

02-4414-CD
HARRY TURNER -vs- WILLIAM J. LAMKE et al

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

HARRY TURNER,

Plaintiff

no. 02-414-CO

vs.

**WILLIAM J. LAMKE, t/d/b/a
WILLIAM J. LAMKE PAVING,**

Defendant

PRAECIPE FOR ENTRY OF JUDGMENT

TO THE PROTHONOTARY:

Please enter judgment against the above-named defendant
in the amount of \$8,048.10.

LORENZO & GIANVITO, P.C.

Date: 3/19/02

BY 
Nicholas Gianvito, Esq.
Attorney for Plaintiff

FILED

MAR 20 2002

1300 MAR 20 2002 Atty. W. Gianvito
William A. Shaw pd \$20.00
Prothonotary not to D
Stat. to Atty.

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of March, 2002, a true and correct copy of the foregoing Praeclipe for Entry of Judgment was forwarded via first-class mail, postage prepaid, to the following, counsel of record for defendant:

Sean B. Epstein, Esq.
Pietragallo, Bosick & Gordon
One Oxford Centre, 38th Fl.
Pittsburgh, PA 15219


Nicholas Gianvito, Esq.



Circulation Date: 02 13 2002

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY
BUREAU OF WORKERS' COMPENSATION
814-765-6398

MICHAEL KOLL
CLEARFIELD JUDGES OFFICE
101 EAST LOCUST STREET
CLEARFIELD PA 16830-2445

DECISION RENDERED COVER LETTER

Bureau Claim Number: 2153760

Insurer Claim Number:

Petitions:

Penalty-Pet

HARRY TURNER
P.O. BOX 76
BURNSIDE, PA 15721-0000

LORENZO & GIANVITO PC
PO BOX 495
PUNXSUTAWNEY, PA 15767

vs

WILLIAM J. LAMKE PAVING
PO BOX 176
GLEN CAMPBELL, PA 15742-0000

PIETRAGALLO BOSICK & GORDON
ONE OXFORD CENTRE 38TH FL
PITTSBURGH, PA 15219

COMMONWEALTH OF PENNSYLVANIA
BWC LEGAL DIV
1171 S. CAMERON STREET
ROOM 327
HARRISBURG, PA 17104-2501

Judge: Michael E Koll
306 East Locust Street
Clearfield, PA 16830-2445

The attached Decision of the Judge is final
unless an appeal is taken to the Workers'
Compensation Appeal Board as provided
by law.

If you do not agree with this Decision, an
appeal must be filed with the Workers'
Compensation Appeal Board within 20 days
from but not including the date of this notice.

Forms for an appeal may be obtained from
the Workers' Compensation Appeal Board,
Capital Associates Building
901 North Seventh Street
Third Floor South
Harrisburg, PA 17102

<input type="checkbox"/> OPEN	<input checked="" type="checkbox"/> SUSPENDED
<input type="checkbox"/> CLOSED	<input type="checkbox"/> UNKNOWN TO WCJ

HARRY TURNER - 2153760

Employee Witnesses & Exhibits:

- 1- Copies of UC Benefit Check Stubs
- 2- Eckerd Drugs listing of medications

Employer Witnesses & Exhibits:

None

Judge Witnesses & Exhibits:

- J-1 Copy of Decision dated 02-12-01

Hearings:

