

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE DIVISION**

In the Matter of the Petition of) **DEFAULT ORDER**
)
PROMED COMPUTERS, INC.) Case No.: INS 05-06-013

HISTORY OF THE CASE

On March 30, 2005, insurer SAIF Corporation (SAIF) sent a Final Premium Audit Billing to ProMed Computers, Inc. (Petitioner) for the period of January 1, 2004, through December 31, 2004. Petitioner filed a timely appeal with the Insurance Division of the Department of Consumer and Business Affairs, who referred the appeal to the Office of Administrative Hearings (OAH) on June 13, 2005.

A hearing was held on October 11, 2005, in Salem, Oregon, conducted by Administrative Law Judge Lawrence S. Smith of OAH. Assistant Attorney General David B. Hatton represented SAIF and filed a Motion to Dismiss. Petitioner received legally sufficient notice, but did not appear. The record closed that day.

ISSUE

Whether Petitioner's appeal should be dismissed pursuant to ORS 737.318 because its dispute with the experience rating modification (ERM) assigned to it is not within the jurisdiction of premium audit hearings.

EVIDENTIARY RULINGS

SAIF's Exhibits A1 through A31 were admitted without objection.

FINDINGS OF FACT

(1) On March 30, 2005, SAIF sent a Final Premium Audit Billing to Petitioner for the period of January 1, 2004, through December 31, 2004. The Audit applied an ERM that was determined by the National Council on Compensation Insurance (NCCI). On May 25, 2004, NCCI sent notice to SAIF and Petitioner that all the prior experience from Blacker Electric, Inc., (Blacker) will be applied to Petitioner's experience rating because of the common majority ownership of the two businesses. (Ex. A15.)

(2) On June 15, 2004, SAIF sent Petitioner further notice of an experience rating change endorsement that included the experience from Blacker. Petitioner did not appeal this notice. (Ex. A18 at 3.)

(3) Petitioner sought review of its new ERM with the Oregon Workers Compensation Rating System Review and Advisory Committee (ORAC). On August 12, 2005, ORAC issued a Decision to Petitioner, concluding that NCCI's decision regarding Petitioner's ERM was correct. The Decision advised Petitioner that it could seek further review with the Insurance Division if requesting such review within 30 days. (Ex. A27.) Petitioner did not request such review.

CONCLUSION OF LAW

Petitioner's appeal is dismissed because its dispute with the ERM is not within the jurisdiction of premium audit hearings.

OPINION

Petitioner appealed the Audit because it disagreed with the ERM applied in the Audit. The ERM was based in part on the prior experience of Blacker, a company that Petitioner purchased. SAIF moved to dismiss Petitioner's appeal because the issue of the ERM is not a result of the premium audit and therefore, not a basis for appeal of the audit.

ORS 737.318 describes about the premium audit program and states in relevant part:

(3) The premium audit system shall include provisions for:

* * * * *

(d) An appeal process pursuant to ORS 737.505 for employers to question the results of a premium audit. * * *

In its appeal of the premium audit, Petitioner seeks to question the ERM applied in the audit. The ERM, based in part on the rating experience of Blacker, is not a result of the premium audit, but the result of NCCI and ORAC decisions that stated the ERM was correctly determined. Therefore, the ERM applied in the premium audit is not a subject that can be questioned by Petitioner in its appeal of the premium audit, especially when Petitioner was twice given notice of the ERM and did not appeal ORAC's decision upholding the ERM, pursuant to ORS 737.505(3). Therefore, Petitioner cannot contest the ERM in its appeal of the Premium Audit Billing. Petitioner raised no other issue with the Audit, so SAIF's Motion to Dismiss is granted.

ORDER

Petitioner's appeal is dismissed. SAIF's Final Premium Audit Billing mailed to Petitioner on March 30, 2005, remains undisturbed.

Date: Nov. 17, 2005

/s/ Lawrence S. Smith
Lawrence S. Smith
Administrative Law Judge
Office of Administrative Hearings

NOTICE OF OPPORTUNITY FOR ADMINISTRATIVE REVIEW

NOTICE: Pursuant to ORS 183.460, the parties are entitled to file written exceptions to this proposed order and to present written argument concerning those exceptions to the Director. Written exceptions must be received by the Department of Consumer and Business Services within 30 days following the date of service of this proposed order. Mail exceptions to:

Department of Consumer and Business Services
c/o Mitchel D. Curzon, Chief Enforcement Officer
Insurance Division
350 Winter Street NE
Salem, OR 97301-3883