

DEPARTMENT OF INSURANCE  
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ADMINISTRATIVE LAW  
BUREAU

BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
 )  
L.A. FITNESS SPORTS CLUBS, )  
 )  
Appellant, ) FILE NO. ALB-WCA-94-11  
 )  
From a Decision of )  
 )  
THE WORKERS' COMPENSATION INSURANCE )  
RATING BUREAU OF CALIFORNIA, )  
 )  
Respondent. )

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PROPOSED DECISION

L.A. Fitness Sports Clubs (L.A. Fitness) appeals the worker's compensation insurance rating classification assigned to its health club receptionists by the Workers' Compensation Insurance Rating Bureau (Rating Bureau).<sup>1</sup> This appeal to the Insurance Commissioner is authorized by Insurance Code section

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<sup>1</sup> The Rating Bureau is a licensed rating organization within the meaning of Insurance Code section 11750.1 and serves as the Insurance Commissioner's designated statistical agent under Insurance Code section 11751.5. The Rating Bureau's decision appealed by L.A. Fitness is set forth in the Rating Bureau's Classification and Rating Committee minutes of appellant's April 12, 1994, hearing before the committee. The Rating Bureau's decision and the present appeal concern appellant's workers' compensation insurance policy effective December 1, 1990, to December 1, 1991.

11753.1. An evidentiary hearing on the appeal was held before Administrative Law Judge Michael D. Jacobs in Los Angeles on June 6, 1995. Appellant was represented at the hearing by L.A. Fitness Vice President Suzanne Moreno. Testifying on behalf of L.A. Fitness were Ms. Moreno and insurance broker Mario Gomez of Lemac and Associates. Respondent Rating Bureau was represented by John N. Frye, Esq, of the Law Firm Frye & Alberts, and Peter E. Murray, Rating Bureau Senior Vice President. Testifying on behalf of the Rating Bureau was Rating Bureau Vice President Warren Clark. The parties called and cross-examined witnesses, presented documentary evidence, and argued their respective positions on the issues. The parties have submitted the matter and the case is now ready for decision.

#### SUMMARY OF DECISION

This appeal raises the question whether the Rating Bureau assigned the proper rating classification to L.A. Fitness's health club receptionists under the provisions of the California Manual of Rules, Classifications and Basic Rates for Workers' Compensation Insurance (Manual).<sup>2</sup> The Rating Bureau assigned L.A. Fitness's operations and employees to Manual code 9053(2),

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<sup>2</sup> The Manual was approved by the Insurance Commissioner (tit. 10 Cal. Code Regs., ch. 5, subch. 3, art. 7, introductory note; Manual, sec. I, para. 2) and constitutes part of the Commissioner's regulations.

"Exercise or Health Institutes -- all employees," and included the company's receptionists in that classification. .

L.A. Fitness contends its receptionists should have been classified under rating code 8810(1), "Clerical Office Employees -- N.O.C. [Not Otherwise Classified]." For the reasons set forth in this decision we conclude L.A. Fitness's health club receptionists do not perform the duties of clerical office employees as defined in the Manual. For rating purposes the Rating Bureau properly included the receptionists under classification code 9053(2), the code assigned to L.A. Fitness as a single enterprise. We affirm the Rating Bureau's decision.

#### FINDINGS OF FACT

##### Background

L.A. Fitness operates 31 health clubs that provide a variety of exercise programs and facilities to its guests and club members. The company conducts its corporate operations from its headquarters offices in Irvine, California. In its health clubs the company employs managers, exercise instructors, child care employees, inside salespeople, and receptionists. The receptionists, who are stationed at each club's entrance, greet members as they enter, confirm their membership status and perform a variety of other duties. Among their other duties are answering telephones to take messages and make court

reservations, collecting renewal and delinquent membership fees, distributing towels, and, at two locations, issuing locker keys. Ms. Moreno testified that in half the clubs the reception desks are located on a separate floor from the gym area and in the other clubs a wall or barrier separates the receptionists from the gym areas.

