BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE DIVISION

In the Matter of the Final Premium Audit of	)	Case No. INS 13-03-002
REAL PROPERTY MANAGEMENT PORTLAND, Inc., Employer	)	**PROPOSED ORDER**

HISTORY OF THE CASE

On October 25, 2012, SAIF Corporation (SAIF, or the insurer) issued a Final Premium Audit Billing to Real Property Management Portland, Inc. (employer). The date employer actually received the billing is unclear.[1] The audit period was from February 1, 2011 through February 1, 2012. Employer appealed the billing on December 19, 2012 and drafted a Petition on February 26, 2013. The date the Division received employer's Petition is unknown; the Division referred the matter to the Office of Administrative Hearings (OAH) on March 6, 2013.

A prehearing conference was held on April 29, 2013 to, among other things, set a hearing date. Attorney Holly O'Dell represented SAIF during the prehearing; employer did not participate. Hearing was scheduled for July 30, 2013.

Hearing was held as scheduled on July 30, 2013, before ALJ Rick Barber, in Salem. SAIF was represented by Ms. O'Dell. DeAnne Hoyt was the insurer representative. Employer did not appear. Ms. Hoyt testified concerning SAIF's motion to amend the stay order, but no testimony was offered concerning the premium audit. The record closed on July 30, 2013.

ISSUE

Whether SAIF's Final Premium Audit Billing is correct.

EVIDENTIARY RULINGS

Exhibits A1 through A7, offered by SAIF, were admitted into evidence without objection.

[1] Employer's Petition indicated the audit billing was received on October 25, 2012, which is the date of the billing. Mr. Fisher's request for hearing stated the billing was received "some time later." Employer did not appear at hearing, so the actual date of receipt cannot be ascertained.

FINDINGS OF FACT

1. The Oregon Workers' Compensation Insurance Plan, otherwise known as the "assigned risk" plan, assigned Employer to be insured by SAIF Corporation during the policy year of February 1, 2011 through February 1, 2012. (Ex. A1).

2. Employer offers full service leasing and property management services throughout the State of Oregon. They advertise their clients' properties, place tenants, screen all applicants, provide maintenance, property inspections, collections, evictions and monthly financial reporting. Employees provide maintenance for the properties, including repairing door locks, leaky faucets and minor structural repair. They also do grounds maintenance. During July through August 2011, the maintenance crew constructed two new decks on a client's property. (Ex. A6 at 24).

3. SAIF performed a premium audit on employer's business in October 2012. SAIF determined that employer's payroll had been wrongly assigned to certain class codes. The auditor assigned the construction of the wood decks to Class 5403 and also changed the assignments for employees Hidy and Larson as well. SAIF claimed a premium audit adjustment in the amount of $10,271.34, and billed employer for that amount on October 25, 2012. (Ex. A6 at 27).

4. Employer contested the application of Class 5403 to the workers building the decks, arguing that deck construction was only part of their job. Similarly, employer claimed that employees Hidy and Larson worked two separate jobs and their payroll should have been split between class codes. SAIF requested that employer provide verifiable time records to show the division of payroll for Hidy and Larson, and also for those building the decks. Employer never provided verifiable time records to SAIF. (Ex. A7).

CONCLUSION OF LAW

SAIF's Final Premium Audit Billing is correct.

OPINION

Employer contested SAIF's Final Premium Audit Billing, contending that SAIF had misapplied and misinterpreted the correct class codes for its employees. Employer has the burden of proof to establish that the insurer's premium audit is incorrect. *Salem Decorating v. NCCI*, 116 Or App 166 (1992) *rev den* 315 Or 643 (1993). It must prove its case by a preponderance of the evidence. *Sobel v. Board of Pharmacy*, 130 Or App 374, 379 (1994), *rev den* 320 Or 588 (1995) (standard of proof under the Administrative Procedures Act is preponderance of evidence absent legislation adopting a different standard). Proof by a preponderance of the evidence means that the fact finder is persuaded that the facts asserted are more likely true than not. *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390 (1987).

Although employer requested a hearing, no one appeared for the employer at hearing. As a result, SAIF presented its written exhibits and contended that employer had failed in its burden of proof in this case. I agree with SAIF, and affirm the premium audit billings for the reasons set forth below.

Verifiable Time Records. From the documents submitted by SAIF (none were submitted by employer), it appears that employer's disagreement with SAIF concerned SAIF's refusal to allocate the payroll of certain employees into more than one class code. SAIF requested that employer provide verifiable time records under OAR 836-042-0060,[2] but employer provided no records.

Employer has the burden of proof to show that the premium audit billing is incorrect. *Salem Decorating, supra.* Employer failed to present any evidence in support of its claim that payroll should be split. Without such evidence, employer cannot prevail. The Final Premium Audit Billings are approved.

PROPOSED ORDER

I propose that the department issue the following final order:

That the Final Premium Audit Billing dated October 25, 2012, be AFFIRMED.

DATED: August 7, 2013

Rick Barber
Administrative Law Judge
Office of Administrative Hearings

[2] OAR 836-042-0060 states in part:

Conditions for Division of Payroll of Individual Employees

(1) When there is an interchange of labor, the payroll of an individual employee shall be divided and allocated among the classification or classifications that may be properly assigned to the employer, *provided verifiable payroll records maintained by the employer disclose a specific allocation for each such individual employee*, in accordance with the standards for rebilling set forth in OAR 836-043-0190 and this rule.

(Emphasis added).

Notice of Right to File Exception to Proposed Order

If the proposed order is adverse to a party, then the party has the right to file written exceptions to the order and present written argument concerning those exceptions pursuant to ORS 183.460. A party may file the exceptions and argument by sending them to the Insurance Division by delivering them to the Labor and Industries Building, 350 Winter Street NE, Room 440 (4th Floor), Salem, Oregon; or mailing them to P.O. Box 14480, Salem, Oregon 97309-0405; or faxing them to503-378-4351; or e-mailing them to mitchel.d.curzon@state.or.us. The Insurance Division must receive the exceptions and argument within 30 days from the date this order was sent to the party.

CERTIFICATE OF SERVICE

On the 7th day of August 2013, I mailed the foregoing PROPOSED ORDER in Reference No. **13-03-002.**

BY FIRST CLASS MAIL:

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