

On 5/5/08, OAH scheduled a hearing to be conducted on 9/16/08.¹

On 9/16/08, OAH conducted a hearing. The hearing was conducted by Alison Greene Webster, an administrative law judge of OAH. The employer appeared and was represented at the hearing by Earl G. Croucher, as the employer's authorized representative pursuant to OAR 836-005-0112 and OAR 137-003-0555. The employer called Jennifer Berti as its witness. The employer offered Exhibit 101 as its documentary evidence which was excluded as not relevant. The insurer appeared and was represented at the hearing by Ethan R. Hasenstein, an Assistant Attorney General assigned to represent the insurer. The insurer called Steve Northrop and Teresa Smith as its witnesses. The insurer offered Exhibits A1 to A15 as its documentary evidence all of which were admitted into the record.

On 9/24/08, OAH issued a proposed order. The proposed order recommended that the director affirm the billings because, for both audit periods, the insurer correctly assigned all of the payroll of store employees to classification code 8044, and the employer failed to maintain verifiable payroll records allowing the insurer to assign some of the payroll to classification code 8044 and remaining payroll to classification code 8810. The proposed order informed the employer and insurer that they could 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.

On 10/3/08, the director timely received from the insurer written exceptions to the proposed order. The insurer's sole exception was that the proposed order stated that "The [insurer's] Toolbox also includes copies of the applicable Oregon administrative rules [*e.g.* OAR 836-042-0060] pertaining to verifiable time records." See proposed order dated 9/24/08, pages 2-3. Apparently, the proposed order found this fact based on a statement by the insurer's attorney in a hearing memorandum.

¹ The proposed order incorrectly stated that the hearing was scheduled on 6/23/08. On 5/5/08, OAH issued a notice of hearing scheduling the hearing to be conducted on 9/16/08. On 6/23/08, OAH issued a notice of administrative law judge reassignment assigning a different administrative law judge to the case. Subsequently, on an unknown date, but sometime between 6/23/08 and 9/16/08, OAH again assigned a different administrative law judge to the case.

See insurer's hearing memorandum dated 9/9/08, pages 3-4. In its exceptions, the insurer stated that the Toolbox did not include copies of the rules.

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 proposed order as the findings of fact, conclusions of law, and reasoning of this final order, except as follows:

The direct excludes the finding of fact and any related conclusion and reasoning if any, that "The Toolbox also includes copies of the applicable Oregon administrative rules pertaining to verifiable time records."

The director corrects all references to classification code "8804" to "8044."

Order

The billings are affirmed and the stay is withdrawn.

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 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 1/2/09

/s/Teresa D. Miller
Teresa D. Miller
Acting Administrator
Insurance Division
Department of Consumer and Business Services