



On September 10, 2002, OAH issued a notice scheduling a hearing to be held on January 28, 2003.

On September 10, 2002, OAH also issued an order granting the employer's request for a stay of all collection efforts by or on behalf of the insurer of any amount billed in the first and second billings until the proceeding is concluded.

On January 27, 2003, OAH issued a notice rescheduling the hearing regarding the first and second billings to May 27, 2003.

On or shortly after March 11, 2003, the employer received from the insurer a billing dated March 11, 2003, for the audit period from January 1, 2002 to December 31, 2002 (third billing); and a billing also dated March 11, 2003 for the audit period from January 1, 2003 to January 31, 2003 (fourth billing).

On April 15, 2003, the director timely received from the employer a written request for a hearing regarding the third and fourth billings. The director assigned case number INS 03-04-010 to the case regarding the third and fourth billings.

On May 2, 2003, the director timely received from the employer a petition and a request for a stay of collection regarding the third and fourth billings, and a request to have the dispute regarding all four billings be consolidated and heard at the hearing scheduled to be held on May 27, 2003.

On May 13, 2003, the director referred to the OAH the petition and request for a stay of collection regarding the third and fourth billings, and request to consolidate both cases, numbers INS 02-06-009 and INS 03-04-010.

On May 20, 2003, OAH issued an order granting the employer's request for a stay of collection of all collection efforts by or on behalf of the insurer of any amount billed in the third and fourth billings until the proceeding is concluded. OAH also issued an order consolidating both cases.

On May 23, 2003, OAH received from the employer an amended petition regarding the third and fourth billings.

On May 27, 2003, OAH held a hearing. The hearing was conducted by Ella D. Johnson, an administrative law judge of OAH. The employer appeared, and was represented at the hearing by William E. Gaar, an attorney licensed in Oregon; and

by Wesley A. McClure, an attorney licensed in Massachusetts, pursuant to Uniform Trial Court Rule (UTCRC) 3.179. The employer called Timothy F. Bergerin, Brenda Cullinan, and Duncan Padding as its witnesses. The employer offered Exhibits R1 through R22 as its documentary evidence. All of the employer's exhibits were admitted into the record. The insurer appeared and was represented at the hearing by David B. Hatton, an Assistant Attorney General assigned to represent the insurer. The insurer called Deanne Hoyt and Tracy Meyer as its witnesses. The insurer offered Exhibits A1 through A53 as its documentary evidence. The insurer's exhibits A1 through A51 and A53 were admitted into the record.

On August 5, 2003, OAH issued a proposed order. The proposed order recommended that the director affirm all four billings.

On September 4, 2003, the director timely received from the employer written exceptions to the proposed order.

On September 5, 2003, the director timely received from the insurer written exceptions to the proposed order.

On September 15, 2003, the director received from the insurer a written response to the employer's exceptions to proposed order.

On September 16, 2003, the director requested OAH to revise the proposed order as OAH considered appropriate to address the exceptions filed by the employer and the insurer.

On March 16, 2004, OAH issued an amended proposed order. The amended proposed order continued to recommend that the director affirm all four billings.

On April 12, 2004, the director received from the employer written exceptions to the amended proposed order.

On April 26, 2004, the director received from the insurer a written response to the employer's exceptions to the amended proposed order.

The director considered the employer's exceptions and the insurer's response. The director either disagreed with the employer's exceptions, or agreed with them but concluded that such exceptions did not cause the director to make a different decision. The director agreed with the insurer's response.

Therefore, the director now makes the following final decision in this proceeding.

**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 amended proposed order as the facts, conclusions, and reasoning of this final order.

**Order**

All four billings are affirmed and the stay of collection is withdrawn.

**Notice of Right to Judicial Review**

Each party may have 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 (4<sup>th</sup> 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](mailto:mitchel.d.curzon@state.or.us)

Dated September 29, 2004

/s/ Joel Ario  
Joel Ario  
Administrator  
Insurance Division  
Department of Consumer and Business Services

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