

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

In the Matter of **Thomas Canon**) **FINAL ORDER**
dba Quality Parts and Restoration) Case Nos. INS 04-05-004
) INS 04-07-014

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 two workers' compensation insurance final premium audit billings (billing(s)) issued by Liberty Northwest Insurance Corporation (insurer) to Thomas Canon dba Quality Parts and Restoration (employer).

History of the Proceeding

On 3/12/04, the employer received from the insurer a billing dated 3/12/04 for the audit period from 1/1/03 to 12/31/03 (first billing).

On 5/4/04, the director timely received from the employer a written request for a hearing regarding the first billing.

On 6/21/04, the director mailed to the employer a petition form, regarding the first billing, to complete and return by 7/6/04.

On 6/30/04, the employer received from the insurer another billing dated 6/30/04 for the audit period from 1/1/04 to 6/7/04 (second billing). The billing informed the employer that it may request a hearing within 60 days after the employer received the billing.

On 7/14/04, the director timely received from the employer the petition regarding the first billing.

Also on 7/14/04, the director timely received from the employer a written request for a hearing regarding the second billing.

On 7/15/04, the director mailed to the employer a petition form, regarding the second billing, for the employer to complete and return by 9/13/04.

On 8/4/04, the director timely received from the employer the petition regarding the first billing.

On 8/9/04, the director referred both requests to the Office of Administrative Hearings (OAH). The director assigned case number INS 04-05-004 to the request regarding the first billing, and case number INS 04-07-014 to the request regarding the second billing.

On 8/19/04, OAH scheduled a hearing regarding both cases to be held on 12/3/04.

On 1/27/05, OAH rescheduled the hearing from 12/3/04 to 3/24/05.

On 3/24/05, OAH held a hearing. The hearing was conducted by Lawrence S. Smith, an administrative law judge of OAH. The employer appeared and was represented at the hearing by Bruce D. Smith, an attorney. The employer called Thomas Canon as its witness. The employer offered Exhibits 115 to 122 as its documentary evidence. All of the employer's exhibits were admitted into the record. The insurer appeared and was represented at the hearing by Barbara Woodford, an attorney. The insurer called Deanne Bigham and David Wilson as its witnesses. The insurer offered Exhibits 101 to 114 as its documentary evidence. All of the insurer's exhibits were admitted into the record.

On 4/21/05, OAH issued a proposed order. The proposed order recommended that the director affirm the billings because the insurer assigned classification code 9534 to the employer's concrete pumping operations, code 9534 more accurately described such operations than code 5213, and the employer did not keep verifiable payroll records that would have allowed the insurer to allocate payroll of certain employees between various applicable codes pursuant to OAR 836-042-0060. 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.

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

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, and reasoning of proposed order as the findings of facts, conclusions, and reasoning of this final order.

Order

The billings are affirmed.

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 August 8, 2005

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

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