

STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE DIVISION

In the Matter of **The Pape` Group, Inc.** and its) **FINAL ORDER**
subsidiaries: **Pape` Bros., Inc., Pape` D.W., Inc.,**)
and **Pape` Lift, Inc.**) Case No. INS 02-05-012

The Director of the Oregon Department of Consumer and Business Services (director), commenced this administrative proceeding, pursuant to Oregon Revised Statutes (ORS) 731.318(3)(d) and 731.505(4), and Oregon Administrative Rules (OAR) 836-043-0101 *et seq.*, to review a workers' compensation insurance final premium audit billing (billing) issued by SAIF Corporation (insurer) to The Pape` Group, Inc. and its subsidiaries: Pape` Bros., Inc.; Pape` D.W., Inc.; and Pape` Lift, Inc. (collectively referred to as employer).

History of the Proceeding

On 5/6/02, the employer received from the insurer a billing dated 5/1/02 for the audit period from 1/1/01 to 12/31/01.

On 5/14/02, the director received from the employer a written request for a hearing. The director received the request within the 60-day time period required by ORS 731.318(3)(d) and 731.505(4), and Oregon Administrative Rules (OAR) 836-043-0170(1).

On 5/16/02, the director mailed to the employer a petition form, pursuant to OAR 836-043-0170(2), for the employer to complete and return so that the director received it by 7/15/02. The letter informed the employer that if the director does not receive it by the due date, then the employer will not be entitled to a hearing and the director will dismiss the request for a hearing.

On 7/10/02, the director received from the employer the petition. The director received the petition within the 60-day time period required by OAR 836-043-0170(9).

On 7/10/02, the director referred the request to the Office of Administrative Hearings (OAH).

On 8/6/02, OAH issued a notice scheduling a hearing to be held on 11/5/02.

On 11/5/02, OAH held a hearing. The hearing was conducted by Ella D. Johnson, an administrative law judge of OAH. The employer participated in the hearing and was represented by M. Lee Wood as the employer's authorized representative pursuant to OAR 836-005-0112 and 137-003-0555. The employer called Wood as its only witness. The employer offered Exhibits 1 to 18 as its documentary evidence. All of the employer's exhibits were admitted into the record. The insurer was represented by David B. Hatton, an Assistant Attorney General assigned to represent the insurer. The insurer called DeAnne Hoyt and Timothy Hughes as its only witnesses. The insurer offered Exhibits A1 to A28 as its documentary evidence. All of the insurer's exhibits were admitted into the record.

On 1/24/03, OAH issued a proposed order pursuant to ORS 183.460 and OAR 137-003-0645. The proposed order recommended that the director affirm the billing because it concluded that the insurer correctly assessed premium on amounts that the employer paid to its employee pursuant to its paid time off plan. The proposed order concluded that the premium was correctly assessed because the employer did not keep records which differentiated between when an employee used paid time off for vacation, which is excludable, and when the employee used such time for other purposes such as sickness and personal leave, which is not excludable, in premium calculation. The proposed order informed the employer and insurer that they could file with the director written exceptions to the proposed order within 30 days after the proposed order was served on the employer and insurer, pursuant to OAR 137-003-0650. On the same date, OAH mailed a copy of the proposed order to the employer and insurer.

The director did not receive any exceptions from the employer or the insurer.

Therefore, the director now makes the following final decision in this proceeding pursuant to ORS 731.248 and 183.470, and OAR 137-003-0655 and 137-003-0665.

Findings of Fact, Conclusions of Law and Opinion

The director adopts, and incorporates herein by this reference, the findings of fact, conclusions of law, and opinion of proposed order as the facts, conclusions, and reasoning of this final order.

Order

The billing is affirmed.

Notice of Right to Judicial Review

Each party has the right to appeal this final order to the Oregon Court of Appeals pursuant to ORS 183.480 and 183.482. If a party wants to appeal the order, the party must file a petition for judicial review with the Court of Appeals within 60 days from the date this order was served on the party. If the order was personally delivered to a party, then the date of service is the day the party received the order. If the order was mailed to a party, then the date of service is the day the order was mailed to the party, not the day the party received the order. If a party does not file a petition within the 60-day time period, then the party will lose the right to appeal this order. If a party appeals the order, the party should also send a copy of the petition to the Insurance Division by delivering it to Labor and Industries Building, 350 Winter Street NE, Room 440 (4th Floor), Salem, Oregon; or mailing it to PO Box 14480, Salem, OR 97309-0405, or faxing it to 503-378-4351; or e-mailing it to mitchel.d.curzon@state.or.us.

Dated March 10, 2004

/s/ Cory Streisinger
Cory Streisinger
Director
Department of Consumer and Business Services

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