

DEPARTMENT OF INSURANCE
Insurance Commissioner Steve Poizner
300 Capitol Mall, 17th Floor
Sacramento, CA 95814
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ORDER DESIGNATING DECISION AS PRECEDENTIAL

Pursuant to section 11425.60 of the Government Code, an agency may designate a decision or parts of a decision as precedent if it contains a significant legal or policy determination of general application that is likely to recur.

The decision of the Insurance Commissioner *In the Matter of the Appeal of Camp Tawonga, Tawonga Jewish Community Corporation, File Number AHB-WCA-07-10*, contains a significant legal or policy determination of general application that is likely to recur.

Accordingly, IT IS HEREBY ORDERED that this decision is designated as precedent.

This order is effective immediately.

Dated: August 27, 2008

STEVE POIZNER
Insurance Commissioner


WILLIAM GAUSEWITZ
Counsel to the Commissioner

**BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA**

FILED

AUG 12 2008

ADMINISTRATIVE HEARING BUREAU

In the Matter of the Appeal of)
)
CAMP TAWONGA, TAWONGA JEWISH)
COMMUNITY CORPORATION,)
)
Appellant,)
)
From the Decision of the)
)
STATE COMPENSATION INSURANCE FUND)
And THE WORKERS' COMPENSATION)
INSURANCE RATING BUREAU,)
)
Respondents.)

FILE AHB-WCA-07-10

ORDER ADOPTING PROPOSED DECISION

The attached proposed decision of Administrative Law Judge Kristin L. Rosi is adopted as the Insurance Commissioner's decision in the above entitled matter. This order shall be effective June 4, 2008. Reconsideration of the Commissioner's decision may be had pursuant to California Code of Regulations, title 10, section 2509.72, but it is not necessary to request reconsideration prior to initiating judicial review. Any party seeking reconsideration of the Insurance Commissioner's decision should serve the request for reconsideration on William Gausewitz, Counsel to the Commissioner at the address indicated below in sufficient time to ensure that the Commissioner can review the request and take appropriate action before the expiration of the 30 day limit for reconsideration.

William Gausewitz, Counsel
California Department of Insurance
45 Fremont Street, 23rd Floor
San Francisco, California 94105

Judicial review of the Insurance Commissioner's decision may be had pursuant to California Code of Regulations, title 10, section 2509.76. The person authorized to accept service on behalf of the Insurance Commissioner is:

Staff Counsel Darrel Woo
California Department of Insurance
300 Capitol Mall, 17th Floor
Sacramento, California 95814

Any party seeking judicial review of the Insurance Commissioner's decision shall file the original writ of administrative mandamus with the court. Copies of the writ of administrative mandamus and the final judicial decision and order on the writ of administrative mandamus must be served on the Administrative Hearing Bureau of the California Department of Insurance.

Dated: 05/02/08

Steve Poizner
Insurance Commissioner

By: 
WILLIAM GAUSEWITZ
Counsel to the Commissioner

DEPARTMENT OF INSURANCE
ADMINISTRATIVE HEARING BUREAU
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BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
CAMP TAWONGA, TAWONGA JEWISH)
COMMUNITY CORPORATION,)
)
Appellant,) FILE AHB-WCA-07-10
)
From the Decision of the)
)
STATE COMPENSATION INSURANCE FUND,)
)
Respondent.)
_____)

PROPOSED DECISION

I. Introduction

This appeal is brought pursuant to California Insurance Code section 11737(f),¹ and arises from a dispute over premium rates charged by State Compensation Insurance Fund (“SCIF”) for workers’ compensation insurance provided to Camp Tawonga, Tawonga Jewish Community Corporation (“Appellant”) under SCIF Group Policy Number 623-631-2004 for the policy year January 1, 2005 – January 1, 2006. The basis of this dispute is disagreement over the

¹ Section 11737, subdivision (f), provides in pertinent part: “Every insurer or rating organization shall provide within this state reasonable means whereby any person aggrieved by the application of its filings may be heard by the insurer or rating organization on written request to review the manner in which the rating system has been applied in connection with the insurance offered or afforded. . . . Any party affected by the action of the insurer or rating organization on the request may appeal, within 30 days after written notice of the action, to the commissioner”

proper payroll classification for certain employees who did non-clerical² work at Appellant's camp location during the summer months but did exclusively clerical work within its San Francisco office during the rest of the year.

