

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

IWCC, Insurance Compliance Division,
Petitioner,

vs.

NO: 14 INC 306
16 IWCC 731

Byung Kim, individually and
Owner of 680 Cleaners,
Respondent.

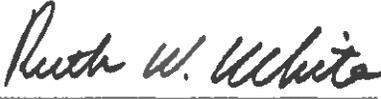
ORDER OF RECALL UNDER SECTION 19(f)

This matter comes before the Commission on its own motion to correct a clerical error in the Decision and Opinion on Review of the Commission filed November 10, 2016 *sua sponte*. After reviewing the Decision on Review, the Commission recalls the Decision for the purposes of correcting the clerical error.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Order dated November 10, 2016, is hereby vacated and recalled pursuant to Section 19(f) for a clerical error contained therein.

IT IS FURTHER ORDERED BY THE COMMISSION that a Corrected Order shall be issued simultaneously with this Order.

DATED: DEC 2 - 2016
RWW/rm



Ruth W. White

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input type="checkbox"/>	PTD/Fatal denied
<input checked="" type="checkbox"/>	None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

IWCC, INSURANCE COMPLIANCE
DIVISION,

Petitioner,

vs.

NO. 14 INC 306
16 IWCC 731

BYUNG KIM, individually and
Owner of 680 CLEANERS,

Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

This matter comes before the Commission on the Petitioner's action for penalties for willful failure to comply with the requirement to maintain workers' compensation insurance pursuant to Section 4(d) of the Workers' Compensation Act. Petitioner, the Illinois Workers' Compensation Commission Insurance Compliance Division, represented by the Office of the Attorney General, brought its motion before Commissioner Ruth White in Chicago on June 21, 2016. Respondent, Byung Kim, appeared *pro se* and a record was taken.

Findings of Fact and Conclusions of Law

1. Petitioner called Respondent, Byung Kim, as an adverse witness. The Commission notes that Respondent is not a native English speaker and testified without the benefit of an interpreter.
2. Mr. Kim testified he is 75 years old and operates a dry cleaning business with locations at 680 North Lake Shore Drive and 600 North Lake Shore Drive in Chicago. The location at 600 is only available for residents of the building. The location at 680 is open for

- business to the general public. Mr. Kim believed he had the 680 location for about 13 years and the 600 location for about two and a half years.
3. The business accepts clothes for dry cleaning from customers and sends them out to a plant to be dry cleaned. Mr. Kim acknowledged he had an employee at both locations. He also acknowledged that his wife performs clothing alterations using scissors, an electric sewing machine and a steam iron which items are used on the premises. There is also an electrically operated device to revolve racks of dry cleaned clothing to retrieve orders. Mr. Kim denied that any chemicals are used on the premises.
 4. After his testimony, Commissioner White allowed Respondent to make statements. He stated that he was unaware that he was required to carry workers' compensation insurance until about three years previously when a woman came onto his premises and advised him that he should purchase insurance within 10 days or he would have "trouble or citation or something like that." Mr. Kim stated that he purchased the insurance within three or four days of that conversation.
 5. Petitioner called Frank Capuzi to testify. He is Chief of Investigators of the Insurance Compliance Division of the Workers' Compensation Commission. He investigated Respondents' alleged non-compliance. Mr. Capuzi testified he received documentation from the Illinois Department of Revenue and the Illinois Department of Employment Security. Those documents confirmed that Respondent's business declared having employees to both State agencies, every year since at least 2009.
 6. Mr. Capuzi also testified that pursuant to his investigation he consulted the official records of the National Commission of Compensation Insurers ("NCCI"). That entity tracks workers' compensation insurance policies issued throughout the country. He believed insurers have to report any change in such insurance policies to that Commission within 24 to 48 hours.
 7. Mr. Capuzi identified the official records from NCCI which showed that Respondent had workers' compensation insurance from July 11, 2004 to July 11, 2011. Respondent then did not have workers' compensation insurance from July 12, 2011 to August 24, 2014.
 8. Mr. Capuzi noted that when Respondent obtained the new insurance policy in 2011, it used a different Federal Employer's Identification Number ("FEIN") in the application. Mr. Capuzi explained that in his experience employers use that tactic to avoid paying back premiums.
 9. On cross examination by Mr. Kim, Mr. Capuzi testified that he did not have the information at hand on which company had issued the previous workers' compensation insurance policies.
 10. Mr. Capuzi also acknowledged that the Insurance Compliance Division has the discretion to issue citations for violations of the insurance requirement ranging between \$500 and

