

STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE DIVISION

In the Matter of **Redding Lumber Transport, Inc.**) **FINAL ORDER**
dba Professional Towing RLT, Inc.) Case No. INS 03-09-006

The Director of the Oregon Department of Consumer and Business Services (director), commenced this administrative proceeding, pursuant to Oregon Revised Statutes (ORS) 737.318(3)(d) and 737.505(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 Redding Lumber Transport, Inc dba Professional Towing RLT, Inc. (employer).

History of the Proceeding

On or about 7/30/03, the employer received from the insurer a billing dated 7/28/03 for the audit period from 4/1/02 to 3/31/03. 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 9/4/03, the director timely received from the employer a written request for a hearing.

On 9/8/03, the director mailed to the employer a letter and a petition form. The letter informed the employer that it must complete the form 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 9/15/03, the director timely received from the employer the completed petition and request for stay of collection.

On 9/17/03, the director referred the request to the Office of Administrative Hearings (OAH).

On 9/30/03, OAH scheduled a hearing to be held on 1/14/04.

On 9/30/03, 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 12/3/03, OAH issued a notice informing the employer and insurer that OAH understood the issue to be addressed during the hearing was “whether [the] insurer incorrectly assessed premium on payments made to owner operators who are allegedly not ‘workers’ as defined by ORS 656.005(30).”¹

On 1/12/04, OAH rescheduled the hearing to be held on 3/10/04.

On, 3/10/04, OAH held a hearing.² The hearing was conducted by Ella D. Johnson, an administrative law judge of OAH. The employer appeared and was represented at the hearing by John A. Anderson, an attorney. The employer called Albert L. Shufelberger as its only witness. The employer offered Exhibits P1 to P34 as its documentary evidence. All of the employer’s exhibits, except P5 page 1 of 2, were admitted into the record.³ 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 and Alice Johnson as its witnesses. The insurer offered Exhibits A1 to A33 as its documentary evidence. All of the insurer's exhibits, except A27, were admitted into the record. The employer and insurer were allowed to file their closing statements in writing.

On 4/12/04, OAH received from the employer its closing statement.

On 5/13/04, OAH received from the insurer its closing statement.

¹ ” The notice further stated that “If you do not agree with the issues(s) as stated, please notify this office and the other parties to this matter, no later than ten days prior to the hearing date. Any objections or amendments not submitted within that time will be deemed to have been waived and we will proceed to hearing with the issue(e) as stated above.” The parties did not object or amend the statement of the issue. Subsequently at the hearing, the parties were asked if this was the issue and both answered yes. See transcript of hearing, page 2. Thus, the issue was essentially whether the truck drivers were workers, not whether they were non-subject workers.

² The proposed order and the revised proposed order incorrectly stated that the hearing was held on 3/30/04. The hearing was held on 3/10/04. See transcript of hearing, pages 1 and 153.

³ The proposed order and revised proposed order failed to state that the employer’s exhibit P5 page 1 of 2 was not admitted (see transcript of hearing page 156), and that the employer’s exhibits P30 to P34 were admitted (see transcript of hearing, page 3).

On 5/27/04, OAH received from the employer its reply to the insurer's closing statement.

On 6/2/04, OAH issued a proposed order. The proposed order concluded that the five drivers were "workers" for purposes of Oregon workers' compensation law, and recommended the director affirm the billing. 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.

On 10/18/04, the director received from the employer written exceptions to the proposed order.

On 11/1/04, the director received from the insurer a response to the employer's exceptions.

On 11/9/04, the director requested OAH issue a revised proposed order.

On 3/15/05, OAH issued a revised proposed order.⁴ The revised proposed order continued to conclude that the drivers were "workers," and recommend the director affirm the billing. 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.

On 4/14/05, the director received from the employer written exceptions to the revised proposed order.

On 4/29/05, the director received from the insurer a response to the employer's exceptions.

The director considered the employer's exceptions and the insurer's response.

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 revised proposed order as the findings of facts, conclusions, and reasoning of this final order.

⁴ The revised proposed order, in the caption and footer, incorrectly referred to the employer as "dba Professional Towing RLC, Inc," rather than "dba Professional Towing RLT, Inc."

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 January 31, 2006

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

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