

**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 No. INS 08-01-001
)
)
COLUMBIA RIVER DAIRY, LLC)
an Oregon Limited Liability Corporation) **REVISED PROPOSED ORDER**

HISTORY OF THE CASE

On October 22, 2007, SAIF Corporation (SAIF) issued a final premium audit billing to Columbia River Dairy, LLC (Petitioner), for the period of July 1, 2006 through June 30, 2007. On December 7, 2007, Petitioner timely requested a hearing on the final premium audit billing, and submitted a Petition to the Department of Consumer and Business Services (Department) on January 7, 2008.

The Department referred the matter to the Office of Administrative Hearings (OAH) on January 8, 2008. On May 7, 2008, Administrative Law Judge Rohini Lata conducted a hearing in this matter. Petitioner appeared through its attorney, Bill Replogle. Brian Anderson and Angie Knowles testified for Petitioner. SAIF was represented by Ethan Hasenstein, Assistant Attorney General. Audit Program Analyst Teresa Smith testified for SAIF. The record was closed at the end of the hearing.

OAH issued a Proposed Order issued on June 13, 2008. Petitioner filed exceptions to the Proposed Order on July 11, 2008.

On July 17, 2008, the Department requested that OAH review the exceptions to the Proposed Order and issue a Revised Proposed Order addressing the exceptions. All language added to the original Proposed Order will be in bold type to make the changes clear. Likewise, any language that is excised from the original will be left in, but with a strikethrough.

ISSUES

Whether SAIF correctly included payments to Brian Anderson during the audit period in the insured's audited payroll.

Whether SAIF correctly included payments from Brian Anderson to Ryan Francis in the insured's audit payroll under ORS 656.029.

EVIDENTIARY RULINGS

Exhibits A1 through A11 and P1 through P15 were admitted into the record without objection.

FINDINGS OF FACT

1. Columbia River Dairy, LLC (CRD) is a dairy farm with about 16 to 17 thousand milk-producing cows and about three thousand dry, birthing or rejuvenating cows. (Test. of Anderson.) CRD produces milk and employs several employees including dairy feeders, dairy managers, Holstein milkers, Jersey milkers and rake and bedding providers. CRD employees are paid a salary, are supervised and are union members. (Test. of Knowles.)

2. CRD applied for workers' compensation coverage with SAIF in 2003. (Ex. A1.) SAIF concluded that CRD operations included care and handling of livestock, milking, processing and the wholesale or retail sales of milk products. SAIF classified most of CRD employees under the 0036 (dairy farm and driver) and a few under the 8810 (office clerical) class codes. (Ex. A3.) SAIF approved the application and CRD's workers' compensation coverage with SAIF became effective October 1, 2003. (Ex. A2.) SAIF has continuously provided CRD's workers' compensation coverage since that time. (Test. of Smith.)

3. SAIF first audited CRD in 2005 for the July 1, 2004 through June 30, 2005 policy period. (Test. of Knowles.) SAIF discovered payments made to Brian Anderson, a "hoof trimmer," which were not included in CRD's payroll. (Ex. A5.) SAIF audited CRD for the July 1, 2005 through June 30, 2006 policy period and again included payments made by CRD to Mr. Anderson. SAIF also became aware of individuals working with Mr. Anderson and advised CRD of the requirements of ORS 656.029. (Ex. A7.) SAIF included the payments to Mr. Anderson in the final premium audit billings. CRD paid the previous final premium audit bills for July 1, 2004 through June 30, 2005 and July 1, 2005 through June 30, 2006 without a request for hearing even though CRD disagreed with the inclusion of payments to Mr. Anderson in the audit billing. (Test. of Knowles.)

4. Most recently, SAIF audited CRD for the July, 1, 2006 through June 30, 2007 policy period. This time, besides including payments made to Mr. Anderson, SAIF also included payments made by Mr. Anderson to Ryan James Francis, another hoof trimmer. (Ex. A8.)

