STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE DIVISION

In the Matter of **Will Do Construction General Contractor, LLC**	)	**FINAL ORDER**
	)	Case No. INS 04-04-010

The Director of the Oregon Department of Consumer and Business Services (director), commenced this administrative proceeding, pursuant to Oregon Revised Statutes (ORS) 731.318(3)(d) and 731.505(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 Will Do Construction General Contractor, LLC (employer).

History of the Proceeding

On 3/15/04, the employer received from the insurer a billing dated 3/9/04 for the audit period from 4/1/03 to 12/31/03.[1] The billing informed the employer that it may request a hearing within 60 days after the employer received the billing.

On 4/9/04, the director timely received from the employer a written request for a hearing.

On 4/12/04, the director mailed to the employer a petition form for the employer to complete and return so that the director received it by 6/8/04.

On 6/2/04, the director timely received from the employer the petition.

On 6/7/04, the director referred the request to the Office of Administrative Hearings (OAH).

On 6/24/04, OAH scheduled a hearing to be held on 9/22/04.

On 8/3/04, OAH issued an order compelling production of certain documents from the employer.

[1] The proposed order stated that the audit period was from 3/29/03 to 12/26/03, which was actually the policy period. The audit period was from 4/1/03 to 12/31/03. See Exhibit A-5 page 3 of 4 called Statement of Account – Audit Adjustment.

On 9/22/04, OAH held a hearing. The hearing was conducted by Ella Johnson, 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 David B. Hatton, an Assistant Attorney General assigned to represent the insurer. The insurer offered Exhibits A1 to A18 as its documentary evidence. All of the insurer's exhibits were admitted into the record.

On 10/22/04, OAH issued a proposed order by default. The proposed order recommended that the director affirm the billing because it concluded that the employer did not meet its burden of proving by a preponderance of the evidence that the billing was incorrect, ORS 183.450(2); *Salem Decorating v. Natl. Council on Comp. Ins.*, 116 Or App 166, 170, 840 P2d 739 (1992), *rev den*, 315 Or 643 (1993), but the insurer met its burden of proving by a prima facie case that the insurer correctly assessed premium on payments made to contract laborers who were "workers" as defined by ORS 656.005(30) and thus the billing was correct, ORS 183.450(2), ORS 183.415(6), OAR 137-003-0670. The proposed order informed the employer and insurer 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 insurer.

The director did not receive from the employer or the insurer any exceptions to the proposed order.

The director reviewed the record in this proceeding and found that it proves a prima facie case.

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 opinion of proposed order, except as corrected herein, as the facts, conclusions, and reasoning of this final order.

Order

The billing is affirmed.

Notice of Right to Judicial Review

Each party may be entitled to have the final order reviewed by the Oregon Court of Appeals pursuant to ORS 183.480 and 183.482. A party may institute a proceeding for judicial review by filing with the court a petition for judicial review 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 day the party received the order. If the order was mailed to a party, then the date of service is the day the order was mailed to the party, not the day 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 February 15, 2005

/s/ Joel Ario
Joel Ario
Administrator
Insurance Division
Department of Consumer and Business Services

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