STATE OF OREGON

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES

DIVISION OF FINANCIAL REGULATION

IN THE MATTER OF:	)	FINAL ORDER
Verheyden Works, Inc	)	OAH Case No. 2024-ABC-06604
	)	Agency Case No.: INS-WC 24-06-12

Procedural History

The Director of the Oregon Department of Consumer and Business Services (Director), by and through 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 (SAIF) to Verheyden Works, Inc. (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 June 26, 2024, the Division referred employer's hearing request contesting the billing to the Office of Administrative Hearings (OAH). The issue before OAH was whether SAIF's Final Premium Audit, dated May 30, 2024, was correct. By Proposed Order March 20, 2025, Senior Administrative Law Judge (ALJ) Elizabeth Jarry Affirmed SAIF's May 30, 2024 Final Premium Audit Billing for the audit period June 1, 2022 to June 1, 2023.

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 as the findings of fact, conclusions of law, and reasoning of this Final Order.

Order

SAIF Corporation's Final Premium Audit issued May 30, 2024 is AFFIRMED. The Order Granting Stay of Collection, issued on June 27, 2024, is lifted.

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 Division of Financial Regulation.

Dated October 8, 2025

TK Keen
Administrator, Division of Financial Regulation
Department of Consumer and Business Services

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

IN THE MATTER OF:	)	**PROPOSED ORDER**
	)	
VERHEYDEN WORKS, INC.	)	OAH Case No. 2024-ABC-06604
	)	Agency Case No. INS-WC 24-06-12

HISTORY OF THE CASE

On May 30, 2024, SAIF Insurance (SAIF) issued a Final Premium Audit Billing (Audit Billing) to Verheyden Works, Inc. (V Works) for the period June 1, 2022, to June 1, 2023. On June 16, 2024, V Works filed a request for hearing with the Department of Consumer and Business Services, Division of Financial Regulation (Department). On or about June 23, 2024, V Works filed a Petition with the Department, requesting a stay of collection during the pendency of the contested case proceeding.

On June 26, 2024, the Department referred the matter to the Office of Administrative Hearings (OAH) and requested the consolidation of the hearing with *In the Matter of Millwood, LLC*, OAH Case No. 2024-ABC-06606. On June 27, 2024, the OAH issued an Order Granting Stay of Collection. The OAH assigned Senior Administrative Law Judge (ALJ) Elizabeth Jarry to preside at the hearing.

On August 27, 2024, ALJ Jarry held a prehearing conference for both the present matter and 2024-ABC-06606. James Verheyden, MD, represented V Works and Millwood. Special Assistant Attorney General Allison Lesh represented SAIF, and Premium Audit Analyst Ena Pullman appeared for SAIF. The parties agreed to consolidate the two matters for hearing. ALJ Jarry identified the issues for the hearing, set a deadline for submission of witness lists and exhibits, and set the hearing for January 9, 2025.

ALJ Jarry convened the telephone hearing on January 9, 2025. Dr. Verheyden represented V Works and Millwood and testified. Ms. Lesh represented SAIF, and Ms. Pullman testified on behalf of SAIF. The record remained open for an additional exhibit from SAIF and the parties' written closing arguments. On January 13, 2025, SAIF submitted Exhibit A48. On January 31, 2025, the parties submitted their initial closing arguments. The record closed on February 14, 2025, after receipt of V Works' final closing argument.[1]

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[1] The ALJ did not receive a final closing argument from SAIF.

ISSUE

Whether SAIF's May 30, 2024 Final Premium Audit Billing correctly billed V Works by classifying $231,699 in subject payroll to classification code (Code) 7219 rather than classifying a portion of that payroll to Code 9328.[2] ORS 737.318, OAR 836-042-0001 *et seq*. and OAR 836-043-0001 *et seq*.

EVIDENTIARY RULINGS

Exhibits A1 through A48, submitted by SAIF, were admitted into the record without objection. Exhibits R1 through R11, R12A, R12B, R13 through R23, and R30 through R59, submitted by V Works, were admitted into the record without objection.[3]

FINDINGS OF FACT

1. V Works is owned by James Verheyden, M.D., and his spouse, Jean Verheyden. The business is operated from their 752-acre property in Bend, Oregon, which includes the owners' home office, a large shop, and an office. There is a plan to use 270 acres for a residential development, and there are structures on the property used for rental income. (Ex. A14 at 4.)