5. Sometime prior to September 8, 2006, CRD told Mr. Anderson to obtain workers' compensation coverage from SAIF. (Test. of Anderson.) Mr. Anderson obtained and had SAIF coverage from September 8, 2006 until March 7, 2007. (Ex. P12.) SAIF cancelled his policy because Mr. Anderson did not file a payroll report. (Test. of Smith.)

6. Mr. Anderson is the owner of Anderson Cattle Services. (Ex. P13.) He has his own business cards and advertises by word of mouth. He has been in the hoof trimming business for about 20 years and is highly skilled in that work. Over the years, he has had about 1,500 customers. However as dairies and ranches have consolidated his customer base has declined. (Test. Of Anderson.) He continues to provide his services to CRD and other smaller customers such as Six Mile Land and Cattle Co. and Keltic Pride Dairy. During the July, 1, 2006 through June 30, 2007 audit period, Mr. Anderson's largest customer was CRD. (Ex. P6.)

7. Mr. Anderson started his relationship with CRD sometime in 2001 based on a request by Dr. Dan Vander Stelt, who worked at CRD at that time as a Herd Manager and Veterinarian. (Ex. P 13.) Mr. Anderson ~~made contact~~ **contacted** CRD and left his business card with his phone number. CRD called him sometime shortly thereafter and the parties verbally agreed that Mr. Anderson would provide hoof trimming services to CRD. The parties do not have a written contract. **Instead, as is customary in the Eastern Oregon locality, they had a "handshake agreement" that Mr. Anderson would provide hoof trimming services to CRD and that CRD had the right to terminate the agreement.** However, The parties agreed that Mr. Anderson would provide his own equipment and supplies and bill CRD monthly based on the number of cattle trimmed and supplies used. (Test. of Anderson.)

8. CRD calls Mr. Anderson when there is work. Mr. Anderson is free to accept or decline the work. If he accepts the work, he performs the work at the ranch without any assistance. Prior to Mr. Anderson's arrival at the ranch, CRD employees pen the cows in need of attention. Because of the long term relationship, Mr. Anderson knows that the cows needing attention are penned. Mr. Anderson does not clock in or out like the other CRD employees and does not report to anyone when he arrives at CRD. He does not supervise CRD employees nor does he take direction or assistance from CRD. On some days, Mr. Anderson does not even talk to any CRD employees. Likewise, Mr. Anderson does not work with CRD's veterinarian. He marks the cows that need more than hoof trimming with an "X" and those cows are treated at the hospital. (Test. of Anderson.)

9. Mr. Anderson has invested a substantial amount of money in his specialized equipment (a kangaroo catcher) and truck. He also provides his own tools and supplies for the job which cost a considerable amount of money. (Test. of Anderson.)

10. As per the parties' verbal agreement, Mr. Anderson sets his own price. Mr. Anderson charged CRD \$7 per cow (Jersey and Holstein) for trim, \$17 for blocks and \$1.50 for wraps in 2006. He increased his price to \$8 per cow for trim in 2007. (Test. of Anderson.)

11. Mr. Anderson bills CRD on or about the fifteenth of the month. (Ex. P6.) During the audit period, CRD paid Mr. Anderson, rather than his business, on the same day he submitted his monthly bills. Mr. Anderson also billed two smaller clients on July 15, 2007, outside the audit period. (Ex. P6.) Mr. Anderson kept two separate invoice

books, one exclusively for CRD and one for his smaller customers. (Test. of Anderson.) **CRD did not withhold any of the payment to Mr. Anderson for employee-related benefits such as retirement savings, health insurance, unemployment, etc. CRD withheld from Mr. Anderson's pay the premium charged by SAIF for providing him and the other hoof trimmers' workers' compensation coverage.**

12. During the audit period, CRD was Mr. Anderson's largest client and Mr. Anderson provided hoof trimming services to CRD on a regular basis. Occasionally, Mr. Anderson did not work for CRD because he needed time off. On other occasions, CRD had more work than Mr. Anderson could handle. On those occasions, three other individuals, Loren Clevenger, Daaron Hamilton and Ryan Francis, also performed hoof trimming services for CRD. All three individuals provided hoof trimming services to CRD during the July 1, 2006 through June 30, 2007 audit period and billed CRD through Mr. Anderson. Mr. Anderson did not supervise or certify the work of these three individuals. If CRD had a complaint, CRD spoke directly with the hoof trimmer responsible for the work. (Test. of Anderson.)