Appellant appeals from SCIF's decision to assign the payroll of these employees to Classification Code 9048(1), "Camps – recreational and educational – all operations – including Clerical Office Employees at camp locations," rather than splitting the payroll at issue between classification Code 9048(1) and Classification Code 8810(1), "Clerical Office Employees – N.O.C".³

For the reasons set forth below, SCIF's decision to assign the payroll of Appellant's employees who did non-clerical work at Appellant's camp location during the summer months and clerical work within its San Francisco office during the rest of the year to classification 9048(1) is affirmed.

II. Statement of Issues

Did SCIF properly classify the payroll of Appellant's employees at issue to Classification Code 9048(1), "Camps – recreational and educational – all operations – including Clerical Office Employees at camp locations," under the Standard Classification System, Part 3, of the California Workers' Compensation Uniform Statistical Reporting Plan ("USRP"),⁴?

Even if SCIF properly classified the payroll of Appellant's employees, do equitable grounds exist for granting Appellant an exemption from the provisions of the USRP?

² As discussed later in this decision, there were no employees at camp who did strictly clerical work while they were there.

³ "N.O.C." means "not otherwise classified."

⁴ The provisions of the USRP constitute part of the Insurance Commissioner's regulations. (Cal. Code of Regs., tit. 10, § 2318.6.) The USRP contains an extensive listing of rating classifications for various occupations, employments, industries, and businesses. The USRP rules are mandatory. (USRP, part 1, section I.) As part of the California Code of Regulations, they have the force and effect of statutes. (Cal. Code of Regs., tit. 10, § 2350; *Yamaha Corp. v. State Bd. Of Equalization* (1998) 19 Cal.4th 1, 10.) The 2005 version of the USRP is applicable to this appeal because the policy at issue incepted during that year.

III. Procedural History

Appellant initiated these proceedings on March 23, 2007, by filing a written appeal to the Insurance Commissioner from SCIF's February 21, 2007 decision, conveyed through the SCIF Customer Assistance Program, rejecting Appellant's claim that twenty-five (25) employees should be classified under Code 8810(1) as clerical office employees for the portion of the year they worked in Appellant's San Francisco office.

The Workers' Compensation Insurance Rating Bureau of California ("WCIRB" or "Rating Bureau")⁵ first appeared by letter dated May 9, 2007⁶ and participated in the proceedings thereafter in support of the SCIF classification decision. References in this decision to "Respondents" include both SCIF and the Rating Bureau.

The appeal was initially assigned to Administrative Law Judge Lisa Williams, and was re-assigned on October 2, 2007 to Administrative Law Judge David R. Harrison. A live evidentiary hearing was held in the San Francisco hearing room of the Department on January 10, 2008 before Judge Harrison and Administrative Law Judge Kristin Rosi.

During the proceedings, Appellant was represented by Gary A. Angel, Esq. of the Law Office of Gary A. Angel. Eric P. Jones, Esq. represented respondent SCIF. WCIRB was represented by John N. Frye, Esq. of the Law Offices of John N. Frye, and Monica Floeck, Esq., in house counsel for WCIRB.

The parties filed opening briefs prior to the hearing and introduced documentary evidence and elicited testimonial evidence at the hearing. The documentary evidence in this case includes

⁵ The WCIRB is a rating organization licensed by the Insurance Commissioner under Insurance Code section 11750, et seq., to assist the Commissioner in the development and administration of worker's compensation insurance classification and rating systems. The Bureau serves as the Commissioner's designated statistical agent for the purpose of gathering and compiling experience data developed under California worker's compensation and employers' liability insurance policies. (Ins. Code § 11751.5.)