L.A. Fitness contends the receptionists perform only clerical work and should thus be assigned to the Manual classification for clerical office employees, code 8810(1).

## The Regulations

### Single Enterprise Rule

The Classification Section of the Manual contains an extensive listing of rating classifications for various occupations, employments, industries and businesses. Manual Rule V, subdivision 3, requires, with certain exceptions, that all operations and employees of a business be assigned to the classification which most accurately describes the entire enterprise. The "single enterprise" rule states:

"If the employer's business, conducted at one or more locations, consists of a single operation or a number of separate operations which normally prevail in the business described by a single Manual classification, that single classification which most accurately describes the entire enterprise shall be applied. Division of payroll shall be made as provided hereafter in respect to Standard Exceptions and General Exclusions. No division of payroll shall be permitted in respect to any other operation even though such

operation may be specifically described by some other classification, unless the applicable classification phraseology or other Manual provision specifically provides for such division of payroll." (Emphasis added.)

L.A. Fitness does not dispute the Rating Bureau's assignment of rating code 9053(2), "Exercise or Health Institutes," to the company's overall operations. The company urges, however, that its receptionists must be separately classified and rated as clerical office employees under the standard exceptions provisions of Manual Rule V, subdivision 12 (a).

#### Manual Provisions for Rating Clerical Personnel

Manual Rule V, subdivision 12, defines outside salespersons and clerical office employees as standard exception employees. The standard exception rule states the remuneration of standard exception employees is subject to a division in payroll, unless otherwise provided by the specific terms of a particular Manual classification.

To qualify for the clerical office employee exception, an employee must meet the requirements prescribed in Rule V, subdivision 12(a):

"Clerical office employees are defined as those employees whose duties are confined to keeping the books, records or cash of the employer, or conducting correspondence, or who are engaged wholly in general office work or office drafting, having no regular duty of any other nature in the service the employer. The entire payroll of any employee who is engaged in

operations performed by clerical office employees and also is exposed (1) to any operative hazard of the business or (2) to any outside selling or collecting work, shall be assigned to the highest rated classification of work to which the employee is so exposed. A clerk, such as a time, stock or tally clerk, whose work is necessary, incidental or appurtenant to any operations of the business other than clerical office shall not be considered a clerical office employee. The Clerical Office Employees classification shall be applied only to the payroll of persons herein described who work exclusively in areas which are separated from all other work places of the employer by buildings, floors, partitions, railings or counters and within which no work is performed other than clerical office or drafting duties as defined in this section." Manual, Rule V, subd. 12(a); emphasis added.)

We find that the Manual's description of clerical office work does not apply to the duties performed by L.A. Fitness's receptionists. Although some individual tasks performed by the receptionists may be considered clerical in nature (taking telephone messages, for example), the great majority of their regular responsibilities -- greeting patrons, confirming membership status, making court reservations, and dispensing towels -- cannot reasonably be construed as general office work, drafting or keeping cash, books, or records as specified in Rule V, subdivision 12(a). The receptionists' non-clerical responsibilities constitute an integral and necessary part of club operations. The Manual limits the clerical office employee exception to employees whose duties are clerical, "[h]aving no regular duty of any other nature in the service of the employer."

DETERMINATION OF ISSUES

L.A. Fitness's health club receptionists do not perform the duties of clerical office employees as defined in Manual Rule V, subdivision 12(a), and do not qualify as standard exception employees. The Rating Bureau properly included the receptionist employees in the workers' compensation insurance rating classification that applies to the company as a single enterprise, code 9053(2), "Exercise or Health Institutes -- all employees."


ORDER

The decision of the Workers' Compensation Insurance Rating Bureau is affirmed.

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I submit this proposed decision on the basis of the hearing held before me and I recommend its adoption as the decision of the Insurance Commissioner of the State of California

DATED: August 3, 1995

  
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MICHAEL D. JACOBS  
Administrative Law Judge  
Department of Insurance