

The Petitioner says that the risk associated with the small credit union building project at issue was more consistent with Code 5645 Carpentry—Detached One or Two Family Dwellings than with Code 5403 Carpentry—NOC. MEMIC argues that the project was commercial, regardless of its size, and that MEMIC properly allocated the payroll. NCCI argues that insurers must apply the classification codes consistently and that MEMIC properly applied NCCI’s rating system to the Petitioner’s work.

III. FINDINGS OF FACT

After considering the hearing testimony, exhibits and the parties’ respective arguments, I find that:

1. The Petitioner is a builder in Milo, Maine. MEMIC transacts insurance in Maine. NCCI is the advisory organization designated by the Superintendent to develop Maine’s uniform workers’ compensation classification system.
2. The Petitioner did the framing, roofing, windows, sheetrock, painting and finish trim on a small credit union building in Brownville, Maine. The credit union hired other contractors to install the HVAC and security and other equipment related to banking. *Hearing Transcript (“Tr.”) 8 – 9.*
3. MEMIC insured the Petitioner for workers’ compensation on this project and assigned the payroll attributable to it to NCCI Code 5403 Carpentry—NOC. *Tr.* 8. The policy was effective from December 15, 2009 to December 15, 2010.
4. On March 24, 2011, the Petitioner appealed MEMIC’s payroll assignment to NCCI.
5. On August 18, 2011, NCCI assembled a panel of its employees to consider arguments and evidence concerning MEMIC’s payroll assignment. The Petitioner and MEMIC attended the proceeding by telephone.
6. On August 19, 2011, NCCI issued its Notice of Decision affirming MEMIC’s payroll assignment.
7. On August 30, 2011, the Petitioner appealed NCCI’s Notice of Decision to the Superintendent of Insurance.
8. MEMIC’s manual rate for Code 5403 is \$21.30 and for Code 5645 is \$14.80.

IV. ANALYSIS AND CONCLUSIONS OF LAW

Background

The Maine Insurance Code, M.R.S. Title 24-A, through its rating provisions, requires workers’ compensation insurers to “adhere to a uniform classification system and uniform experience rating plan.” 24-A M.R.S. § 2382-B(1). This system means in part to ensure two important goals. First, each insured should pay premium that matches its exposure. Second, insureds engaged in the same types of business activities should pay premium based on the same rates.

Insurers and rating organizations must also provide a “reasonable means whereby any person aggrieved by the application of its rating system may be heard ... to review the manner in which such rating system has been applied in connection with the insurance afforded that person.” 24-A

M.R.S. § 2320(2). On August 18, 2011, NCCI heard the Petitioner's and MEMIC's positions in a telephone proceeding and issued a Notice of Decision the next day. NCCI based this decision on a "desire to maintain consistency, so all policyholders may rely on the consistent application of the classification rules." NCCI also distinguished the two classifications generally, noting that Code 5403 does not refer to residential structures or to size thresholds or limitations, and that Code 5645 does not refer to commercial structures. NCCI concluded that the correct classification for building a credit union is Code 5403.

Analysis

The Petitioner's argument essentially is that the residential-commercial distinction between Code 5645 and Code 5403 does not make practical sense. He also says that MEMIC used the wrong classification because his carpentry work on the 1400 square foot, one-floor credit union is substantially similar to the carpentry that a one- or two-family dwelling would require. This argument has some appeal. However, the issue in this proceeding is not whether the classification should be changed but whether NCCI properly applied the approved rating system to the Petitioner's activities. I conclude that NCCI acted properly for the following reasons.

The NCCI *Basic Manual*³ lists five classification codes for carpentry. The first four have specific applications: Code 5645 to one- and two-family detached dwellings; Code 5651 to three-story dwellings (multiple occupancy, primarily); Code 5437 to installation of cabinet work or interior trim; and Code 2802 to shop work and drivers. The last—Code 5403—applies to "general carpentry work not otherwise classified." *Scopes Manual*, N252. In other words, the carpentry-related classifications function as a sort of checklist.

The first question is whether any of the first four classifications would have applied to the Petitioner's work. As its title implies, Code 5645 applies to one- and two-family dwellings. NCCI describes this as covering "the carpentry work in connection with the construction of a private residence." *Scopes Manual*, N273. By definition, the description limits this code to private residences. It cannot apply to any other work.

Because there is no other applicable specific classification that might apply,⁴ the only remaining classification is Code 5403. This is the catch-all for carpentry-related operations. NCCI says it this way: "Code 5403 covers general carpentry work not otherwise classified in the *Basic Manual*." *Scopes Manual*, N252. NCCI also describes this code as applying to "carpentry operations on commercial structures in connection with building raising ..." *Id.* Last, NCCI points out that Codes 5645, 5651 and

5437, among others, show “operations somewhat related in nature to Code 5403 operations that are not assigned to Code 5403.” *Id.*, N253.

Code 5645 and Code 5403 function because they rely on a bright line—the distinction between a type of residential work and commercial work. The bright line is not merely a semantic point. It is a substantive one, which supports the uniform classification system. Any builder who goes into a project that does not fit into the description for Code 5645 should have confidence that he or she will pay premium based on the same manual rates that the uniform system would apply to another builder doing equivalent work.

V. ORDER

IT IS HEREBY ORDERED that the Petition is denied.

VI. NOTICE OF APPEAL RIGHTS

This Decision and Order is final agency action of the Superintendent of Insurance within the meaning of the Maine Administrative Procedure Act. Any party may appeal this Decision and Order to the Superior Court as provided by 24-A M.R.S.A. § 236, 5 M.R.S.A. § 11001, *et seq.* and M.R.Civ.P. 80C. Any such party must 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 within forty days after the issuance of this Decision and Order. There is no automatic stay pending appeal; applications for stay may be made as provided in 5 M.R.S.A. § 11004.

¹ The Hearing Officer’s September 14, 2011 Notice of Pending Proceeding and Pre-Hearing Conference set an intervention deadline of 3:00 p.m. September 21, 2011. The Hearing Officer did not receive any applications to intervene.

² Superintendent Eric A. Cioppa delegated all legal authority to Bureau of Insurance attorney Benjamin Yardley to act in the Superintendent’s name as the hearing officer in this proceeding.

³ Pursuant to 5 M.R.S.A. § 9058, I have taken official notice of NCCI’s *Basic Manual* and *Scopes Manual* on file at the Bureau of Insurance.

⁴ The parties have not suggested that Code 5651, Code 5437 or Code 2802 apply, so I have limited my analysis to Code 5645 and Code 5403.

PER ORDER OF THE SUPERINTENDENT OF INSURANCE

DATED: November 22, 2011

By: _____
BENJAMIN YARDLEY
Staff Attorney