

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

IN THE MATTER OF)
)
RICKMAN BUILDING COMPANY, INC.)
)
)
Appellant.)
)
)
_____)

Case No. H 22-01

PROPOSED DECISION

Introduction

Rickman Building Company, Inc. (RBC) filed an appeal with the Division of Insurance Director following a January 3, 2022 decision by the Alaska Review Advisory Committee’s Workers’ Compensation Grievance Committee (ARAC). ARAC concluded that the audit as conducted by Alaska National Insurance Company (ANIC) was completed in compliance with the National Council on Compensation Insurance (NCCI) Basic Manual for Workers’ Compensation and Employer Liability Insurance (Basic Manual) Rule 2-H.

The Appellant is a licensed general contractor in Alaska and, during the regular course of business, hired a subcontractor, Jack Brincefield dba Jack of all Trades. The appeal of the ARAC determination centered on two main points: first, whether RBC provided adequate documentation to show Jack of all Trades was an independent contractor; and second, whether

ANIC properly conducted the audit in accordance with the NCCI Basic Manual Rule 2-H. The Appellant contends that they provided adequate documentation to show Jack of all Trades was an independent subcontractor under AS 23.30.230(a)(12) rather than a contract employee.

On February 25, 2022, the Director of the Alaska Division of Insurance (Director) assigned the appeal to the undersigned Hearing Officer under provisions established in AS 21.06.170 - 21.06.230. Pursuant to the Director's appointment, I hereby submit this proposed decision affirming the ARAC's decision.

Discussion

I. Issue

The primary issues under appeal are whether RBC provided adequate documentation to show Jack of all Trades was an independent contractor exempt from carrying Workers Compensation (WC) insurance, and whether ANIC properly conducted the audit in accordance with the NCCI Basic Manual Rule 2-H-2. The applicable policy number is:

Rickman Building Company - 19FWW75987

II. Background

The appellant argued that ANIC erred in conducting its audit according to the NCCI Basic Manual, and argued that ANIC erred in determining Rickman Building Company, Inc. did not provide adequate documentation for subcontractor Jack to be classified as an independent contractor.

III. Facts and Proceedings

The parties attended a prehearing conference on April 7, 2022 held before hearing officer Alida Bus. Those in attendance were Diane F. Vallentine, Esq. and Danielle Pennison for the appellee; Heather Rickman and Ehren Rickman for the appellant; Victoria Dorsey, Esq., Sharlee Edwards,

and Yessenia Fuchs for the National Council of Compensation Insurance (NCCI); and Dan Wilkerson, Assistant Attorney General, as counsel for the hearing officer. The parties agreed to procedural issues, brief filing timelines and a status conference date of June 6, 2022.

The following individuals participated:

Heather Rickman:	Rickman Building Company, Inc.
Ehren Rickman:	Rickman Building Company, Inc.
Diane Vallentine:	Alaska National Insurance Company
Danielle Pennison	Alaska National Insurance Company
Victoria Dorsey:	National Council on Compensation Insurance
Yessenia Fuchs	National Council on Compensation Insurance
Sharlee Edwards	National Council on Compensation Insurance
Daniel Wilkerson:	Asst. Attorney General (Counsel to Hearing Officer)
Alida Bus:	Division of Insurance (Health Care Program Coordinator)

The parties agreed to the following briefing schedule:

The appellant submit a brief by April 15, 2022.

The appellee submit a brief by April 29, 2022.

The appellant submit a reply to the appellee's brief by May 13, 2022.

Both parties submitted prehearing briefs to establish facts and outline their positions. The parties attended a status conference on June 6, 2022 held before hearing officer Alida Bus. The parties at this time agreed to proceed with the Hearing Officer rendering a decision based on the pleadings as presented, without oral argument or proceeding to a hearing.

In the Appellant's brief, Ms. Rickman argued on behalf of RBC that ANIC erred in conducting its audit according to the NCCI Basic Manual, and argued that ANIC erred in determining Rickman Building Company, Inc. did not provide adequate documentation for subcontractor Jack to be classified as an independent contractor.

RBC obtained Worker's Compensation insurance for the coverage period June 1, 2019 to June 1, 2020 from ANIC. RBC conducted several construction projects during this policy year.

