



Pennsylvania Compensation Rating Bureau

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PENNSYLVANIA TEST AUDIT PROGRAM **BULLETIN # 93**

TEST AUDIT APPEAL DECISION

Per Bureau Circular No. 1479, the result of an insurance carrier appeal to the Audit Committee is presented to the membership for their information.

The insured is a machine job shop that produces parts for the mining and steel manufacturing industries. The insured does not manufacture a proprietary line of products. The appeal centered on the allocation of payroll for one employee, the wheelchair-bound president. The carrier had assigned the president's payroll to Code 461, Machine Shop, while the test audit had assigned the payroll of this employee to Code 953, Office. The carrier responded to the test audit difference, citing the Bureau's procedure on the interpretation of the terms "regular and frequent" in the context of classification assignments. The carrier explained that the original audit stated that the president's duties consisted of entering "the shop area three-to-four times per day using his wheelchair and (will) check on jobs that are in progress." Since the president was in the shop on what the carrier perceived to be a regular and frequent basis, the carrier believed that he would not qualify for a clerical assignment. To support this assignment, the carrier provided a copy of a Statement of Duties form signed by the insured's vice president.

The Bureau's response to the carrier indicated that the test audit difference would not be revised, as the carrier had not provided sufficient documentation to justify the assignment of Code 461 to the president. Specifically, Bureau staff noted that the amount of time spent in the shop by the president in the Statement of Duties form submitted by the carrier was two-to-three times per day, whereas the carrier's audit indicated three-to-four times per day. Additionally, at no time did the carrier indicate how much of the president's time was spent in the shop area. The Bureau audit quantified time that the president spent in the shop as being 20-30 minutes daily. Furthermore, the duties of the president did not include setting up machinery or performing direct supervision. Because the president's time spent in the shop was limited to checking on jobs with no supervision (supervision was provided by another employee) and was conducted on a limited basis, the Bureau sustained the assignment of Code 953 to the president.

During the presentation before the Committee, the carrier focused on the Bureau's concept pertaining to "regular and frequent." The carrier expressed the opinion that, since the president was in the shop several times every day, this was a regular and frequent part of the president's daily duties and, as a result, the president should be assigned to the governing classification.

The carrier also provided an example of a prior test audit in which the Bureau had criticized the carrier for not applying the regular and frequent concept. This documentation was provided during the meeting and was reviewed by the Committee. The example provided by the carrier disclosed that the executive officer in that case had worked in the shop one hour a day out of an eight-hour workday. The Bureau advised the carrier that this employee was assignable to the governing classification. The carrier asserted that this example revealed an inconsistency on the Bureau's part in comparison to the case now under appeal.

The carrier also presented a form signed by an executive officer of the company (the vice president) that provided a description of the duties of the president, purportedly justifying the assignment of Code 461. The carrier also noted that the president had been assigned to Code 461 on a previous audit and that the insured had not disputed this assignment.

Bureau staff presented a response to the carrier. It was the position of the Bureau that this employee's exposure to the shop for only 20-to-30 minutes per day was not considered regular and frequent. Furthermore, the employee was merely checking on the status of ongoing jobs, with the amount of physical activity significantly suppressed given the obvious limitations imposed on him by being in a wheelchair.

In addition, the Bureau's audit worksheets contained more detail as to the actual time spent by the officer in the shop. The carrier's audit did not mention specifically how much time the president spent in the shop area, while the Bureau audit indicated the employee in question only spent 20-to-30 minutes a day in the shop. The rest of his time was spent in the office. Bureau staff also noted that the test audit showed that there was an additional level of supervision in place, indicating that the president was not performing direct supervision in the shop, but rather was simply checking on the status of various jobs.

Bureau staff noted further that the terms "regular and frequent" should not be construed to mean that any individual who ever steps into the shop area would automatically have their payroll assigned to the higher-rated shop classification. The intent is to be reasonable and fair in assigning the appropriate classification that best reflects the employees' job duties. In terms of the carrier's reference to the test audit bulletin on regular and frequent, Bureau staff pointed out that the examples cited therein were provided as general guidelines. Since the Bureau does not use a specific figure to determine regular and frequent status, each case must be reviewed individually and within the context of the particular business being reviewed. With respect to the prior test audit decision cited by the carrier as being inconsistent with the current decision, Bureau staff observed that the amount of time cited in the example was more than twice the amount of time that the employee in the current appeal spent in the shop.

The Committee then went into executive session. Discussion began with an agreed-upon understanding that the concept of "regular and frequent" was a subjective one and at times a challenging one to apply. It was also noted that the insured had apparently not disputed the assignment of Code 461 to the president in prior audits. However, after some further discussion regarding the particular facts present with this appeal, a consensus developed that, given the limited time spent in the shop by the president (20-30 minutes per day), his physical infirmities and the fact that the carrier's original audit did not clearly support a case for finding that this employee had "regular and frequent" exposure to the shop operations, the Committee resolved that the assignment of the president for the policy term in question should be to Code 953 rather than to Code 461. The Committee was not persuaded that the assignment of Code 953 in this case was contradictory with the decision in the prior test audit cited by the carrier. It was noted

that the pertinent circumstances in each of these respective cases were different in a number of ways, not the least of which was the fact that the time spent in the shop by the employee in the current case was less than half the time spent in the shop by the employee in question from the prior test audit raised by the appealing carrier. The Committee also expressed concern that the level of detail and documentation in the carrier's original audit in this case had not been consistent with the establishment of a regular and frequent exposure for the president.

Accordingly, upon motion made and seconded, the Committee voted unanimously to sustain the Bureau's test audit decision assigning Code 953 to the president.