

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

In the Matter of **Krauss Craft, Inc.**) **FINAL ORDER**
) Case No. INS 09-08-001

The Director of the Oregon Department of Consumer and Business Services (director), by and through the Insurance Division, commenced the above entitled administrative proceeding, at the request of Krauss Craft, Inc. (employer), to review a decision by the Oregon Workers' Compensation Rating System Review and Advisory Committee (ORAC), pursuant to Oregon Revised Statutes (ORS)737.505(3), and Oregon Administrative Rules (OAR) 836-043-0200 *et seq.*

History of the Proceeding

Sometime between 5/11/09 and 5/15/09, the employer received from ORAC a letter dated 5/8/09.¹ The letter informed the employer that ORAC decided, in relevant part, that classification code 3040 best described the employer's business of making metal playground equipment, code 3040 was the governing classification because the employer's metal welding, bending and cleaning operations work produced the greatest amount of payroll, and the employer's other operations, except plastic manufacturing, did not qualify to be assigned a different code.

On 6/3/09, the director received from the employer an e-mail requesting a hearing.²

¹ The proposed order dated 2/17/10 did not find when the employer received ORAC's decision. Determining when an employer received a decision is critical to determining whether the employer is entitled to a hearing. ORS 737.505(3). The employer stated in its petition dated 7/30/09 that the employer received the decision sometime during the "week of May 11, 2009." 5/11/09 was a Monday and the end of the work week, Friday, was 5/15/09. The employer and ORAC did not introduce any evidence at the hearing to the contrary. Therefore, the director finds that the employer received the decision sometime between 5/11/10 and 5/15/09.

² The proposed order also did not find when the director received the employer's request for a hearing. Determining when the director received the employer's request for a hearing is also critical to determining whether the employer is entitled to a hearing. ORS 737.505(3). The director received the employer's request for a hearing on 6/3/09. The director provided to OAH and ORAC a copy of the employer's e-mail requesting a hearing when the director referred the case to OAH on 8/3/09.

On 6/9/09, the director mailed to the employer a letter and a petition form to complete and return by 8/3/09.

On 7/31/09, the director received from the employer the completed petition.

On 8/3/09, the director referred the request to the Office of Administrative Hearings (OAH).

On 9/9/09, OAH scheduled a hearing to be conducted on 10/28/09.

On 11/12/09, OAH rescheduled the hearing to be conducted on 11/30/09.

On 12/2/09, OAH rescheduled the hearing to be conducted on 12/21/09.

On 12/21/09, 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 Carol Edwards, as the employer's authorized representative pursuant to OAR 836-005-0112 and OAR 137-003-0555. The employer called Carol Edwards and Bill Adams as its witnesses. The employer did not offer any documentary evidence. ORAC appeared and was represented at the hearing by Tim Hughes, the Recording Secretary for ORAC, as its authorized representative. ORAC did not call any witnesses. ORAC offered Exhibits 1 to 4 as its documentary evidence. All of ORAC's exhibits were admitted into the record.³

On 2/17/10, OAH issued a proposed order. The proposed order recommended that the director affirm ORAC's decision. The proposed order informed the employer and ORAC that they could file with the director written exceptions to the proposed order within 30 days after the proposed order was served on the employer and insurer. On the same date, OAH mailed a copy of the proposed order to the employer and ORAC.

The director did not receive any exceptions from the employer or ORAC.

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

The employer and ORAC did not introduce any evidence at the hearing to the contrary. Therefore, the director finds that the director received the employer's request for a hearing on 6/3/09.

³ The proposed order indicated that OAH added to the record the employer's petition dated 7/30/09 and received by the director on 7/31/09. It was unnecessary and redundant for OAH to add the documents to the record because they automatically become part of the record of a case. ORS 183.417(9).

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 noted herein.

Order

ORAC’s decision is affirmed.

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 April 13, 2010

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

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