13. Mr. Loren Clevenger's business is called Clevenger Hoof Trimming. Mr. Daaron Hamilton's business is called Hamilton Hoof Trimming. Mr. Clevenger and Mr. Hamilton owned their own trucks and also worked for other customers. (Test. of Anderson.)

14. During the July 1, 2006 through June 30, 2007 audit period, Mr. Anderson owned two trucks. He leased his 1989 Ford to Mr. Francis¹ and retained his 2002 Ford truck for himself. Other than the leased truck, Mr. Francis owned his own tools and equipment. He did however purchase his supplies from Mr. Anderson. (Test. of Anderson.) All three individuals billed Mr. Anderson for their work. When billing Mr. Anderson, Mr. Francis charged \$5 for Jerseys and \$7 for Holsteins for trims, \$5 per block and fifty cents for wraps. Mr. Francis always billed Mr. Anderson on the fifteenth of the month. (Ex. P2.) Mr. Anderson paid him within a few weeks of the billing. Mr. Francis charged Mr. Anderson less than what Mr. Anderson charged CRD, so that Mr. Anderson could retain the difference and apply it to the lease of the truck and supplies he provided. (Test. of Anderson.)

15. Mr. Anderson issued form 1099s to all three individuals. (Test. of Anderson.) The individuals filed a Schedule C with their federal income taxes. In 2006, Mr. Anderson issued a form 1099 to Mr. Francis in the amount of \$74,393 and to Mr. Clevenger in the amount of \$4,117. (Ex. P3.) In 2006, Mr. Francis' represented his gross receipts as \$72,760 and Mr. Clevenger represented his gross receipts as \$108,810. (Ex. P13.)

16. On February 8, 2008, SAIF adjusted CRD's premium audit bill because SAIF realized that Mr. Anderson had his own coverage from September 8, 2006 through March 8, 2007. The adjustment reduced the amount billed for Mr. Anderson from \$242,955 to

¹ Incidentally, Mr. Francis became the owner of the 1989 Ford truck after the July 1, 2006 through June 30, 2007 audit period.

\$104,398 because Mr. Anderson had his own SAIF coverage during part of the audit period. (Ex. A9.)

CONCLUSIONS OF LAW

SAIF correctly included payments to Brian Anderson during the audit period in the insured's audited payroll.

SAIF correctly included payments from Brian Anderson to Ryan Francis in the insured's audit payroll under ORS 656.029.

OPINION

The issues to be resolved here are whether SAIF correctly included payments from CRD to Brian Anderson during the audit period in the insured's audited payroll and whether SAIF correctly included payments from Brian Anderson to Ryan Francis in the insured's audit payroll under ORS 656.029.

When an employer contests a premium audit billing, it has the burden to present evidence to establish its case. The employer bears the burden of proving, by a preponderance of the evidence, that the billing is not correct. *Salem Decoration v. NCCI*, 116 Or App 166, 170 (1992), *rev den* 315 Or 643 (1993) (in premium audit cases, burden of proof is on the employer). Proof by a preponderance of evidence means that the fact finder is persuaded that the facts asserted are more likely true than false. *Riley Hill General Contractors v. Tandy Corp.*, 303 Or 390 (1989). In order to prevail, CRD must establish that any or all of the individuals are not subject workers.

In making the determination whether hoof trimmers are subject "workers," the initial inquiry is whether they are "workers" within the meaning of the workers' compensation law. *S-W Floor v. Nat'l Council on Comp Ins.*, 318 Or 614, 622 (1994). ORS 656.005(30) provides, in pertinent part, that a "worker" is "any person * * * who engages to furnish services for a remuneration, subject to the direction and control of an employer * * *." There is no dispute that the hoof trimmers received remuneration for their services, therefore, my analysis is limited to the question of whether they were subject to employer's direction and control.