RBC subcontracted some of the work on its projects to Jack Brincefield d.b.a. Jack of all Trades. At the end of this policy, a routine final audit was conducted. It was found that Jack of all Trades did not maintain WC insurance. As a result, ANIC charged RBC a higher premium for the policy year.

RBC submitted documentation including a Certificate of Insurance for and signed subcontractor agreement with Jack of all Trades. ANIC determined that Trades would be considered a contract employee. RBC appealed this decision to the ANIC audit manager. ANIC responded they were unable to determine whether Jack of all Trades had employees and therefore were unable to determine whether Jack of all Trades was exempt from carrying a WC policy under AS 23.30.230(a)(12).

RBC appealed this decision to NCCI in November 2020, requesting that the final audit for the policy period of June 1, 2019 to June 1, 2020 be revised and the payments to Jack of All Trades be excluded from the premium calculation. The ARAC Grievance Committee considered the dispute in October 2021 and made a decision in the case January 3, 2022.

In the Appellee's brief response, Ms. Vallentine argued for ANIC that insurers conducting policy audits are not expected to determine whether a contractor's subcontractors are exempt from carrying WC insurance. Rather, Basic Manual Rule 2-H says that for a contractor to avoid paying premium for their subcontractor's service they are to provide evidence of WC insurance or a certificate of exemption. However, Alaska does not have a procedure for a subcontractor to obtain a certificate of exemption, so a contractor must provide evidence of WC insurance. ANIC claims it was appropriate to charge premium for the risk associated with RBC's uninsured subcontractor. In the absence of the documentation described in Rule 2-H-1, Ms. Vallentine said that Rule 2-H-2 requires the insurance company to charge WC premium based on the degree of documentation provided by a contractor in accordance with the established tables.

In the case at hand, Ms. Vallentine argued that RBC did not provide the necessary payroll or other documentation, so the full subcontract price was the basis for determining the premium due from the contractor.

The Committee determined that the case's main issue was whether the carrier conducted the audit as per Basic Manual Rules. The subcontractor in question did not provide proof of WC coverage during the policy period and the carrier therefore included payments for subcontractors in the payroll calculation for the final premium. The Committee concluded that the audit conducted by ANIC was completed in compliance with the Basic Manual Rules.

IV. Applicable Law, Regulation and Policy

AS 23.30.045 requires an employer to provide for workers' compensation payments to its employees, establishes that a contractor is liable for workers' compensation payments to the employees of an uninsured subcontractor, and provides definitions for the terms "contractor," "subcontractor," and "project owner." AS 23.30.075 requires an employer, unless exempted, to either maintain insurance to cover the employer's liability for workers' compensation payments or to furnish satisfactory proof to the Alaska Division of Workers' Compensation, of the employer's ability to pay Workers' Compensation liabilities directly. AS 23.30.230 provides a list of exemptions from Workers' Compensation Insurance. AS 23.30.230(a)(12) provides an exemption for an independent contractor if the person a) has a contract for the service; b) is free from direction and control over the means of providing the service; c) incurs most of the cost for tools and labor; d) has an opportunity for profit and loss as a result of the service; e) is free to hire and fire help to perform the service; f) has all required licensure; g) follows IRS requirements; and h) meets two of the following: the person is responsible for completion of the

service, maintains a separate business address, works for other customers. AS 23.30.239 allows for a sole proprietor or partner to elect Workers' Compensation coverage.

Workers' compensation insurance rates, manuals, and rating rules are proposed by the NCCI and approved by the Director under AS 21.39.040. The NCCI is a licensed insurance rating organization approved by the Director under AS 21.39.060. AS 21.39.090 requires a rating organization to provide a reasonable means in Alaska for a person aggrieved by the rating system to be heard and allows the person to appeal a determination to the Director. 3 AAC 30.200 establishes the ARAC, which provides the initial review process for people aggrieved by the rating organization's rating system. AS 21.06.170- 21.06.240 contain the principal statutory rules for Division of Insurance hearings and AS 21.06.180 limits the Director's authority to purposes within the scope of Title 21.

