STATE OF OREGON

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES

DIVISION OF FINANCIAL REGULATION

IN THE MATTER OF:	)	FINAL ORDER
TW Construction, LLC	)	OAH No. 2017-ABC-01162
	)	DFR Case No. INS-WCA 17-10-006

Procedural History

The Director of the Oregon Department of Consumer and Business Services (Director), by and through the Division of Financial Regulation (Division), commenced the above entitled administrative proceeding to review a workers' compensation insurance final premium audit billing (billing) issued by SAIF Corporation (Insurer) to TW Construction, LLC (Employer) pursuant to Oregon Revised Statutes (ORS) 737.256(1), ORS 737.505(3), and Oregon Administrative Rules (OAR) 836-043-0200 *et. seq.*

On December 12, 2017, the Division referred Employer's hearing request contesting the billing to the Office of Administrative Hearings (OAH). The issues before OAH were whether Insurer's Final Premium Audit, dated September 27, 2017, was correct and whether to issue a Stay of Collections. A Stay of Collections was issued by Senior Administrative Law Judge Joe Allen on January 2, 2018. A hearing was scheduled for June 19, 2018. Employer did not appear for the scheduled hearing. A Proposed Order on Default was issued by Administrative Law Judge, Rick Barber, dated June 26, 2018.

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 the Proposed Order on Default as the findings of fact, conclusions of law, and reasoning of this final order.

Order

SAIF Corporation's Final Premium Audit issued September 27, 2017 is AFFIRMED and the Stay of Collections dated January 2, 2018 is VACATED.

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: September 19, 2018

Andrew R. Stolfi
Administrator/Insurance Commissioner
Division of Financial Regulation
Department of Consumer and Business Services

STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
DIVISION OF FINANCIAL REGULATION

In the Matter of TW Construction, LLC) **CERTIFICATE OF SERVICE**
) OAH Case No. 2017-ABC=01162
) DFR Case No. INS-WCA 17-10-006

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

Amanda Christensen
Andrew Cramer
Manager
TW Construction LLC
PO Box 66850
Portland, OR 97290

✓ US First Class Mail

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

✓ US First Class Mail

Ned Boughton
Special Assistant Attorney General
SAIF Corporation
400 High Street SE
Salem, OR 97312-0700

✓ US First Class Mail

Dated: September 20, 2018

Gail M. Gage
Compliance Specialist

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BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
DEPARTMENT OF CONSUMER & BUSINESS SERVICES
DIVISION OF FINANCIAL REGULATION
PREMIUM AUDIT WORK

IN THE MATTER OF:	)	**PROPOSED ORDER ON DEFAULT**
	)	
TW CONSTRUCTION LLC	)	OAH Case No. 2017-ABC-01162
	)	Agency Case No. INS-WCA 17-10-006

Hearing in this matter was scheduled for June 19, 2018, beginning at 9:00 a.m. Employer TW Construction LLC was given notice of the hearing through the Notice of Hearing mailed on February 9, 2018.[1] Employer did not appear for the scheduled hearing.

Employer requested a hearing on SAIF Corporation's Final Premium Audit Billing dated February 25, 2017. Employer had the burden of proof to present evidence to establish, by a preponderance of the evidence that the Final Premium Audit Billing was incorrect. *Salem Decorating v. NCCI*, 116 Or App 166 (1992) *rev den* 315 Or 643 (1993). It was required to 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).

Because Employer did not appear and did not present evidence in support of its case, it has failed to carry its burden of proof in this case. I propose that the Final Premium Audit Billing be AFFIRMED.

Rick Barber
Administrative Law Judge
Office of Administrative Hearings

[1] A prehearing conference was also held on February 9, 2018, and the correspondence to the parties, including employer, indicated the hearing date.

EXCEPTIONS TO PROPOSED ORDER

Pursuant to ORS 183.460, the parties are entitled to file written exceptions to this Proposed Order and to present written argument concerning those exceptions to the Director. Written exceptions must be received by the **Division of Financial Regulation** within 30 days following the date of service of this Proposed Order. You may send exceptions via email to gail.m.gage@oregon.gov, or via mail to:

Gail M. Gage
Compliance Specialist 3
Division of Financial Regulation
PO Box 14480
Salem, OR 97309-0405

CERTIFICATE OF MAILING

On June 26, 2018, I mailed the foregoing PROPOSED ORDER ON DEFAULT issued on this date in OAH Case No. 2017-ABC-01162.

By: First Class Mail

Amanda Christensen
TW Construction, LLC
PO Box 66850
Portland OR 97290

Tracy Meyer
SAIF Corporation
400 High Street SE
Salem OR 97312

Nate Boughton
SAIF Corporation
400 High Street SE
Salem OR 97312

By: Electronic Mail

Gail Gage, Agency Representative
Insurance Division
350 Winter Street NE
Salem OR 97301

Ryan K Clark
Hearing Coordinator

BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
DEPARTMENT OF CONSUMER & BUSINESS SERVICES
DIVISION OF FINANCIAL REGULATION
PREMIUM AUDIT WORK

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Hearing Coordinator