

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

In the Matter of **Mona Makela** ) **FINAL ORDER**  
**dba Heavenly Maid Cleaning Service** ) Case No. INS 11-07-011

**History of the Proceeding**

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 Mona Makela dba Heavenly Maid Cleaning Service<sup>1</sup> (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 two workers' compensation insurance final premium audit billings (billing) issued by SAIF Corporation (insurer) to the employer.

On or about 3/11/11, the employer received from the insurer a billing dated 3/10/11, for the audit period from 10/13/09 to 10/1/10 (first billing).<sup>2</sup>

On 5/3/11, the director timely received from the employer a written request for a hearing to review the first billing.

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<sup>1</sup> The employer in this proceeding was at all relevant times a sole proprietorship, not a corporation, notwithstanding any references in the record, including the proposed order, to the contrary. See *e.g.* Exhibit A1 pages 1, 4; A2 page 4; SAIF hearing memorandum dated 11/29/11. The amended proposed order used the correct the name of the party.

<sup>2</sup> The proposed order issued on 3/7/12 and the amended proposed order dated 4/19/12 did not find when the employer received either billing. Determining when an employer received a billing is critical to determining whether the employer is entitled to a hearing even when, as in this case, the employer defaulted by not appearing at a hearing. ORS 737.505(4), OAR 836-043-0110, OAR 836-043-0170, and OAR 137-003-0670(3). 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 5/3/11 that it received the first billing on 3/11/11, stated in its petition dated 6/30/11 that it received the first billing on or about 3/11/11 or 3/12/11, and stated in its petition dated 11/7/11 that it received the second billing on or about 10/12/11 or 10/13/11. The director provided to OAH and the insurer a copy of the employer's requests for a hearing and petitions when the director referred the case to OAH on 7/6/11 regarding the first billing and on 11/21/11 regarding the second billing. The employer did not appear at the hearing, and the insurer did not introduce any evidence at the hearing to the contrary. Therefore, the director finds that the employer received the first billing on or about 3/11/11 or 3/12/11 and the second billing on or about 10/12/11 or 10/13/11.

On 7/5/11, the director timely received from the employer a petition relative to the first billing, and a request for an order staying all collection efforts by or on behalf of the insurer of any amount billed in the first billing as a result of the audit until this proceeding is concluded.

On 7/6/11, the director referred to the Office of Administrative Hearings (OAH) the employer's request for a hearing relative to the first billing.

On 7/12/11, OAH issued an order granting the stay relative to the first billing.

On 7/28/11, OAH scheduled a hearing to be conducted on 12/6/11.

On or about 10/13/11, the employer received from the insurer a billing dated 10/11/11, for the audit period from 10/1/10 to 6/6/11 (second billing).<sup>3</sup>

On 11/8/11, the director timely received from the employer a written request for a hearing to review, and a completed petition relative to, the second billing; and a request for an order staying all collection efforts by or on behalf of the insurer of any amount billed in the second billing as a result of the audit until this proceeding is concluded.

On 11/21/11, the employer's attorney called and informed the director that the attorney was withdrawing from the case, relative to both the first and second billings, and would send a letter confirming the withdrawal.

Also on 11/21/11, the director sent an e-mail to OAH, and the parties, informing OAH that (1) the employer's attorney had withdrawn from the case, (2) the director had received and was preparing to refer to OAH the employer's request for a hearing relative to the second billing, (3) the employer was claiming that both billings contained the same errors, and (4) the director assumed that the employer had requested or would request OAH to review of both billings at one hearing, and (5) the director would assign one case number to the case, relative to both the first and second billings.

Also on 11/21/11, the director referred to the OAH the employer's request for a hearing relative to the second billing.

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<sup>3</sup> See footnote 2 above.

On 11/28/11, OAH and the director received a letter dated 11/22/11 from the employer's attorney saying that he was withdrawing from the case and that "Ms. Makela has advised that she intends to represent herself and her company at the time of the hearing."

On 12/21/11, at the request of the employer, OAH rescheduled the hearing to be conducted on 2/21/12.

On 2/13/12, OAH issued an order granting the stay relative to the second billing.

On 2/21/12, OAH conducted a hearing. The hearing was conducted by Rick Barber, an administrative law judge of OAH. The employer did not appear and was not represented at the hearing. The insurer appeared and was represented at the hearing by Ethan R. Hasenstein, an Assistant Attorney General assigned to represent the insurer. The insurer did not call any witnesses. The insurer offered Exhibits A1 to A7 as its documentary evidence all of which were admitted into the record.<sup>4</sup>

On 3/7/12, OAH issued a proposed order and mailed it to the parties. The proposed order recommended that the director affirm the billings. 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.

On 4/2/12, the director sent to OAH a memo requesting OAH revised the proposed order by (1) correcting the name of the party from Heavenly Maid Cleaning Service, Inc. to Mona Makela dba Heavenly Maid Cleaning Service<sup>5</sup>, (2)

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<sup>4</sup> OAH also added to the record the insurer's hearing memorandum dated 11/29/11 which was filed with OAH on 11/30/11. It was unnecessary and redundant for OAH to add the document to the record because it automatically becomes part of the record of a case. ORS 183.417(9).

<sup>5</sup> See footnote 1 above.

finding when the employer received each billing from the insurer<sup>6</sup>, and (3) dating the proposed order.

On 4/5/12, the director received an e-mail from either the employer or its successor attaching some documents. On the same date, the director replied to the e-mail saying that the director would not consider the documents in making a final decision in this case because the documents were filed after the record closed on 2/21/11, and even if they were timely filed they were not relevant.

On 4/19/12, OAH issued an amended proposed order and mailed it to the parties. The amended proposed order recommended that the director affirm the billings. 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 amended proposed order.

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

### **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 amended proposed order as the findings of fact, conclusions of law, and reasoning of this final order except as noted herein.<sup>7</sup>

### **Order**

The billings are affirmed and the stays are 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

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<sup>6</sup> See footnote 2 above.

<sup>7</sup> See footnote 2 above.

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 July 5, 2012

/s/ Louis Savage  
Louis Savage  
Insurance Commissioner  
Insurance Division  
Department of Consumer and Business Services

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