10/16/2001 09:00:00 Held

7/26/2001 14:15:00 Held

**Harry Turner vs. William J. Lamke Paving, et al
Penalty Petition
PABWC Claim No. 2153760
Page 1 of 6**

FINDINGS OF FACT

1. By Decision and Order of February 12, 2001, the Claim Petition filed by the Claimant, Harry D. Turner, against Defendant/Employer, William J. Lamke Paving, was granted, finding that the Claimant suffered a work injury on September 16, 1999, to his left shoulder and left side. Such Order further found that the Claimant's work injury resulted in Claimant's incurrence of a period of temporary total disability from September 17, 1999 through November 1, 1999; a one-day period of temporary partial disability on November 2, 1999; and a renewed period of temporary total disability from November 3, 1999 through Claimant's return to work for Defendant/Employer, on August 16, 2000. The Claimant's benefits were suspended effective August 16, 2000 and ongoing, until such time as the Claimant's condition changed in accordance with the Pennsylvania Workers' Compensation Act, as Amended. (02/12/2001 Decision/Order, Findings of Fact No. 10; Conclusion of Law No. 2)
2. Pursuant to the February 12, 2001 Decision and Order, Defendant/Employer was responsible for the calculation and payment of Workers' Compensation benefits to the Claimant for the afore-noted periods, consistent with the Claimant having a pre-injury average weekly wage of \$340.00, with Defendant being entitled to take credit for monies paid to the Claimant by Defendant/Employer in lieu of compensation, for the period of September 17, 1999 through August 16, 2000, together with credit for Unemployment Compensation benefits. Defendant/Employer was further found to be responsible for the payment of Claimant's causally-related medical expenses.
3. Pursuant to the February 12, 2001 Order, Defendant/Employer was additionally ordered to reimburse Claimant's costs of litigation, in the amount of \$191.02, together with making payment of attorney's fees for unreasonable contest in an amount equal to twenty percent (20%) of unpaid compensation benefits remaining due the Claimant, subsequent to calculation of the amount of benefits to be paid after credit being taken for wages paid in lieu of compensation, together with Unemployment Compensation credits.
4. On or about May 3, 2001, the Claimant filed a Penalty Petition asserting that, to date, no payments whatsoever had been made by Defendant/Employer to Claimant or his Counsel.
5. An initial pretrial conference was held in this matter on July 26, 2001. At such time, the parties stipulated that indemnity benefits remained due and owing to the Claimant. The parties, at such time, agreed to ascertain the precise amounts of indemnity benefits and/or medical benefits remaining due and unpaid, together

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with submitting any Affidavits or assertions as to the basis for such delay in payments. (06/26/2001 Hearing N.T.)

6. Subsequent to receipt of notice that the parties had not reached any stipulations or made any additional submissions in this matter, an additional hearing was scheduled and held on October 16, 2001. At the time of such hearing, in support of the Penalty Petition, Counsel for Claimant proceeded to submit a copy of his March 2, 2001 correspondence to Counsel for Defendant, providing Counsel for Defendant with the amounts of Unemployment Compensation benefits which the Claimant received in order to permit Defendant to utilize such to calculate the amounts of indemnity benefits dues.

Pursuant to such, Claimant received Unemployment Compensation benefits for the period of November 4, 1999 through February 12, 2000, in the total sum of \$3,178.00. From February 13, 2000 through August 16, 2000, Claimant received Unemployment Compensation benefits in the total sum of \$5,671.00. (Claimant's Exhibit 1)

7. Pursuant to the Claimant's testimony in the prior proceedings, Claimant had additionally received weekly paychecks in the amount of \$270.14 per week for the period of September 17, 1999 through November 12, 1999, with an additional check dated November 30, 1999, in the amount of \$45.16. (02/12/2001 Decision/Order, Findings of Fact No. 3 (c))
8. Pursuant to the prior proceedings in this matter, Claimant submitted unpaid medical bills, reports and records from Punxsutawney Hospital Emergency Room, previously ordered to be paid, in the amount of \$880.50. (Claim Petition, Claimant's Exhibit "E")
9. Pursuant to the prior proceedings, Counsel for Claimant proceeded to submit medical reports, bills and records relating to bills for diagnostic studies, in the amount of \$215.00, which were ordered to be paid pursuant to the prior Decision and Order, and which remain unpaid.
10. Pursuant to the prior proceedings, Counsel for Claimant submitted a listing of out-of-pocket prescription costs which the Claimant has incurred at Eckert Drugs, for medication prescribed by Claimant's treating physicians for his work injury. At the time of the October 16, 2001 hearing, Counsel for Claimant submitted an updated listing of the amounts due and owing for such prescription costs, totaling \$155.33.

