

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

In the Matter of **ProMed Computers, Inc.**) **FINAL ORDER**
) Case No. INS 05-06-013

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 ORS 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 ProMed Computers, Inc. (employer).

History of the Proceeding

On or about 4/1/05, the employer received from the insurer a billing dated 3/30/05 for the audit period from 1/1/04 to 12/31/04. 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 5/26/05, the director timely received from the employer a written request for a hearing to review "the experience rating that was applied to our company after the purchase of the assets of Blacker Electric. We can show that this was an assets only purchase and the experience rating for Blacker Electric Inc should not have been applied to ProMed Computers, Inc's account with SAIF."

On 5/31/05, 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 6/10/05, the director timely received from the employer the completed petition.

On 6/13/05, the director referred the request to the Office of Administrative Hearings (OAH).

On 6/17/05, OAH scheduled a hearing to be held on 10/11/05.

On 6/21/05, OAH received from the employer a request for an order staying all collection efforts by or on behalf of the insurer of any amount billed in the billing as a result of the audit until this proceeding is concluded. See OAR 836-043-0170(5).

On 6/23/05, OAH issued an order granting the stay.

On 10/11/05, OAH held a hearing. The hearing was conducted by Lawrence S. Smith, 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 did not call any witnesses. The insurer offered Exhibits A1 to A31 as its documentary evidence and they were admitted into the record.

On 10/11/05, during the hearing, the insurer filed a motion to dismiss. The insurer argued that the employer was not entitled to a hearing pursuant to ORS 731.318(3)(d) because ORS 731.318(3)(d) entitles the employer to request a hearing only to “question the results of a premium audit,” but in this case the employer requested a hearing to review the assignment of an experience rating modification (ERM) to the employer by the National Council on Compensation Insurance, Inc. (NCCI) and thus was not a result of a premium audit by the insurer.

On 11/17/05, OAH issued a proposed order. The proposed order granted the insurer’s motion and recommended that the director dismiss the employer’s request for a hearing. 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.

Order

The employer’s request for a hearing is dismissed, 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 April 4, 2006

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

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