

DEPARTMENT OF INSURANCE
ADMINISTRATIVE LAW BUREAU
45 Fremont Street, 22nd Floor
San Francisco, CA 94105
Telephone: (415) 538-4251

BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA

FILED

JUL 11 2000

In the Matter of the Appeal of)	ADMINISTRATIVE LAW BUREAU
)	
B.D.D. PEST CONTROL, INC., doing business as HYDREX PEST CONTROL COMPANY)	FILE ALB-WCA-99-29
)	
Appellant,)	
)	
From a Decision of)	ORDER ADOPTING PROPOSED DECISION
)	
THE WORKERS' COMPENSATION INSURANCE RATING BUREAU OF CALIFORNIA,)	
)	
Respondent.)	
)	

The attached proposed decision of Administrative Law Judge Michael D. Jacobs is adopted as the Insurance Commissioner's decision in the above-entitled matter. This order shall be effective July 28, 2000.

Dated: 6/29/00

CHUCK QUACKENBUSH
Insurance Commissioner

BY: 
BRIAN SOUBLET
Chief Counsel

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Appellant,)	
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THE WORKERS' COMPENSATION)	
INSURANCE RATING BUREAU OF CALIFORNIA,)	
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Introduction

B.D.D. Pest Control, Inc. (BDD), an employer and workers' compensation insurance policyholder, appeals a July 1, 1999, decision of the California Workers' Compensation Insurance Rating Bureau (Rating Bureau)¹ concerning BDD's 1998 experience modification.

¹ The Rating Bureau is a rating organization licensed by the Insurance Commissioner under Insurance Code, division 2, part 3, chapter 3, article 3, to assist in the development, administration, and enforcement of workers' compensation insurance classification and rating systems. Its legislative responsibilities include the collecting of workers' compensation insurance loss and expense statistics, the making of rating plans, the developing of pure premium rates (Ins. Code, § 11750.1, subd. (b)), and the administration of classification and rating systems (Ins. Code, § 11750.3), subject to the Insurance Commissioner's supervision (Ins. Code, § 11752).

BDD appeals the Rating Bureau's decision to the Insurance Commissioner under Insurance Code section 11753.1, subdivision (a).²

The appeal raises the issue whether the Rating Bureau properly applied applicable statistical reporting and experience rating regulations in using the open value of a specific workers' compensation claim, rather than the claim's lower, closed value, in calculating BDD's 1998 experience modification. BDD argues the Rating Bureau erred in using the open value because the claim at issue closed before the 1998 experience modification became effective. BDD contends the Rating Bureau's use of the claim's open value resulted in an artificially high experience modification.

The appeal was heard on June 19, 2000, before Administrative Law Judge Michael D. Jacobs. John Drake, BDD's corporate president, represented appellant at the hearing and testified as a witness. John N. Frye, Esq., represented the Rating Bureau. The Rating Bureau presented the testimony of Rating Bureau employee Eric Reilly, an expert on the California workers' compensation insurance experience rating system. The parties introduced documentary and testamentary evidence, argued their respective positions, and submitted the appeal for decision by the Insurance Commissioner.

For the reasons that follow, we shall conclude that the provisions of the Insurance Commissioner's experience rating and policy reporting regulations require the Rating Bureau to use the open value of the claim at issue in calculating BDD's 1998 experience modification. We sustain the Rating Bureau's July 1, 1999, decision.

² Insurance Code section 11753.1, subdivision (a), authorizes any person aggrieved by a rating organization's decision to appeal the decision to Insurance Commissioner.

Facts and Applicable Regulations

The relevant facts involve the reporting and valuation of a single workers' compensation claim for experience rating purposes. BDD's insurer opened the claim in October 1995 and closed the claim in May 1998. The claim occurred within the experience period applicable to BDD's October 1, 1998, experience modification.

The claim arose in October 1995, when one of BDD's employees sustained a job-related injury and filed a claim against BDD's workers' compensation insurance policy. The policy in effect when the injury occurred provided coverage for the period May 1, 1995, to May 1, 1996. Within a week after the injury occurred, BDD's insurer opened case file, assigning number 71-95027492 to the claim.