⁶ Exhibit 203.

all exhibits admitted into evidence, which are identified more specifically in the parties' Joint Exhibit List.

Each party called one witness to testify on its behalf. Chief Financial Officer Gregg Rubenstein testified for the appellant, Senior Auditor, Chester Chow testified for SCIF and Brian Gray, Quality Assurance Director for Classification and Test Audit, testified for WCIRB.

Following the evidentiary hearing, the parties filed post-hearing briefs, and the record was closed on February 22, 2008.

IV. Contentions of the Parties

Appellant originally contended that the payroll of the twenty-five employees at issue should be assigned to classification 8810(1), for the nine months out of the year that the employees performed clerical duties at the Appellant's San Francisco office and assigned to classification 9048(1) during the three month period they spent at Appellant's campgrounds. Subsequently, the Appellant conceded that two (2) employees, Ken Kramarz and Deborah Newbrun, were executives and not clerical employees under Code 8810(1) during the hearing. As a consequence, the payroll of only 23 employees remained at issue. Appellant also contends SCIF should be estopped from attempting to collect increased premiums.

SCIF contends the employees are properly classified for the entire year under Code 9048(1) as camp employees pursuant to the rules of the USRP, and further asserts that it is obligated to conform to the rules of the USRP.

The WCIRB also contends the employees are properly classified for the entire year under Code 9048(1) as camp employees and further asserts that an employee's payroll cannot be split between two classifications based on the amount of time the employee performs each task.⁷

⁷ The WCIRB did, however, opine that, while employees who engaged exclusively in clerical activities at the camp had to be classified under 9048(1) while there, they would not lose their clerical classification (8810) for their San Francisco work, if otherwise applicable. Based on the evidentiary record, no employees who engaged exclusively in clerical activities at camp.

V. Findings of Fact⁸

A. Appellant's Operations

Appellant is a non-profit corporation operating group-centered summer camp programs for children and families in Tuolumne County, with administrative offices in San Francisco. Appellant employs approximately twenty-five (25) year-round employees; that is, employees who work for the corporation on a year-round basis, both at the San Francisco office and at the summer camp.⁹ With the exception of a handful of employees discussed below, all employees working at the San Francisco administrative office work under a 9-month contract on an hourly wage basis.¹⁰

B. Employees at Issue

The employees whose classifications are at issue, and the job duties they performed, are as follows:¹¹

<u>Employees</u>	<u>Job Duties in SF</u>	<u>Job Duties at Camp</u>
Cala Belkin	Clerical	Therapist
Miriam Blachman	Hire kitchen staff	Kitchen Manager
Liz Boyarsky	Clerical	Camp activities
Shira Burstein	Clerical	Camp activities
David Castle	Clerical	Not at campsite
Andrea Fajans	Clerical	Camp activities
Jesykah Forkash	Clerical	Camp activities
Seth Friedman	Asst. Dir. Wilderness	Camp activities
Jordan Gill	Asst. Summer Dir.	Camp activities
Sasha Goldberg	Clerical	Not at campsite
Ann Gonski	Assoc. Director	Camp activities

⁸ References to the transcript of the hearing held on January 10, 2008 are "RT." followed by the page number(s) and, where line references are used, a "/" followed by the line numbers(s). Thus, for example, a reference to RT 35/14-18 is to page 35, lines 14-18 of the transcript. Exhibits are referred to by the numbers assigned to them in the Exhibit Lists filed by the parties.

⁹ App. Exh. 1; RT. 76/5-7.

¹⁰ App. Exh. 17.

