

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 )  
 )  
ALASKA NATIONAL INSURANCE )  
COMPANY )  
 )  
Appellant )  
v. )  
BIGFOOT AUTO SERVICE, INC. )  
 )  
Appellee )  
\_\_\_\_\_ )

Case No. H 18-03

**PROPOSED DECISION**

**Introduction**

The dispute concerns the final audit as produced by Alaska National Insurance. Bigfoot Auto Service, Inc. (Bigfoot), the policyholder, contends that a payroll split should be allowed for one employee. During certain months, the employee only performs duties described in Code 8810. The other months, the employee is a bus driver under code 7382. According to the policyholder, a payroll split should be allowed since the employee is performing two separate jobs and separate payroll records are maintained.

The policyholder stated that the employee in question drives a school bus for nine months during the year. During the summer, the employee in question works in the office. According to the policyholder, the employee performs his duties in a physically separated office during the three months that the school bus is not in operation. The carrier, Alaska

1 National Insurance Co. (Alaska National), noted that Alaska's NCCI *Basic Manual for Workers*  
2 *Compensation and Employers Liability Insurance* – 2001 Edition (Basic Manual) does not  
3 allow for a payroll split between a Basic Classification and a Standard Exception Code and  
4 asked that a payroll split be denied. The audited payroll was assigned to Code 7382. For the  
5 reasons which follow, I, as the hearing officer, decline to grant the relief sought by Alaska  
6 National and affirm the Alaska Grievance Committee's (Committee) decision in this case to the  
7 extent consistent herein.

## 8 Discussion

### 9 I. ISSUE PRESENTED

10 Did the Alaska Grievance Committee properly apply Basic Manual Interchange of  
11 Labor Rule 2-G-4 (rule 2-G-4) to split one employee's wages into two classifications for  
12 purposes of determining premium?

### 13 II. BACKGROUND

14 Alaska's NCCI Basic Manual Rule 2-G-4 reads in the pertinent section:

15 A division of payroll with Code 8742, Code 8810, or Code 8871 is allowed for  
16 employees of a seasonal business who exclusively perform outside sales or clerical  
17 duties during a seasonal shutdown of that business's basic classification operations  
18 when all the following conditions are met:

- 19 a. The seasonal shutdown must be for a minimum of 60 consecutive calendar days  
20 within any 12-month period
- 21 b. The basic classification operation subject to the seasonal shutdown ceases entirely for  
22 that time period
- 23 c. The employees meet the eligibility requirements in Rule 1-8-2-a or 1-8-2-c during the  
24 seasonal shutdown

25 For purposes of this rule, a seasonal business is defined as a business whose basic  
26 classification operations are subject to a seasonal shutdown and not intended to continue  
through the entire calendar year.

The rule allows payroll splits for employees of seasonal businesses during the shutdown of that  
businesses operations as long as they meet the requirements for the shutdown and the code  
duties.

1 In order to qualify under 2-G-4-c, Rule 1-8-2-a requires that:

- 2 • The basic classification(s) wording applicable to the business does not include clerical
- 3 office, drafting or telecommuting employees
- 4 • Other rules do not prohibit the assignment of Code 8810 or Code 8871
- 5 • The employee meets the duties, site and other requirements listed below:

6 **(1) Duties**

7 Duties must be limited to one or more of the following work activities:

- 8 • Creation or maintenance of:
  - 9 Employer records
  - 10 Correspondence
  - 11 Computer programs
  - 12 Files
- 13 • Drafting
- 14 • Telephone duties, including telephone sales
- 15 • Data entry or word processing
- 16 • Copy or fax machine operations, unless the insured is in the business of making copies
- 17 or faxing for the public
- 18 • General office work similar in nature to the above

19 **III. FACTS AND PROCEEDINGS**

20 A. Initial Facts and Proceedings

21 Bigfoot Auto Service, Inc, the policyholder, was requesting a payroll split for one of its  
22 employees based for an audit covering the period from October 2016 to October 2017. The  
23 employee works as a bus driver for nine months of the year, classified as code 7382; the other  
24 months are spent performing the duties described in classification code 8810. The employee  
25 works in two different locations performing two separate jobs. Alaska National opposed the  
26 payroll split. A hearing before the Committee was held on July 19, 2018. After hearing the  
parties, the Committee met in executive session and issued the following decision:

“**RESOLVED**, the activities contemplated under Code 7382 meet the first two conditions  
outlined in the Rule 2-G and the employee meets the eligibility requirements for Rule 1-B-2-a  
therefore a split of payroll is allowed between Code 7382 and 8810 for the employee but only  
during the seasonal shutdown.”

