

**BEFORE THE HEARING OFFICER PANEL
STATE OF OREGON
for the
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE DIVISION**

In the Matter of the Petition of)	Case Nos.: INS 03-06-003
)	
)	PROPOSED ORDER
SAFE INC)	
)	ON DEFAULT

HISTORY OF THE CASE

The employer appeals the May 7, 2003 decision of the Oregon Workers Compensation Rating System Review and Advisory Committee (ORAC). On December 3, 2003, Administrative Law Judge Catherine P. Coburn conducted a hearing in this matter. Petitioner SAFE, Inc. (employer) failed to appear. Pursuant to OAR 137-003-0555, Tim Hughes, appeared as authorized representative for ORAC. The record closed following the hearing.

OFFICIAL NOTICE

I take official notice of the *Basic Manual of Workers' Compensation and Employers Liability Insurance (Basic Manual)*. The *Basic Manual* is a publication of NCCI. It includes the rules insurer follow to arrive at the correct class code for a business and the official description for all class codes filed with the department. The *Basic Manual* is a required part of every insurer's audit procedure guide. OAR 836-043-115(1)(a). I also take official notice of another NCCI publication, the *Scopes of Basic Manual Classifications (Scopes Manual)*. The *Scopes Manual* consists of a numerical listing of class codes with descriptive terminology and examples of types of business activities that have been included in class codes in the past.

DEFAULT

Pursuant to OAR 137-003-0670, when a party is notified of the time and place of the hearing and fails to appear, for reasons not beyond that party's reasonable control, an Administrative Law Judge may issue a default order if she finds persuasive evidence in the record to support the order. Here, employer was duly notified of the time and place of the hearing by letter dated September 23, 2003. At 30 minutes past the convening time, I convened the hearing in the employer's absence. Employer made no contact with the Office of Administrative Hearings to explain any event that might excuse its failure to appear. Under the circumstances, I find that a default order is appropriate.

ISSUE

Whether ORAC incorrectly denied petitioner's request to amend *Basic Manual* Rule 2-E-1 that establishes a minimum payroll of \$300 per week for officers of a non-profit business.

EVIDENTIARY RULINGS

Pursuant to the hearing notice dated September 23, 2003, the agency file is designated as the record. Also, ORAC's Exhibits A through D were received into the record without objection.

FINDINGS OF FACT

- (1) Petitioner is a non-profit corporation operating a drop-in center that is staffed in part by mental health consumers who use the services of the facility. Individuals who work at the facility are called "keyholders." Three keyholders also serve as officers of petitioner's board of directors. They are not compensated for their service to the board. However, they are paid from \$82 to \$200 per month for their work as keyholders. Petitioner's insurance carrier assessed a minimum payroll of \$300 per week to these individuals in lieu of actual wages earned. (Ex. D-1.)

CONCLUSION OF LAW

ORAC correctly denied petitioner's request to amend *Basic Manual* Rule 2-E-1 that establishes a minimum payroll of \$300 per week for officers of a non-profit business.

OPINION

Inasmuch as petitioner is the party seeking redress before the department concerning SAIF's final premium audit billing for the audit period, petitioner has the burden of proving its position on those issues by a preponderance of the evidence. *Salem Decorating v. Nat'l Council on Comp. Ins.*, 116 Or App 166 (1992), *rev den* 315 Or 643 (1993) (in premium audit cases, burden of proof is on the employer). "Preponderance of the evidence" means that the factfinder is persuaded that the facts asserted are more likely true than false. *Riley Hill General Contractors v. Tandy Corp.*, 303 Or 390 (1989). Accordingly, employer carries the burden of proving by a preponderance of the evidence that the final premium audit is incorrect.

The *Basic Manual* (2001 Edition) Rule 2-E-1 provides that the minimum wage for executive officers is \$300. Here, the keyholders employed by petitioner are board members, and qualify as executive officers who are subject to assessment of a minimum payroll of \$300 per week. ORAC found that petitioner's employment practices are unique and do not warrant amending a national rule. I agree. Petitioner failed to appear, and therefore has failed to meet its burden. Inasmuch as the record contains persuasive facts supporting ORAC's decision, ORAC's decision is affirmed. OAR 137-003-0670(3)(a)

ORDER

IT IS HEREBY ORDERED that:

ORAC's May 7, 2003 decision is affirmed.

DATED this 9th day of December 2003.

Catherine P. Coburn, 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
Oregon Insurance Division
350 Winter Street NE Room 400
Salem, OR 97301-3883

