

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE DIVISION**

In the Matter of the Petition of)	Case No.: INS 04-10-017
)	
GRANTS PASS JETBOATS, INC.)	
dba HELLGATE JETBOAT EXCURSIONS)	PROPOSED ORDER
)	
)	

HISTORY OF THE CASE

On July 9, 2004, insurer SAIF Corporation (SAIF) sent a Final Premium Audit Billing to petitioning employer Grants Pass Jet Boats, Inc. (Petitioner) for the period of April 1, 2003 through April 1, 2004. Petitioner filed a request for hearing on October 15, 2004. Its request was referred to the Office of Administrative Hearings (OAH) on December 2, 2004.

A telephone hearing was held by Administrative Law Judge Lawrence S. Smith of OAH on March 22, 2005. Pursuant to OAR 137-003-0555, Petitioner was represented by its president, Robert Hamlyn, with one witness, Kevin Mee, Petitioner's accountant. Assistant Attorney General David B. Hatton represented responding insurer SAIF Corporation (SAIF), with one witness, Teresa Smith of SAIF. The hearing and record closed that day.

ISSUE

Whether Petitioner filed a timely request for hearing after receiving a Final Premium Audit Billing mailed July 9, 2004.

EVIDENTIARY RULINGS

Insurer's Exhibits 1 through 3 and procedural Exhibits 4 through 6 were admitted without objection.

FINDINGS OF FACT

(1) Petitioner is an Oregon corporation that hires employees in its business of offering river boat trips. Its busy season is from May through September each year. (Test. of Hamlyn and Mee.)

(2) SAIF provided workers' compensation coverage to Petitioner for the period of April 1, 2003, through April 1, 2004. On July 9, 2004, SAIF mailed a Final Premium Audit Billing for this time period to Petitioner at its correct mailing address. Petitioner received it soon after it was mailed. (Ex. 1.)

(3) Petitioner's president forwarded Billing to its accountant by August 2, 2004. Because they were distracted by the busy season, the president and accountant did nothing about the Billing until the accountant called SAIF on October 15, 2004. He was advised about the 60-day time limit for an appeal and told to file it even though it was late. (Test. of Mee and Smith.) That day, the accountant sent a letter to SAIF, requesting a hearing. (Ex. 3.) Petitioner's president filed a Petition on November 24, 2004. (Ex. 2.)

CONCLUSION OF LAW

Petitioner did not file a timely request for hearing after receiving the Final Premium Audit Billing mailed July 9, 2004.

OPINION

On February 4, 2005, SAIF requested dismissal of Petitioner's Petition because Petitioner did not file its petition within 60 days after receiving the Final Premium Audit Billing was, as required by ORS 737.505(4).¹ Petitioner probably received the Final Premium Audit Billing soon after it was mailed on July 9, 2004. Petitioner's president forwarded it to its accountant by August 2, 2004. Petitioner clearly received the Billing more than 60 days before filing its request for hearing on October 15, 2004, so its request for hearing was not timely filed.

Petitioner alleges that its delay was due to good cause because the Billing was received during its busy season. ORS 737.505(4) does not allow for good cause to extend the time limit. *Kilham Stationery v. NCCI*, 109 Or App 545 (1991). Petitioner also argues that SAIF told its accountant to file a request for hearing even though it was after the 60-day time limit. SAIF told Petitioner's accountant how to request a hearing, but did not represent in any way that the time limit for request for hearing was waived.

¹ ORS 737.505(4) states:

Insured entitled to rate information; remedies of aggrieved persons.

* * * *

(4) Appeals to the director pursuant to ORS 737.318 with regard to a final premium audit billing must be made within 60 days after receipt of the billing.

ORDER

Petitioner's request for hearing filed October 15, 2004, is dismissed as untimely filed pursuant to ORS 737.505(4). SAIF's Final Premium Audit Billing mailed to Petitioner remains undisturbed.

/s/ Lawrence S. Smith
Lawrence S. Smith
Administrative Law Judge
Office of Administrative Hearings

DATE OF MAILING AND ISSUANCE: April 15, 2005

NOTICE OF OPPORTUNITY FOR ADMINISTRATIVE REVIEW

NOTICE: Pursuant to ORS 183.460, the parties are entitled to file written exceptions to this proposed order and to present written argument concerning those exceptions to the Director. Written exceptions must be received by the Department of Consumer and Business Services within 30 days following the date of service of this proposed order. Mail exceptions to:

Department of Consumer and Business Services
c/o Mitchel D. Curzon, Chief Enforcement Officer
Insurance Division
350 Winter Street NE
Salem, OR 97301-3883