

**STATE OF OREGON  
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
INSURANCE DIVISION**

In the Matter of **D.R.S. Trucking, LLC** ) **FINAL ORDER**  
 ) Case No. INS 08-10-002

The Director of the Oregon Department of Consumer and Business Services (director), commenced this administrative proceeding, at the request of Employer D.R.S. Trucking, LLC (employer), pursuant to Oregon Revised Statutes (ORS) 737.318(3)(d), ORS 737.505(4), and Oregon Administrative Rules (OAR) 836-043-0101 *et seq*, to review a workers' compensation insurance final premium audit billing (billing) issued by SAIF Corporation (insurer) to the employer.

**History of the Proceeding**

On 6/2/08, the employer received from the insurer a billing dated 5/30/08, for the audit period from 7/1/07 to 2/10/08.<sup>1</sup>

On 7/28/08, the director received from the employer a written request for a hearing to review the billing.<sup>2</sup>

On 7/29/08, the director mailed to the employer a letter and a petition form.

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<sup>1</sup> The proposed order did not find when the employer received the billing. When an employer receives a billing is critical to determining whether the employer is entitled to a hearing. ORS 737.505(4), OAR 836-043-0110, OAR 836-043-0170; *Pease v. National Council on Compensation Insurance*, 113 Or App 26, 830 P2d 605, *rev den* 314 Or 391 (1992). The employer stated in its petition dated 9/26/08 that it received the billing on 5/30/08. The billing was dated 5/30/08. The insurer mailed the billing to the employer on 5/30/08. The insurer is located in Salem, Oregon, which is in northwestern Oregon. The employer is located in Powers, Oregon which is in southwestern Oregon. It is unlikely that the employer received the billing on the same date as it was mail because of the distance between Salem and Powers. It is likely that the employer did not know when it received the billing but merely stated on the petition the date of the billing rather the date the employer received the billing. Pursuant to OAR 836-043-0170(6), "...if the date is unknown to the employer, the date of receipt is considered to be the third day after the date of mailing...." Three days after Friday, 5/30/08, was Monday, 6/2/08. Therefore, the director finds that the employer received the billing on 6/2/08.

<sup>2</sup> The proposed order also did not find when the director received the employer's request for a hearing. When the director receives from an employer a request for a hearing is also critical to determining whether the employer is entitled to a hearing. On 7/28/08, the director received by fax from the employer's attorney a letter dated 7/28/09 requesting a hearing. Therefore, the director finds that the director received the employer's request for a hearing on 7/28/08.

On 9/26/08, the director 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.

On 10/1/08, the director referred the request to the Office of Administrative Hearings (OAH).

On 10/8/08, OAH scheduled a hearing to be conducted on 2/5/09.

On 10/30/08, OAH issued an order granting the stay.

On 2/5/09, OAH conducted a hearing. The hearing was conducted by Rick Barber, an administrative law judge of OAH. The employer appeared by phone and was represented at the hearing by Manuel Hernandez, an attorney. The employer called Fern Steen as its witness. The employer offered Exhibits E1 to E2 and E4 to E7 as its documentary evidence all of which were admitted into the record.<sup>3</sup> 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 Deanne Hoyt as its witnesses. The insurer offered Exhibits A1 to A15 as its documentary evidence all of which were admitted into the record.

On 4/27/09, OAH issued a proposed order and mailed it to the parties. The proposed order recommended that the director affirm the billing because the employer did not present sufficient evidence to support its position and the insurer presented a prima facie case showing that 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 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.

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<sup>3</sup> The employer did not offer an exhibit E3.

**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.

**Order**

The billing is affirmed and the stay is terminated.

**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 6/16/09

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

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