The Case Summary and Decision included the following:

- 1 • For the policy period in question, there were three basic classification assigned, Codes  
2 7382, 8010 and 8380. The employee in question was not involved in the activities  
3 contemplated under Codes 8010 and 8380.
- 4 • The Committee discussed the Rule and questioned if the meaning of a seasonal  
5 shutdown was applicable to the operations of the governing code ceasing or any basic  
6 classification operation ceasing operations. There was agreement that the operations  
7 contemplated under Code 7382 met the conditions as outlined in Alaska State Basic  
8 Manual Rule 2.G.

9  
10 On August 8, 2018, Mr. Craddock, in his capacity as the Grievance Committee Secretary,  
11 notified Alaska National and Bigfoot Auto of the Committee's decision, by providing them with  
12 the Case Summary & Decision.

13  
14 B. Hearing Officer Proceedings

15 On September 5, 2018, the Division received a letter from Jermain Dunnagan & Owens, P.C.,  
16 notifying the Director that Alaska National Insurance Company would appeal the decision of  
17 the Committee.

18 A pre-hearing conference was held on December 11, 2018. During the pre-hearing  
19 teleconference before the hearing officer appointed by the director to hear the case, the parties  
20 agreed no hearing would be necessary and written briefings would be submitted to the hearing  
21 officer. A date of January 18, 2019 was the deadline for the parties to submit briefs. On  
22 December 28, 2018 this was amended by a motion from Bigfoot received December 20, 2018  
23 so that Bigfoot could file its brief by February 4, 2019. There were no objections by Alaska  
24 National.

1 On January 18, 2019, the Division received a brief from Alaska National Insurance Co.  
2 appealing the Committee's decision. Alaska National, in its Appellant's Brief, stated the  
3 insured's office is open year round and has one business entity that pays the employees for all  
4 business operations. They recapped the issue, does the NCCI BASIC MANUAL RULE 2-G4-  
5 Seasonal Shut Down Rule apply to the employee working in the office and driving a school  
6 bus? Since the insured qualifies to use two basic classification codes (7382 Bus Driver and  
7 8380 Auto Repair), the committee determined that one of the basic classification is seasonal,  
8 and therefore, the insured qualifies for the seasonal split. Alaska National's position was that  
9 the employee is working in both business operations throughout the year, and therefore does  
10 not qualify for the seasonal split. As described, the employee works in the store and shop office  
11 year round and drives the school bus for approximately nine months of the year. Since the  
12 employee is interchanging between two basic classification codes, and only the work pertaining  
13 to one of the codes is shut down for more than 60 days, the seasonal shutdown rule does not  
14 apply to this insured.

15 Alaska National also believes that it was not the intent for the Alaska exception rule to  
16 permit seasonal businesses to have one basic classification continue in operation for more than  
17 60 days. This rule, when it was drafted and approved on January 1, 2015, was intended for  
18 mining, guides and lodges that have one basic class code that shuts down for more than 60  
19 days; in other words, a business that is truly seasonal.

20 Their conclusion is that the insured does not qualify for a seasonal shutdown, the  
21 employee is correctly classified in code 7382 - Bus Driver for the full policy period and does  
22 not qualify for a payroll split with class code 8810 based on the Interchange of Labor Rule 2G.  
23 Some of the insured's employees qualify for division of payroll between two or more basic  
24 classification codes and also engage in operations that are classified by codes 8810, 8742, 8748  
25

1 or 8871. The payroll for these standard exception operations must be allocated to the basic  
2 classification code with the largest amount of payroll applicable to that employee.