NCCI's *Basic Manual for Workers Compensation and Employers Liability Insurance - 2001 Edition* (Basic Manual) sets out rules for disputes between an insured entity and an insurer under Appendix G and establishes rules for Workers' Compensation Insurance premium audits under Rule 2 and Rule 2-H provides rules specifically associated with contractors and subcontractors.

Under AS 21.42.120, the Division of Insurance approves insurance policy contract forms and has approved Form WC 00 00 00 C, *Workers Compensation and Employers Liability Insurance Policy*, filed by NCCI. This policy provides that premiums will be determined by NCCI's manuals of rules, rates, rating plans, and classifications and requires a policy holder to keep records and information needed by the insurer to calculate premium and to authorize the insurer to examine and audit all of the policy holder's records applicable to the policy.

Alaska Division of Insurance Bulletin B18-01, issued in January of 2018, provides policy and interpretations of the Alaska Divisions of Insurance and Workers' Compensation issued Bulletin related to Workers' Compensation Insurance coverage for contractors and subcontractors. The division's Bulletin B 15-08, issued in 2015, outlines the approved progression for an insurer to request records from the insured entity and these records may include copies of contracts between subcontractors and contracts the subcontractors may have with their subcontractors to determine if the insurer is entitled to premium on the portion of payroll for these entities.

AS 08.18.011 requires a person to be registered as a construction contractor before submitting a bid to work as a construction contractor and prohibits a general contractor from allowing a person who is not registered to work for the general contractor.

Conclusion

I. The ARAC decision to uphold the audit conducted by ANIC related to the appeal is affirmed.

Based on briefs provided by Ms. Rickman and Ms. Vallentine, the audit was correctly performed in accordance with rules established in the Basic Manual and specifically Rule 2-H for contractors and subcontractors. The briefs illustrated that the Appellant subcontracted work to a third party, which created additional liability for Workers' Compensation insurance and that the insurer correctly pursued additional premium to cover the liability in accordance with Basic Manual rules. The Appellant did not provide the documentation necessary to mitigate the liabilities through the audit process and did not present the adequate evidence during the hearing to establish that the audit was incorrect.

Before the ARAC process, ANIC had raised concerns that the contract with Jack of all Trades did not qualify him as an independent contractor for a few reasons, including that the

contract was not specific to a particular job and did not clarify who has direction and control over the work performed, nor a concrete billing schedule. Ms. Rickman claims to have provided ANIC with the qualifications of Jack of all Trades being an independent contractor. The Committee limited its scope to whether ANIC conducted the audit according to the Basic Manual Rule, and did not consider the categorization of Jack of all Trades, as the contractor was not carrying WC insurance; the Committee therefore concluded that they had to be included as part of the payroll because they didn't have the supporting document required by Basic Rule 2-H.

Neither the Director of Insurance nor the Committee has the authority to decide the issue of whether ANIC correctly categorized Jack of all Trades as a contract employee versus an independent contractor. ANIC had advised RBC in writing at the time the policy was issued that premium would be added for subcontractors who did not maintain workers compensation insurance.

III. HOLDING

I find,

The audit by ANIC of the Appellant's W/C policies was conducted correctly in accordance with the Basic Manual to include work performed by a contract employee / subcontractor.

Therefore, I uphold the ARAC's decision in this case.

Dated this 1st day of July, 2022.

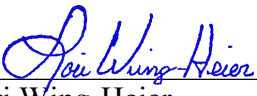


Alida Bus
Hearing Officer

Adoption

The undersigned director of the Division of Insurance adopts this Proposed Decision in Case No. H 22-01 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 11 day of July, 2022.



Lori Wing-Heier
Director

Non-Adoption Options

1. The undersigned Director of the Division of Insurance declines to adopt this Proposed Decision in Case No. H 22-01 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 _____, 2022.

Lori Wing-Heier
Director

2. The undersigned director of the Division of Insurance revises the Proposed Decision in Case No. H22-01 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 _____, 2022.

Lori Wing-Heier
Director

I hereby certify that on the ____ day of _____, 2022, I mailed and emailed copies of this document to the following persons:

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**NOTICE OF FINAL ORDER
AND APPEAL RIGHTS
Case H 22-01**

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.