

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

In the Matter of **Swift Couriers, Inc.**

) **FINAL ORDER**
) Case No. INS 14-02-002

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 to review a workers' compensation insurance final premium audit billing (billing) issued by SAIF Corporation (insurer) to Swift Couriers, Inc. (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.*

Presumably on 12/9/13, the employer received from the insurer a billing dated 12/6/13, for the audit period from 7/1/12 to 7/1/13.¹

On 12/26/13, the director timely received from the employer a written request for a hearing to review the billing.

On 12/30/13, the director mailed to the employer a letter, and a petition form to be completed and returned to the director by 2/24/14.

¹ ORS 737.318(3)(d) and 737.505(4) give an employer the right to a hearing to review a workers' compensation insurance final premium audit billing issued by an insurer to the employer. ORS 737.318(3)(d), ORS 737.505(4), OAR 836-043-0110(5), and OAR 836-043-0170. Thus, determining whether and if so then when an employer received a billing, either actually or constructively, is critical to determining whether the employer is entitled to a hearing. However, the proposed order dated 7/16/14 did not find when the employer received the billing from the insurer. The billing was dated 12/6/13. The employer stated in its petition dated 2/19/14 that it received the billing on 12/6/13 but clarified in an e-mail dated 2/25/14 @ 10:42 AM that "I probably should have stated ... that it was received on a subsequent, unknown date." Thus, the date that the employer actually received the billing is unknown. However, OAR 836-043-0170(1) states "[f]or the purpose of determining the date of receipt of a final premium audit billing sent to the insured by mail when the receipt date is unknown to the insured, the date of receipt shall be presumed to be three days after the postmark date, or three days after the date of mailing, if the postmark is illegible or unavailable." The billing was dated 12/6/13 and presumably the insurer mailed the billing to the employer on the same date. 12/6/13 was a Friday. Three days after 12/6/13 was Monday, 12/9/13. Based on the above, the director presumes that the employer received the billing on 12/9/13.

On 2/21/14, the director timely received from the employer the completed petition, and a request for an order staying all collection efforts by or on behalf of the insurer of any amount billed in the billing as a result of the audit until this proceeding is concluded.

On 2/27/14, the director referred the request to the Office of Administrative Hearings (OAH).

On 3/5/14, OAH issued an order granting the stay.

On 4/3/14, OAH scheduled a hearing to be conducted on 6/4/14.

On 6/4/14, OAH conducted a hearing. The hearing was conducted by Samantha Fair, an administrative law judge of OAH. The employer appeared and was represented at the hearing by Rick Luty, as the employer's authorized representative pursuant to OAR 836-005-0112 and OAR 137-003-0555.² The employer called Rick Luty, Miguel Bastidis, Gabriel Laplaceliere, and LaVonne Lal as its witnesses. The employer offered Exhibits R1 to R16. The employer's exhibits R3 and R6 were excluded due to lack of relevancy. The employer's exhibits R1, R2, R4, R5, and R7 to R16 were admitted into the record. The insurer appeared and was represented at the hearing by Holly O'Dell, an attorney. The insurer did not call any witnesses. The insurer offered Exhibits A1 to A16 as its documentary evidence all of which were admitted into the record.^{3 4}

On 7/16/14, OAH issued a proposed order and mailed it to the parties. The proposed order recommended that the director affirm the billing because the employer was responsible for providing workers' compensation insurance covering the employees of three specific employers pursuant to ORS 656.029. The proposed

² Initially, the employer was represented by an attorney. However, by the time of the hearing, the employer was no longer represented by the attorney.

³ During the hearing, the employer and insurer stipulated that the billing dated 12/6/13 was correct except to the extent it assessed the employer premium based on compensation paid by the employer to three specific other employers.

⁴ The billing described payments made by the employer to Slavic's Express Delivery but did not use the payments to calculate the premium due. At the hearing, the insurer "agreed ... [that the] payments made to Slavic were not at issue and any reference in the narrative portion of the audit to Slavic was in error."

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.

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 added in footnote 1 herein.

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 OCT 10 2014



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

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DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE DIVISION**

In the Matter of **Swift Couriers, Inc.**

) **CERTIFICATE of**
) **SERVICE of**
) **FINAL ORDER**
) Case No. INS 14-02-002

I certify that I sent the final order to the following person(s) on the date and by the means indicated below:

Rick Luty
General Manager
Swift Couriers, Inc.
3301 SE Columbia Way Suite 100
Vancouver, WA 98661-8040

✓ US First Class Mail

Eric Williams
Premium Audit Program Analyst
Underwriting Division
SAIF Corporation
400 High Street SE
Salem, OR 97312-0700

✓ State inter-agency mail

Holly O'Dell
Managing Attorney, Legal Services Division
SAIF Corporation
400 High Street SE
Salem, OR 97312-0700

✓ State inter-agency mail

Dated OCT 10 2014


Mitchel D. Curzon
Chief Enforcement Officer

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