

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

In the Matter of **SAFE, Incorporated**

) **FINAL ORDER**
) Case No. INS 06-04-002

The Director of the Oregon Department of Consumer and Business Services (director), commenced this administrative proceeding, at the request of SAFE, Incorporated (employer), 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 the employer.

History of the Proceeding

On 2/1/06, the employer received from the insurer a billing dated 1/26/06 for the audit period from 10/1/04 to 9/30/05. 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 2/4/06, the director timely received from the employer a written request for a hearing to review the billing.

On 2/13/06, 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 4/3/06, the director timely received from the employer the completed petition, and 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 4/4/06, the director referred the request to the Office of Administrative Hearings (OAH).

On 4/12/06, OAH scheduled a hearing to be held on 8/1/06, and issued an order granting a stay.

On 7/6/06, the insurer requested a prehearing telephone conference “to identify, simplify and clarify the issues.”

On 7/17/06, OAH scheduled the prehearing conference to be held on 8/31/06, and rescheduled the hearing to be held on 11/8/06.

On 8/31/06, OAH conducted the prehearing conference in which both parties participated.

On 10/31/06, OAH issued a letter dated 10/31/06, as a result of the prehearing conference, concluding that (1) the employer’s authorized representative may not present any legal argument, as defined in OAR 137-003-0555(1)(c), pursuant to ORS 183.457(3) and OAR 137-003-0555(4)¹; and (2) the employer may present evidence and factual argument at the hearing only about “issues that resulted from the premium audit which in this case is [] whether [the insurer] appropriately applied the \$300.00 weekly minimum payroll for subject corporate officers to [the employer].”

On 11/8/06, OAH held a hearing. The hearing was conducted by Rohini Lata, an administrative law judge of OAH. The employer appeared and was represented at the hearing by Robert Ewbank, as the employer’s authorized representative pursuant to OAR 836-005-0112 and OAR 137-003-0555. The employer called Robert Ewbank, Darryl Stanfill, Tim Hughes and Robert Miller as its witnesses. The employer offered Exhibits PE1 to PE9 as its documentary evidence, all of which were admitted into the record. The insurer appeared and was represented at the hearing by Shannon N. Rickard, an Assistant Attorney General assigned to represent the insurer. The insurer called DeAnne Hoyt as its witness. The insurer

¹ See also OAR 836-005-0112.

offered Exhibits A1 to A7 as its documentary evidence, all of which were admitted into the record.

On 11/30/06, OAH issued a proposed order and mailed it to the parties. The proposed order recommended that the director affirm the billing because (1) the insurer was required to use the rates and rating systems filed by The National Council on Compensation Insurance, Inc.'s (NCCI), as described in NCCI's *Basic Manual of Workers' Compensation Insurance (Basic Manual)*, (2) the *Basic Manual* (2001 ed.), in Rule 2-E-1-b, required an insurer to include in the calculation of the employer's workers' compensation insurance premium a minimum of \$300 per week for each executive officer unless certain exceptions applied, (3) none of the exceptions applied to the employer, (4) the employer appointed certain individuals as corporate officers who were not compensated, and (5) the insurer included the minimum amount per individual in calculating the employer's premium.

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

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 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 June 20, 2007

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

//
//
//