The initial determination of whether the hoof trimmers were subject to CRD's direction and control is made under the judicially created "right to control" test. *S-W Floor*, 318 Or at 622. The critical question in determining direction and control under the "right to control" test is not the actual exercise of control, but whether the *right of control* exists. *Id.* The factors to be considered in determining whether the right to control exists are: (1) direct evidence of the right to, or the exercise of, control; (2) the furnishing of tools and equipment; (3) the method of payment; and (4) the right to fire. *Salem Decorating v. Nat'l Council of Comp. Ins.*, 116 Or App 166, 171 (1992) *rev den* 315 Or 643 (1993); *Castle Homes v. Whaite*, 95 Or App 269, 272 (1989).

The "relative nature of the work" test must be considered "if there is some evidence suggesting the employer retained the right to control the method and details of the work." *Rubalcaba v. Nagaki Farms, Inc.*, 333 Or 614, 627 (2002).

The Right to Control Test

Control Issue: Petitioner argued that because the parties treated the relationship as one of an independent contractor and because Mr. Anderson was not on CRD's payroll, Mr. Anderson is an independent contractor. If the inquiry was to end at what the parties' intended, this case would be very easy to decide. However, the courts do not stop the inquiry with the intention of the parties. The courts have devised a *right to control test* and distinguish between two different types of control. "Control over the method of performance" is an indication that there is an employment relationship, while "control over the result to be achieved" is consistent with an independent contractor relationship. *Trabosh v. Washington Count*, 140 Or App 159, 165 (1996). Applying that distinction to this case demonstrates that CRD did not have a great deal of control over Mr. Anderson or his method of performance. Mr. Anderson is highly skilled in his work and did not need supervision. Mr. Anderson did not clock in or out like the other CRD employees and did not report to anyone. He did not supervise CRD employees nor did he take direction or assistance from CRD employees. In fact, CRD had no control over Mr. Anderson.

SAIF argued that because CRD controlled the animals and decided which animal should be worked on and at what times required Mr. Anderson to coordinate his efforts with CRD which is indicative of right to control. The extent of CRD's involvement in Mr. Anderson's work was only limited to CRD's right to expect a certain end product. The level of coordination here does not rise to the level of an employment relationship. A contractor has the right to coordinate his efforts and perform the work that is required under a contract. The one letting the contract also has the right to control its property and decide what work should be done and at what times so as not to disrupt the business.

After considering all the facts, this factor indicates an independent contractor relationship. Furthermore, the evidence establishes that, as per the parties' verbal agreement, Mr. Anderson set his own price. During the audit period, his price was \$7 per cow, which he later changed to \$8 per cow. Where, as here, Mr. Anderson was free to set his own price the relationship appears one of a contractor.

Furnishing of tools and equipment: This factor also weighs in favor of an independent contractor relationship. SAIF concedes that Mr. Anderson had a substantial investment in his business and provided his own tools, equipments and supplies. Therefore, this factor indicates an independent contractor relationship.

Method of payment: "When payment is by quantity or percentage, the method of payment test largely becomes neutral. To the extent that it indicates continuing service, it suggests employment; to the extent that it lessens an employer's interest in the details of

how the employee spends (their) time, it has been said to suggest an independent contractor relationship." *Henn v. SAIF*, 60 Or App at 592. The evidence establishes that Mr. Anderson billed the dairy on or about the fifteenth of the month and CRD paid him on the same day he submitted his monthly bills. These regular payments plus the fact that CRD paid Mr. Anderson rather than the business, is indicative of an employment relationship rather than a contractual relationship, where payments are usually at the completion of a contract. Furthermore, the payments indicated, and the facts bore out, that the relationship was of a continuous nature suggesting an employment relationship. However, CRD issued Mr. Anderson a 1099 and did not withhold taxes indicating a contractor relationship. Considering all the evidence here, this is a neutral factor.