BDD's insurer reported the claim and estimated its monetary value in initial and subsequent unit statistical reports to the Rating Bureau at the intervals prescribed by the California Workers' Compensation Uniform Statistical Reporting Plan (USRP)³. The USRP requires insurers to submit an initial report for a given policy year not later than twenty months after the effective date of the policy. (USRP, pt. 4 A I, para. 4 (a).) The USRP prescribes the valuation date for incurred losses reported in the insurer's initial statistical report for a policy year as follows: "Losses included in the first reporting of a given policy year shall be valued as

³ The USRP is part of the Insurance Commissioner's regulations. (Tit. 10, Cal. Code Regs., § 2318.6.) It requires insurers to file "unit statistical reports" for every policy extending coverage under California's workers' compensation laws. (USRP, pt. 4 A I, paras. 1 and 2.)

of eighteen (18) months after the month of the inception of the policy.” (USRP pt. 4 A I, para. 3 (a).) Consistent with that requirement, the insurer’s initial statistical report for BDD’s 1995 policy values the claim at issue as of November 1996. The initial report shows an estimated value of \$43,031 for the claim.

Where an insurer’s unit statistical report for a policy lists one or more open claims, the USRP requires the insurer to file subsequent reports to the Rating Bureau to reflect changes in loss records. (USRP, pt. 4 A III, para. 1 (a).) If the first report lists an open claim, a second report must be filed no later than thirty-two months after the effective date of the policy. (USRP, pt. 4 A III, para. 1 (b) (1).) The second-level report must value reported losses as of thirty months after the month in which the policy inceptioned. (*Ibid.*) BDD’s insurer reported claim 71-95027492 in a timely second statistical report to the Rating Bureau. The second report values the claim at \$43,031 as of November 1997, consistent with the prescribed USRP valuation date.

If a third reporting of a policy year is required, the USRP states losses included in the third report shall be valued as of forty-two months after the month in which the policy inceptioned. Third reports must be filed with the Rating Bureau no later than forty-four months after the effective date of the policy. (USRP, pt. 4 A III, para.1(b) (2). BDD’s insurer closed claim 71-95027492 in May 1998. It filed a third report for BDD’s 1995 policy year and, as required by the USRP, it valued incurred losses under the policy as of November 1998. The third report values the claim at \$27,508.

The Rating Bureau used the insurer’s second-level valuation of the claim in the calculation of BDD’s October 1, 1998, experience modification. BDD contends the Rating Bureau should recalculate the experience modification using the claim’s closed value because the claim closed before the effective date of BDD’s 1998 experience modification. We find the

regulations governing experience rating and statistical reporting prohibit granting BDD's request. Section VI, paragraph 1, of the California Workers' Compensation Experience Rating Plan (Experience Rating Plan)⁴ provides in relevant part: "The data used for experience rating purposes shall be the individual risk experience data reported in accordance with the provisions of the approved California Workers' Compensation Uniform Statistical Reporting Plan [T]he data used shall be the data reflected in the latest report (first, second or third), which, in accordance with the California Workers' Compensation Uniform Statistical Reporting Plan, was due to be filed no later than one month prior to the inception date of the experience rating."

In the instant case, the evidence establishes Experience Rating Plan section VI, paragraph 1, requires BDD's 1998 experience modification calculation to include the loss valuation data contained in the insurer's second report for BDD's 1995 policy. The second report is the latest report that was due to be filed no later than one month before October 1, 1998, the inception date of BDD's 1998 experience modification.

As required by the USRP, the insurer's third report valued 1995 incurred losses as of November 1998, one month after BDD's 1998 experience modification became effective. The third report was not filed with the Rating Bureau until January 1999. The evidence shows the Rating Bureau properly used the closed value of claim 71-95027492, as reported in the insurer's third-level report, in BDD's 1999 experience modification calculation.

⁴ The Insurance Commissioner duly adopted the provisions of the Experience Rating Plan as a regulation. (Tit. 10, Cal. Code Regs., § 2353.)

