

STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE DIVISION

In the Matter of **Thomas Creek Lumber**) **FINAL ORDER**
and Log Company) Case No. 12-06-002

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, 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 Thomas Creek Lumber and Log Company (employer).

On 3/30/12, the employer received from the insurer a billing dated 3/28/12 for the audit period from 1/1/11 to 1/1/12.

On 5/15/12, the director received from the employer a letter dated 4/25/12 requesting a hearing to review the billing.¹

On 6/4/12, the director received from the employer a petition dated 5/31/12.²

¹ ORS 737.318(3)(d) and 737.505(4) give an employer the right to request a hearing to review a workers' compensation insurance final premium audit billing issued by an insurer to the employer. If the employer wants to request a hearing, the employer must, *inter alia*, send to the director a written request for a hearing. The director must receive the request by the 60th day after the employer received the billing. The billing was dated 3/28/12, and presumably mailed to the employer on the same date. The employer stated in its letter dated 4/25/12 that it received the billing on 3/30/12, although it stated in its petition dated 5/31/12 that it received the billing on 3/28/12 which was also the date of the billing. The proposed order found that the employer received the billing on 3/30/12. Since the employer received the billing on 3/30/12, the director had to receive the request by 5/29/12. The director received the request on 5/15/12.

² See OAR 836-043-0170(2) also requires an employer that wants a hearing to send to the director a completed petition, on a form prescribed by the director, providing additional information including a copy of the entire billing. The director must receive the completed petition by the 60th day after the date that the director received the request for a hearing. Since the director received the request for a hearing on 5/15/12, the director had to receive the completed petition by 7/16/12. The director received the completed petition on 6/4/12.

On 6/5/12, the director referred the employer's request for a hearing to the Office of Administrative Hearings (OAH) to schedule, and if necessary conduct a hearing and issue a proposed order.³

On 7/16/12, the director received from the employer a letter dated 7/11/12 requesting the director suspend, postpone or otherwise stay during the pendency of this proceeding any effort by the insurer to collect the amount billed in the billing.^{4 & 5}

On 7/18/12, OAH issued an order granting the employer's request for a stay.

On 8/30/12, OAH scheduled a hearing to be conducted on 12/3/12.

On 12/3/12, 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 Brent C. Walker, as the employer's authorized representative.⁶ The employer called Brent C. Walker as its witness. The employer offered Exhibits E1 to E8 as its documentary evidence all of which were admitted into the record. The insurer appeared and was represented at the hearing by Holly O'Dell, an Assistant Attorney General assigned to represent the insurer. The insurer called Loni Johansen as its witness. The insurer offered Exhibits A1 to A5 as its documentary evidence all of which were admitted into the record.

On 1/8/13, OAH issued a proposed order and mailed it to the parties. The proposed order concluded that the billing correctly allocated certain payroll to classification code 2701 rather than to code 8602 because the employer did not maintain "verifiable payroll records" as required by and described in OAR 836-042-0060 to permit the allocation of the payroll to code 8602.^{7 & 8} The proposed order

³ See ORS 183.635(3)(g) and OAR 137-003-0501 *et seq.*

⁴ See ORS 737.505(5) and OAR 836-043-0170(5).

⁵ The employer's letter dated 7/11/12 was addressed to the Insurance Division of the Department of Consumer and Business Services (DCBS). However, it was received the Workers' Compensation Division (WCD) of DCBS on 7/16/12. WCD forwarded the letter to the Insurance Division. The Insurance Division received the letter on 7/17/12.

⁶ See ORS 183.457(1)(d), OAR 836-005-0112 and OAR 137-003-0555.

⁷ The classification codes are listed and described in the National Council on Compensation Insurance, Inc.'s *Basic Manual of Workers' Compensation Insurance* and *Scopes® of Basic Manual Classification*.

⁸ The employer's records did not comply with OAR 836-042-0060(4)(c) because they did not describe the duties performed by each employee to enable the insurer to determine the correct classification.

recommended that the director affirm the billing. The proposed order informed the parties that they may file with the director written exceptions to the order by 2/19/13.⁹

The director did not receive from the parties any exceptions to the 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 proposed order as the findings of fact, conclusions of law, and reasoning of this final order.

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.

Dated March 13, 2013

/s/ Louis Savage
Louis Savage
Insurance Commissioner

The records did not comply with OAR 836-042-0060(4)(d) because they “look more like an estimate than an actual time record” of the time each employee spent each day during the audit period driving to an area to be logged and marking trees to be cut or uncut *i.e.* timber cruising.

⁹ See ORS 183.460 and OAR 137-003-0645(5).