

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE

S A N F R A N C I S C O

In the Matter of the Appeal of)	
VISTA FENCE COMPANY, INC.,)	
Appellant.)	
From a Decision of)	FILE NO. SF 6960-R-021
THE WORKERS' COMPENSATION)	AMENDED DECISION
INSURANCE RATING BUREAU)	
OF CALIFORNIA,)	
Respondent.)	

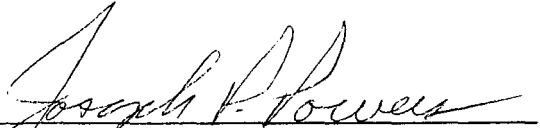
The Decision dated February 19, 1993 in the captioned matter is amended as follows:

1. In the first line, third paragraph on page three, "Code 5200(2)" is replaced with "Code 6400".
2. The last full sentence of the ORDER on page five is replaced by the following: "This Order will be effective April 8, 1993."

In all other respects, the Decision of February 19, 1993 remains the same.

DATED:

March 12, 1993


JOSEPH P. POWERS
Hearing Officer

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE

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Appellant.)	
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FACTS

1. The Appellant was insured for its workers' compensation liability during the times pertinent to this appeal.
2. Respondent, The Workers' Compensation Insurance Rating Bureau of California ("Bureau") is a rating organization licensed pursuant to the provisions of Insurance Code Sections 11750, et seq.

3. Since at least 1985, Appellant's employees who "set" fence posts in concrete had been assigned Classification Code 5200(2), "Concrete or Cement Work" for purposes of determining its workers' compensation insurance premium.

4. Sometime in April 1989, a Bureau inspection of Appellant's operations determined that these employees in question should be reassigned to Code 6400, "Fence Construction - Metal or Wood", which classification carries a higher rate.

5. The results of the Bureau inspection were sent to the Appellant's insurance carrier in October 1989.

6. The Appellant's premiums for the 1989 policy, which expired in July 1990, were calculated using the lower rated Code 5200(2). The re-assignment of these employees to the higher rated classification was accomplished at the time of the audit, which was conducted after the expiration of the policy in 1990, as well as after the inception of the 1990 to 1991 policy.

7. The Appellant believes that Code 5200(2) should be allowed for the 1989 and 1990 policies, since the first notice of the classification change was not received until the audit billing of the 1989 policy year. Upon appeal to the Classification and Rating Committee of the Bureau, the assignment of Code 5200(2) for the

1989 and 1990 policies was sustained.

8. The Appellant has appealed this decision to the Insurance Commissioner pursuant to Insurance Code Section 11753.1.

The Appellant contends that it was not informed of the classification change until well in the 1990 policy year. Appellant had used Code 5200(2) without problems since at least 1985. Code 5200(2) was, in fact, still endorsed on the policy during the 1989 policy year, and appears on the experience modification calculation sheets produced by the Bureau. Unaware that any problems with continued use of Code 5200(2) for certain employees existed, the Applicant bid jobs on that basis. Had the Appellant known of the classification change, it could have adjusted the job bids accordingly. Now, Appellant cannot go back and recoup on the bids made with the understanding that the lower rated Classification 5200(2) would be used.

The Bureau contends that Code 5200(2) is the correct classification for the employees in question. The Appellant concedes this. Following the April 1989 inspection, the report was sent to the carrier in accordance with Rule VII, 9 of the Manual of Rules, Classifications and Rates (Title 10, California Code of Regulations Section 2350). There is no regulation requiring the Bureau to send these inspection reports directly to the insured. The Bureau depends on the insured's insurance carrier and producer to properly

notify the insured of classification changes.


DISCUSSION

There is no dispute now over the correct classification assignment, Code 6400 is proper. Appellant's basic point is that the change in the classification was effectively decided in April 1989, but it was not informed of the change until sometime following the expiration of its policy late in 1990. Appellant is harmed in that bids were made on the basis that Appellant would continue to use Code 5200(2), as it had for several previous years. The Appellant cannot go back now and recoup money lost on completed jobs.

The Bureau is correct in that it need only notify the carrier of the results of an inspection. The Bureau and the insured should be able to depend on the carrier and producer communicating these important matters to the insured. However, this does not always happen. As in at least two prior appeals, Sierra Childrens Home and Grayson Services, Inc., a lack of communication on the part of the carrier and/or producer, as intermediaries between the Bureau and the insured, has caused hardship to the insured. The insured should not have to bear the complete burden of this lack of communication, as an insured may reasonably rely on the insurance professionals involved to keep it informed of actions that will directly effect its premiums.

ORDER

Therefore, since the Appellant has been harmed by lack of notice of a classification change resulting in considerable additional premium, it is Ordered that Classification Code 5200(2) be allowed for the employees in question, who set concrete for fence posts, for the 7-1-89 to 7-1-90, and 7-1-90 to 7-1-91 policy years. It is understood that Classification Code 6400 is the proper classification for these employees, and is now in use. This Order to be effective no less than 20 days from its date pursuant to the provisions of Insurance Code Section 11754.5.



JOSEPH P. POWERS
Hearing Officer

DATED:

FEB 19 1993

FEB-19, 1993