

STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE DIVISION

In the Matter of **Anytime Labor, Inc.**

) **FINAL ORDER**
) Case No. INS 05-03-010

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 Anytime Labor, Inc. (employer).

History of the Proceeding

On or about 11/26/04, the employer received from the insurer a billing dated 11/23/04 for the audit period from 4/1/04 to 9/30/04. 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 1/19/05, the director received from the employer a written request for a hearing.¹

¹ Initially, in its letter dated 1/17/05, the employer requested a hearing to "challenge the experience modification calculation. ... It is the employer's contention that the experience [rating] modification [(ERM)] of 2.010 used by SAIF from the commencement of the policy year was calculated notwithstanding SAIF's failure to afford the employer the opportunity to elect the \$500.00 medical reimbursement program at or about the commencement of the policy year in question." Later, after the hearing, in its memorandum dated 8/5/05, the employer explained that "the employer is disputing the premium audit billing ..., not the ERM. While SAIF is correct that the employer would like its ERM changed, the employer has concluded that [the National Council on Compensation Insurance, Inc.] NCCI rules militate against such a change. Instead, the employer more specifically wants the premium audit billing ... reduced because of SAIF's failure to provide adequate notice of the employer's option to join the \$500 claim reimbursement program." The reimbursement program referred to by the employer is created by ORS 656.262(5) and implemented by OAR 436-060-0055 and administered by the Workers' Compensation Division (WCD).

On 1/20/05, 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 3/17/05, the director received from the employer the completed petition, and a request for a stay of collection efforts by or on behalf of the insurer of any amount billed in the billing until this proceeding is concluded. See OAR 836-043-0170(5).

On 3/18/05, the director referred the request to the Office of Administrative Hearings (OAH).

On 3/23/05, OAH scheduled a hearing to be held on 7/19/05.

On 3/23/05, 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.

On 5/2/05, OAH rescheduled the hearing to be held on 8/3/05.

On 8/3/05, OAH held a 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 William Replogle, an attorney. The employer called Kevin LaFurge as its only witness. The employer's exhibits P1 to P30 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 DeAnne Hoyt and Derik Scroggins as its witnesses. The insurer's exhibits A1 to A20 were admitted into the record.

On 9/9/05, OAH issued a proposed order. The proposed order recommended that 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 10/10/05, the director received from the insurer written exceptions to the proposed order.

The director did not receive from the employer any exceptions to the proposed order.

On 11/17/05, the director requested OAH to review the exceptions and issue a revised proposed order. See OAR 137-003-0650(3).

On 12/9/05, OAH issued an amended proposed order. The amended proposed order continued to recommend that the director affirm the billing. The amended proposed order informed the employer and insurer that they could file with the director written exceptions to the amended proposed order within 30 days after the amended proposed order was served on the employer and insurer.

The director received written exceptions to the amended proposed order from the insurer on 1/5/06, and from the employer on 1/10/06.

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 amended proposed order as the findings of facts, conclusions, and reasoning of this final order.²

Order

The billing is affirmed and the stay is withdrawn.

Notice of Right to Judicial Review

A party has the right to appeal this final order to 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

² This case is distinguishable from a line of cases that may be referred to as ERM cases such as *ProMed Computers, Inc.*, case number INS 05-06-013, dated 4/4/06, adopting the proposed order dated 11/17/05; *Rick's Custom Fencing & Decking, Inc.*, case number INS 96-10-019, final order dated 7/28/97, adopting the proposed order dated 5/30/97; *Kevin Fitzpatrick Painting*, number INS 89-04-010, final order dated 9/25/89; *Quality Parts Service*, number INS 88-03-013, final order dated 10/16/89, adopting the proposed order dated 8/2/89. These ERM cases involved the issue of whether the employer's ERM was calculated correctly. This case involved the issue of whether the employer's billing was correct as a result of the insurer allegedly failing to give the employer notice of the WCD reimbursement program. However, the employer received the notice from the insurer. The director does not express any opinion about whether the employer would have been entitled to any relief even if the employer had not received the notice.

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 December 4, 2006

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

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