STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE DIVISION

In the Matter of **Wayne Johnson Enterprises, Inc.**) **FINAL ORDER**
) Case No. INS 08-07-004

The Director of the Oregon Department of Consumer and Business Services (director), commenced this administrative proceeding, at the request of Employer Wayne Johnson Enterprises, 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*, to review a workers' compensation insurance final premium audit billing (billing) issued by SAIF Corporation (insurer) to the employer.

History of the Proceeding

On 5/1/08, the employer received from the insurer a billing dated 4/28/08 for the audit period from 1/1/07 to 12/31/07. [1] & [2]

On 5/19/08, the director received from the employer a written request for a hearing to review the billing.

On 5/20/08, the director mailed to the employer a letter and a petition form.

On 6/17/08, the director received from the employer the petition.[3]

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[1] The proposed order did not find when the employer received the billing. When an employer receives a billing is critical to determining whether the employer is entitled to a hearing. ORS 737.505(4), OAR 836-043-0110, OAR 836-043-0170; *Pease v. National Council on Compensation Insurance*, 113 Or App 26, 830 P2d 605, *rev den* 314 Or 391 (1992). The employer stated in its petition dated 6/15/08 that it received the billing on 4/24/08. The billing was dated 4/28/08. It is likely that the employer did not know when it received the billing. Pursuant to OAR 836-043-0170(6), "…if the date is unknown to the employer, the date of receipt is considered to be the third day after the date of mailing…." Three days after Monday, 4/28/08, was Thursday, 5/1/08. Therefore, the director finds that the employer received the billing on 5/1/08.

[2] On or about 11/18/08, the insurer revised the billing.

[3] The petition included the premium audit result and premium audit adjustment pages of the billing but not the cover and notice of rights pages of the billing. The director requested the employer provide the omitted pages but the employer was unable to do so. So the director requested the insurer provide the omitted pages. On 7/7/08, the director received from the insurer the omitted pages.

On 7/14/08, the director referred the request to the Office of Administrative Hearings (OAH).

On 7/16/08, OAH scheduled a hearing to be conducted on 11/17/08.

On 10/22/08, OAH issued to the employer an order to provide to the insurer certain documents requested by the insurer.

On 11/17/08 and 12/4/08, 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 Wayne Johnson as the employer's authorized representative pursuant to OAR 836-005-0112 and OAR 137-003-0555. The employer called Wayne Johnson, Noreen Johnson, and Kurt Johnson as its witnesses. The employer did not offer any documentary evidence. The insurer appeared and was represented at the hearing by Ethan R. Hasenstein, an Assistant Attorney General assigned to represent the insurer, as the insurer's authorized representative. The insurer called Teresa Smith and Joe Rick as its witnesses. The insurer offered Exhibits A1 to A15 as its documentary evidence all of which were admitted into the record.

On 11/18/08, in between the hearing dates, the insurer revised the billing by, *inter alia*, changing the classification code from 2725 to 2702 assigned to the work performed by Camo Logging, Inc. (Camo) and Holdfast Falling, LLC (Holdfast) for the employer during the audit period.

On 1/13/09, OAH issued a proposed order and mailed it to the parties. The proposed order concluded that the insurer correctly billed the employer for workers' compensation insurance premium based on compensation paid by the employer to Camo and Holdfast for cutting timber for the employer, and correctly assigned classification code 2702 to the work they performed for the employer, during the audit period. The proposed order recommended that director affirm the revised billing. 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.

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 revised billing is affirmed.

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 6/19/09

/s/ Teresa D. Miller
Teresa D. Miller
Acting Administrator
Insurance Division
Department of Consumer and Business Services

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