

BERNARD GINN & SONS, INC.)
)
 v.)
 LEGION INSURANCE)
 COMPANY, et al.)
 Docket NO. INS-02-753)
)

DECISION AND ORDER

This adjudicatory proceeding arises out of a petition filed with the Superintendent by Bernard Ginn & Sons, Inc., pursuant to 24 A M.R.S.A. §§ 229 and 2320(3), alleging that Legion Insurance Company's final audit of Ginn's 1999-2000 workers' compensation insurance policy was both untimely and incorrect. Because the audit did not comply with the notice requirements of Bureau of Insurance Rule 470, it is unnecessary to decide whether the employees in question were correctly reclassified on audit, and the petition is granted.

Because Legion Insurance Company is in rehabilitation in the Commonwealth of Pennsylvania, an order was issued on May 8, 2002 establishing procedures and timetables to clarify jurisdictional and scheduling issues. Legion did not object to jurisdiction or move for stay, but advised the Superintendent by letter that it would be unable to attend or to actively participate in the hearing. However, the National Council on Compensation Insurance ("NCCI"), designated pursuant to 24 A M.R.S.A. § 2382 B as the advisory organization responsible for the administration of the uniform workers' compensation classification system, did appear at the hearing.

An adjudicatory hearing was held before the Superintendent on July 24,¹ with Mary Ginn, the petitioner's Treasurer, appearing and testifying on behalf of the Petitioner. It is undisputed that the one policy in dispute expired on July 1, 2000, and that the date on the final audit invoice was November 20, 2000, which is more than 120 days after policy expiration. Furthermore, Ms. Ginn testified that the bill was not actually received until January of 2001. Therefore, pursuant to Bureau of Insurance Rule 470, § 5, Legion may not charge any premium for this policy in excess of what it had already billed Ginn before October 29, 2000, unless the final audit deadline is extended pursuant to Rule 470, § 7, which provides as follows:

If the carrier is unable to examine and audit the records of the insured that relate to the calculation of the final premium and the inability is solely due to the failure of the insured to cooperate in the audit, then the 120-day limitation in Section 4 above shall begin when the carrier is able to complete the examination and audit of the insured's records. The insurer must notify the insured in writing prior to 120 days from the end of the policy period of the reasons for the inability to establish the final premium.

Ms. Ginn acknowledges that it was in order to accommodate her scheduling needs that the audit was not conducted until October 3. However, the Rule

makes clear that even if such a delay would otherwise be sufficient cause to extend the deadline, the deadline is not extended unless the insurer gives the policyholder written notice before the original deadline has passed. Ms. Ginn testified that she received no such notice, and her testimony was supported by a letter from her insurance agency, which would ordinarily receive a courtesy copy of any request to extend the deadline, asserting that their records do not reveal any notice either.

No evidence to the contrary was presented. However, at the request of NCCI, the hearing was recessed and the record was left open until August 5 so that the Respondents could search their records for any documentation of a timely request to extend the audit deadline.² No such documentation was provided, and the record is hereby closed. Based on Mrs. Ginn's credible and uncontradicted testimony, I find that Legion did not make a timely request.

Order and Notice of Appeal Rights

It is therefore *ORDERED* that the Petition is hereby *GRANTED*, and that Bernard Ginn & Sons, Inc. is not liable for the disputed portion of its 1999-2000 workers' compensation premium.

This Decision and Order is a final agency action of the Superintendent of Insurance within the meaning of the Maine Administrative Procedure Act. It is appealable to the Superior Court in the manner provided in 24-A M.R.S.A. § 236 (2000) and M.R. Civ. P. 80C. Any party to the proceeding may initiate an appeal within thirty days after receiving this notice. Any aggrieved non-party whose interests are substantially and directly affected by this Decision and Order may initiate an appeal on or before September 17, 2002. There is no automatic stay pending appeal; application for stay may be made in the manner provided in 5 M.R.S.A. § 11004.

¹ Pursuant to 24-A M.R.S.A. § 210, the Superintendent has appointed Bureau of Insurance Attorney Robert Alan Wake to serve as hearing officer, with full decisionmaking authority.

² In the event that it might be necessary to address the merits of the audit, Ginn was also ordered to provide certain financial information to supplement the record, which it has done.

PER ORDER OF THE SUPERINTENDENT OF INSURANCE

AUGUST 8, 2002

**ROBERT ALAN WAKE
DESIGNATED HEARING OFFICER**