to work for other employers when not performing duties for OAPC.

(18) A worker makes his or her services available to the general public on a regular and consistent basis:

An independent contractor looking for home health care work would have his or her information on social media, have a number in the telephone book, have business cards and letterhead, and other indicia of being in business for the general public to contact to engage those services. O&C was in the position of trying to prove a negative in that regard, as it would have to

show there was no evidence that the general public in the areas where the aides worked would know to contact them for home health services. While such advertising would have been persuasive on this issue had it existed, the lack of it reveals little.

(19) A person for whom a service is performed retains the right to discharge the worker; and

(20) A worker has the right to terminate the relationship with the person for whom a service is performed at any time he or she wishes without incurring liability:

These final two will be considered together. The contract that has been used since July 2021 made it clear that in paragraph 16 of O&C exhibit 1.49 that "this contract can be terminated at any time by either party." That provides both the agency and the worker with the same rights as the employer/employee relationship in the State of Arkansas. "The right to discharge a worker is a factor indicating that the worker is an employee and the person possessing the right is an employer." (OAPC X. 24, #19) Likewise, if a worker has the right to end his or her relationship with the person for whom the services are performed whenever he or she wishes without incurring liability, that factor indicates an employer-employee relationship." (OAPC X 24, #20)

After evaluating all the factors contained in Ark. Code. Ann §11-1-204, I find the evidence overwhelmingly supports the finding that the aides for OAPC are employees and not independent contractors. As OAPC Exhibit 24 says: "…if the relationship of employer and employee exists, the designation or description of the relationship by the parties as anything other than employer and employee is immaterial. Thus, if such a relationship exists, it is of no consequence that the employee is designated as a partner, coadventurer, agent, independent contractor or the like." For the purposes of Arkansas workers' compensation law, I see no way that aides working under the DHS guidelines as adopted by OAPC could ever be an independent contractor. There is too much supervision and control required by DHS, and therefore by OAPC, for a person to retain a degree of independence as would be expected for a business selling its services to the public, which

is necessary for a person to qualify as an independent contractor under Ark. Code. Ann §11-1-204.

Having found the aides should not have been classified as independent contractors, I then turn to the penalty that should be imposed in this matter. OAPC has been previously fined the maximum amount of $10,000.00 for using a similar scheme to avoid providing workers' compensation insurance to its employees. OAPC vigorously asserted that the provisions of §11-1-204 meant it did not have to treat its aides as employees; it showed no contrition nor did it maintain it did so in error. I think this is a case of someone seeing what he or she wanted to see in the statutes; overall, the 20-factor test, which became law in 2019, incorporates many of the factors under the common law test. OAPC saw its workers' compensation insurance premiums drop to $750.00 for the coverage year 9/30/2019-9/30/2020 when compared to the previous year, when the premium was $15,698.00. That first year alone, OAPC saved more money by not covering the aides than the maximum fine could be under §11-9-406. As for this charge, I see nothing that mitigates against the maximum penalty of $10,000.00, and hereby assess a fine in that amount.

ORDER

Pursuant to Ark. Code Ann. § 11-9-406(a), Jill Wiles, individually, and d/b/a Ozark Adult Personal Care, LLC., is hereby directed and ordered to pay Ten Thousand Dollars ($10,000.00), endorsed to the Death and Permanent Total Disability Trust Fund, c/o Arkansas Workers' Compensation Commission, Post Office Box 950, Little Rock, Arkansas, 72203-0950. Said penalty is to be paid within thirty (30) days.

The employer is further directed and ordered to pay all costs of litigation, specifically $563.50, representing the cost of the transcript. Said payment should be remitted to the Arkansas Workers' Compensation Commission, Post Office Box 950, Little Rock, Arkansas, 72203-0950.

Additionally, the employer is hereby advised that the Compliance Division will continue to monitor the employer to ensure that it continues to provide workers' compensation coverage for its employees. Any lapse of coverage will result in additional sanctions.

Should the employer fail to pay the penalties assessed herein, this Commission may petition the Circuit Court of Pulaski County, Arkansas, for an order enjoining the employer from engaging in further employment until such time as the employer makes full payment of all civil penalties as provided by Arkansas Code Annotated § 11-9-406(b)(6).

IT IS SO ORDERED.

JOSEPH C. SELF
ADMINISTRATIVE LAW JUDGE