

TOWN OF BUXTON)
)
v.)
)
LEGION INSURANCE COMPANY)
(IN REHABILITATION))
)
Docket NO. INS-03-409)
)

DECISION AND ORDER

This adjudicatory proceeding arises out of a petition filed with the Superintendent by the Town of Buxton, pursuant to 24-A M.R.S.A. §§ 229 and 2320(3), contending that the additional premium billed by Legion Insurance Company after final audit of the Town’s 2001–02 workers’ compensation insurance policy was invalid because it was not established in a timely manner as required by Bureau of Insurance Rule 470. For the reasons discussed below, the petition is granted.

An adjudicatory hearing was held before the Superintendent on May 16, 2003.¹ Although all parties were given notice that failure to attend may result in a disposition by default, Legion did not appear, and did not request a continuance or an opportunity to participate by telephone or by written submissions. Legion was therefore found to be in default. However, because the Town had the burden of persuasion and proof, evidence was taken to determine whether the Town’s claim was adequately supported by the uncontested facts as presented through sworn testimony and documentary records.

¹ Pursuant to 24-A M.R.S.A. § 210, the Superintendent has appointed Bureau of Insurance Attorney Robert Alan Wake to serve as hearing officer, with full decisionmaking authority.

The policy year in question closed at 12:01 a.m. on July 1, 2002. Pursuant to Bureau of Insurance Rule 470, § 5, Legion was required to establish the final premium within 120 days; i.e., on or before 12:01 a.m. on October 29, 2002. Through its agent, on October 15, 2002, Legion provided the Town with premium audit information, and asked Town officials if the information was correct. On October 22, the Town advised that the audit information appeared to be erroneous. Legion did not prepare a bill, but rather waited for the Town’s revised figures, which the Town provided on November 12, revealing that the errors in the original audit were in the Town’s favor and had understated the Town’s actual premium rate. Legion agreed to the revised audit, and through its agent, notified the Town on January 9, 2003 that the additional premium due as a result of the audit would be \$15,427.

This bill would clearly be untimely unless the billing deadline was extended by mutual agreement or because of the Town's failure to provide information in a timely manner. The record shows that all inaccuracies and delays were Legion's fault, not the Town's. Although it could be inferred that there was an implicit agreement to extend the period for issuance of the final bill, any such agreement would have obligated Legion to finalize the premium within a reasonable time. Two months is not a reasonable time in these circumstances. Had a premium been provisionally established and communicated to Legion in a timely manner based on the initial audit, Legion would have been entitled to collect that lesser amount, but Legion did not do so. Therefore, the premium initially billed and paid during the policy period must stand as the final premium for this policy.

Order and Notice of Appeal Rights

It is therefore *ORDERED* that the Petition is *GRANTED*. The Town of Buxton does not owe any additional premium on its 2001-02 policy.

This Decision and Order is a final agency action of the Superintendent of Insurance within the meaning of the Maine Administrative Procedure Act. It is appealable to the Superior Court in the manner provided in 24-A M.R.S.A. § 236 (2000) and M.R. Civ. P. 80C. Any party to the hearing may initiate an appeal within thirty days after receiving this notice. Any aggrieved non-party whose interests are substantially and directly affected by this Decision and Order may initiate an appeal on or before June 25, 2003. There is no automatic stay pending appeal; application for stay may be made in the manner provided in 5 M.R.S.A. § 11004.

PER ORDER OF THE SUPERINTENDENT OF INSURANCE

MAY 16, 2003

ROBERT ALAN WAKE
DESIGNATED HEARING OFFICER