

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

In the Matter of **A+ Secure Storage, LLC**) **FINAL ORDER**
) Case No. INS 03-08-010

The Director of the Oregon Department of Consumer and Business Services (director), by and through the Insurance Division, commenced the above entitled administrative proceeding, at the request of A+ Secure Storage, LLC (employer), to review a decision by the Oregon Workers' Compensation Rating System Review and Advisory Committee (ORAC), pursuant to Oregon Revised Statutes (ORS) 737.505(3), and Oregon Administrative Rules (OAR) 836-043-0200 *et seq.*

History of the Proceeding

On August 12, 2003, the employer received from ORAC a letter dated August 11, 2003. The letter informed the employer that ORAC was unable to decide, due to a lack of a majority vote, whether to allow the employer to divide the payroll of three part time employees between classification code 8810 for the clerical work and 9015 for the customer service work. Thus, ORAC's decision was in effect to continue to assign code 9015, and not assign code 8810, to the employer relative to the three part time employees.

On August 18, 2003, the director timely received from the employer a written request for a hearing.

On September 9, 2003, the director timely received from the employer a petition.

On September 10, 2003, the director referred the request to the Office of Administrative Hearings (OAH).

On September 23, 2003, OAH scheduled a hearing to be held on January 7, 2004.

On January 12, 2004, OAH rescheduled the hearing to be held on April 7, 2004.

On April 7, 2004, OAH held a hearing. The hearing was conducted by Catherine P. Coburn, an administrative law judge of OAH. The employer appeared and was represented at the hearing by Jerry J. Peacore (Peacore), President of the employer, as the employer's authorized representative pursuant to OAR 836-005-0112 and

137-003-0555. Peacore testified on behalf of the employer. The employer offered Exhibits A through G as its documentary evidence. All of the employer's exhibits were admitted into the record. Subsequently, the employer submitted another document which OAH, absent any objection by ORAC, admitted as additional evidence and marked as Exhibit H. ORAC appeared at and was represented at the hearing by Timothy J. Hughes (Hughes), the Secretary for ORAC, as its authorized representative. Hughes testified on behalf of ORAC. ORAC did not offer any documentary evidence.

On March 5, 2004, OAH issued a proposed order. The proposed order recommended that the director affirm ORAC's decision because Oregon's workers' compensation classification system has a special rule that precludes assigning to code 8810 any portion of the payroll of an employee that performs any retail customer services, and in this case, the employer's three part time employees perform some retail customer services such as completing and accepting storage rental applications and payments from customers. 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. 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.

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

ORAC's decision is affirmed.

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. 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 September 21, 2004

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

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