

**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)	Case No.: INS 07-02-005
)	
CASCADE RECOVERY, INC.,)	PROPOSED DEFAULT
Petitioner)	ORDER
)	

HISTORY OF THE CASE

On December 12, 2006, Liberty Northwest (Liberty) issued a Final Premium Audit Billing (Audit Billing) for the audit period of March 14, 2006 until November 1, 2006 (Audit Period) to Cascade Recovery, Inc. (Petitioner). Petitioner filed a timely appeal of the Audit Billing. Its appeal was referred to the Office Administrative Hearings (OAH) on February 20, 2007.

After two previous postponements at Petitioner's request, a hearing in regards to Petitioner's appeal was conducted by Administrative Law Judge (ALJ) Lawrence S. Smith of the OAH on November 7, 2007, in Beaverton, Oregon. Petitioner was properly notified of the time and place of the hearing and did not appear or participate. Attorney Barbara Woodford represented Liberty and called one witness, Sandy Stephenson, senior auditor for Liberty. The record closed after the hearing that day. Since the hearing, Petitioner has not contacted the Administrative Law Judge to explain its failure to appear.

ISSUE

Whether Liberty properly applied Code 7219 to the payroll of Petitioner's employee, Terry Payne, during the Audit Period.

EVIDENTIARY RULINGS

Liberty's Exhibits 101 through 105 and Pleading Exhibit 1 were admitted without objection.

FINDINGS OF FACT

(1) Petitioner is an Oregon corporation engaged in the business of collateral recovery, specializing in repossessing motor vehicles and other merchandise for banks and other financial institutions. (Ex. 103 at 3.) The governing code for the payroll of Petitioner's employees is 7219 (Contract Hauling and Drivers) because Petitioner's main business is identifying and moving collateral. (*Id.*; Test. of Stephenson.)

(2) Liberty provided workers' compensation insurance for Petitioner for the period of March 14, 2006 until November 1, 2006 (Audit Period). (Ex. 102.)

(3) During the Audit Period, Terry Payne worked for Petitioner as a lot attendant, cleaning the repossessed vehicles in the lot, and as a locksmith, making keys for the vehicles (Test. of Stephenson.) On its payroll reports to Liberty during the Audit Period, Petitioner reported Payne's payroll as Code 8810. (*Id.*) Before Audit Period on December 2, 2004, Petitioner was sent a letter from Liberty that advised:

Code 8810 applies only for the time spent performing administrative, record keeping and secretarial type duties *in your company's qualifying office areas*. Neither application would apply for key making duties, cleaning of vehicles or picking up/delivering repossessed vehicles or merchandise. These duties would be appropriately classified 7219.

(Ex. 101, emphasis in original.) The letter also advised Petitioner that it needed to keep adequate hourly records if it wished to claim some of the time under Code 8810. (*Id.*)

(4) In its Audit Billing for this period, Liberty assigned Code 7219 (Contract Hauling and Drivers), the governing code for Petitioner's business, to Payne's payroll because of his duties. (*Id.*)

(5) On June 21, 2007, Tim Hughes of National Council on Compensation Insurance (NCCI), the organization that determines the appropriate codes for various occupations, emailed Petitioner's president, advising him:

Concerning [Petitioner], I confirmed that the proper classification of the "lot attendant" was that of the business, Code 7219. This employee did not qualify for one of the standard exception classifications.

(Ex. 105.)

CONCLUSION OF LAW

Liberty properly coded the payroll of Petitioner's employee, Terry Payne, as Code 7219 (Contract Hauling and Drivers) during the Audit Period.

OPINION

Pursuant to OAR 137-003-0670, when a party is notified of the time and place of the hearing and fails to appear and has not shown that the reasons for not appearing were beyond that party's reasonable control, an Administrative Law Judge may issue a default order if the persuasive evidence in the record supports the Final Premium Audit Billing. Petitioner was properly notified of the time and place of the hearing and failed to appear. Liberty presented a *prima facie* case supporting its Audit Billing. Petitioner has made no

contact with this office to explain its failure to appear, and a default order is appropriate.

Petitioner has the burden of proving that Liberty's Audit Billing for the Audit Period is incorrect. *Salem Decorating v. Natl. Council on Comp Ins.*, 116 Or App 166 (1992), *rev den* 315 Or 643 (1993) (in premium audit cases, burden of proof is on the employer). Petitioner did not appear for the hearing to provide evidence to meet this burden.

In its Audit Billing, Liberty classified the payroll of Payne as 7219 (Contract Hauling and Drivers), the governing code for Petitioner's business of repossessing motor vehicles and other merchandise. Petitioner had classified his payroll as 8810. Petitioner has not established grounds for the exception code 8810. It received specific prior notice that such a code was not applicable. NCCI, the agency with expertise regarding codes and classification, opined that the correct code for Payne's payroll is 7219. There is *prima facie* evidence for Liberty's Audit Billing.

ORDER

Liberty Northwest's Final Premium Audit Billing issued to Cascade Recovery, Inc. on December 12, 2006, for the audit period of March 14, 2006 until November 1, 2006, is correct and payable.

Lawrence S. Smith
Administrative Law Judge
Office of Administrative Hearings

Dated this 20th of November, 2007.

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