

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
FOR THE DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE DIVISION**

In the Matter of the Premium Audit)	
Appeal of)	Case No. INS 03-11-005
)	
STEVEN J. SCHNEIDER, dba)	
Cascade Construction & Remodeling)	PROPOSED ORDER OF
)	DISMISSAL
)	
)	

On November 4, 2003, Steven Schneider, dba Cascade Construction & Remodeling (petitioner or Schneider) timely filed a request for hearing concerning the billing issued for his workers’ compensation coverage by the respondent insurer, Liberty Northwest Insurance Corporation (insurer or Liberty), for the policy period of August 13, 2003 through September 1, 2003 (policy period). On November 18, 2003, petitioner submitted a petition raising several issues and naming Liberty as his carrier. Accompanying the petition was a copy of the billing. The billing and attached notice of appeal rights were titled “Final Premium Audit Billing.” On November 19, 2003, the Department of Consumer and Business Services, Insurance Division (the department or director) referred this matter to the Office of Administrative Hearings (OAH) for hearing.

On December 18, 2003, Liberty filed a Motion to Dismiss in this matter, arguing that the department was without jurisdiction to hear this matter. On January 15, 2003, Administrative Law Judge Ella D. Johnson conducted a telephone conference in this matter to hear oral argument on Liberty’s Motion to Dismiss. Liberty was represented by Senior Trial Counsel Barbara Woodford. Petitioner represented himself *pro se*.

In that regard, Liberty argued that the department was without jurisdiction to hear this appeal because the billing in this case was based on an estimated audit and not an actual audit inasmuch as petitioner refused to allow Liberty to perform a final premium audit of his records as required by the insurance contract and the rules governing the provision of workers’ compensation insurance in Oregon. Petitioner responded that he did not allow Liberty to perform the audit of his records because he was not insured through Liberty. Liberty established that it provided petitioner with worker’s compensation insurance through the assigned risk pool during the audit period.¹

ORS 737.318(2) and (3) and 737.505(4) give the department the responsibility to hear appeals by employers of final premium audit billings issued by workers’ compensation insurers and to promulgate rules governing the final premium audit program. Furthermore, OAR 836-043-0170(7) states:

¹ Thereafter, Liberty provided petitioner with a copy of his signed application and policy establishing that petitioner was insured through Liberty

(7) Subject to the exception provided in section (8)² of this rule, for purposes of ORS 737.318 and 737.505, OAR 836-043-0110 and this rule, the final premium audit billing of an employer is the first document issued by the insurer to the employer **after its audit of the employer** that contains all of the elements specified in this section. Failure by the insurer to include any of the elements renders the billing incomplete as a final premium audit billing for purposes of ORS 737.318 and 737.505 and renders the debt uncollectible until all elements are included. The elements are as follows:

- (a) The results of the audit;
- (b) The amount of the difference between the estimated standard premium reported by the employer for the entire policy period and the final standard premium calculated after the policy period is over **as determined pursuant to the audit**; and
- (c) The notification required in ORS 737.318 and OAR 836-043-0110.

(Emphasis added.)

Additionally, the policy signed by petitioner requires petitioner at PART FIVE – PREMIUM, G concerning the “Audit” to allow Liberty to examine and audit all of his records related to the policy. It further states at subsection E that:

The premium shown on the information Page, schedules and endorsements is an estimate. The final premium will be determined after this policy ends using the actual, not estimated, premium basis and the proper classifications and rates that lawfully apply to the business and work covered by this policy.

Here, the premium billed by Liberty was based on an estimated audit, not on a final premium audit. Notwithstanding the title placed on the billing by the insurer, petitioner’s billing was

² Section (8) states:

If the insurer after an audit of an employer issues both a statement of the employer’s account and a letter to the employer that explains the audit and states the amount of the difference, the statement of account and the letter together are the final premium audit billing and:

- (a) The insurer may provide the notification required in ORS 737.318 and OAR 836-043-0110 either in the statement of account or in the letter; and
- (b) If the statement of account and the letter are received separately, the 60-day period within which the Director must receive the request for a hearing begins upon receipt by the employer of the later-received document.

not a final premium audit billing over which the department has jurisdiction. Consequently, I conclude that, because the department is without jurisdiction or authority over this estimated audit, the Office of Administrative Hearings is without jurisdiction to conduct a hearing to resolve this matter.

In reaching this conclusion, I note that should petitioner allow Liberty to audit his records and he disagrees with the resulting final premium audit billing, the department would have jurisdiction to hear his case. Accordingly, this matter shall be dismissed for lack of jurisdiction.

ORDER

Petitioner's appeal of the estimated premium audit billing for the policy period August 13, 2003 through September 1, 2003 shall be dismissed for lack of jurisdiction.

IT IS SO ORDERED.

Dated this 26th day of January 2004 in Salem, Oregon.

Ella D. Johnson, Administrative Law Judge
Office of Administrative Hearings

NOTICE OF OPPORTUNITY FOR ADMINISTRATIVE REVIEW

NOTICE: Pursuant to ORS 183.460, the parties are entitled to file written exceptions to this proposed order and to present written argument concerning those exceptions to the Director. Written exceptions must be received by the Department of Consumer and Business Services within 30 days following the date of service of this proposed order. Mail exceptions to:

Mitchel D. Curzon
Chief Enforcement Officer
Insurance Division
Dept of Business & Consumer Services
PO Box 14480
Salem OR 97309-0405