2. During the period June 1, 2022, to June 1, 2023, V Works employees performed the following work: trucking and hauling for others, including hauling rock and sand for contractors and hauling wildland firefighting heavy equipment; maintenance on heavy equipment in the shop; a small amount of excavation work; and dismantling a former concrete mix operation on the property. Employees for V Works also perform work for the Verheydens' other business, Millwood, LLC. (Ex. A14 at 4.)

3. On October 27, 2023, SAIF notified V Works that its workers' compensation policy was selected for a premium audit for the period June 1, 2022, through June 1, 2023. (Ex. A15 at 135; test. of Pullman.) On January 11, 2024, SAIF requested various documents from V Works, including a summary of payroll separated by individual and class codes and sample timecards for employees who performed work in more than one class code. (Ex. A16 at 15.)

4. During the audit, SAIF utilized V Works' gross payroll information from a QuickBooks Payroll Summary for the period June 2022 through December 2022 and Employee Earnings Reports for the period January 2023 to June 1, 2023. The Quickbooks Payroll Summary showed the gross number of hours each employee worked during that period, their rates of pay (salary, hourly, overtime, prevailing), and total payroll for each rate of pay. The Employee Earnings Reports showed the gross number of hours each employee worked during that period and the total payroll for that period for each type of pay (salary, regular hourly, and

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[2] Code 7219 applies to trucking under contract for others. (Test. of Pullman; Ex. A41 at 1.) Code 9328 applies to "employees who work in the warehouse when delivery work is subject to Code 7219." (Ex. A48 at 2.)

[3] V Works did not submit Exs. R24 through R29.

overtime). The Employee Earnings Reports did not show the rates of the different types of pay. (Ex. A15 at 152-157.)

5. During the audit period, V Works employees prepared weekly timecards that were reviewed by the general manager, Donald Lindstrom. (Test. of Verheyden.) The timecards include the employee's name, the pay period, and the date, as well as a table that includes rows for days of the week and columns to enter the following information: date; time in; time out; brief job description; various class codes; and total hours worked. (*See e.g.,* Ex. A15 at 3.) The following are examples of the information included in the timecards:

Pay Period 6-20-2022 to 6-24-2022 V Works

	Tm In:	Tm Out:	Brief Job Description	Misc Liley Project	Total
Mon	5:30 am	4:00 pm	Liley Project		10.5
Tues	5:30 am	4:00 pm	[Liley Project]		10.5
Wed	5:30 am	4:30 pm	[Liley Project]		11
Thu	5:30 am	4:30 pm	[Liley Project]		10.5
Total:					42.50

Name: William White Date: 6-24-2022

(Ex. A14 at 10; unused columns and rows omitted.)

Pay Period 12/4 to 12/10 V Works

	Tm In:	Tm Out:	Brief Job Description	270 Property Projects-6217	Equipment Maintenance/Shop-8232	Land Grading/Snow Plowing of Co Road- 8232	Total
Mon	6:30 am	4:30 pm	Working on Grader		10		10
Tues	6:30 am	4:30 pm	Working on Freightliner		10		10
Wed	6:30 am	4:30 pm	Road Project	10			10
Thu	6:30 am	4:30 pm	Snow Plowing/Road Project	6		4	10
Fri			off				
Total:							40

Employee Name: Donald Lindstrom Date: ______________

(Ex. A14 at 11; date column and unused columns and rows omitted.)

/ / /

Pay Period 10/31/22 to 11/4/22 V Works

	Tm In:	Tm Out:	Brief Job Description	270 Property Projects- 6217	Trucking for Others- 7219	Total
Tues	0600	1545	Kiewit		9.75	9 ¾
Wed	0615	1530	Kiewit		9.25	9 ¼
Thu	0630	1815	Bend Shop Roadwork	11.75		11 ¾
Total:						30 ¾

Employee Name: Gary Killion Date: 11-1-22

(Ex. A14 at 13; date column and unused columns and rows omitted.)

6. V Works also maintained computerized time sheets for each employee. (*See e.g.*, Ex. A15 at 1-2.) The time sheets include similar information to what is included on the timecards. No pay amounts, either rates of pay or total pay, are shown on the time sheets or timecards. (*See id*.)

7. During the audit, V Works did not provide summaries that supported the payroll calculations by class code. (A16 at 1; test. of Pullman.)

8. On May 30, 2024, SAIF issued V Works an Audit Billing for the period June 1, 2022, to June 1, 2023. (Ex. A18.) In the Audit Billing, SAIF stated the following:

> During the policy year employees performed work reportable to more than one class. Weekly time records were maintained. However, the VTRS [verifiable time records] provided did not meet the requirements to allow a division of payroll. The description of work on the timecards was not always enough to determine the correct classification and no summarization was provided. Therefore, each employee has been classified to the highest-rated class code they had exposure.

