

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 2/16/07, the director timely received from the employer the completed petition.

On 2/20/07, the director referred the request to the Office of Administrative Hearings (OAH).

On 2/26/07, OAH issued a notice scheduling the hearing to be conducted on 6/13/07, and mailed it to the parties.

On 6/7/07, the employer requested OAH to reschedule the hearing.²

On 6/14/07, OAH issued a notice rescheduling the hearing from 6/13/07 to 9/19/07, and mailed it to the parties.

On 8/30/07, OAH issued a notice rescheduling the hearing from 9/19/07 to 11/7/07, and mailed it to the parties.³

On 11/7/07, OAH conducted 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 Barbara Woodford, an attorney. The insurer called Sandy Stephenson as its witness. The insurer offered Exhibits 101 to 105 and Pleading Exhibit 1 as its documentary evidence all of which were admitted into the record.

On 11/20/07, OAH issued a proposed order. The issue was whether the insurer correctly assigned classification code 7219 to all of the work performed by Terry Payne (Payne) for the employer during the audit period. Payne worked as a lot attendant cleaning repossessed vehicles in the lot, and as a locksmith making keys for the vehicles, and other unspecified duties. The employer did not keep verifiable

² On 6/7/07, OAH received from the employer an e-mail saying "I would like to request a continuance for our hearing that is scheduled for June 13th. We are in the process of trying to resolve the issues and feel that we may be able to accomplish this without the hearing."

³ According to the proposed order, the employer requested the hearing be rescheduled twice, first from 6/13/07 to 9/19/07 and apparently second from 9/19/07 to 11/7/07. Although OAH's hearing file contained documentation that the employer requested the hearing scheduled for 6/13/07 to be rescheduled, it did not contain any documentation that the employer requested the hearing scheduled for 9/19/07 be rescheduled.

payroll records of any time Payne spent in the employer's office performing administrative or clerical type of work which may have allowed the insurer to assign code 8810 to some of the work performed by Payne.⁴ The proposed order recommended that the director affirm the billing because the employer had the burden of proving by a preponderance of the evidence that the billing was incorrect, ORS 183.450(2); *Salem Decorating v. Natl. Council on Comp. Ins.*, 116 Or App 166, 170 (1992), *rev den*, 315 Or 643 (1993); *Gallant v. Board of Medical Examiners*, 159 Or App 175, 180-183 (1999), but the employer did not meet its burden because it did not appear and was not represented at the hearing; and the insurer provided *prima facie* evidence that the billing was correct, see ORS 183.415(6), OAR 137-003-0670(3)(a). The proposed order informed the employer and insurer that they may file with the director written exceptions to the proposed order and the director must receive them within 30 days after the proposed order was mailed to 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 of law, and reasoning of revised proposed order as the findings of fact, conclusions of law, 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 ORS 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

⁴ See OAR 836-043-0115(4)(f) and (n), and OAR 836-042-0050 to OAR 836-042-0060.

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.

Dated April 28, 2008

/s/ Scott J. Kipper
Scott J. Kipper
Administrator
Insurance Division
Department of Consumer and Business Services

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