

WORKMEN'S  
COMPENSATION:

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An application filed with the Workmen's Compensation Commission against a self-insuring company or corporation, which states that the individual filing such application was a former employee of such company or corporation and that he was unjustly discharged from such employment because he had filed a claim for compensation, and was forced to sign a statement that he was being discharged for inefficiency, does not state sufficient grounds for revoking the self-insuring privilege of such company or corporation by the Workmen's Compensation Commission.

September 26, 1956

Honorable Spencer H. Givens  
Director  
Division of Workmen's Compensation  
Jefferson City, Missouri

Dear Sir:

Your recent request for an official opinion reads as follows:

"We respectfully request your opinion on jurisdiction and procedure in the matter before us described below:

"On July 20 we received 'Application for Revocation of Self-Insurer Privileges' signed by Alfred Henry Fultner, claimant, and by his attorney, Daniel J. Leary, in Injury No. MM-76843, and on July 23 we received 'Motion to Dismiss Application for Revocation of Self-Insurer Privileges' filed by Spencer, Scott & Dwyer by E. P. Dwyer, attorneys for Atlas Powder Company.

"Both of these papers are attached for your information, and if you require the case file mention (MM-76843) it will be made available to you upon your request."

To your letter you attach the "Application for Revocation of Self-Insurer Privileges" which was signed by Alfred Henry Fultner. The application discloses that one Alfred Henry Fultner had for a period of time been employed by the Atlas Powder Company, a corporation, and a self-insurer; that during the course of the employment Fultner alleged that he had suffered injuries in the course of his employment; that after a period of considerable time he was awarded by the corporation the sum of \$2400.00 as compensation for his injuries, and that immediately thereafter

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he was discharged by the company. In his "Application for Revocation of Self-Insurer Privileges," he alleges in his first paragraph that the Atlas Powder Company operates a powder plant in Jasper County. In his second paragraph he alleges that it has qualified as a self-insurer under the provisions of the Workmen's Compensation law. Both of these allegations are obviously correct. In his third paragraph Fultner alleges that "said company is not now qualified to continue as a self-insurer and has failed to accomplish the purposes of a self-insurer." No further mention is made to this statement in the application and there is no statement by Fultner as to why the company has failed to accomplish its purpose as a self-insurer.

In paragraph five of his application Fultner goes rather thoroughly into his own case, alleging that he was injured on January 5, 1955 while in the corporation's employment; that he was hospitalized, was treated by the corporation's doctor, and that he did not return to work until March 27, 1955. He states that since that time he has worked regularly, and that he filed application for compensation on December 3, 1955; that a hearing was had on July 9 and 10, 1956, and that a compromise settlement for \$2400.00 was made at that time, July 10. Fultner also alleges that on the morning of July 11 he was discharged by plant manager Ralph Holliday and that before the company would deliver applicant his pay for the last two weeks' work he was required to sign a statement to the effect that the discharge was on account of unsatisfactory work; that he signed such statement under duress.

It would seem to be obvious that in setting forth the charge in this last paragraph, the burden of which was discrimination against an employee for the exercise of his rights, that Fultner had in mind Section 287.780, RSMo 1949, which reads:

"Every employer, his director, officer or agent, who discharges or in any way discriminates against an employee for exercising any of his rights under this chapter, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less

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than fifty nor more than five hundred dollars, or by imprisonment in the county jail for not less than one week nor more than one year, or by both such fine and imprisonment."

We reach this conclusion because of the fact that so far as we can determine there is no other penalty section against an employer for discrimination in this way against an employee, and because it is obvious that the aforesaid section, 287.780, was meant to apply to just such a situation as Fultner alleges in his application took place.

However, it does not appear to us to follow at all that simply because the company violated Section 287.780, which it may or may not have done, that this section would provide Fultner with any base upon which to rest his application for a revocation of self-insurer privileges. The way in which an employer may become a self-insurer is set out fully in Section 287.280, RSMo 1949, which reads:

"Every employer electing to accept the provisions of this chapter, shall insure his entire liability thereunder except as hereafter provided, with some insurance carrier authorized to insure such liability in this state, except that an employer may himself carry the whole or any part of such liability without insurance upon satisfying the commission of his ability so to do. If the employer fail to comply with this section, an injured employee or his dependents may elect after the injury to recover from the employer as though he had rejected this chapter, or to recover under this chapter with the compensation payments commuted and immediately payable. If the employer be carrying his own insurance, on the application of any person entitled to compensation and on proof of default in the payment of any installment, the commission shall require

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the employer to furnish security for the payment of the compensation, and if not given, all other compensation shall be commuted and become immediately payable; provided, that employers engaged in the mining business shall be required to insure only their liability hereunder to the extent of the equivalent of the maximum liability under this chapter for ten deaths in any one accident, but such employer may carry his own risk for any excess liability."

The penalty as set forth in Section 287.780, for a violation of that section, is that the employer may be prosecuted for a criminal misdemeanor and upon conviction may be punished by a fine or by imprisonment in the county jail or by both such fine and imprisonment. There is no mention whatever made of any effect of revocation of the self-insurer privilege of the company for a violation of this section. It is obvious that the Workmen's Compensation Department could not take jurisdiction of a charge made under Section 287.780 because it is not a court of law and a violation of this section could only be considered and heard by a court of law. If Fultner desired to file charges against the company in the magistrate court of the county in which the company is located, on the ground that the company has violated Section 287.780 he certainly could do so, but he obviously cannot do this before the Workmen's Compensation Commission, which is in no way a court of law.

We also call attention to Section 287.790, RSMo 1949, which reads:

"Any person, corporation, his or its directors, officers or agents, or any other person who violates any of the provisions of this chapter for which a penalty has not herein been specifically provided, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than fifty dollars nor more than five

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hundred dollars or by imprisonment in the county jail for not less than one week and not more than one year or both such fine and imprisonment."

This section also makes any violations of the provisions of the chapter a misdemeanor but it does not bear upon the matter of the revocation of the self-insurer privilege.

#### CONCLUSION

It is the opinion of this department that an application filed with the Workmen's Compensation Commission against a self-insuring company or corporation, which application states that the individual filing such application was a former employee of such company or corporation and that he was unjustly discharged from such employment because he had filed a claim for compensation, and was forced to sign a statement that he was being discharged for inefficiency, does not state sufficient grounds for revoking the self-insuring privilege of such company or corporation by the Workmen's Compensation Commission.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Hugh P. Williamson.

Very truly yours,

John M. Dalton  
Attorney General

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