

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

In the Matter of **All-In-Hall Corporation** ) **FINAL ORDER**  
 ) Case No. INS 05-04-016

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 All-In-Hall Corporation (employer).

**History of the Proceeding**

On 12/20/04, the employer received from the insurer a billing dated 12/09/04 for the audit period from 8/1/03 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 2/14/05, the director received from the employer a written request for a hearing to review the billing.<sup>1</sup>

On 2/24/05, 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).

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<sup>1</sup> The director actually received from the employer three requests for a hearing. The first and second requests were received by e-mail on 2/14/05, and the third request was received by mail on 2/16/05. The first request stated that the employer received "the proper instructions to request a hearing" that day on 2/14/05. The second request stated that "Earlier today we received notification from SAIF as to where to submit our Request for Hearing to. I mailed our request to you, and now am e-mailing it so as to be within our 60 day window." See OAR 836-043-0170(1), (6) & (7).

On 4/13/05, the director timely 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.<sup>2</sup>

On 4/29/05, the director referred the request to the Office of Administrative Hearings (OAH).

On 5/9/05, OAH scheduled a hearing to be held on 8/24/05, and 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. See OAR 836-043-0170(5).

On 6/6/05, OAH rescheduled the hearing to be held on 8/24/05.

On 7/6/05, OAH rescheduled the hearing to be held on 9/28/05.

OAH held a pre-hearing conference on 9/7/05 which was continued on 10/26/05. The conference was conducted by Lawrence S. Smith, an administrative law judge (ALJ) for OAH. The purpose of the conference was to determine whether the employer timely requested a hearing. The employer was represented by Russell Hall, as the employer's authorized representative pursuant to OAR 836-005-0112 and 137-003-0555. The employer called Tom Ware as its witness. 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 Kathy Sim as its witnesses. Neither the employer nor the insurer offered any documentary evidence. Instead, the ALJ selected certain documents received from the parties and designated them as Exhibits 1 to 10 and admitted them into the record.<sup>3</sup>

On 11/10/05, OAH issued a proposed order. The proposed order recommended that the director dismiss the employer's request for a hearing because the director received the request after it was due. The proposed order found that the insurer mailed the billing to the employer on 12/9/04; the actual date that the employer

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<sup>2</sup> The petition stated that the employer received the billing on 12/20/04.

<sup>3</sup> On 9/19/05, OAH sent a letter to the parties informing them that the hearing scheduled for 9/28/05 was indefinitely postponed, and the pre-hearing conference was to be continued on a later date, because the threshold issue of whether the employer timely requested a hearing needed to be resolved before a hearing to review the billing could be held. Since OAH subsequently determined that the employer requested a hearing late, the hearing to review the billing was never held.

received the billing was unknown so the employer was considered to have received the billing on 12/13/04 pursuant to OAR 836-043-0170(6); the employer had to request a hearing within 60 days thereafter by 2/11/05 pursuant to ORS 737.318(3)(d), ORS 737.505(4), and OAR 836-043-0170(1); but the director received by mail the employer's request five days late on 2/16/05.<sup>4</sup> The director cannot waive or extend the due date. *Pease v. National Council on Comp. Ins.*, 113 Or App 26, 28-29, 830 P2d 605, *rev den* 314 Or 391 (1992). 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 did not receive from the parties 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, except for the statement in the Opinion section of the proposed order that “[t]he rule [OAR 836-043-0170(6)] does not allow for filing a request for hearing by email, so the email filing on February 14 is not accepted.”

### **Order**

The employer's request for a hearing is dismissed, and the stay is withdrawn.<sup>5</sup>

### **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

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<sup>4</sup> As indicated in herein in footnote 1, the director received from the employer three requests for a hearing, two by e-mail on 2/14/05 and one by mail on 2/16/05. Since the relevant statutes and rules do not require an employer to send, or prohibit an employer from sending, a request by a specific means, an employer may send a request by any means including mail, fax, e-mail or personal delivery. In this case, however, the first and second requests sent by e-mail were also late by three days.

<sup>5</sup> The director makes no decision on the billing because there was no findings in the record about whether the billing was correct.

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 23, 2006

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

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