

**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 Nos. INS 07-04-003,
)	
)	
THE TRADING COMPANY, INC.)	
An Oregon Corporation)	PROPOSED ORDER

HISTORY OF THE CASE

On January 10, 2007, SAIF Corporation (SAIF or insurer) presented a Final Premium Audit Billing to The Trading Company, Inc (TTC or employer). TTC requested a hearing and submitted a Petition to the Insurance Division on March 28, 2007, contesting the change in classification codes from 3632 to 3030. The matter was referred to the Office of Administrative Hearings (OAH) on April 10, 2007, and hearing was set for June 19, 2007.

Hearing was held at the scheduled date and time, with Administrative Law Judge Rick Barber presiding. TTC was present at hearing, through Joyce Parker and Helena Vanderwey. Ms. Vanderwey testified for TTC. SAIF was present and represented by Shannon Rickard from the Department of Justice. DeAnne Hoyt and Ed Grove testified for SAIF; Michael Craddock, a Senior Quality Assurance Specialist with the National Council on Compensation Insurance (NCCI), also testified as a witness for SAIF.¹ The record closed at the end of the hearing on June 19, 2007.

ISSUE

Whether SAIF correctly classified employer's employees under code 3030 instead of 3632.

EVIDENTIARY RULINGS

SAIF offered Exhibits A1 through A4 into evidence, and they were admitted without objection. TTC offered Exhibit E1, which was also admitted without objection. The documentary record also includes the Petition filed by TTC on March 28, 2007, although not as evidence.

¹ Although NCCI is technically a party to classification issues and Mr. Craddock was aware of that, his presence in the hearing was specifically as a witness and not as a party.

FINDINGS OF FACT

1. TTC operates a business fabricating “wear” parts out of steel to be used as replacement parts on large machines and equipment. TTC has a shop in Woodburn, Oregon, with the following tools and equipment: a plasma cutting table, three forklifts (one large, two small) for moving material such as steel plate, a stationary drill, brake press, welders (carbiding tables) and three overhead cranes or lifts. One of their primary products is a “hammer,” which can weigh between four and 90 pounds, and is used as replacement grinding teeth on heavy grinders used to grind wood debris into bark or mulch-like products. TTC fabricates the hammers, and other replacement parts, then sells them to municipalities and other contractors. The purchaser does all installation of the new parts on their heavy equipment. TTC believes there is a big difference between “wear” parts—which it makes—and “structural” steel work on heavy equipment. Structural steel includes the frame, the tub and the rest of the machinery, except the parts that wear out and need to be replaced. (Test. of Vanderwey).

2. On October 1, 2002, Ms. Hoyt, an audit analyst for SAIF, wrote to TTC to discuss the appropriate classification codes to be used on the job. At that time, SAIF concluded that class 3632 was the appropriate code for employer’s operation, as part of a premium audit contest. The state ombudsman involved at the time suggested that 3632 was the appropriate code, rather than 8107, and SAIF agreed to the change. TTC was assessed premium based upon that code from 2002 until the most recent premium audit. (Test. of Hoyt).

3. Mr. Grove performed SAIF’s audit of TTC in 2006 and concluded that class 3632 (Machine Shop – NOC) was not the correct class because of the work being performed by employer. He reviewed the work being performed and interviewed Ms. Parker, TTC’s bookkeeper, to understand the job tasks, and concluded that class 3030 was more appropriate for employer’s workers. (Ex. A1).

4. When SAIF and TTC disagreed about the classification, SAIF asked NCCI to perform an audit of employer’s facilities to determine the appropriate code. NCCI’s auditor, Michael Craddock, performed an independent review of employer’s work to determine the appropriate codes. Although he knew what class code SAIF had assigned, and what TTC felt it should be, Mr. Craddock believed it was his job to find the correct code, even if it was different than the ones raised by the parties. He toured the shop and met with Ms. Vanderwey, TTC’s owner and president, to discuss the job duties. He concluded that the fabrication of replacement parts best fit within class 3030. He disagreed with employer’s belief that class 3030 only applied to structural components of the heavy equipment. (Ex. A2; test. of Craddock).

5. Based upon the NCCI audit, SAIF concluded that it had been incorrect to assign class 3632 to the workers back in 2002. Although SAIF has the authority to go back and reclassify if classification codes are found to be incorrect, it waived its right to do so in this case because of the previous advice it gave to employer. (Test. of Hoyt).

ADMINISTRATIVE NOTICE

At the hearing, I took administrative notice of the accuracy of the *Basic Manual or Workers' Compensation and Employers Liability Insurance*, as well as of the *Scopes of Basic Manual Classifications*. I accept these documents, and in particular the portions of the document which are part of this record, as the authoritative definitions of what the work entails under Classes 3632 and 3030.

CONCLUSIONS OF LAW

Class 3030 is the correct code for employer's employees when hauling materials belonging to others.

OPINION

When an employer contests a premium audit matter, it has the burden to present evidence in support of its case. SAIF's conclusions are deemed correct, and employer has the burden to prove, by a preponderance of the evidence, that SAIF's conclusions were wrong. *Salem Decorating v. Nat'l Council on Comp. Ins.*, 116 Or App 166, 170 (1992), *rev den* 315 Or 643 (1993). Employer has not met its burden in this case.

There are procedural and factual issues in this case. Procedurally, the record before me shows that NCCI has determined that 3030 is the correct classification code for employer's business. NCCI has the right to make such classifications, (Ex. A3), and SAIF is in large part bound by those classifications unless it wants to go through the contested case process itself. Procedurally, SAIF's assignment of the workers to class 3030 is appropriate given the findings made by NCCI.

However, even if there was no procedural issue and I was just looking at the facts of the case—the work being performed and the language of classification code 3030—I would conclude that employer has not shown SAIF's reclassification to be incorrect.

Employer makes a distinction between “wear” parts and “structural” parts, and gives a plausible explanation for the difference between them. However, as Mr. Craddock testified, that distinction is not found in class 3030. The addendum to that classification states:

Class 3030 applies to your employees involved in direct labor, supervision and driving who are engaged in fabricating or assembling of structural iron or steel when performed in a permanently located shop. Products include bars, I beams, channels, angles, tees, plates, roof trusses and joints used for support in the construction of buildings, bridges, heavy machinery pieces, etc. The process includes layout, cutting, riveting, bolting and welding and the use of heavy metal power saws, shears, punch presses, drill presses and plate rolls. *Class 3030 applies to businesses engaged in both structural and nonstructural fabrication.* Class 3030 also

applies to the repair or maintenance of your equipment, structures or buildings, and vehicles used for this work. Blast furnace or converter operations, casting of steel, or rolling mills are to be separately rated.

(Ex. A1 at 8)(Emphasis added).

The emphasized language indicates that fabrication on heavy machinery, whether structural or not, is covered under this classification code. It would be nice if there was a code that fit just the wear parts employer fabricates, since the evidence indicates without contradiction that employer's workers are not exposed to fabricating or repairing the heavy machinery itself and, logically, their risk would appear to be smaller. However, I consider it important that NCCI, the entity given the task of determining the correct class code, has deemed 3030 as the correct code. The Final Premium Audit should be affirmed.

PROPOSED ORDER

I propose that the department issue the following final order:

SAIF's Final Premium Audit Billing dated January 10, 2007, is correct and payable; SAIF correctly assigned Class 3030 to TTC's employees.

DATED this 24th day of July 2007.

Rick Barber, Administrative Law Judge
Office of Administrative Hearings

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:

Mitchel D. Curzon
Chief Enforcement Officer
Oregon Insurance Division
PO Box 14480
Salem, OR 97309-0405