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SECRETARY OF STATE

BEFORE THE COMMISSIONER OF THE TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE FOR THE STATE OF TENNESSEE

IN THE MATTER OF:	)	
	)	
SOUTHERN CRAFT MANUFACTURING, INC.	)	
	)	**DOCKET No: 12.28-096717A**
and	)	
	)	**WC Appeal - Insurance**
TECHNOLOGY INSURANCE COMPANY	)	

FINAL ORDER

This matter was heard on December 13, 2007, before Administrative Judge Steve Darnell, appointed by the Secretary of State, with Larry C. Knight, Assistant Commissioner of Insurance, sitting as Designee of the Commissioner of Commerce and Insurance. As Commissioner's Designee, Mr. Knight makes the final determination as to Findings of Facts and Conclusions of Law in this matter.

By Order entered on November 27, 2007, Technology Insurance Company ("TIC") was held in default pursuant to Tenn. Code Ann. § 4-5-309.[1] Southern Craft Manufacturing, Inc. ("Southern Craft") chose to proceed with this contested case hearing without the participation of TIC and was represented by Attorney Paul B. Plant of Lawrenceburg, Tennessee.

The subject of the hearing was whether the bonuses paid by Southern Craft should be considered wages and for purposes of calculating Southern Craft's workers' compensation premium. After consideration of the record, including all relevant testimony, exhibits, and proposed Findings of Fact and Conclusions of Law, it is determined that such bonuses are not

1 TIC did not appeal this Order.

"wages" and that they should not, therefore, be included when calculating the amount of Southern Craft's workers' compensation premium.

This conclusion is based on the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The Commissioner of Commerce and Insurance (the "Commissioner") has jurisdiction over this matter pursuant to Tenn. Code Ann. § 56-5-309(b).

2. TIC currently holds a certificate of authority to sell workers' compensation insurance in Tennessee holds a certificate of authority to sell workers' compensation coverage in Tennessee.

3. Southern Craft is a for-profit corporation which has, since 1994, been engaged in the manufacture of burial caskets located in Loretto, Tennessee. All shares of Southern Craft are owned by its President, Rodney Robinson ("Mr. Robinson") and his wife.

4. Mr. Robinson hires all employees and determines the method under which employees are paid based at least in part on production and attendance. However, the decision to pay or not pay bonuses and determination of the their amount or frequency, has at all times pertinent been within the sole discretion of Mr. Robinson. No assurances have been given to Southern Craft employees that bonuses will be paid, and no information regarding the amount or frequency of them has been communicated, contractually or otherwise.

5. TIC provided workers' compensation insurance coverage to Southern Craft for the policy period January 7, 2004 through January 7, 2005.

6. Based on an audit conducted for the policy period specified in Paragraph 5, above, TIC determined that bonuses paid to Southern Craft employees should be considered wages for purposes of determining workers' compensation insurance premium. TIC made such

determination because it believed that the bonuses were in lieu of wages. However, Mr. Robinson has never advised TIC that bonuses were paid in lieu of wages, and he did not indicate that this was the case in his testimony at the hearing. None of the six (6) insurers which provided workers' compensation insurance coverage for Southern Craft for previous policy periods considered the bonuses as wages in determining the applicable workers' compensation premium.

CONCLUSIONS OF LAW

1. TIC, as the moving party in this case, has the burden of proving by a preponderance of the evidence that Southern Craft's bonuses should be included as wages when determining the amount of its workers' compensation premium. Tenn. Comp. R. & Regs. 1360-4-1-.02.

2. Tenn. Code. Ann. § 50-6-402(a) provides as follows:

> In determining classifications of risks and premiums relating to the classification, the insurer may include allowances of any character made to any employee, only when the allowances are in lieu of wages, and are specified as part of the wage contract.

3. Pursuant to Tenn. Code Ann. § 56-5-320, the National Council on Compensation Insurance ("NCCI") is the Commissioner's designated rate service organization for workers' compensation insurance.

4. NCCI has promulgated guidelines consistent with Tenn. Code. Ann. § 50-6-402(a) for determining which allowances or incentives should be considered as wages for purposes of calculating premiums. Such guidelines are set forth in Rule 2 of the Basic Manual for Workers' Compensation Liability Insurance ("Basic Manual") published by NCCI, which provides that allowances must be paid in lieu of wages and as part of the wage contract in order to be considered wages.

5. Tenn. Comp. R. & Regs. 0780-1-82-.10(2) provides that "[o]rders issued under this Rule shall assign the costs of the appeal, in the commissioner's discretion, to the non-prevailing party."

6. TIC did not participate in this contested case proceedings and Southern Craft elected to proceed without TIC's participation. TIC was held in default by Order entered on November 27, 2007.

7. TIC failed to show by a preponderance of the evidence that Southern Craft's bonuses should be included as wages when calculating its workers' compensation premium.

NOW THEREFORE, IN LIGHT OF THE FOREGOING, the following is hereby ORDERED:

1. TIC's claim that Southern Craft must pay additional workers' compensation premiums based on the bonuses Southern Craft pays to its employees is **DENIED**.

2. The costs of this proceeding are hereby assigned to TIC.

This Initial Order is entered and effective this 7 day of October, 2009.

Larry C. Knight, Jr.
Assistant Commissioner of Insurance

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 4th day of October, 2009.

Thomas G. Stovall, Director
Administrative Procedures Division

NOTICE OF APPEAL PROCEDURES

Review of Final Order

This Final Order is issued pursuant to Tenn. Comp. R. & Regs. 0780-1-82-.10. Any party who is aggrieved by this Final Order is entitled to judicial review pursuant to Tenn. Code Ann. § 4-5-322. See Tenn. Comp. R. & Regs. 0780-1-82-.11.

Tenn. Code Ann. § 4-5-322 provides in relevant part:

> (a)(1) A person who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter, which shall be the only available method of judicial review...
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> ....
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> (b)(1)(A) Proceedings for review are instituted by filing a petition for review in the chancery court of Davidson County, unless another court is specified by statute. Such petition shall be filed within sixty (60) days after the entry of the agency's final order thereon.
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> ....
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> (2) In a case in which a petition for judicial review is submitted within the sixty-day period but is filed with an inappropriate court, the case shall be transferred to the appropriate court. The time for filing a petition for review in a court as provided in this chapter shall not be extended because of the period of time allotted for filing with the agency a petition for reconsideration. Copies of the petition shall be served upon the agency and all parties of record, including the attorney general and reporter, in accordance with the provisions of the Tennessee Rules of Civil Procedure pertaining to service of process.
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> (c) The filing of the petition for review does not itself stay enforcement of the agency decision. The agency may grant, or the reviewing court may order, a stay upon appropriate terms, but if it is shown to the satisfaction of the reviewing court, in a hearing that shall be held within ten (10) days of a request for hearing by either party, that any party or the public at large may suffer injury by reason of the granting of a stay, then no stay shall be granted until a good and sufficient bond, in an amount fixed and approved by the court, shall be given by the petitioner conditioned to indemnify the other persons who might be so injured and if no bond amount is sufficient, the stay shall be denied. The reviewing court shall not consider a stay unless notice has been given to the attorney general and reporter; nor shall the reviewing court consider a stay unless the petitioner has previously sought a stay from the agency or demonstrates that an agency ruling on a stay application cannot be obtained within a reasonable time.