

**STATE OF OREGON  
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
INSURANCE DIVISION**

In the Matter of **Steven J. Schneider dba Cascade Construction & Remodeling.** ) **FINAL ORDER**  
 ) Case No. INS 03-11-005

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 Liberty Northwest Insurance Corporation (insurer) to Steven J. Schneider dba Cascade Construction & Remodeling (employer).

**History of the Proceeding**

On 9/26/03, the employer received from the insurer a billing dated 9/17/03 for the audit period from 8/13/02 to 9/1/03.<sup>1</sup>

On 11/4/03, 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 11/4/03, 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 1/5/04.

On 11/18/03, 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).

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<sup>1</sup> The billing indicated that the policy period, and thus in this case also the audit period, was from 8/13/02 to 9/01/03, although the petition indicated that the audit period was for 8/13/03 to 9/1/03. The employer's application to the insurer, dated 8/12/02, also indicated that the proposed effective date of the insurance was to be 8/13/02. Therefore, the director finds that the beginning of the audit period is 8/12/02, not 8/12/03, as stated in the Proposed Order.

On 11/19/03, the director referred the request to the Office of Administrative Hearings (OAH).

On 11/28/03, OAH 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 billing until this proceeding is concluded.

On 12/10/03, OAH issued a notice scheduling a hearing to be held on 3/3/04.

On 12/19/03, OAH received from the insurer a motion dated 12/18/03 to dismiss the employer's request for a hearing, remove the stay of collection, because the billing was based on an estimation of the employer's payroll, and not on an actual audit of any of the employer's records, and thus the billing was not a final premium audit billing .

On 1/15/04, OAH held a telephone conference to consider the insurer's motion. The conference was conducted by Ella D. Johnson, an administrative law judge of OAH. The employer represented himself, and the insurer was represented by Barbara Woodford, an attorney.

On 1/26/04, OAH issued a proposed order. The proposed order recommended that the director dismiss the employer's request for a hearing because it concluded that pursuant to ORS 737.318(3)(d), ORS 737.505(4), and OAR 836-043-0170(7) the employer was entitled to a hearing only after the insurer conducted an audit of the employer's records, but the insurer did not conduct an audit because the employer refused to allow the insurer to conduct an audit.<sup>2</sup> 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.

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<sup>2</sup> See OAR 836-043-0110(2) and (3) requiring a workers' compensation insurer to conduct audits.

**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 employer’s request for a hearing is denied and the stay is removed.

**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.

Dated May 10, 2004

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

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