(*Id*. at 1.) SAIF assigned $231,699 in subject payroll to Code 7219, which includes the following employees' wages: Robert Boock; William White; Donald Lindstrom; Chad Fosdick; Gary Killion; Jeremy Lindstrom; Jimmy Robinson; and Mark Salyers.[4] (Exs. A18 at 3, A14 at 9.)

9. SAIF provides an example of a verifiable payroll record on its website. (Test. of Pullman; *see* Ex. R21.) The example includes the following information: employee name; pay period; date; job number or customer; job description; class code; hours worked by date and class code; total hours worked; and a summary of hours worked per class code converted into wages. The job descriptions include "Carpentry – Framing Movie Theater," which is sufficient to identify the class code as 5403 for commercial framing, and "Pouring Concrete Sidewalk," which is sufficient to identify the class code as 5221 for concrete flatwork. (Ex. R21 at 1; test. of Pullman.)

[4] V Works indicated to SAIF that Mark Salyers and Gary Killion primarily performed truck driving under contract for others during the audit period. (Ex. A14 at 20.)

CONCLUSION OF LAW

SAIF's May 30, 2024 Final Premium Audit Billing correctly billed V Works by classifying $231,699 in subject payroll to Code 7219.

OPINION

V Works contests the Audit Billing for the period June 1, 2022, to June 1, 2023. In its Petition to the Department, V Works requested the reclassification of a portion of payroll from Code 7219 to Code 9328. V Works bears the burden to establish that SAIF's premium audit is incorrect. *Salem Decorating v. NCCI*, 116 Or App 166 (1992), *rev den*, 315 Or 643 (1993). To sustain this burden, V Works 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).

ORS 737.310(10) directs the Department to prescribe, by rule, the conditions under which a division of payroll between different manual classifications is permitted for purposes of computing workers' compensation premiums. The Department has prescribed those conditions in OAR 836-042-0060, which provides, in pertinent part:

> (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.[5]
>
> * * * * *
>
> (3) When verifiable payroll records are required with respect to a single employee and the employer does not maintain them as required in this rule, the entire payroll of the employee shall be assigned to the highest rated classification exposure in accordance with the standards for rebilling set forth in OAR 836-043-0190.[6]
>
> (4) For purposes of this rule, payroll records of an employee are verifiable if they have the following characteristics:

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[5] OAR 836-042-0055(1)(d) defines "interchange of labor" as "an employee or employees who at different times perform duties described by two or more classifications assigned to an employer according to the classification system used by the insurer."

[6] OAR 836-043-0190 was repealed, effective January 1, 2013.

> (a) The records must establish a time basis, and the time basis must be hourly or a part thereof, daily or part thereof, weekly or part thereof, monthly or part thereof or yearly or part thereof;
>
> (b) For each salaried employee, the records must also include time records in which the salary is converted to an hourly, daily, weekly, monthly or yearly rate and then multiplied by the time spent by the employee in each classification exposure;
>
> (c) The records must include a description of duties performed by the employee, to enable the insurer to determine correct classification assignment. Records requiring additional explanation or interpretation are not considered to be verifiable; and
>
> (d) The records must be supported by original entries from other records, including but not limited to time cards, calendars, planners or daily logs prepared by the employee or the employee's direct supervisor or manager. * * *. Verifiable records must be summarized in the insured employer's accounting records.

V Works contends that it provided sufficient payroll records to allow for the division of payroll between class codes 7219 and 9328. More specifically, V Works contends that its payroll records include a sufficient description of duties performed and an allocation of work time by class code to support a division of payroll. *See* V Works' Final Closing Argument at 1.

First, SAIF contends that V Works failed to provide payroll records that satisfy the requirements of OAR 835-042-0060(4)(a) and (b). *See* SAIF's Initial Closing Argument at 2. Second, SAIF contends that even if V Works had provided payroll records that satisfied the requirements of OAR 836-042-0060(4)(a) or (b), such records did not include sufficient descriptions of job duties needed to assign an employee's pay to multiple class codes. Finally, SAIF contends that V Works failed to provide summaries of payroll by employee and class code at the time of the audit. *See id*. at 3.

