

On 10/3/06, the director timely received from the employer the completed petition.

On 10/3/06, the director referred the request to the Office of Administrative Hearings (OAH).

On 10/12/06, OAH scheduled a hearing to be held on 2/1/07.

On 2/1/07, OAH held a hearing. The hearing was conducted by Lawrence S. Smith, an administrative law judge of OAH. The employer appeared and was represented at the hearing by Barbara A. Wenlund, as the employer's authorized representative pursuant to OAR 836-005-0112 and OAR 137-003-0555. The employer called Barbara A. Wenlund and Don Wenlund as its witnesses. The employer offered Exhibit A as its documentary evidence which was admitted into the record. The insurer appeared and was represented at the hearing by Barbara a. Woodford, an attorney. The insurer called Mark Lybbert as its witness. The insurer offered Exhibits 101 to 109 all of which were admitted into the record.

On 2/15/07, OAH issued a proposed order. The proposed order recommended that the director affirm the billing because (1) the insurer correctly assigned Class Code 5403 to all of the work performed by certain workers and (2) the insurer was not equitably estopped, or prevented, from assigning such classification. The insurer correctly assigned Class Code 5403 because the classification applied to at least some of the work performed by the workers, but the employer failed to keep verifiable time records of the time the workers performed different types of work which if kept would have permitted the insurer to assign Class Code 8227 to the other work performed by the workers. The insurer was not prevented from assigning Class Code 5403 because, among other reasons, the insurer did not knowingly represent to the employer that only Class Code 8227 applied because employer had not previously reported to the insurer and thus the insurer did not know what types of work the workers performed, and the employer knew or should have known that Class Code 8227 did not apply because the employer had kept, but stopped keeping, verifiable time records of the time the workers performed different types of work. 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 billing is affirmed.

Notice of Right to Judicial Review

A party has the right to judicial review of this order pursuant to ORS 183.480 and 183.482. A party may request judicial review by sending a petition for judicial review to the Oregon Court of Appeals. The court must receive the petition 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 date the party received the order. If the order was mailed to a party, then the date of service is the date the order was mailed to the party, not the date 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 by delivering it to the Labor and Industries Building, 350 Winter Street NE, Room 440 (4th Floor), Salem, Oregon; or mailing it to PO Box 14480, Salem, OR 97309-0405; or faxing it to 503-378-4351; or e-mailing it to mitchel.d.curzon@state.or.us.

Dated July 12, 2007

/s/ Carl N. Lundberg
Carl N. Lundberg
Deputy Administrator
Insurance Division
Department of Consumer and Business Services