

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

In the Matter of **WRG Fire Training and Simulation Systems, Inc.** ) **FINAL ORDER**  
 ) Case No. INS 03-01-016

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 SAIF Corporation (insurer) to WRG Fire Training and Simulation Systems, Inc. (employer).

**History of the Proceeding**

Sometime between January 2, 2003 and February 26, 2003<sup>1</sup>, the employer received from the insurer a billing dated January 2, 2003 for the audit period from January 1, 2001 to December 31, 2001<sup>2</sup>.

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<sup>1</sup> The corrected proposed order did not find when the employer received the billing but merely concluded that the [e]mployer timely filed a hearing request within 60 days from receipt of the final premium audit billing as required by ORS 737.505(4).” The billing was dated January 2, 2003. If the employer had received the billing on the same date as it was dated, then the employer would have had until March 3, 2003 for the director to receive a request for a hearing. The director received from the request for a hearing on January 29, 2003. The employer stated in its petition dated March 1, 2003 that it received the billing on “01/02/03 & 02/06/03 & 02/26/03.” The employer did not specify what it received on each date; or by which date, if at all, it had received all of the information required by OAR 836-043.0170(7). Included with the petition was, *inter alia*, a copy of the cover page of the billing, the premium audit adjustment page of the billing, and the premium audit results page of the billing. The only page of the billing that was not included in the petition was the notice of the employer’s right to request a hearing. However, the employer’s request for a hearing was addressed to the director at the same address as would have been stated in the notice, and requested the “appropriate forms / paper work” that the notice would have informed the employer to expect to receive after requesting a hearing. However, neither the employer nor the insurer contested this jurisdictional issue during or after the hearing. The director concludes that the preponderance of the evidence supports the conclusion in the corrected proposed order that the employer timely requested a hearing.

<sup>2</sup> The corrected proposed order did not state what the audit period was but merely referred to the audit period. The employer indicated in its petition that the audit period from January 1, 2001 to December 31, 200. However, the billing being reviewed indicated that the audit period was from January 1, 2001 to only December 31, 2001. Thus, the director finds that the audit period was from January 1, 2001 to December 31, 2001.

On January 29, 2003, the director timely received from the employer a written request for a hearing.

On January 31, 2003, the director mailed to the employer a petition form for the employer to complete and return so that the director received it by March 31, 2003.

On March 5, 2003, the director timely received from the employer the petition and a request for stay of collection.

On March 6, 2003, the director referred the request to the Office of Administrative Hearings (OAH).

On March 12, 2003, OAH scheduled a hearing to be held on June 10, 2003.

On March 12, 2003, OAH issued an order granting 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, pursuant to OAR 836-043-0170(5).

On October 14, 2003, OAH rescheduled the hearing to be held on November 12, 2003.

On November 12, 2003, OAH commenced a hearing. The employer requested that the hearing be continued at a later time so it could obtain an attorney. The employer's request was granted.

On November 26, 2003, OAH rescheduled the hearing to January 6, 2004.

On January 12, 2004, OAH rescheduled the hearing to April 13, 2004.

On April 21, 2004, OAH rescheduled the hearing to June 30, 2004.

On June 30, 2004, OAH rescheduled the hearing to July 28, 2004.<sup>3</sup>

On July 28, 2004, OAH resumed the hearing. The hearing was conducted by Ella D. Johnson, and administrative law judge of OAH. The employer appeared and was represented at the hearing by William R. Gee, as the employer's authorized representative pursuant to OAR 836-005-0112 and 137-003-0555. The employer called William R. Gee and Barbara Gee as its witnesses. The employer offered Exhibit P1 as its documentary evidence. The employer's exhibit was admitted into

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<sup>3</sup> As indicated in the corrected proposed order, the hearing was rescheduled each time due to the employer's unavailability.

the record. The insurer appeared and was represented at the hearing by David B. Hatton, an Assistant Attorney General assigned to represent the insurer. The insurer called Gretchen Amann and Paul Johnson as its witnesses. The insurer offered Exhibits A1 to A37 as its documentary evidence. All of the insurer's exhibits were admitted into the record.

On September 7, 2004, OAH issued a proposed order. The proposed order recommended that the director affirm the insurer's billing because it found that (1) the insurer correctly added classification code 5040 by analogy because the employer's operations substantially changed during the audit period, (2) the insurer correctly allocated certain payroll to the additional classification because the employer did not keep verifiable time records to allow the insurer to divide the payroll between the new classification and other otherwise applicable classifications, and (3) the insurer correctly retroactively assigned the new classification from the beginning of the audit period pursuant to OAR 836-043-0190(3)(c). 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. On the same date, OAH mailed a copy of the proposed order to the employer and insurer.

The director did not receive from the employer or the insurer any exceptions to the proposed order.

On October 14, 2004, the director requested OAH to correct the proposed order.<sup>4</sup>

On October 22, 2004, OAH issued a corrected proposed order.

The director did not receive from the employer or insurer any exceptions to the corrected proposed order.<sup>5</sup>

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<sup>4</sup> The proposed order erroneously indicated that the employer offered Exhibits 1 through 3, when it only offered Exhibit P-1, a video tape. The order also erroneously indicated that the insurer offered Exhibits 101-113 when it actually offered Exhibits A1 through A37. The order also indicated that the National Council on Compensation Insurance, Inc. (NCCI) offered Exhibits A1 through A14 when it was not a party to the proceeding, and did not present any exhibits. These errors were corrected in the corrected proposed order.

<sup>5</sup> The corrected proposed order stated on page 1, third paragraph, last sentence, that the parties' "Appeal rights [*i.e.* right to file written exceptions] will continue to run [for 30 days] from the original

## **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 the corrected proposed order, as clarified herein, as the facts, conclusions, and reasoning of this final order.

### **Order**

The billing is affirmed and the stay is withdrawn.

### **Notice of Right to Judicial Review**

Each party may be entitled to have the final order reviewed by the Oregon Court of Appeals pursuant to ORS 183.480 and 183.482. A party may institute a proceeding for judicial review by filing with the court a petition for judicial review 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 files a petition, the party is requested to also send a copy of the petition to the Insurance Division.

Dated February 3, 2005

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

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date of the Proposed Order issued on September 7, 2004, inasmuch as this correction does not change the outcome of the order.” However, the corrected proposed order also stated on page 8, that the parties had the right to file written exceptions to the corrected proposed order. Since the corrected order informed the parties that they had the right to file exceptions thereto, notwithstanding the contrary statement therein, we conclude that the parties had the right. On November 19, 2004, the director sent an e-mail to both parties to find out if they did not file any exceptions because they chose not to or because they erroneously believed that they could not. The director asked the parties to respond by 12/3/04. On 11/22/04, the insurer responded that it did not plan on filing any exceptions. The director did not receive any response from the employer. On 11/22/04, the director resent the original e-mail to the employer. The director did not receive any response from the employer.