

STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
DIVISION OF INSURANCE
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STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
DIVISION OF INSURANCE

IN THE MATTER OF)
)
KALEB BENSON (BOB BENSON TRUCKING),)
CASE NO. AK-GC-01-2010)
)
Appellant.)
)
_____)

Case No. H 10-02

PROPOSED DECISION

Introduction

The dispute in this matter is the determination of when Kaleb Benson (Mr. Benson) obtained legal ownership of Bob Benson Trucking (BB Trucking) and when he ceased to be the executor of Robert Benson's estate and an employee of BB Trucking.

The National Council on Compensation Insurance, Inc. (NCCI) sought the position of the Division of Insurance regarding whether the issue in dispute was appealable before the Alaska Workers' Compensation Rating and Classification Grievance Committee (committee). The division directed the matter to be scheduled before the committee. The committee found that it is not within its jurisdiction to rule on the disputed audit terms as it concerns the compensation of Mr. Benson because of the legal issues involved in determining the worker status of Mr. Benson. Mr. Benson appealed that decision to the director of the Division of Insurance. The undersigned was appointed by the director to act as hearing officer in this matter. The parties briefed the issues and agreed that an evidentiary hearing was not necessary.

1 Pursuant to the director's appointment, I hereby submit this proposed decision
2 affirming the committee's decision.

3
4 **Discussion**

5 Mr. Benson secured a policy through the assigned risk plan in December 2003
6 for a trucking business he operated as a sole proprietor. He opted to exclude himself from
7 coverage and the policies provided coverage for clerical operations only.

8
9 Robert Benson, Mr. Benson's father, owned and operated a trucking business,
10 Bob Benson Trucking (BB Trucking). Robert Benson died in August 2004 and left BB
11 Trucking to Mr. Benson. Robert Benson's will was contested by a family member and held in
12 probate court until June 2009. Mr. Benson ran BB Trucking during that time although BB
13 Trucking was still owned by Robert Benson's estate until probate was completed.

14 Robert Benson had never obtained a workers' compensation policy for his
15 employees. In 2008, Mr. Benson applied for and obtained a workers' compensation policy for
16 the employees of BB Trucking. His insurance agent and the insurer, Alaska National Insurance
17 Company (ANIC), decided to add the BB Trucking employees to Mr. Benson's clerical only
18 policy. When the audit was performed on the 1/11/08 and 1/11/09 policies, the wages paid to
19 Mr. Benson were included along with those of the BB Trucking employees in determining the
20 policy premium. Mr. Benson claimed that his wages should have been excluded from the
21 policy coverage.

22
23 Mr. Benson's position is that, when his father died, Mr. Benson was the
24 executor of the estate until the will cleared probate and, as executor/owner, he considered
25 himself excluded from coverage under the policies and had always intended to exclude himself
26 from that coverage.

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ANIC asserts that, although the policies were issued to Mr. Benson as a sole proprietor, he was actually operating BB Trucking as the executor of the estate. ANIC had agreed to cover the BB Trucking employees on Mr. Benson's policy. ANIC's auditor reviewed the 941 federal tax forms and the Alaska ESC reports, all of which were filed in the name of BB Trucking and signed by Mr. Benson as "Executor." The employer identification number used was that of BB Trucking, not that of Mr. Benson's sole proprietorship. Mr. Benson's remuneration was treated as wages by BB Trucking on all these forms. Because of this documentation, ANIC considers Mr. Benson an employee of BB Trucking and claims that it would have had to respond to any injury to Mr. Benson. Therefore, Mr. Benson's wages should be included in the premium on the disputed policy terms.

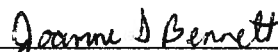
The NCCI Basic Manual, Dispute Resolution Process, Section B, 3.a. states:

Neither NCCI nor the Committee have the authority to interpret, apply, or provide an opinion on state or federal laws, rules, or regulations; or decisions of courts or administrative proceedings; to hear disputes brought by carriers; or to hear disputes that are not confined to the application or interpretation of NCCI rules or rating system.

Conclusion

Because of the legal issues involved in determining the worker status of Kaleb Benson, I have determined that the division and the committee do not have jurisdiction to rule on the disputed audit terms. For these reasons, I affirm the committee decision.

Dated this 5th day of August, 2010.



Joanne S. Bennett
Hearing Officer

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Adoption

The undersigned director of the Division of Insurance adopts this Proposed Decision in Case No. H 10-02 as the final administrative determination in this matter. Pursuant to AS 21.39.170(c) and Alaska Appellate Rule 602(a)(2), you may appeal this final decision within 30 days. See the attached Notice of Final Order and Appeal Rights.

DATED this 29th day of August, 2010.



Linda S. Hall
Director

Non-Adoption Options

1. The undersigned director of the Division of Insurance declines to adopt this Proposed Decision in Case No. H 10-02 and instead orders that the case be returned to the hearing officer to

___ take additional evidence about _____

___ make additional findings about _____

___ conduct the following specific proceedings: _____

DATED this ___ day of _____, 2010.

Linda S. Hall
Director

2. The undersigned director of the Division of Insurance revises the Proposed Decision in Case No. H 10-02 as follows:

Pursuant to AS 21.39.170(c) and Alaska Appellate Rule 602(a)(2), you may appeal this final decision within 30 days. See the attached Notice of Final Order and Appeal Rights.

DATED this ___ day of _____, 2010.

Linda S. Hall
Director