WORKOUT FITNESS STORE	]	
	]	
v.	]	
	]	**DECISION AND ORDER**
NORGUARD INSURANCE COMPANY	]	
	]	
Docket NO. INS-01-2520	]	
	]	

Workout Fitness Store of Fitness Store, Inc. filed a petition with the Superintendent on April 27, 2001, pursuant to 24-A M.R.S.A. §§ 229 and 2908(6), contesting the cancellation of its workers' compensation insurance policy by NorGUARD Insurance Company for nonpayment of premium. An adjudicatory hearing was held on June 19, 2001.[1]

[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.

According to the testimony of the owner, Charles Oransky, one of his employees told him last December that he had hurt his shoulder at work and would need medical treatment. When Mr. Oransky reported the claim, his producer advised him that he was no longer insured because his coverage had been cancelled on May 1, 2000; the producer faxed him a copy of the cancellation notice. He immediately bound coverage with another insurer after NorGUARD declined to reinstate the policy. He then reviewed his records and discovered to his further surprise that he had not made any payment in the spring of 2000. However, he found no record of either the March 2000 premium bill, the original notice of cancellation, or any followup correspondence from NorGUARD.

Mr. Oransky testified that the only relevant material he could find in his files were a final audit bill from his 1998–99 policy, which he paid in April, a final audit bill from his 1999–2000 policy, which he received in July 2000 and which showed a credit balance of $701, and a record that he paid NorGUARD $1074.75 on September 1, 2000, which he substantiated with a cancelled check.

NorGUARD, however, provided evidence that it mailed a notice of cancellation on March 28, in compliance with the 30-day notice requirement of 39-A M.R.S.A. § 403(1), and that the Workers' Compensation Board confirmed receipt of its copy of the notice on April 3.

Mr. Oransky does not contest NorGUARD's assertion that the notice was mailed, but questions the fairness of sending such announcements by ordinary mail, in a single-page mailing that could easily be overlooked or discarded, rather than

alerting the recipient through the use of certified mail. He notes further that where the July 14 premium audit statement lists an "Amount due Insured," he reasonably believed that no further action was required from him at the time. Although the final audit statement does show an anniversary date of December 20 and a termination date of May 1, these dates appear in relatively small print and it is easy to imagine those dates being overlooked if the issuance of the final audit itself did not attract attention.

NorGUARD acknowledged that the notice was confusing, and has changed the notice format it uses. The amount listed did not actually reflect a credit balance, but rather reflected what the company would have owed the insured as a refund if Workout Fitness had paid all four quarterly installments instead of paying only the first installment. The bill reflecting the actual final status of his account – a balance owed of $1074.75 – was sent at a later date, and that was the source of the September 1 payment. Unfortunately, this may have added to the confusion, since this amount was almost equal to two quarterly estimated premium installments.[2]

2 Thus, slightly more than five months' actual premium - from December 20 to May 1 - was almost equal to three quarterly installments of estimated premium. The reason such discrepancies are not uncommon is that the estimated premium must be determined before the close of the preceding policy year and therefore is based on payroll figures that could be as much as two years out of date.

However, neither 24-A M.R.S.A. § 2908(5) nor 39-A M.R.S.A. § 403(1) requires notices of cancellation to be delivered by registered or certified mail. Documents received by regular mail in the ordinary course of business are lost or ignored at one's own peril. It is undisputed that valid grounds for cancellation– the nonpayment of the March 20 premium installment – existed at the time the notice of cancellation was sent, and that the default was not cured before the scheduled May 1 cancellation date. I find based on persuasive evidence adduced at hearing that a valid notice of cancellation was sent in a timely manner. The cancellation therefore took effect on May 1 in accordance with that notice, and the confusion surrounding the July 14 audit notice began after Workout Fitness had already been operating without coverage for some two and a half months.

Nothing that happened after May 1 alters the fact that the policy was lawfully cancelled effective May 1. None of the subsequent transactions relating to the settlement of the closed account, nor any other action by NorGUARD, could reasonably be interpreted by the insured as an offer of reinstatement.

Order and Notice of Appeal Rights

The Petition is therefore *DENIED.*

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, 2001. 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

June 21, 2001

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ROBERT ALAN WAKE
DESIGNATED HEARING OFFICER