In its first exception, Petitioner argues that ALJ erred in finding the method of payment was neutral with regard to whether the agreement between CRD and Mr. Anderson was indicative of an employment or a contractual relationship.

It is true that Mr. Anderson was paid on a "per cow" basis and that he controlled his own rate of compensation by setting the rate he charged and deciding whether or not to accept work offered by CRD suggesting an independent contractor relationship. However, it is not accurate that CRD paid Mr. Anderson within three weeks of receipt. As stated previously, the evidence establishes that Mr. Anderson billed the dairy on or about the fifteenth of the month and CRD paid him on the same day he submitted his monthly bills. These regular payments certainly indicate an employment relationship. The fact that CRD did not withhold from any of the payment to Mr. Anderson for employee-related benefits does not automatically suggest an independent contractor relationship. This factor continues to be neutral.

Right to fire: The right to terminate the relationship at any time without liability is strong evidence that the contract was one of employment. *Bowser v. State Indus. Accident Comm.*, 182 Or 42, 54 (1947). The right to control whether further work would be done is also indicative of the right to fire. *Cy Inv. Inc. v. Nat'l Council on Comp. Ins.*, 128 Or App 579, 584 (1994). CRD and Mr. Anderson did not enter into a written contract so it is difficult to determine just what rights the parties had. Mr. Anderson did not contract to do piece work for CRD. Evidence established that he was required to perform such work as CRD could provide. Without a contract, CRD had the right to fire Mr. Anderson without incurring any contractual liability. Mr. Anderson could file a claim under *quantum meruit* but the claim would not be contractual claim. Conversely, Mr. Anderson also had the right to terminate the relationship without incurring any contractual liability. The courts view the right to terminate the relationship without any contractual liability as strong evidence of employment.

In its second exception, Petitioner argues that the ALJ erred in finding the right to fire factor suggests an employment relationship. As set forth in the order, the ALJ made findings of fact and conclusions based on testimony and evidence provided at the hearing.

In sum, the “right to control” test is inconclusive. While one factor is neutral, two factors suggest an independent contractor status and one factor strongly suggests an employment relationship. Consequently, I move to the “relative nature of the work” test.

Relative Nature of the Work Test

The nature of the work test involves an examination of:

“The character of the claimant’s work or business – how skilled it is, how much a separate calling or enterprise it is, to what extent it may be expected to carry its own accident burden * * * its relation to the employer’s business, that is how much it is a regular part of the employer’s regular work, whether it is continuous or intermittent, and whether the duration is sufficient to amount to the hiring of continuing services as distinguished for the completion of a particular job.

Woody v. Waibel, [276 Or 189, 195 (1976)], quoting 1A Larson’s *Workmen’s Compensation Law*, section 43.51 (1973).

Before the court’s decision in *Rubalcaba*, the test was applied only when the right to control test was inconclusive. See *Oregon Drywall Systems, Inc. v. Nat’l Council on Comp. Ins.*, 153 Or App 662 (1998) (if the right to control is inconclusive, the relative nature of the work test may be applied). In *Rubalcaba*, the Oregon Supreme Court reversed the Court of Appeals and the Workers’ Compensation Board because both the court and the board failed to apply the relative nature of the work test when there was “some evidence” that the employer retained the right to control. 333 Or at 627. Here I find that, inasmuch as two of the factors of the right to control test indicate an independent contractor relationship, there is “some evidence” that the employer retained the right to control the work of the hoof trimmers. Accordingly, I apply the relative nature of the work test.

Even though Mr. Anderson indicated that he worked for other smaller clients during the audit period, the evidence on this was unclear. For example, the testimony was not clear as to whether billing to the smaller clients outside the audit period included work during the audit period or outside the audit period. Moreover, there were significant payments from CRD to Mr. Anderson throughout the audit period. Thus, even if Mr. Anderson had other clients, the evidence shows that his business is substantially dependent on CRD which indicates that his business is inextricably intertwined with CRD’s business.

