

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

In the Matter of **Genaro S. Leiva-Perez**
dba The Finishing Touch Construction

) **FINAL ORDER**
) Case No. INS 04-07-021

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 to Genaro S. Leiva-Perez dba The Finishing Touch Construction (employer).

History of the Proceeding

On 7/14/04, the employer received from the insurer a billing dated 7/13/05 for the audit periods from 9/1/02 to 8/31/03 and from 9/1/03 to 1/11/04. The billing informed the employer that it may request a hearing by sending to the director a written request for a hearing so that the director receives the request within 60 days after the employer received the billing. See ORS 737.318(3)(d), ORS 737.505(4), and OAR 836-043-0170(1).

On 7/21/04, the director timely received from the employer a written request for a hearing.

On 7/22/04, the director mailed to the employer a letter and a petition form. The letter informed the employer that it must complete the petition and return it to the director so that the director receives it within 60 days after the director received the request for a hearing, otherwise the director will dismiss the employer's request for hearing. See OAR 836-042-0170(2)-(3) & (9).

On 9/7/04, the director timely received from the employer the completed petition and a request for stay of collection.

On 9/8/04, the director referred the request to the Office of Administrative Hearings (OAH).

On 9/16/04, 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 9/27/04, OAH scheduled a hearing to be held on 12/29/04.

On 2/14/05, OAH rescheduled the hearing to be held on 5/4/05.

On 5/4/05, 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 Genaro S. Leiva-Perez, as the employer's authorized representative pursuant to OAR 836-005-0112 and 137-003-0555. The employer called Genaro S. Leiva-Perez as its only witness. The employer did not offer any documentary evidence. 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 Denise L. Ashley, Ed Dolfay, and Jeffrey Hull as its witnesses. The insurer offered Exhibits A1 to A41 as its documentary evidence. All of the insurer's exhibits were admitted into the record.

On 5/24/05, OAH issued a proposed order. The proposed order recommended that the director affirm the billing because the employer did not meet its burden of proving by a preponderance of the evidence that the billing was incorrect. See ORS 183.450(2); *Salem Decorating v. Natl. Council on Comp. Ins.*, 116 Or App 166, 170, 840 P2d 739 (1992), *rev den*, 315 Or 643 (1993); *Gallant v. Board of Medical Examiners*, 159 Or App 175, 180, 974 P2d 814 (1999). 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 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 August 8, 2005

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

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