3 On February 4, 2019, the division received a reply brief from Bigfoot Auto, opposing  
4 the appeal brief entered by Alaska National. Bigfoot did not dispute any of the stated facts from  
5 Alaska National's brief, with the exception that Bigfoot Auto has more than one employee and  
6 the revenue generated by the bus drivers pays the bus drivers. Bigfoot Auto refuted the  
7 following statement from Alaska National "Alaska National believes it was not the intent for  
8 the Alaska exception rule to permit seasonal businesses to have one basic classification  
9 continue in operation for more than 60 days. This rule, when it was drafted and approved on  
10 January 1, 2015, was intended for mining, guides and lodges that have one basic class code that  
11 shuts down for more than 60 days; in other words, a business that is truly seasonal." Bigfoot  
12 also stated that "A review of the NCCI BASIC MANUAL RULE 2.G.4 (2015 edition) finds no  
13 mention of, or referral to a 'seasonal Shut Down Rule' or 'the Alaska exception rule'. There is  
14 no 'Alaska exception rule'... Bigfoot wasn't issued a single basic classification code by AN.  
15 Five classifications were issued by Alaska National." Additionally, Bigfoot's final payroll  
16 summary for the policy "shows the bus payroll as the smallest portion of the payroll." Bigfoot  
17 also submitted documentation that the payroll accounts were tracked and kept separately.

18 A pre-hearing teleconference was held on February 6, 2019. The parties agreed to settle  
19 the case based on the briefs, while reserving their right to appeal the decision. Alaska National  
20 was granted the opportunity to submit a reply brief by February 15, 2019.

21 The reply brief was received by the hearing officer February 15, 2019. In its reply brief,  
22 Alaska National stated that Bigfoot had misconstrued the facts and the applicable laws and  
23 rules. It concluded that it stood by its original brief and that a payroll split should be denied.  
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Conclusion

I. **BASIC MANUAL RULE 2-G-4** IS APPLICABLE AND BIGFOOT QUALIFIES FOR A SEASONAL PAYROLL SPLIT

A. THE BUS DRIVING OPERATIONS ARE A SEASONAL BUSINESS

In order to qualify for a payroll split under rule 2-G the business operations must be a seasonal business which is defined as “a business whose basic classification operation are subject to a seasonal shutdown and not intended to continue through the entire calendar year.” The shutdown must also last for a “minimum of 60 consecutive calendar days” under rule 2-G-4-a. In this case, the bus driving operations are for nine months of the year and are shut down for three consecutive months, which is a seasonal shutdown that surpasses the 60 consecutive calendar day requirement. Alaska National argues that the business is not seasonal, however, this argument is unconvincing. They state that because there are multiple business classifications, some of which do not shutdown, that the business is not seasonal. However rule 2-G-4-b states that “The basic classification operation **subject to the seasonal shutdown** ceases entirely for that time period” (emphasis added) which acknowledges that businesses can have multiple basic classification operations, only one of which needs to be shut down in order to a payroll split to be allowed. Therefore, Bigfoot is considered a seasonal business within the meaning of rule 2-G-4 and meets the length of time required under 2-G-4-a.

B. THE BUS DRIVING OPERATION CEASES ENTIRELY DURING THE SHUTDOWN

In order to meet the requirements under rule 2-G-4-b “The basic classification operation subject to the seasonal shutdown ceases entirely for that time period.” In this case, the bus driving operations are completely shutdown during that period. The employee in question works at a different location, the employee has no interaction with the bus driving operation

1 while it is shutdown, and different payroll records are kept. Bigfoot has met the requirements  
2 under rule 2-G-4-b.

3  
4 C. THE EMPLOYEE MEETS THE REQUIREMENTS OF RULE 1-8-2-a

5 The final issue is whether the employee meets the requirements of rule 1-8-2-a. The  
6 employee meets the first two requirements in that the bus driver classification does not include  
7 clerical workers, and a split is explicitly allowed under rule 2-G-4. The only requirement to  
8 determine is whether the employee performs the duties required for clerical workers. Alaska  
9 National noted in its brief that the employee performed bookkeeping duties in Bigfoot's store  
10 and repair shop. This would match the duties required for the creation and maintenance of the  
11 employer's records, which would mean the employee met the requirements of 1-8-2-a. This is  
12 in accordance with the Committee, who also found that the employee's actions met the  
13 requirements for 1-8-2-a.

