

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)	
)	
GRAYSON SERVICE, INC.,)	DECISION
)	
From a Decision of)	File No. SF 6960-R-83
)	
THE WORKERS' COMPENSATION)	
INSURANCE RATING BUREAU)	
OF CALIFORNIA,)	
)	
Respondent.)	
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FACTS

1. Appellant was insured for its workers' compensation liability during all times pertinent to this appeal.
2. Respondent, Workers' Compensation Insurance Rating Bureau of California ("Bureau"), is a rating organization licensed pursuant to the provisions of California Insurance Code Sections 11750, et seq.
3. An alleged material change of interest occurred in the ownership of Appellant in September 1983. This change of interest, if found to be material, would have changed the experience modification for the Appellant's 1984/1985 workers' compensation insurance policy.
4. A material change of interest did occur in June 1985, with a subsequent change in the experience modification.
5. Because of the lack of certain requested information, the Bureau disallowed the September 1983 change of interest for lack of a timely appeal.
6. Appellant appealed, to the Classification and Rating Committee of the Bureau, which Committee upheld the Decision of the Bureau staff.
7. Appellant has appealed this Decision to the Insurance Commissioner pursuant to Insurance Code Section 11753.1.

CONTENTIONS OF THE PARTIES

Appellant contends a material change of interest occurred in September 1983. This should have reduced its experience modification to 100%. Appellant points out that the events causing the 1985 change of interest (which was allowed) were very similar to the events which occurred in 1983. Thus, the Bureau could have determined at the time it was studying the 1985 change of interest that in fact a material change of interest had occurred in 1983. In other words, both changes of interest could have been handled together and therefore no appeal would have been needed.

Further, Appellant contends that it never received any direct communication from the Bureau as to the need for additional information to substantiate the 1983 change of interest. All correspondence from the Bureau was apparently directed to the various insurance carriers involved.

The Bureau contends that it needed more information to support the Appellant's contention that a material change of interest had occurred in September 1983. The Bureau communicated this need for additional information to the insurance carriers of record. The Bureau admits that the original request from Appellant to review the 1983 change of interest was received in a timely manner. It was the subsequent attempts by the Bureau to get additional information which caused the time to run. The Bureau cites Section III, Rule (10) of the California Experience Rating Plan ("plan") (10, California Code of Regulations, Section 2353) to support its contention.

DISCUSSION

The Experience Rating Plan is a complex document. Employers do not necessarily understand all of its intricacies. They rely on their agent/broker, or insurance carrier, to guide them through its provisions. Subsection (b) of Rule (10), Section III of the Plan states that there will be no revision of a published experience modification unless "Either the insurer or the insured requests, in writing, such action within one year of the expiration date of the modification to be effected." Here, the first request for review of the 1983 change of interest was received by the Bureau within one year of the expiration date of the policy year in dispute (1984/1985 policy).

The matter extended beyond the one year because of an apparent need for additional supporting information. There were many carriers involved; Mission Insurance Company, Argonaut, Industrial Indemnity and eventually the State Compensation Insurance Fund. There is evidence that there was a nonpayment cancellation by one of the carriers involved. We question whether the carriers really worked hard at getting this information. Likely, and this is supported by letters in Exhibit 1, the carriers simply passed the request on to the producer. In one letter to the Bureau from a carrier (August 6, 1985 from Argonaut) the writer apologizes for delays, citing "so much to do...".

The 1985 change of interest was being studied by the Bureau. The Appellant could reasonably believe that the 1983 change of interest would be considered at the same time.

CONCLUSION

The original request to the Bureau to review the circumstances of the 1983 change of interest were received within the time frame provided by the previously cited Rule of the Plan. There were several carriers involved, anyone of whom could have dropped the ball on the matter of fully informing the Appellant as to the urgency of supplying the requested additional information. There was no direct communication from the Bureau to the Appellant. We are not saying that the Bureau, in all cases, must deal directly with the employer in matters such as these. The Bureau should be able to deal with the insurance carrier of record. However, special problems could arise where the Bureau should directly approach the employer to be certain that the employer fully understands what it is requiring in order to substantiate a change of interest. A roughly similar situation existed in the previously heard case of the Appeal of Sierra Childrens' Home, wherein a Decision favorable to the Appellant was rendered December 13, 1990.

The record is not crystal clear as to whether the September 1983 change of interest was in fact material. It appears that it was. In any event, the Bureau should reconsider its original Decision, which was to the effect that it was deemed to be a nominal change of interest because of lack of furnishing of additional information in a timely manner.

ORDER

It is ORDERED that the Workers' Compensation Insurance Rating Bureau of California reconsider its original determination in the matter of the change of interest of the

Appellant which occurred in September 1983. If the change of interest is found to be material, the experience modification for the affected year should be modified accordingly. The Appellant is to promptly furnish any information required by the Bureau, if it has not already done so. This Order to be effective not less than 20 days from its date pursuant to the provisions of Insurance Code Section 11754.5.

DATED: *May 20, 1991*

Joseph P. Powers
JOSEPH P. POWERS
Hearing Officer

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