\$2,500, *in lieu* of the Attorney General filing a formal charge before the Commission. Mr. Capuzi also explained that “if the company did not have workers’ compensation [insurance] in the past, it is more likely they would receive a” citation.

11. However, Mr. Capuzi did not believe Respondent would qualify for the lesser penalty of a citation because he had workers’ compensation insurance but declined to pay premiums beginning in 2010. He also noted that Mr. Kim denied to investigators that he ever had workers’ compensation insurance in the past.
12. After testimony, Respondent presented an exhibit titled “Insurance History” purportedly from State Farm Insurance. It indicated a business policy was in effect from August 31, 2005 to August 25, 2015, and workers’ compensation insurance policy in effect between August 25, 2014 and August 25, 2015. Premiums for renewal were both due on August 25, 2015.

Petitioner argues that the record is clear that Respondents willfully violated the requirements of the Act to maintain workers’ compensation insurance. It cites the previous insurance and the use of different FEIN to obtain the insurance after it had been terminated. Petitioner seeks penalties of \$100,000.00. Respondent, Mr. Kim, claims that he did not remember having previous workers’ compensation insurance and he only learned about the requirement when specifically informed of such by the woman after which he purchased it. Mr. Kim argues that at the most he should be subject only to a fine pursuant to citation.

The Commission does not find Mr. Kim’s claim of ignorance credible. He has operated a business in Illinois for 13 years and clearly had workers’ compensation insurance for most of that time. His decision to cancel/non-renew that insurance appears conscious. In addition, the fact that he reapplied for new insurance with a different FEIN number suggests his knowledge of the process and his attempt to avoid the consequences of previous non-compliance. Finally, Respondent’s exhibit is not persuasive. It was unauthenticated and in any event only identified some policies that had been in effect and did not prove that no previous workers’ compensation policies had been in effect.

Nevertheless, the Commission finds Petitioner’s request for an imposition of a fine of \$100,000.00 to be excessive. The Commission is cognizant of the public policy goal of encouraging compliance with the insurance requirement and that high fines could result in higher incentive for such compliance. In addition, fines collected for non-compliance are the only source of money for the Injured Workers’ Benefit Fund, which pays benefits to injured workers of non-insured employers. However, in the opinion of the Commission imposing a \$100,000 fine probably would result in nothing except the likely discontinuation of Respondent’s business; a result which would be of benefit to nobody.

The Commission does not have the authority to convert the instant non-compliance action into a citation action. The power to issue a citation rests solely with an investigator with the compliance division and not a Commissioner. Once a non-compliance action has been instituted and the Commission finds the violation of the insurance requirement was willful, the

Commission can levy a fine of up to \$500 per day the employer is in noncompliance. However, the Act provides that "the minimum penalty under this Section shall be the sum of \$10,000." Therefore, the Commission does not have the discretion to impose a fine of less than \$10,000.00.

The Commission finds the minimum fine of \$10,000.00 to be appropriate in this matter. The Commission notes that Respondent's business is small with total payroll ranging between about \$3,000 to less than \$26,500 per year. Petitioner always had a very limited number of employees and the work activities of employees were not of a particularly dangerous nature. Therefore, the risk of a serious injury, especially a catastrophic injury, was relatively small. The lack of danger associated with Respondent's business operation is supported by the fact that there is no evidence of any workers' compensation claim or any injury associated with Respondents.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondents, Byung Kim and 680 Cleaners pay to the Illinois Workers' Compensation Commission the sum of \$10,000.00 pursuant to Section 4(d) of the Act.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$10,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED:

DEC 2 - 2016

RWW/dw
R-6/21/16
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Ruth W. White

Charles J. DeVriendt

Joshua D. Luskin