

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 10/17/05, the director received from Fortune's Bulldozing and Grading, LLC a written request for a hearing.

On 10/17/05, the director mailed to Fortune's Bulldozing and Grading, LLC a letter and a petition form. The letter informed Fortune's Bulldozing and Grading, LLC that it must complete the form and return it to the director so that director received it by 12/16/05, otherwise the director would dismiss the employer's request for a hearing. See OAR 836-043-0170(2)-(3) & (9).

On 1/13/06, the director received from Fortune's Bulldozing and Grading, LLC a petition.

On 1/28/06, the director dismissed Fortune's Bulldozing and Grading, LLC's request for a hearing because the director did not timely receive a petition.

On 2/8/06, the director received by fax from Fortune's Bulldozing and Grading, LLC a letter dated 2/7/06 explaining that it mailed the petition on 10/22/05 and the circumstances of the mailing.

On 2/14/06, the director accepted Fortune's Bulldozing and Grading, LLC's explanation and withdrew the dismissal. On the same date, the director referred Fortune's Bulldozing and Grading, LLC's request to the Office of Administrative Hearings (OAH).³

On 2/17/06, OAH scheduled a hearing to be held on 6/1/06.

On 6/1/06, OAH held a hearing. The hearing was conducted by Catherine P. Coburn, an administrative law judge of OAH. Fortune's Bulldozing and Grading, LLC appeared by and through David Eversz (Eversz). OAH discovered that Fortune's Bulldozing and Grading, LLC was not the employer. OAH did not allow Eversz to represent the employer because the employer was a partnership and only a partner or an attorney may represent a partnership as its authorized

³ See footnote 1 herein above.

representative pursuant to OAR 836-005-0112 and 137-003-0555. However, OAH allowed Eversz to testify. The employer did not appear at the hearing, offer any documentary evidence, or call any witnesses. The insurer appeared and was represented at the hearing by Shannon N. Rickard, an Assistant Attorney General assigned to represent the insurer. The insurer did not call any witnesses. The insurer offered Exhibits A-1 to A-9 as its documentary evidence. All of the insurer's exhibits were admitted into the record.

On 7/11/06, 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.

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.

Additionally, the director finds as follows.

The employer employed Jimmy Howard from 4/6/04 to 7/5/04. See Exhibit A6.

The employer and Eversz knew that Richard or Laura Fortune must, and Eversz could not, represent the employer at the hearing. The petition form was mailed to Eversz. Richard Fortune signed it. The petition form informed the employer that if it was is a partnership then it must be represented by either a partner or an attorney. Additionally, the insurer sent an e-mail to Eversz on 5/15/06 @ 9:24 AM, several weeks before the hearing on 6/1/06, saying *inter alia* that if the employer and insurer did not settle their dispute about the billing then "Mr. or Mrs. Fortune will need to be presenting the case.... This is the entity type [*i.e.* partnership] Fortune's was during the time frame of the audit period." See Exhibit A-8.

The insurer presented *prima facie* evidence that the billing was correct. See ORS 183.415(6) and OAR 137-003-0510(1).

Order

The billing is affirmed.

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 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 February 2, 2007

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

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