

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

In the Matter of **Grants Pass Jetboats, Inc.**) **FINAL ORDER**
dba Hellgate Jetboat Excursions) Case No. INS 04-10-017

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 Grants Pass Jetboats, Inc. dba Hellgate Jetboat Excursions (employer).

History of the Proceeding

On an unknown date, but soon after 7/8/04, the employer received from the insurer a billing dated 7/8/04 for the audit period from 4/1/03 through 3/31/04. The billing informed the employer that it may request a hearing within 60 days after the employer received the billing.

On 10/18/04, the director received from the employer a written request for a hearing.

On 10/19/04, the director mailed to the employer a petition form to complete and return so that director received it by 12/17/04.

On 11/29/04, the director received from the employer the petition. However the petition did not include a copy of the cover page of the billing.

On 12/2/04, the director received from the employer a copy the cover page of the billing. Thus, the director timely received a competed petition.

On 12/2/04, the director referred the request to the Office of Administrative Hearings (OAH).

On 12/10/04, OAH issued a notice of hearing scheduling an in-person hearing to be held on 3/22/05.

On 2/23/05, OAH issued a prehearing order indicating that the sole issue to be decided at the hearing was whether the billing was correct.

On 3/16/05, OAH issued an amended notice of hearing changing the in-person hearing to a telephone hearing, and adding the issue of whether the employer timely requested a hearing.

On 3/22/05, OAH held a telephone 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 Robert Hamlyn, as the employer's authorized representative pursuant to OAR 836-005-0112 and 137-003-0555. The employer called Kevin Mee as its 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 Teresa Smith as its witness. The insurer offered Exhibits 1 to 3 as its documentary evidence. All of the insurer's exhibits were admitted into the record. OAH also included in the record as exhibits OAH's Notice of Hearing dated 12/10/04, a legal memorandum from the insurer dated 2/4/05, and OAH's Pre-Hearing Order dated 2/23/05, and labeled them as Exhibits 4 to 6 respectively.

On 4/15/05, OAH issued a proposed order. The proposed order recommended the director dismiss the employer's request for a hearing because the employer filed the request beyond the 60-day time period required by ORS 737.318(3)(d) and ORS 737.505(4), and OAR 836-043-0170(1), and such time limitation may not be waived or extended by the director. *Pease v. National Council on Comp. Ins.*, 113 Or App 26, 28-29, 830 P2d 605, *rev den* 314 Or 391 (1992).

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 employer's request for hearing is dismissed.

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 2, 2005

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

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