As the Rating Bureau correctly notes in its written response to the appeal, “There is no provision in either Plan which permits a supplemental or corrected unit statistical filing when a claim closes between the valuation date and the effective date of the experience modification in which it is used. Therefore, in this case, when the claim in question closed in May 1998, which was after the November 1997 valuation date but prior to the October 1, 1998, effective date of the experience modification, the Plans require that the experience modification calculation utilize the November 1997 value of the claim.”

As noted in the Rating Bureau’s pre-hearing brief, the Rating Bureau must develop experience modifications in the manner prescribed in the regulations. The Rating Bureau’s affirmation is compelled by the fundamental attribute of regulations as the embodiment of rules or standards of general application. (Gov. Code, § 11342, subd. (g).) The California Supreme Court described regulations as having a binding effect equal to the force of legislative enactments: “[A] regulation adopted by a state administrative agency pursuant to a delegation of rulemaking authority by the Legislature has the force and effect of a statute.”

(Agricultural Labor Relations Bd. v. Superior Court (1976) 16 Cal.3d 392, 401.)

The California Legislature has declared that compliance with the experience rating and statistical reporting plans is mandatory: “Every workers’ compensation insurer shall record and report its workers’ compensation experience to the designated rating organization as set forth in the uniform statistical plan approved by the commissioner.” (Ins. Code, § 11734, subd. (b).) “Every workers’ compensation insurer shall adhere to the approved manual rules and experience rating plan in writing and reporting its business.” (Ins. Code, § 11734, subd. (c).)

Similarly, the USRP provides, "Reports of experience for every workers' compensation policy extending coverage under the workers' compensation laws of California . . . must be filed in accordance with the instructions contained in this Plan." (USRP, at pt. 4 A I, para. 1.)

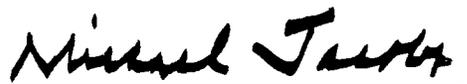
The Experience Rating Plan states, "The rules of this Plan, which has been approved by the insurance commissioner of the State of California . . . shall govern the experience rating procedure to be followed in connection with California workers' compensation insurance."

Experience Rating Plan, section I, paragraph 1.) The aforementioned authorities make abundantly clear the provisions of the statistical reporting and experience rating regulations are equally binding on BDD's insurer, the Rating Bureau, and the Department of Insurance.

Conclusion

The Rating Bureau correctly applied the applicable provisions of the USRP and the Experience Rating Plan in using the insurer's second-level valuation of claim 71-95027492 in calculating BDD's October 1, 1998, experience modification.

Dated: June 23, 2000



MICHAEL D. JACOBS
Administrative Law Judge

DECLARATION OF SERVICE BY MAIL (AND FAX)

Case Name/No.: In the Matter of the Appeal of:
B.D.D. PEST CONTROL, INC.,
dba HYDREX PEST CONTROL COMPANY
File No. ALB-WCA-99-29

I, **CARMENCITA O. MALBOG**, declare that:

I am employed in the County of San Francisco, California. I am over the age of 18 years and not a party to this action. My business address is State of California, Department of Insurance, Administrative Law Bureau, 45 Fremont Street, 22nd Floor, San Francisco, California, 94105.

I am readily familiar with the business practices of the San Francisco Office of the California Department of Insurance for collection and processing of correspondence for mailing with the United States Postal Service. Said ordinary business practice is that correspondence is deposited with the United States Postal Service that same day in San Francisco, California.

On July 11, 2000, following ordinary business practices, I caused a true and correct copy of the following document(s):

PROPOSED DECISION; ORDER ADOPTING PROPOSED DECISION

to be placed for collection and mailing at the office of the California Department of Insurance at 45 Fremont Street, San Francisco, California, with proper postage prepaid, in a sealed envelope(s) addressed as follows:

(SEE ATTACHED PARTY SERVICE LIST)

In addition, on _____, I also FAX'ed a copy of said document to all parties where indicated to the FAX number which is printed under each address on this Declaration.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed at San Francisco, California, on July 11, 2000.

July 11, 2000
DATE


CARMENCITA O. MALBOG

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