¹¹ Appellant's Exhibit 8 and the testimony of CFO Gregg Rubenstein provided information regarding the duties of each employee at issue. Mr. Rubenstein's testimony was uncontroverted and as such, his descriptions are included herein.

Miriam Gordon	Asst. Staffing Dir.	Camp activities
Grant Gordon	Clerical	Camp activities
Daniel Harris	Registrar	Clerical/Camp
Sara Hilbrich	Clerical	Camp activities
Jonina Kaufman	Asst. Director	Camp activities
Rina Kedem	Asst. Dir. Wilderness	Camp activities
Ken Kramarz	Executive Director	Camp activities
Jeremy Lansing	Clerical	Camp activities
Aaron Mandel	Clerical	Camp activities
Deborah Newbrun	Director	Camp activities
Erick Ordin	Clerical	Camp activities
Sadie Rubin	Clerical	Not at campsite
Ashley Warner	Clerical	Camp activities
Kendra Zien	Clerical	Camp activities

C. Duties Performed at the San Francisco Office

While in the San Francisco office, Appellant's employees perform a variety of clerical and non-clerical duties, aimed at securing campers for the following summer season.¹²

Employees Cala Belkin, Liz Boyarksy, Shira Burnstein, David Castle, Andrea Fajans, Jesykah Forkash, Jordan Gill, Sasha Goldberg, Grant Gordon, Daniel Harris, Sara Hilbrich, Jonina Kaufman, Jeremy Lansing, Aaron Mandel, Erik Ordin, Sadie Rubin, Ashley Warner and Kendra Zien all worked as clerical employees, answering telephones, making photocopies and filing paperwork. Their positions were not supervisory and their work in San Francisco was performed exclusively at the Camp's administrative headquarters.

¹² App. Exh. 8.

Employee Miriam Blachman performed varied work at the administrative office. While some of her duties were apparently clerical in nature, she was also responsible for interviewing and hiring summer kitchen staff.¹³

Employees Seth Freidman and Rina Kedem were employed as the Camp's Assistant Directors of Wilderness.¹⁴ As such, Mr. Freidman and Ms. Kedem were responsible for recruiting, interviewing and hiring wilderness staff for the summer.¹⁵ Additionally, Mr. Freidman coordinated travel to and from the campgrounds.¹⁶

Ann Gonski served as the Camp's Associate Director. Ms. Gonski's duties included supervising the administrative staff, serving as the agency's media spokesperson and as the agency's representative to its Board of Directors.¹⁷ Additionally, Ms. Gonski met with representatives of other community agencies in order to form partnerships with these organizations. The meetings often took place outside the Camp's administrative offices.¹⁸

Miriam Gordon was employed as the Camp's Assistant Director of Staffing.¹⁹ She was responsible for recruiting, interviewing and hiring all program staff for the summer season.²⁰ As the Camp employs approximately 150 staff each summer, this task took a large portion of Ms. Gordon's time.

Ken Kramarz served as the Camp's Executive Director.²¹ In addition to his supervisory roles, he directed the Camp's legal and political actions, and represented the Camp to other

¹³ RT. 35/14-18; App. Exh. 8-2.

¹⁴ RT. 42/11-13; RT. 64/22.

¹⁵ RT. 65/6-9.

¹⁶ RT. 43/21-25; App. Exh. 8-2.

¹⁷ RT. 50-51/8-7; App. Exh. 8-3.

¹⁸ RT. 51/14-20.

¹⁹ App. Exh. 8-3.

²⁰ RT. 54/2-5.

