

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF OREGON  
for the  
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
INSURANCE DIVISION**

In the Matter of the Final Premium            )       Case No. INS 09-06-004  
    Audit of                                        )  
  )  
**JC REEVES CORPORATION**                    )       **PROPOSED ORDER**

**HISTORY OF THE CASE**

On April 6, 2009, Liberty Northwest Insurance (Liberty) issued a Final Premium Audit Billing to JC Reeves Corporation (employer). The audit period was from October 1, 2007 through October 1, 2008. Employer requested a hearing on April 15, 2009. The Division received employer's Petition on June 10, 2009, and referred the matter to the Office of Administrative Hearings (OAH) on June 17, 2009.

Hearing was held before ALJ Rick Barber on November 17, 2009, in the Tualatin offices of the OAH. Norman Haugk represented employer in the hearing and testified. Liberty was represented by its attorney, Barbara Woodford. Dennis Wolcott testified for insurer. The record closed later on November 17, 2009.

**ISSUE**

Whether the Final Premium Audit Billing of April 6, 2009 was correct. Employer specifically contests the premium amounts attributable to the work classifications for Ron Estey, one of its employees.

**EVIDENTIARY RULINGS**

Exhibits 101 through 106 were admitted into evidence without objection. Exhibits A through E, offered by employer, were also admitted into evidence. Employer's petition and hearing request are included in the documentary record as procedural documents.

**FINDINGS OF FACT**

1. Employer was incorporated in approximately 1982 to do land and property development. Employer has an inventory of properties that includes rentals, lots, and (during the period in question), new homes being built and marketed. (Ex. B). Norman Haugk is one of two employees who handle the financial aspects of the business (accounting, comptroller, bookkeeping, and office work). (Test. of Haugk).

2. At the beginning of the policy period, employee Ron Estey was employer's operations manager, overseeing all aspects of employer's properties, from inspecting rental properties and lots to overseeing subdivisions and managing the project managers of specific building projects. (Test. of Haugk).

3. In December 2007, the site supervisor/project manager overseeing new construction left the job. Owing to the economic times, Reeves decided to have Estey take over those responsibilities in addition to those he already had. The new duties required Estey to tour properties after each phase of construction was complete, to okay the next phase, and to prepare the "punch lists" if there were changes or repairs needed. Estey was not actually doing the construction himself. (Test. of Haugk).

4. When Liberty audited employer's premium, it noted the differing tasks performed by Estey. Estey's usual operations manager duties were classified as 5606, but his site supervisor duties were classified as 5645. Because Estey did not keep time records to differentiate between the two classifications or duties, Liberty included all of Estey's wages in class 5645. (Ex. 104, 105; test. of Wolcott). Haugk was upset with Liberty because it did not inform employer of the possibility of keeping verifiable time records. (Test. of Haugk).

5. Estey's wages were attributed to class 5645 until the site supervisor role ended, when the houses were completed. His wages were then returned to 5606 when he returned to his operations manager duties exclusively. (Test. of Wolcott).

### CONCLUSIONS OF LAW

The Final Premium Audit Billing of April 6, 2009 was correct.

### OPINION

Employer has contested Liberty's reassignment of Ron Estey's wages from class 5606 to class 5645, a carpentry classification code at a higher rate. Employer has the burden of proof to establish that the insurer's premium audit is incorrect. *Salem Decorating v. NCCI*, 116 Or App 166 (1992) *rev den* 315 Or 643 (1993). Employer must show that Liberty's use of the classification code 5645 was incorrect.

The basic facts are undisputed. At the beginning of the policy period, Estey performed duties as operations manager, a job which Liberty and employer both agree was correctly classed as 5606. For several months, Estey took on additional tasks as the site supervisor for employer's new construction, a change of duties from the operations manager position (although he was still doing both jobs).

Employer puts forth two arguments as to why Estey's wages should not have been moved to 5645. First, it argues that Estey was not actually doing carpentry work and should not be classified under that code. Second, even if the code was correct, employer argues that it should have been informed about the procedure for keeping verifiable time

records so that only part of Estey's wages would be in 5645, and part would remain in 5606.

**5645 was the correct code.** Although the language of code 5645 does not specifically state that site supervisors would be included in the code, the language in code 5606 makes that requirement clear:

Executive supervisors or construction superintendents are defined as those persons exercising supervisory control through job foremen. *Foremen shall be assigned to the classification that specifically describes the type of construction or erection operation over which they are exercising direct supervisory control...*

*(Basic Manual, Oregon, at 7; emphasis added).*

Estey's activities as operations manager were assigned to 5606 because he was essentially supervising supervisors. When he took over the site supervisor duties, his work had to be assigned to the 5645 code—the work he was supervising. Liberty's decision was correct.

**There are no verifiable time records.** Employer also argues that it should have been informed of the possibility of splitting time between two codes, using verifiable time records. While the employer attributes this to the intent of the insurer, there is a more practical reason why it could not be done in this case, even if verifiable time records had been kept. As Wolcott testified, and as the Basic Manual shows, there are only three situations where 5606 can be split with another code on the same employee's payroll. It can be divided with code 8227 (construction or erection permanent yard), code 7421 (aircraft or helicopter operation), or when "the employee has a distinct change in duties and is assigned to another job site." (*Id.*).

There has been no showing that Estey would have qualified for the division if there had been verifiable time records. Furthermore, as Haugk admits, there are no verifiable time records for this policy period. It remains employer's burden of proof to show that the 5645 class code should not apply. Employer has not met its burden of proof, and the final premium audit billing is affirmed. Employer has failed to show that the Final Premium Audit Billing was incorrect.

**PROPOSED ORDER**

I propose that the department issue the following final order:

That the final premium audit billing dated April 6, 2009 be AFFIRMED.

DATED this 26th day of January 2010.



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Rick Barber, 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

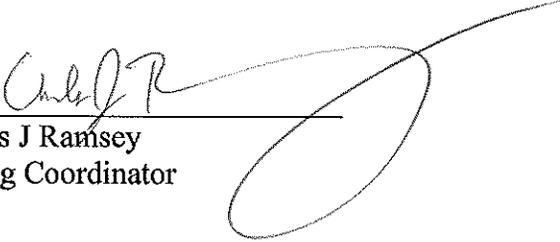
CERTIFICATE OF SERVICE

On the 26th day of January 2010, I mailed the foregoing Proposed Order in Reference No. 0906004.

BY FIRST CLASS MAIL:

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Hearing Coordinator