Mr. Anderson’s work formed an essential and regular part of CRD’s work. CRD is engaged in the production of milk. CRD needs healthy cows moving around

and eating grass. Mr. Anderson provides hoof care - trimming and other services to keep the cows healthy and moving. Without Mr. Anderson and the hoof trimmers, CRD cannot operate its business unless it hires employees to do the work. Therefore, Mr. Anderson's services were an essential and integral part of CRD's business. Petitioner contended that an argument could be made that anyone who performs services for CRD could be considered an employee of CRD because all work is essential and regular part of CRD's operation. However, as previously discussed, CRD is in the production of milk. An electrician or cleaners work may be important but is not essential to the cows producing milk. Presumably the cows would produce milk in an unclean environment even if there was no electricity **because the cows can be milked by hand and the milk can be cooled by generators.**

Mr. Anderson's work was also continuous and of sufficient duration to amount to the hiring of continuous services rather than the contracting for the completion of a specific job. Mr. Anderson did not just work on one or a specific group of cows. He continuously worked on the cows since his relationship started with CRD in 2001.

Finally, being a large operation, CRD is in a better position to bear the cost of injuries to the hoof trimmers. Consequently, based on the analysis set forth in the relative nature of the work test, Mr. Anderson was a "worker" under the Oregon workers' compensation statutory scheme.

In its third exception, Petitioner argues that the ALJ erred in finding the "right to control" test did not conclusively establish that the relationship between CRD and Mr. Anderson indicative of an independent contractor relationship and the ALJ erred in applying the "relative nature of the work" test. Petitioner further argues that assuming that the ALJ properly applied the "relative nature of the work" test, the ALJ erred in concluding that the test indicated Mr. Anderson was a worker as opposed to an independent contractor.

While the evidence is clear that Mr. Anderson operates a hoof trimming business, it is not clear that his business is independent of CRD. While there is no dispute that he has worked as a hoof trimmer for approximately 20 years and had approximately 1,500 clients at one time, there is no evidence to suggest that he had those many clients during the audit period. In fact, as discussed previously, Mr. Anderson's testimony was not clear as to whether billing to the smaller clients outside the audit period included work during the audit period or outside the audit period. Under the circumstances, where Mr. Anderson could not recall the facts, the ALJ made a decision on the best evidence available.

Petitioner further argues that although CRD represents Mr. Anderson's largest client, it by no means represents his only client. As discussed previously, even if Mr. Anderson had other clients, the evidence shows that his business is substantially dependent on CRD which indicates that his business is inextricably intertwined with CRD's business.

The rest of Petitioner's arguments have already been addressed and the ALJ sees no need to address them again.

Ryan Francis

In its fourth exception, Petitioner argues, that the ALJ erred in finding Mr. Francis to be an employee of Mr. Anderson which is inapposite with the ALJ's finding that Mr. Anderson is an employee of CRD. Petitioner asserts that the ALJ's finding that Mr. Francis was an employee of Mr. Anderson suggests that the ALJ viewed Mr. Anderson as an independent contractor of CRD, as opposed to an employee. The ALJ disagrees with this characterization but revises her opinion as follows:

Under the tests and the reasoning discussed above, evidence establishes that Mr. Francis was an employee of ~~Mr. Anderson~~ **CRD just as Mr. Anderson was an employee of CRD.** In addition to the above reasoning, evidence establishes that Mr. Francis only billed **CRD, through** Mr. Anderson and that too on a regular basis. Evidence also establishes that for the year 2006, payments from ~~Mr. Anderson~~ **CRD, made to Mr. Francis via Mr. Anderson** made up Mr. Francis' entire income.

