

On 5/13/03, the director received from the employer a written request for a hearing.¹ The director received the request within the 30-day time period required by ORS 737.505(3).

On 6/3/03, the director referred the request to the Office of Administrative Hearings (OAH).

On 6/18/03, OAH issued a notice of hearing scheduling a hearing to be held on 9/9/03.

On 6/23/03, OAH issued an amended notice scheduling a hearing to be held on 9/9/03.²

On 9/9/03, OAH held a hearing. The hearing was conducted by Catherine P. Coburn, an administrative law judge of OAH. The employer participated in the hearing and was represented by Robert K. Alexander, as the employer's authorized representative pursuant to OAR 836-005-0112 and 137-003-0555. The employer called Robert K. Alexander as its only witness. The employer offered Exhibits 1 to 11 as its documentary evidence. All of the employer's exhibits were admitted into the record. ORAC was represented at the hearing by Tim Hughes, the Recording Secretary for ORAC, as its authorized representative. ORAC called Brian Fowler as its only witness. ORAC offered Exhibits R1 to R2 as its documentary evidence. All of ORAC's exhibits were admitted into the record.

On 10/9/03, OAH issued a proposed order pursuant to ORS 183.460 and OAR 137-003-0645. The proposed order recommended that the director affirm ORAC's decision because it determined that (1) classification code 5651 specifically describes the employer's operations, (2) classification code 5403 does not apply when another more specific classification code applies, like classification code 5651 applies in this case, and (3) classification code 5445 does not apply when the general

¹ The Proposed Order incorrectly indicated that the employer requested a hearing on 5/19/03.

² The notice issued on 6/18/03 characterized this case as a workers' compensation premium audit type of case initiated by the employer requesting a hearing to review a final premium audit billing issued by the insurer pursuant to ORS 737.318(3)(d) and 737.505(4). The amended notice correctly characterized this case as a workers' compensation classification type of case initiated by the employer requesting a hearing to review a decision by ORAC pursuant to ORS 737.505(2)-(3).

contractor is responsible for the entire dwelling project and the general contractor's employees install the wallboard, like in this case. The proposed order informed the employer and ORAC 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 ORAC.

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

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, except as follows.

Page 3, fifth paragraph, which states that "Class Code 5651 contains an Oregon Special Rule which provides in pertinent part: Carpentry repair or remodeling of dwellings three stories or less is also contemplated under this classification. (Emphasis in the original.)"

The underlined quoted text is actually part of the description of the scope of the classification, rather than a state specific rule. Although there is a state specific rule relative to classification code 5651, it is not relevant to this case.

Page 4, fourth full paragraph, which states that "The Scopes Manual Class Code 5403 contains an Oregon Special Rule which provides in pertinent part:"

Code 5403 covers general carpentry work not otherwise classified in the Basic Manual. It contemplates carpentry work of a commercial and industrial nature such as buildings or structures. It also contemplates construction of dwellings that exceed three stories in height. Code 5403 also applies to carpentry repair and/or remodeling of commercial buildings and structures and dwellings that exceed three stories in height.

The indented quoted text is actually part of the description of the scope of the classification, rather than a state specific rule. Although there is a state specific rule relative to classification code 5403, it is not relevant to this case.

Order

ORAC's decision is affirmed.³

Notice of Right to Judicial Review

Each party may have the right to appeal this order to the Oregon Court of Appeals pursuant to ORS 183.480 and 183.482. A party may appeal the order by filing a written petition for judicial review with the Court of Appeals in accordance with the current Oregon Rules of Appellate Procedure. The Court of Appeals must receive the petition within 60 days from the date the 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 the 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 the 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 April 5, 2004

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

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³ The Proposed Order incorrectly "ordered" that the workers' compensation final premium audit billing issued by the insurer, which precipitated the employer's request to ORAC, was correct and payable. As indicated previously, this case as a workers' compensation classification type of case initiated by the employer requesting a hearing to review a decision by ORAC pursuant to ORS 737.505(2)-(3). Therefore, as provided in ORS 737.505(3), the decision to be made in this case is only whether ORAC's decision is to be affirmed or reversed. The decision is not whether the insurer's billing is correct and payable.