²¹ RT. 66/3-4.

community agencies.²² Appellant conceded during the hearing that Mr. Kramarz was not a “clerical” employee, as defined by the USRP.²³

Deborah Newbrun was employed as the Camp’s Director.²⁴ She was responsible for all staff, providing educational workshops for the community and developing training programs for summer staff. Appellant conceded during the hearing that Ms. Newbrun was not a “clerical” employee, as defined by the USRP.²⁵

D. Duties Performed at the Campgrounds

During the summer months, all of the above-named employees, with the exception of David Castle, Sasha Goldberg and Sadie Rubin, worked at Appellant’s campgrounds in Tuolumne County. Mr. Castle, Ms. Goldberg and Ms. Rubin were never at the campsite, and worked exclusively in the Camp’s administrative office.²⁶

Most employees work at the Appellant’s campgrounds under a separate contract that paid them a flat rate for their services.²⁷ While at the campgrounds, employees performed a variety of “camp activities” including serving as camp counselors, program coordinators, lifeguards, or kitchen staff, depending upon their job descriptions.²⁸ Some employees had programmatic responsibilities, i.e. arts and crafts, or physical activities, while others served as counselors, kitchen staff, and maintenance staff or supervised other employees. One employee, Daniel Harris, spent a large portion of his time in the Camp’s administrative office. However, Mr. Harris also performed bus duty to and from the campgrounds, riding in the lead vehicle.²⁹

²² App. Exh. 8-4.

²³ RT. 66/15-23.

²⁴ RT. 69/18-20.

²⁵ RT. 69-70/21-2.

²⁶ RT. 20-21/20-21.

²⁷ RT. 25/5-11; App. Exh. 17.

²⁸ RT. 18/17-21; App. Exh. 8.

²⁹ RT. 56/14-23.

All employees working at the campgrounds slept either in "staff" housing or with the campers themselves in small cabins.³⁰ Both the staff housing and the general cabins for campers are located within the boundaries of the campground. The Camp staff does not leave the campsite at the end of their shifts.³¹ These employees take their meals with the campers at the Camp's cafeteria but do not share bathroom or shower amenities with the campers.³²

The Camp's facilities also include an administrative building that houses the telephones and computers, as well as camper files.³³ A separate office is maintained for the Camp's on-site therapist.³⁴ The campgrounds include a ropes course, an archery range, a swimming pool and a variety of nature trails.

VI. Discussion

A. The Regulatory Scheme

The provisions of the USRP constitute part of the Insurance Commissioner's regulations. (Cal. Code of Regs., tit. 10, § 2318.6.) The USRP contains an extensive listing of rating classifications for various occupations, employments, industries, and businesses. The USRP rules are mandatory. (USRP, part 1, section I.) As part of the California Code of Regulations, they have the force and effect of statutes. (Cal. Code of Regs., tit. 10, § 2350; *Yamaha Corp. v. State Bd. Of Equalization* (1998) 19 Cal.4th 1, 10.)

At its outset, the USRP sets forth its objective. USRP, part 3, section I, provides as follows:

The objective of the classification system is to group employers into classifications so that each classification reflects the risk of loss common to those employers. With few exceptions, it is the business of the employer within California that is classified, not

³⁰ RT. 86/7-20.

³¹ RT. 59/13-15.

³² RT. 87/16-21; 87-88/22-3.

³³ RT. 33/7-15.

³⁴ RT. 33/23-25.

the separate employments, occupations, or operations within the business.

Part 3, Section III, paragraph 1 of the USRP sets forth the general classification procedure:

1. Classification Description. An alphabetical listing of classifications that describe most occupations, employments, industries and businesses is contained in Section VII, "Standard Classification."

a. Any business or operation specifically described by a classification shall be assigned to that classification.

Determination of a California employer's workers' compensation premium rate depends, in part, on the classification code assigned to that employer's operations. Based on information reported by the insurer to the WCIRB as to the loss, exposure, and premium data of each workers' compensation insurance policy, the WCIRB determines "pure premium rates" for each classification. (USRP, part 1, section I, rule 1.)

In this appeal, there is no dispute as to the appropriate classification for Appellant's operations. Appellant is properly classified under Code section 9048(1) – Camps – recreational or educational.