The payroll of an employee may be divided if verifiable payroll records maintained by the employer disclose a specific allocation for the individual employee. *See* OAR 836-042-0060(1). Pursuant to OAR 836-042-0055(1)(f), "[p]ayroll" is defined as "money or substitutes for money that are payable to workers for their services and that are specified or defined by the rating system used by the insurer * * *." Accordingly, to qualify as "payroll records," the records must include pay (money) information. V Works provided four forms of records to SAIF during the audit: the QuickBooks Payroll Summaries, the Employee Earnings Reports, timecards, and time sheets. The timecards and timesheets do not include any references to monetary amounts. As such, they do not qualify as payroll records. The QuickBooks Payroll Summaries and the Employee Earnings Reports are the records Millwood provided that include pay information in the form of total pay for the periods of June through December 2022 and January to June 1, 2023. Thus, these summaries and reports are the "payroll records."

Although the summaries and reports show total payroll for two six-month periods, these payroll records do not include each employee's hours by class code and a conversion of those hours into pay by class code. Accordingly, V Work failed to produce payroll records that meet the requirements of OAR 836-042-0060(4)(a) and, for Donald Lindstrom who received some salary, the requirements of OAR 836-042-0060(4)(b).[7]

Furthermore, as SAIF contends, even if V Works had submitted payroll records satisfying the requirements of OAR 836-042-0060(4)(a) and (b), the records provided were insufficiently descriptive to meet the requirements of OAR 836-042-0060(4)(c). The timecards and time sheets do not consistently include sufficient descriptions of job duties that would permit SAIF to determine the correct classification assignment. For instance, some of the timecards included "Liley Project," "Road Project," and "Kiewit" as descriptions of job duties. Exhibit A14 at 10, 11, 13. Those descriptions appear to provide project or client names but do not detail any actual job duties performed by the employees with which SAIF could determine the correct class code. Such records would require additional explanation or interpretation. V Works contends that the labels on the class code columns in the timekeeping records provide sufficient descriptions; however, the insurer must be able to independently identify the correct class code by the job descriptions, not by the class code assignment made by the employer (or employee who completed the timecard). For example, listing an employee's hours under Code 6217 "Property Projects" with a job description of "Road Project" does not identify the actual work the employee performed – grading, etc. SAIF must know the duties actually performed so that SAIF can confirm the accuracy of the employer's class code allocation. Accordingly, V Works' records do not meet the requirements of OAR 836-042-0060(4)(c).

V Works further contends that its records are similar to, or better than, the verifiable payroll record example on SAIF's website. As previously discussed, V Works' timecards and time sheets do not include adequate descriptions of job duties that would enable SAIF to identify the correct class code. Additionally, unlike the verifiable payroll record example, V Works' timecards and time sheets do not include a summary converting work hours into pay by class code. *See* Exhibit R21 at 1.

In sum, V Works has not established by a preponderance of the evidence that it maintained verifiable payroll records for the audit period at issue in accordance with the criteria set forth in OAR 836-042-0060(4). Because V Works did not satisfy the conditions required for a division of payroll, the payroll for employees was properly assigned to the highest rated classification exposure, pursuant to OAR 836-042-0060(3). Accordingly, SAIF properly classified $231,699 in subject payroll to Code 7219.

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[7] Even assuming V Works' timecards are considered payroll records for purposes of satisfying the requirements OAR 936-042-0060(4)(a) through (c), those payroll records "must be supported by original entries from *other* records" in order to be verifiable. OAR 836-042-0060(4)(d); emphasis added. In *R&R Tree & Landscape, Inc. v. Department of Consumer & Bus. Services*, 264 Or App 568 (2014), the Oregon Court of Appeals held that the petitioner's daily logs could not be used to satisfy both the requirements of OAR 836-042-0060(4)(c) and OAR 836-042-0060(4)(d).

ORDER

I propose the Department of Consumer and Business Services, Division of Financial Regulation, Premium Audit Work issue the following order:

SAIF's May 30, 2024 Final Premium Audit Billing, for the audit period June 1, 2022, to June 1, 2023, is AFFIRMED. Verheyden Works, Inc. is liable for the adjusted premium.

The Order Granting Stay of Collection, issued on June 27, 2024, will be lifted with the issuance of the Final Order.

Elizabeth Jarry
Senior Administrative Law Judge
Office of Administrative Hearings

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

SERVICEMEMBERS' CIVIL RELIEF ACT

Unless otherwise stated in this order, the Office of Administrative Hearings has no reason to believe that a party to this proceeding is subject to the Servicemembers' Civil Relief Act (SCRA). If a party to this proceeding is a servicemember who did not appear for the hearing, within the servicemember's period of service, or 90 days after their termination of service, that party should immediately contact the agency to address any rights they may have under the SCRA.

CERTIFICATE OF MAILING

On March 20, 2025, I mailed the foregoing PROPOSED ORDER issued on this date in OAH Case No. 2024-ABC-06604**.**

By: First Class Mail

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