

On 2/10/05, the director referred the request to the Office of Administrative Hearings (OAH).

On 3/11/05, OAH scheduled a hearing to be held on 6/9/05.

On 2/18/05, the insurer requested the employer to provide to the insurer certain documents by 3/11/05.

On 3/14/05, the employer provided to the insurer some of the requested documents.

On 4/1/05, the insurer requested OAH issue an order compelling the employer to provide the remainder of the previously requested documents.

On 4/22/05, OAH issued an order compelling the employer to provide to the insurer the remainder of the previously requested documents.²

On 6/1/05, employer requested the hearing be rescheduled.³

On 6/9/05, OAH held a hearing. The hearing was conducted by Catherine P. Coburn, an administrative law judge of OAH. The employer did not appear and was not represented at the hearing. 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 John Hegener and Rodney Hoff as its witnesses. The insurer offered Exhibits A1 to A40 as its documentary evidence. All of the insurer's exhibits were admitted into the record.

On 6/16/05, OAH issued a proposed order. The proposed order recommended that the director affirm the billing because (1) the employer's failure to appear was not beyond the reasonable control of the employer, see OAR 137-003-0670(2), (2) 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);

² According to the proposed order, page 1, the employer did not provide to the insurer the remainder of the previously requested documents.

³ According to the proposed order, page 1, and the faxed request dated June 1, 2005 to reschedule the hearing, the employer faxed the request to the insurer but not to OAH. The insurer delivered the request to OAH at the hearing on June 9, 2005. The employer did not make any other contact with OAH.

Gallant v. Board of Medical Examiners, 159 Or App 175, 180, 974 P2d 814 (1999), and (3) the insurer provided *prima facie* evidence that the billing was correct, see ORS 183.415(6), OAR 137-003-0670(3)(a). 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 reviewed the record in this proceeding and found that it proves a *prima facie* case.

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.

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