

CLYDE WEBB]	
]	
<i>v.</i>]	
]	
MAINE EMPLOYERS' MUTUAL INSURANCE]	DECISION AND ORDER
COMPANY, <i>et al.</i>]	
]	
Docket NO. INS-99-15]	
]	

Clyde Webb has filed a petition with the Superintendent, pursuant to 24-A M.R.S.A. §§ 229, 2320(3), and 2908(6), contesting the cancellation of his workers' compensation insurance policy by the Maine Employers' Mutual Insurance Company ("MEMIC") for nonpayment of premium. Mr. Webb admits that he has not paid the full premium billed by MEMIC, and objects to the cancellation on the sole ground that the unpaid portion of the premium is based on an inappropriate reclassification of his cleanup operations after the Ice Storm of 1998. Because the reclassification was untimely, the petition is granted.

Clyde Webb does logging and related work in Manchester, Maine. In past years, his business has been classified as Logging (Code 2702) for workers' compensation insurance rating purposes,¹ but the only nonclerical employee was Mr. Webb himself, who has elected not to be covered. However, Mr. Webb did hire temporary employees for his storm cleanup work, and it is the classification of those employees that is at issue here.

On January 23, 1998, Mr. Webb obtained a policy from MEMIC. In consultation with his producer, he applied for coverage under Code 9102, "Park - Not Otherwise Classified," the classification applicable to lawn and grounds maintenance operations. MEMIC issued the policy in accordance with that classification, but after the policy expired and MEMIC conducted an audit, the business was reclassified as Code 6217, "Excavation," a classification that applicable to some ground clearing operations. Mr. Webb's producer calculated what the correct audit premium would have been if Code 9102 were applied to the difference between the actual audited payroll and the estimated payroll on which his quarterly payments had been based. Mr. Webb paid that amount, but did not pay the additional charge resulting from the reclassification.

On May 3, MEMIC mailed notice to Mr. Webb that the policy would be cancelled, effective June 8, for nonpayment of a past-due balance of \$173.50. Mr. Webb filed a petition, pursuant to 24-A M.R.S.A. §§ 229, 2320(3), and 2908(6), contesting the cancellation. The Superintendent convened an adjudicatory hearing on November 23, which was postponed at Mr. Webb's request and the rescheduled hearing was held on May 24, 2000.²

Since Mr. Webb had no covered employees during the remainder of the 1999–2000 policy period, he agreed to allow the cancellation to take effect rather than pay for unnecessary coverage. However, his petition is not moot because it remains in dispute whether he has an outstanding premium debt to MEMIC.

Although the evidence has shown that the classification assigned on audit does more accurately describe Mr. Webb's operations than the classification assigned when the policy was issued,³ that is not the question. MEMIC does not contend that the reclassification was based on information that was unavailable or withheld at the time the policy was issued, nor that the reclassification was necessary because of a change in the nature of the covered operations after the policy was purchased. Therefore, the retrospective audit adjustment is barred by Uniform Classification System Rule IV(G)(2),⁴ which prohibits retroactive premium increases resulting from corrections to classifications more than 120 days after the issuance or renewal of the policy.

Order and Notice of Appeal Rights

It is therefore *ORDERED* that Clyde Webb's petition is *GRANTED*. His 1998–99 MEMIC premium is hereby determined to have been paid in full.

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 July 31, 2000. There is no automatic stay pending appeal; application for stay may be made in the manner provided in 5 M.R.S.A. § 11004.

¹ Pursuant to 24-A M.R.S.A. § 2382-B, workers' compensation insurers must adhere to a uniform classification system approved by the Superintendent and administered by the designated workers' compensation advisory organization, which is the National Council on Compensation Insurance ("NCCI"). The Superintendent has taken official notice of both the NCCI *Basic Manual*, filed by NCCI pursuant to 24-A M.R.S.A. § 2382-B(3), and the NCCI *Scopes Manual* (formally entitled *Scopes of Basic Manual Classifications*), containing more detailed descriptions of the various classification codes. These manuals, to the extent that their provisions have been approved by the Superintendent, have the same legal effect as rules adopted by the Superintendent. *Imagineering, Inc. v. Superintendent of Insurance*, 593 A.2d 1050, 1052 (Me. 1991).

² 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.

³ Furthermore, as Craig Reynolds testified on behalf of MEMIC, a third classification – Code 0106, "Tree Pruning, Spraying, Repairing" – would be an even more accurate description of the risk, and that classification would have resulted in a still higher premium.

⁴ As set forth in the *Basic Manual*; see Note 1 above.

PER ORDER OF THE SUPERINTENDENT OF INSURANCE

JUNE 21, 2000

**ROBERT ALAN WAKE
DESIGNATED HEARING OFFICER**