

# Injured during driving test: Does he qualify for workers' comp benefits?

If someone is injured during a pre-employment test, do they get workers' comp benefits? The answer to that question came down to the definition of a three-letter word.

Cozmin Gadalean applied for a commercial driver position with Imperial Trucking Inc. in Oregon. Gadalean interviewed with the company's owner who scheduled a mandatory U.S. Department of Transportation (DOT) pre-employment driving test.

On June 4, 2014, Gadalean drove an Imperial truck with one of the company's drivers to make an actual delivery. After reaching the destination, Gadalean fell four to five feet from the truck to the ground, landing on his left hip.

He was diagnosed with hip strain. Gadalean filed a workers' comp claim. He said as he understood it, the agreement was that if he passed the pre-employment driving test, he would "continue working," although he said he hadn't received a written offer of employment nor filled out any employment tax form.

Imperial's workers' comp insurer denied the claim. Gadalean requested a hearing before an administrative law judge (ALJ), claiming the owner had told him before the driving test he had the job and he'd be paid 25% of the gross profit from the delivery.

The owner testified he hadn't hired Gadalean. The driver who went along on the delivery said the unpaid pre-employment test was standard practice.

The ALJ OK'd the denial of benefits to Gadalean after

determining that he hadn't been hired, hadn't been paid and hadn't been promised any pay for the pre-employment test. The ALJ credited the testimony of the owner and driver and discredited Gadalean's testimony.

Gadalean appealed to a state court.

### **Workers' comp or minimum wage law?**

Gadalean argued the board should have considered the state's minimum wage law to determine whether he should receive workers' comp benefits.

The Court of Appeals reversed the board, concluding that Gadalean qualified as a worker at the time of his injury because he had been "put to work" and was entitled to receive the minimum wage for the delivery he made.

Imperial appealed to the state supreme court. The company argued that compensation must be a part of the agreement between employer and employee for Gadalean to have been a worker. Gadalean argued that an entitlement to compensation (the minimum wage) was enough to satisfy the "for a remuneration" requirement of the state's workers' compensation law.

The Oregon Supreme Court said the disagreement centered on what the legislature meant when it said that services are furnished "for" a remuneration. The court said that meant the subject acted with an expected result – "he or she did so for – with the expected result of – remuneration."

The state's highest court said that wasn't the situation with Gadalean. Since the board accepted the company owner's explanation that there was no promise to pay Gadalean for the testing time, there was no expectation of pay.

The Oregon Supreme Court reversed the appeals court's ruling and reinstated the board's decision: Gadalean wouldn't receive

workers' comp benefits for the injury he suffered during the driving test.

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