

the first billing as a result of the audit until this proceeding is concluded. On the same date, the director forwarded the request to OAH.

On 3/12/14, OAH issued an order granting a stay regarding the first billing.

On 4/1/14, OAH conducted a telephone prehearing conference in which both parties participated.

On 4/1/14, the employer received from the insurer a billing dated 3/13/14 for the audit period from 9/1/13 to 1/16/14 (second billing).

On 4/2/14, the director timely received from the employer a written request for a hearing to contest the second billing.³

On 4/3/14, the director mailed to the employer a letter, and a petition form to be completed and returned to the director by 5/14/14 if the employer wanted both billings to be contested at the same hearing.

On 4/7/14, the director timely received from the employer the completed petition dated 4/4/14 regarding the second billing, and a request for a stay regarding the second billing.⁴

On 4/7/14, the director referred to OAH the request regarding the second billing.

On 4/16/14, OAH scheduled a hearing to be conducted on 5/21/14.

On 6/4/14, OAH conducted a hearing. The hearing was conducted by Joe L. Allen, an administrative law judge of OAH. The employer appeared and was represented at the hearing by Don Glerup, as the employer's authorized representative pursuant to OAR 836-005-0112 and OAR 137-003-0555. The employer called Don Glerup as its only witness. The employer offered Exhibits R1 to R10. The employer's exhibits R9 and R10 were excluded. The employer's exhibits R1 to R8 were admitted into the record. The insurer appeared and was

³ Both of the proposed orders incorrectly indicated that the employer requested a hearing regarding the second billing on 4/4/14. Although the employer's petition was both dated and received by the director on 4/4/14, the employer had previously requested a hearing. The employer requested a hearing regarding the second billing in its letter dated 4/2/14 which the director received by e-mail on 4/2/14.

⁴ There is no indication in the proposed orders or in OAH's file that OAH issued a revised order granting a stay regarding both billings, or a separate order granting a stay regarding only the second billing.

represented at the hearing by Holly O'Dell, an attorney. The insurer called Eric Williams as its only witnesses. The insurer offered Exhibits A1 to A27 as its documentary evidence all of which were admitted into the record.

On 7/9/14, OAH issued a proposed order and mailed it to the parties. The proposed order recommended that the director affirm both billings. However, the proposed order applied an inapplicable legal analysis to determine whether John Mabe was a subject worker.⁵

On 7/11/14, OAH withdrew the proposed order.

On 8/15/14, OAH issued a corrected proposed order, omitting the inapplicable legal analysis, and mailed it to the parties. The corrected proposed order recommended that the director affirm both billings because, based on the evidence or lack thereof admitted in the hearing, (1) the employer did not keep verifiable payroll records, as described in OAR 836-042-0060, showing (a) when employees were not working on a logging site during traditional logging activity, and (b) when Don Glerup was working in his office performing administrative tasks and was not working on a logging site; and (2) the employer exercised, to a degree, direction and control of John Mabe when he performed logging services for compensation for the employer. 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.

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

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⁵ The proposed order applied OAR 471-031-0181. However, this rule does not apply to the Insurance Division because the Insurance Division did not adopt the rule and it is not responsible administering ORS 671.510 to ORS 671.760, or ORS chapters 316, 656, 657 and 701. See ORS 670.605(1); and *Avanti Press, Inc. v. Employment Department*, 248 Or App 450 (2012).

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 corrected proposed order as the findings of fact, conclusions of law; and reasoning of this final order except as corrected in footnotes 2 and 3 herein.

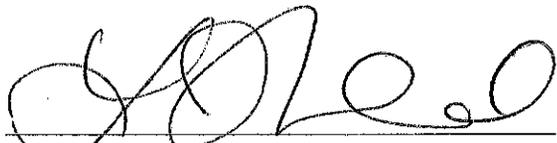
Order

The first and second billings are 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 NOV 24 2014



Laura N. Cali, FCAS, MAAA
Insurance Commissioner and Chief Actuary

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