B. Single Enterprise Rule

Unless an employee falls within one of the Standard Exceptions or works within an industry (such as construction) in which the USRP specifically allows for payroll to be divided between occupations, all employees are classified according to the classification of the overall business in which they work. (USRP, part 3, section I.) Further, the USRP provides:

2. Single Enterprise. 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 classification, the entire exposure of the business shall be assigned to that single classification. 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 provisions contained herein specifically provide for such division of payroll. Division of payroll for Standard Exceptions and General Exclusions shall be made pursuant to the provisions of this Plan. (USRP, Part 3, Section II, Rule 2.)

The Plan recognizes certain exceptions to the general classification and single enterprise rule. Separate classifications may be used to classify employees who fall within the Standard Exceptions to the Plan. The Standard Exceptions are "Clerical Office Employees" and "Outside Salespersons." The principle issue on appeal is whether Appellant's above-listed employees fall within the Standard Exception for Clerical Office Employees.

C. Standard Exception for Clerical Office Employees

1. Definition

Part 3, Section III, Rule 4.a. of the USRP defines Clerical Office Employees as follows:

Clerical Office Employees are defined as those employees whose duties are confined to keeping the books, records or cash of the employer, 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 of 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 employer is exposed. **Supervisors** and clerks, such as time, stock or tally clerks, whose work is necessary, incidental or appurtenant to any operations of the business other than clerical office, shall not be considered clerical office employees. The clerical office employee classification shall be applied only to the payroll of persons herein described who work exclusively in areas that are separated from all other work places of the employer by buildings, floor, partitions, railings, or counters and within which no work is performed other than clerical office or drafting duties as defined in this section. (Emphasis added.)

2. Analysis of Definition

The definition of Clerical Office Employees consists of three criteria, all of which must be met, relating to: (1) what duties the employee performs; (2) what hazards the employee is

exposed to; and (3) what activities occur within the precise physical area in which the employee's services are performed. (*In the Matter of the Appeal of Healthcare Management Services, LLC* (2006) AHB-WCA-05-30.) Failure to meet even one criterion prevents classification as a clerical office employee. A majority of Appellant's employees at issue herein fail to meet each of the criteria.

Duties Performed: The definition requires that the employee's duties be "confined to keeping books, records or cash of the employer, conducting correspondence or . . . wholly . . . general office work or office drafting," and that the employees have "no regular duty of any other nature in the service of the employer." Further, if the employee is a supervisor "whose work is necessary, incidental or appurtenant to any operations of the business other than clerical office," the employee shall not be considered a clerical office employee.

Employees David Castle, Sasha Goldberg and Sadie Rubin perform strictly clerical duties and do not travel to the campsite during the summer months. As such, they are properly classified as clerical employees and will not be discussed in the remainder of this decision.

Appellant's remaining employees all perform duties outside of those considered "clerical" by the USRP. While their duties nine months out of the year may be clerical, they work at Appellant's campsite in non-clerical capacities three months out of the year, serving as camp counselors, program directors, activities specialists, kitchen staff, and the like. It is immaterial that many of these employees work under separate contracts during the summer months, or that their time at the campgrounds is limited. The regulation is clear in that it requires clerical employees to have "no regular duty of any other nature in the service of the employer."

Moreover, the duties performed by employees Miriam Blachman, Seth Friedman, Ann Gonski, Miriam Gordon, Rina Kedem, Ken Kramarz, and Deborah Newbrun, at the San Francisco office do not constitute "clerical" work as contemplated by the USRP. These

employees are responsible for interviewing and hiring new employees, supervising non-clerical or program staff, and meeting with the public or partner organizations. Such supervisory and non-clerical work is crucial to the Appellant's operation and outside the purview of clerical duties.

Exposure to Hazards: Appellant's remaining employees spend three months of the year outside the administrative office and are exposed to the hazards of the campgrounds. While at the campsite, employees supervise campers, participate in camp activities such as arts and crafts and nature hikes, serve as lifeguards, and eat with campers in the cafeteria. They are free to roam the campgrounds and their daily tasks require movement throughout the campsite. Additionally, these employees sleep at the campsite, and thus are exposed to the overnight hazards of a campground.