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Penalty Petition
PABWC Claim No. 2153760
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11. At the time of the October 16, 2001 hearing, the Claimant presented brief testimony that, as of the time of such hearing, he had received no payment of any amounts from Defendant/Employer subsequent to the February 12, 2001 Decision and Order. At the time of the October 16, 2001 hearing, Counsel for the parties indicated that, pursuant to discussions between counsel, there was an understanding that there might have been some payment of medical bills by Defendant/Employer, although Counsel for Claimant submitted, in support of Claimant's position, that such remained unpaid, a collection notice, which has been marked as Claimant's Exhibit "F". This matter was continued in order to allow Counsel for Employer to provide verification of payment of any such amounts; the parties to attempt resolution; or, in the alternative, the submission of positional statements on the entitlement of the Claimant to penalties.
12. Subsequent to the October 16, 2001 hearing, Counsel for Claimant submitted a positional statement asserting continuing entitlement to the payment of all amounts previously ordered, together with penalties, as well as the additional amount of prescription costs. No additional submissions have been received from Defendant/Employer.
13. Pursuant to the Bureau of Workers' Compensation Records Management Division Workers' Compensation Rate Schedule, for injuries occurring between January 1, 1999 and December 31, 1999, the weekly compensation rate for wages ranging between \$326.67 and \$441.00 per week is \$294.00 per week.
14. Accordingly, based upon the foregoing, and review of the record in its entirety, it is further found as follows:
 - a. Defendant/Employer has violated the provisions of the Pennsylvania Workers' Compensation Act, in failing to make payment of the amounts ordered to be paid pursuant to the February 12, 2001 Decision and Order on the Claimant's prior Claim Petition.
 - b. Defendant/Employer's failure to pay such, despite repeated opportunities continuing subsequent to the issuance of the original Decision and Order in this matter; the filing of Claimant's Claim Petition, the July 26, 2001 pretrial in this matter; as well as the October 16, 2001 hearing and continuing thereafter, is found to be an unreasonable and excessive delay, entitling the Claimant to an award of a fifty percent (50%) penalty, in addition to the amount of indemnity benefits, medical costs and expenses, litigation costs, attorney's fees and interest, previously due and owing pursuant to the February 12, 2001 Decision and Order.

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Penalty Petition
PABWC Claim No. 2153760
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- c. In reaching these findings, the testimony of the Claimant is found to be credible, unrefuted and undisputed.
- d. The following is a calculation of the amounts due and owing the Claimant and his Counsel:

09/17/99 through 11/12/99 = 8 weeks

8 weeks [x] \$294.00	= \$2,352.00
8 weeks [x] \$270.24	= \$2,161.92
	= \$ 190.08

11/04/99 through 02/12/2000 = 14 weeks

14 weeks [x] \$294.00	= \$4,116.00
14 weeks [x] \$227.00	= \$3,178.00
11/30/99 - 1 Check for \$45.16	[\$ 45.16]
	= \$ 892.84

02/13/2000 through 08/16/2000 = 26.5 weeks

26.5 weeks [x] \$294.00	= \$7,791.00
26.5 weeks [x] \$214.00	= \$5,671.00
	= \$2,120.00
	= \$3,202.92

Total Amount Due \$3,202.92

+ <u>320.29</u> (10% Interest)	
\$3,523.21 (Interest to 8/00)	
+ <u>352.32</u> (10% Interest)	
\$3,875.53 (Interest to 8/01)	
(Total wage benefits due Claimant)	
+ 775.11 (Counsel fees due Claimant's Counsel)	
+ <u>191.09</u> (Bill of Costs)	
	= \$4,841.73

+ Outstanding Medical Bills:

\$ 880.50 Punxsy Hosp. E.R.	
\$ 155.33 Prescription Drugs	
<u>\$ 215.00</u> Dr. Khalouf	
	= \$1,250.83

TOTAL = \$6,092.56

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PABWC Claim No. 2153760
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+ 50 Percent Penalty	= \$3,046.28
20% - Additional Counsel Fees for present proceeding	
20% x \$3,046.28	= <u>\$ 609.26</u>
TOTAL AMOUNT DUE	= \$9,748.10

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the entirety of the record and the respective Law on this matter, this Adjudicator concludes as follows:

1. At all times relevant hereto, the parties were bound by the applicable terms and provisions of the Pennsylvania Workers' Compensation Act, as Amended.
2. Claimant has sustained his burden of proof, that Defendant/Employer has violated the provisions of the Pennsylvania Workers' Compensation Act, as Amended, in failing to make payment of amounts of indemnity benefits, medical costs and expenses, costs of litigation and attorney's fees, ordered to be paid pursuant to the February 12, 2001 Decision and Order, entitling Claimant to an award of the payment of such amounts, together with an award of penalties in the amount of fifty percent (50%) upon such outstanding amounts, for Defendant/Employer's excessive and unreasonable delay in making such payments.
3. As the Claimant has prevailed in this matter, Counsel for Claimant shall be entitled to the reimbursement of costs of litigation; however, no additional costs have been submitted.
4. Defendant/Employer has failed to sustain its burden of proof, that its contest of this Penalty Petition was reasonable. Accordingly, consistent with the foregoing Decision and Order, additional attorney's fees in the amount of twenty percent (20%) upon any additional amounts awarded hereunder shall be paid by Defendant/Employer to Counsel for Claimant, beyond any amounts ordered to be paid hereunder.