14 II. HOLDING

15 I find


- 16
- 17 • Bigfoot Auto Services Inc. meets the definition of a seasonal business under rule 2-G-4,  
18 and fulfills the required length of time for the shutdown.
  - 19 • Bigfoot also ceases all bus driving operations during the seasonal shutdown, as required  
20 in rule 2-G-4-b.
  - 21 • The employee meets the position requirements of classification code 8810, as required  
22 under rule 2-G-4-c.
  - 23 • Bigfoot has met all of the requirements under rule 2-G-4 and is entitled to a payroll split  
24 between code 7382 and 8810, but only during the seasonal shutdown.

25 Therefore, I decline to grant the relief sought by Alaska National and affirm the  
26 Committee's decision in this case to the extent consistent herein.



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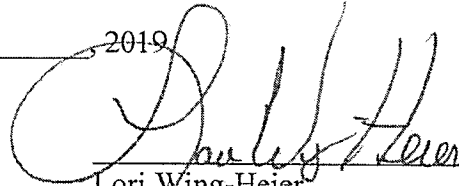
1 Dated this 18 day of March, 2019

  
Anna Latham  
Hearing Officer

3 **Adoption**

4 The undersigned director of the Division of Insurance adopts this Proposed  
5 Decision in Case No. H 18-03 as the final administrative determination in this matter. Pursuant  
6 to AS 21.39.170(c) and Alaska Appellate Rule 602(a)(2), you may appeal this final decision  
7 within 30 days. See the attached Notice of Final Order and Appeal Rights.

8 DATED this 18<sup>th</sup> day of March, 2019

  
Lori Wing-Heier  
Director

11 **Non-Adoption Options**

12 1. The undersigned director of the Division of Insurance declines to adopt this Proposed  
13 Decision in Case No. H 16-04 and instead orders that the case be returned to the hearing officer  
14 to

15 \_\_\_ take additional evidence about \_\_\_\_\_

16 \_\_\_ make additional findings about \_\_\_\_\_

17 \_\_\_ conduct the following specific proceedings: \_\_\_\_\_

18  
19  
20 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

21 \_\_\_\_\_  
Lori Wing-Heier  
22 Director

23 2. The undersigned director of the Division of Insurance revises the Proposed Decision in Case  
24 No. H 18-03 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 \_\_\_\_\_, 2019.

\_\_\_\_\_  
Lori Wing-Heier  
Director

I hereby certify that on the 14 day of March, 2019, I mailed copies of this document to the following parties:

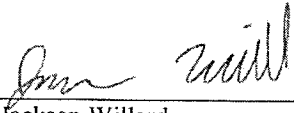
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**NOTICE OF FINAL ORDER  
AND APPEAL RIGHTS  
Case H18-03**

The order signed by the Director of the Division of Insurance is the final order in this action.

Pursuant to AS 21.39.170(c), and the Alaska Appellate Rule 602(a)(2), you may appeal this final decision within 30 days.

AS 21.39,170(c) provides:

An order or decision of the director is subject to review by appeal to the superior court at the instance of a party in interest. The court shall determine whether the filing of the appeal will operate as a stay of an order or decision of the director. The court may, in disposing of the issue before it, modify, affirm, or reverse the order or decision of the director in whole or in part.

Alaska Appellate Rule 602(a)(2) provides:

An appeal may be taken to the superior court from an administrative agency within 30 days from the date that the decision appealed from is mailed or otherwise distributed to the appellant. If a request for agency reconsideration is timely filed before the agency, the notice of appeal must be filed within 30 days after the date the agency's reconsideration decision is mailed or otherwise distributed to the appellant, or after the date the request for reconsideration is deemed denied under, agency regulations, whichever is earlier. The 30 day period for taking an appeal does not begin to run until the agency has issued a decision that clearly states that it is a final decision and that the claimant has thirty days to appeal. An appeal that is taken from a final decision that does not include such a statement is not a premature appeal.

For other applicable rules of court, see Alaska Appellate Rules 601-612.