

director so that the 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 3/30/07, 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 4/10/07, the director referred the requests to the Office of Administrative Hearings (OAH).

On 4/12/07, OAH issued an order granting the stay.

On 4/19/07, OAH scheduled a hearing to be conducted on 6/19/07.

On 6/19/07, OAH conducted a hearing. The hearing was conducted by Rick Barber, an administrative law judge of OAH. The employer appeared and was represented at the hearing by Joyce E. Parker, as the employer's authorized representative pursuant to OAR 836-005-0112 and OAR 137-003-0555. The employer called Helena Vanderwey as its witness. The employer offered Exhibit 1 as its documentary evidence which was 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, Ed Grove, and Michael Craddock, as its witnesses. The insurer offered Exhibits A1 to A4 as its documentary evidence all of which were admitted into the record.

On 7/24/07, OAH issued a proposed order. The proposed order recommended that the director affirm the billing. The billing replaced classification code 3632 with code 3030 relative to the employer's steel "wear" or replacement part fabrication operations. The order concluded, essentially, that code 3030 more closely describe the employer's operations than code 3632, and therefore the billing was correct. 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.

On 7/30/07, the director timely received from the insurer written exceptions to the proposed order. The insurer asserted that, in the conclusion of law on page 3 of the order, the phrase “when hauling material belonging to others,” was not relevant to this case. The director agrees.

The director did not receive from the employer any exceptions to the proposed order.

On 10/31/07, the director requested OAH to conduct further hearing, pursuant to OAR 137-003-0655(2), “to determine whether code 3030 applies to both structural and nonstructural byproducts, (2) if code 3030 applies to only structural byproducts then also whether the employer’s steel replacement parts are structural as opposed to nonstructural, and (3) whether some other code, such as code 3040, 3507, or 3632, ‘best describes’ or ‘most closely describes’ the employer’s steel replacement part operation.”

On 1/22/08, the director received from the insurer a letter dated 1/18/08 objecting to the director’s request for further hearing by explaining, with references to specific evidence in the record, why the insurer believed the existing record was sufficient and any further hearing was unnecessary.

On 2/7/08, the director withdrew the request to conduct further hearing.

On 2/8/08, the director received from the employer a letter dated 2/8/08 not objecting to the director making a decision based on the existing record, but explaining why the employer believed that code 3632 applied to the employer’s operations.

Therefore, the director now makes the following final decision in this proceeding.³

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 the proposed order as the findings of fact, conclusions of law, and reasoning of this final order, except that the conclusion of

³ The director’s decision in this case is based on the record that existed as of 7/30/07 when the director received the insurer’s exceptions.

law on page three of the proposed order is changed to state “The insurer correctly assigned classification code 3030, by analogy, to the employer’s steel ‘wear’ or replacement part fabrication operations.”

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 ORS 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 March 11, 2008

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

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