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Penalty Petition
PABWC Claim No. 2153760
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ORDER

**AND NOW, this 13th day of February, 2002, it is hereby Ordered that the
Penalty Petition filed by Claimant/Employee, Harry Turner, against Defendant/
Employer, William J. Lamke Paving, and/or its Workers' Compensation Insurer, is
GRANTED.**

Defendant/Insurer is directed to issue payments to Claimant and his Counsel in
accordance with the calculations set forth in Finding of Fact No. 14 (d), and in
accordance with Conclusion of Law Nos. 2 and 4.


**Michael E. Koll
Workers' Compensation Judge
Clearfield District Office**

lfb



Harrisburg, PA 17104

DEPARTMENT OF
LABOR & INDUSTRY
COMMONWEALTH OF PENNSYLVANIA

www.dli.state.pa.us

BUREAU OF WORKERS' COMPENSATION

March 6, 2002

The foregoing is hereby certified to be a true and and correct copy of Judge Michael E. Koll's

Decision Circulated February 13, 2002

Harry Turner v.
in the case of William J. Lamke Paving, BWC #2153760, D/I 9/16/99

as full, entire, and complete as the same remains on file in the Bureau of Workers' Compensation of the Department of Labor and Industry.

Certified this 6th day of March, 2002

Laura S. Keller
Chief
Claims Management Division

ATTEST:

I hereby certify that Laura S. Keller, who signed the foregoing, was at the time of signing, Chief, Claims Management Division, Bureau of Workers' Compensation, and as such, was the legal custodian of the above-described records.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of the Department of Labor and Industry to be affixed on this 6th day of March, 2002

Seal of the Department
of Labor and Industry

Sandra J. Neal
Sandra J. Neal

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

HARRY TURNER,

Plaintiff

vs.

no. 02-414-CO

WILLIAM J. LAMKE, t/d/b/a
WILLIAM J. LAMKE PAVING,

Defendant

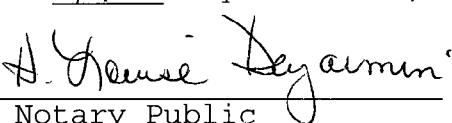
STATE OF PENNSYLVANIA
SS:
COUNTY OF JEFFERSON

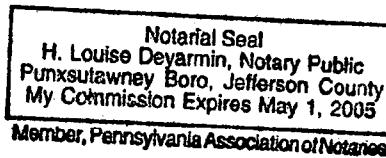
AFFIDAVIT PURSUANT TO 77 P.S. SECTION 951

1. I certify that I am counsel of record for the above-noted claimant-plaintiff, HARRY D. TURNER, in the above-noted claim against WILLIAM J. LAMKE, t/d/b/a LAMKE PAVING.
2. I hereby further certify that there has been a default in payments of compensation due with respect to the above-noted judgment against said WILLIAM J. LAMKE, t/d/b/a LAMKE PAVING.
3. The foregoing statements are true and correct to the best of my knowledge, information and belief.


Nicholas Gianvito, Esq.

Sworn and subscribed before me
this 14th day of March, 2002.


H. Louise Deyarmin
Notary Public



COPY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY ,
PENNSYLVANIA
STATEMENT OF JUDGMENT

Harry Turner
Plaintiff(s)

No.: 2002-00414-CD

Real Debt: \$8,048.10

Atty's Comm:

Vs.

Costs: \$

Int. From:

William J Lamke, t/d/b/a
William J. Lamke Paving
Defendant(s)

Entry: \$20.00

Instrument: Default Judgment

Date of Entry: March 20, 2002

Expires: March 20, 2007

Certified from the record this 20th of March, 2002

William A. Shaw, Prothonotary

SIGN BELOW FOR SATISFACTION

Received on _____, _____, of defendant full satisfaction of this Judgment, Debt, Interest and Costs and Prothonotary is authorized to enter Satisfaction on the same.

Plaintiff/Attorney

COPY

NOTICE OF JUDGMENT

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

Harry Turner

Vs.

No. 2002-00414-CD

William J Lamke, t/d/b/a
William J. Lamke Paving

To: DEFENDANT(S)

NOTICE is given that a JUDGMENT in the above captioned matter has been entered against you in the amount of \$8,048.10 on the March 20, 2002.

William A. Shaw
Prothonotary

William A. Shaw