Work Area: The definition of "clerical office employee" requires that the employee work in a separated area "within which no work is performed other than clerical office or drafting duties as defined in this section." There is no question that the work areas for Appellant's employees during the summer months are not exclusively used for "clerical office or drafting duties."

D. Equitable Estoppel

Lastly, Appellant's post-hearing brief argues the doctrine of equitable estoppel should prevent SCIF from charging Appellant increased premiums. Without providing any legal precedent or support for this argument, Appellant contends it relied upon Mr. Chow's "representations" in fashioning separate contracts for employees, and as such should be relieved of any increase in premiums for the 2005 policy year.

The doctrine of equitable estoppel requires a fundamental finding that conduct on the part of one party has induced another party to take such a position that he will be injured if the first

party is permitted to repudiate his acts. (Evid. Code § 623; *Sumrall v. Cypress* (1968) 258 Cal.App.2d 565, 568-569.) Four elements must ordinarily be proved to establish an equitable estoppel: (1) the party to be estopped must know the facts; (2) must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe that it was so intended; (3) the party asserting the estoppel must be ignorant of the true state of facts; and (4) must rely upon the conduct to his injury. (*Lentz v. McMahon* (1989) 49 Cal. 3d 393, 400.)

The facts recited herein fail to meet any of the elements of equitable estoppel. First, the evidence is insufficient to establish that Mr. Chow knew separate contracts existed. Mr. Chow denies such knowledge,³⁵ and Mr. Rubenstein's testimony clearly states that neither Mr. Chow nor the WCIRB ever saw the contracts.³⁶ Secondly, there is no evidence that Mr. Chow induced Camp Tawonga to create or use separate contracts. Indeed, Mr. Rubenstein testified that the contracts had been used "for a number of years" and were not introduced or suggested by Mr. Chow to the Appellant.³⁷ Moreover, the fact pattern presented in this appeal is not analogous to the fact patterns in the limited cases in which the Commissioner has granted equitable relief. Here, the appellant presented no evidence that it was misled or thwarted by third parties. As such, Appellant's estoppel argument is therefore without factual basis and is rejected.

For the foregoing reasons, Appellant's remaining employees must be classified under Code 9048(1).

VII. Conclusion

Pursuant to California Code of Regulations, title 10, section 2509.61, subdivision (a), a "party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he or she is asserting."

³⁵ RT 160/22-25.

³⁶ RT 80/14-21.


Based on the evidence submitted by the parties, the record on appeal and the foregoing analysis of the facts and law at issue, Appellant has met its burden of proof with regard to employees David Castle, Sasha Goldberg and Sadie Rubin. These employees perform only clerical duties as defined by the USRP, and their payroll should be assigned to Classification Code 8810.³⁸ Appellant has not met its burden of proof to show that SCIF improperly assigned the payroll of Appellant's remaining employees to Classification 9048(1).

ORDER

1. The decision of State Compensation Insurance Fund to assign the payroll of David Castle, Sasha Goldberg and Sadie Rubin to Classification Code 9048(1) is overruled.
2. The decision of State Compensation Insurance Fund to assign the payroll of Appellant's remaining year-round employees³⁹ to the Classification Code 9048(1) is affirmed.

I submit this proposed decision based on the evidentiary hearing, records and files in this matter and recommend its adoption as the decision of the Insurance Commissioner of the State of California.

Dated: March 28, 2008


KRISTIN L. ROSI
Administrative Law Judge
Department of Insurance

³⁷ RT 80-81/22-5.

³⁸ By letter dated January 29, 2008, SCIF confirms that these three employees have already been reclassified as clerical employees.

³⁹ Listed and identified on pages 5-6 of this decision.