~~Because Mr. Francis was an employee of Mr. Anderson, for workers' compensation purposes, one of two things must happen. First, Mr. Anderson would have to provide coverage for Mr. Francis. Second, if Mr. Anderson does not provide such coverage, then CRD would have to provide coverage pursuant to ORS 656.029, which states in part:~~

Because Mr. Francis was an employee of CRD, CRD must provide workers' compensation for Mr. Francis. If Mr. Anderson is an independent contractor, and if Mr. Francis is an employee of Mr. Anderson, then CRD would have to provide coverage pursuant to ORS 656.029, which states in part:

(1) If a person awards a contract involving the performance of labor where such labor is a normal and customary part or process of the person's trade or business, the person awarding the contract is responsible for providing workers' compensation insurance coverage for all individuals, other than those exempt under ORS 656.027, who perform labor under the contract unless the person to whom the contract is awarded provides such coverage for those individuals before labor under the contract commences. If an individual who performs labor under the contract incurs a compensable injury, and no workers' compensation insurance coverage is provided for that individual by the person who is charged with the responsibility for providing such coverage before labor under the contract commences, that person shall be treated as a noncomplying employer and benefits shall be paid to the injured worker in the manner provided in this chapter for the payment of benefits to the worker of a noncomplying employer.

(2) If a person to whom the contract is awarded is exempt from coverage under ORS 656.027, and that person engages individuals who are not exempt under ORS 656.027 in the performance of the contract, that person shall provide workers' compensation insurance coverage for all such individuals. If an individual who performs labor under the contract incurs a compensable injury, and no workers' compensation insurance coverage is provided for that individual by the person to whom the contract is awarded, that person shall be treated as a noncomplying employer and benefits shall be paid to the injured worker in the manner provided in this chapter for the payment of benefits to the worker of a noncomplying employer.

Petitioner argued that CRD is not responsible for Mr. Francis' workers' compensation under subsection (2). The above subsection (2) does not apply to this case because Mr. Anderson is not exempt from coverage under ORS 656.027. Applying subsection (1) to the present situation, CRD is the "person awarding the contract" and Mr. Anderson is "the person to whom the contract is awarded." That makes Mr. Francis the one who performs labor under the contract. In other words, if Mr. Anderson did not provide coverage for Mr. Francis, then CRD must. Under the second part of subsection (1), it is possible that CRD's failure to provide coverage for those workers could make it a non-complying employer if there was an injury.

In summary, whether as employee of ~~Brian Anderson~~ CRD or by operation of ORS 656.029, CRD is responsible to pay premium on the payments made to Mr. Francis during the audit period when Mr. Anderson did not have his own workers' compensation coverage in place.

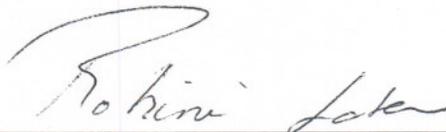
Petitioner argues that, if an employment relationship exists, the insurance premium should not be based on one hundred percent of the payments made by CRD to Mr. Anderson. Petitioner argues that it should be based on a lower amount because SAIF did not take into consideration depreciation on Mr. Anderson's truck and the cost of supplies, etc. SAIF presented testimony that the revised premium audit did not allow depreciation on Mr. Anderson's truck because the truck was used for his roping and farming business. SAIF argues, and I agree that without further evidence, no further adjustments can be made.

In its fifth exception, Petitioner argues that the ALJ failed to address the status of Mr. Hamilton and Mr. Clevenger, the other hoof trimmers, contracted by CRD to perform hoof trimming services. As far as the ALJ recalls, the status of Mr. Hamilton and Mr. Clevenger were not at issue in the hearing. Thus, the ALJ declines to address any issues relating to Mr. Hamilton and Mr. Clevenger.

PROPOSED ORDER

It is therefore PROPOSED that the Final Premium Audit Billing for the period July, 1, 2006 through June 30, 2007 be affirmed.

DATED this 19th day of August 2008.



Rohini Lata, 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

CERTIFICATE OF SERVICE

On the 21st day of August 2008, I mailed the foregoing Revised Proposed Order in Reference No. **0801001**.

BY FIRST CLASS MAIL:
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