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



In the Matter of R & R Tree Service, Inc.

FINAL ORDER

) ON RECONSIDERATION

) Case No. INS 09-04-002

The Director of the Oregon Department of Consumer and Business Services (director), commenced this administrative proceeding, at the request of Employer R & R Tree Service, Inc. (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 1/6/09, the employer received from the insurer a billing dated 12/31/08, for the audit period from 7/1/07 to 6/30/08.

On 2/6/09, the director received from the employer a letter dated 2/2/09 requesting a hearing to review the billing.

On 2/10/09, the director mailed to the employer a letter and a petition form to be completed by 4/7/09.

On 4/7/09, 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

<sup>&</sup>lt;sup>1</sup> The proposed order dated 2/18/10 did not find when the employer received the billing or when the director received the employer's request for a hearing. Determining when an employer received a billing, and when the director received the employer's request for a hearing and completed petition, are critical to determining whether the employer is entitled to a hearing. ORS 737.505(4), OAR 836-043-0110, OAR 836-043-0170. See *Pease v. Natl. Council on Comp. Ins.*, 113 Or App 26, *rev den* 314 Or 391 (1992). The employer stated in its request for a hearing dated 2/2/09 and petition dated 4/7/09 that the employer received the billing on 1/6/09. The director received the employer's request for a hearing on 2/6/09 and stamped the date received on the face of the letter. The director provided to OAH and the insurer a copy of the employer's request for a hearing and petition when the director referred the case to OAH on 4/7/09. The employer and insurer did not introduce any evidence at the hearing to the contrary. Therefore, the director finds that the employer received the billing on 1/6/09 and the director received the employer's request for a hearing on 2/6/09.

amount billed in the billing as a result of the audit until this proceeding is concluded.

On 4/7/09, the director referred the requests to the Office of Administrative Hearings (OAH).

On 4/14/09, OAH issued an order granting the stay.

On 4/27/09, OAH scheduled a hearing to be conducted on 10/7/09.

On 9/30/09, OAH rescheduled the hearing to be conducted on 12/8/09.

On 10/19/09, OAH rescheduled the hearing to be conducted on 12/8/09.

On 12/8/09, 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 Bill Replogle, an attorney. The employer called Jannai Cornett and Robert Cornett as its witnesses. The employer offered Exhibits P1 to P17 as its documentary evidence all of which were admitted into the record. 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 Denise Ashley, Ed Grove, and Teresa Smith, as its witnesses. The insurer offered Exhibits A1 to A30 as its documentary evidence all of which were admitted into the record. <sup>2</sup>

On 2/18/10, 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 meet its burden of production and persuasion. ORS 183.450(2); Salem Decorating v. Natl. Council on Comp. Ins., 116 Or App 166, 170, (1992), rev den 315 Or 643 (1993). 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.

<sup>&</sup>lt;sup>2</sup> The proposed order indicated that OAH added to the record the insurer's hearing memorandum, entitled "Opening Statement" dated 11/24/09. It was unnecessary and redundant for OAH to add the document to the record because it is automatically included the record of a case. ORS 183.417(9).

On 3/5/10, the director received from the employer written exceptions to the proposed order.

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

On 3/17/10, the director received from the insurer a written response to the employer's exceptions.

On 3/24/10, the director received from the employer a written response to the insurer's response.

The director considered the exceptions. The director is not persuaded by the exceptions that the director must or should take any action different than that recommended in the proposed order.

On 4/12/10, the director issued a final order.

On 5/19/10, the employer filed with the Court of Appeals a petition for judicial review of the final order.

On 1/27/11, the director withdrew the final order to reconsider the final order pursuant to ORS 183.482(6).

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

## Findings of Fact, Conclusions of Law and Opinion

The director continues to adopt, and incorporate 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 noted herein.

#### 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.

FEB 0 1 2011

Teresa D. Miller Administrator Insurance Division

lusa O Mill

Department of Consumer and Business Services

//

11

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

In the Matter of R & R Tree Service, Inc.	) ) ) )	CERTIFICATE of SERVICE of FINAL ORDER ON RECONSIDERATION Case No. INS 09-04-002
I certify that I sent the final order on reconsideration to the following person(s) on the date and by the means indicated below:		
Jannai Cornett Secretary R & R Tree Service, Inc. 1710 Commercial Street NE Salem, OR 97301-0707		✓ US First Class Mail
David L. Jorling Attorney PO Box 853 Lake Oswego, OR 97034-0139		✓ US First Class Mail
DeAnne J. Hoyt Premium Audit Analyst, Premium Audit Program Underwriting Services SAIF Corporation 400 High Street SE Salem, OR 97312-1000		✓ State inter-agency mail
Ethan R. Hasenstein Assistant Attorney General Government Services Section, General Counsel Divisio Oregon Department of Justice 1162 Court Street NE Salem, OR 97301-4096		✓ State inter-agency mail
Jamie K. Contreras Assistant Attorney General Civil/Administrative Appeals Section, Appellate Divisi Oregon Department of Justice 1162 Court Street NE Salem, Oregon 97301-4096	on	✓ State inter-agency mail
Dated FEB 0 1 2011	hel I	Curzon

Chief Enforcement Officer