



**Pennsylvania Compensation Rating Bureau**

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**BUREAU CIRCULAR NO. 1386**

To All Members of the Bureau:

Re: **APPEAL DECISION**

**RETROACTIVE CLASSIFICATION CHANGES**

In the Bureau's continuing interest of providing members with information on issues and decisions of significance we advise you of the following recent appeal decision. The Commissioner's Adjudication and Order in this matter was issued October 19, 1998 - Docket No. WC97-06-014. This appeal involved the Bureau Manual rules regarding retroactive classification changes (Section 1, Rule IV, C. 8.). The Bureau has prepared the following general summary of the appeal. Members may reference the full decision of the Commissioner for a complete narrative of the facts surrounding this appeal, as well as the Commissioner's analysis and conclusion.

**SUMMARY**

In a letter dated November 13, 1992 the insured, describing itself as a "manufacturer of custom truck bodies," petitioned for the authorization of several additional classifications for various departments it operated (e.g., electrical shop, cabinet shop and paint shop). The Bureau denied this request based on the Manual's single enterprise rule and criteria for multiple classification assignments. The Bureau reaffirmed the assignment of Code 451, Automobile, Truck or Trailer Body Manufacturing, advising the employer that the various departments operated by this employer were all contemplated by Code 451. Approximately three years later, in a letter dated November 29, 1995, the insured requested another classification review. Citing competitors, the insured this time requested reassignment of his business to Code 463, Automobile Mfg. or Assembling, or Code 815, Automobile Service Center. Upon completion of a lengthy review, including the performance of a survey of the insured's operations, the Bureau ultimately approved the insured's request for reassignment to Code 463 effective the insured's 1994 policy term.

Though agreeing with the reclassification to Code 463, the insured disputed the effective date of the change. The insured believed the reclassification to Code 463 should be made retroactive to the 1991 Policy Year rather than to the 1994 Policy Year. The basis for this was the insured's contention that its 1992 letter constituted a request for a change in classification.

If so, Manual rules prescribe that the change from Code 451 to Code 463 be made retroactive to the 1991 policy. The Bureau did not believe the insured's 1992 letter constituted a request for reclassification but simply a request for additional classifications, a request that was denied at the time and would have been denied subsequently.

A central question in this case was whether the letter of November 13, 1992 constituted a request or application for reclassification. The insured interpreted the 1992 letter as a request for correction of its classification. The Bureau did not. The Commissioner noted that at the time the insured made its request in 1992 it was classified as Code 451. Nowhere in its letter did the insured dispute this classification, nor did the insured ask that Code 451 be replaced by another classification. Instead the letter focused entirely on the question of dividing payroll into multiple classifications to cover the various areas of the insured's business. In contrast to the 1992 request, the insured's letter of November 29, 1995 specifically requested a change in its classification from Code 451 to Code 463 or Code 815. Accordingly, the Commissioner found that the insured's letter of November 13, 1992 did not request a correction of a misclassification. Additionally, the Commissioner found that the insured did not make a request for correction of a misclassification until its correspondence of November 29, 1995, and the resulting reclassification was appropriately made retroactive to the 1994 Policy Year only in accordance with Manual rules.

In their appeal presentation the insured had also argued that Manual rules were applied by the Bureau in a manner which improperly limited the insured's contractual right to obtain a refund of premium. The language of the policy upon which the insured relied states the following:

#### Classifications

Item 4 of the Information Page shows the rate and premium basis for certain business or work classifications. These classifications were assigned based on an estimate of the exposures you would have during the policy period. If your actual exposures are not properly described by those classifications, we will assign proper classifications, rates and premium basis by endorsement to this policy.

Since this policy provision does not contain a time limit, the insured relied on this omission to argue that the correction in classification from Code 451 to Code 463 entitled the insured to a refund from its carrier covering any and all policy years which included this language in the policy. However, the Commissioner decided against this argument for several reasons. First, it rested on the premise that the classification assignment in 1992 was inaccurate at that time. The Commissioner noted that the Bureau, in its response to the 1995 request that the reclassification be made retroactive to 1991, indicated that the classification change from Code 451 to Code 463 represented a progression in the classification evaluation process. This correspondence, taken together with the insured's correspondence of 1995, revealed that the reclassification to Code 463 occurred for reasons which only came to the attention of the Bureau in that year. Neither the insured's letter of November 1992 nor any other evidence on record contained any suggestion that either party believed the assignment of the Code 451 classification was improper in 1992.

Additionally, if this policy language was interpreted as the insured suggested, the Commissioner opined that the contract between the insured's carrier and the insured would contain provisions contrary to Manual rules approved by the Commissioner. In effect it would provide no limitation on an insured's ability to seek premium refunds retroactively. This would defeat the purpose of the Manual rule limiting the retroactive application of classification changes. This rule has been upheld by the Insurance Commissioner in *In Re: Presbyterian Home at 58<sup>th</sup> