

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

In the Matter of **Farrell V. Larson *et. al***) **FINAL ORDER**
dba Larson Skyline Farms) Case No. INS 04-08-009

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 Farrell V. Larson *et. al.*, a partnership, dba Larson Skyline Farms (employer).

History of the Proceeding

On 8/6/04, the employer received from the insurer a billing dated 8/3/04 for the audit period from 3/1/03 to 3/1/04. 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 8/19/04, the director timely received from the employer a written request for a hearing.

On 8/23/04, 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 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 a hearing. See OAR 836-043-0170(2)-(3) & (9).

On 10/13/04, the director timely received from the employer the completed petition.

On 10/15/04, the director referred the request to the Office of Administrative Hearings (OAH).

On 11/1/04, OAH scheduled a hearing to be held on 2/1/05.

On 2/1/05, 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 Farrell V. Larson, managing partner, as the employer's authorized representative pursuant to OAR 836-005-0112 and 137-003-0555. The employer called Larson as its witness. The employer offered Exhibits P1 to P10 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 David B. Hatton, an Assistant Attorney General assigned to represent the insurer. The insurer called Joseph Rick and DeAnne J. Hoyt as its witnesses. The insurer offered Exhibits A7 through A17 as its documentary evidence. Exhibits A1 to A17 were admitted into the record.

On 3/4/05, OAH issued a proposed order recommending that the director affirm the billing because (1) the employer did not keep verifiable payroll records, as described in OAR 836-042-0060, which would have allowed the insurer to allocate the payroll to various applicable classifications based on the type of work performed rather on any other basis; and (2) in the absence of such records, the insurer correctly allocated a small portion of the payroll to code 0008 for the hand harvesting of onions and the remaining portion of the payroll to code 0037 for the mechanical harvesting of all other field crops, as required by OAR 836-042-0060(3) and the "proportionate acreage rule" applicable to special classifications for farm operations in Oregon as stated in the National Council on Compensation Insurance, Inc.'s (NCCI) Basic Manual of Workers' Compensation and Employers Liability Insurance, 2001 Edition (Basic Manual), page 8. 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 of law, and opinion of proposed order as the facts, conclusions, and reasoning of this final order, except as follows:

On page 3, the second quoted section of OAR 836-042-0060, immediately after the asterisks "*****", is corrected from "(1)" to "(3)" and the third quoted section of the same rule is corrected from "(2)" to "(3)".

On page 4, in the third full paragraph, second sentence, the reference to "Rule 8742" is deleted because there is no rule numbered 8742. However, there is a classification code numbered 8742 but code 8742 applies to only estimators. The subsequently quoted text from the Basic Manual does not relate to code 8742, but it does relate to classification codes that apply to farms and therefore is relevant.

Order

The billing is 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 June 21, 2005

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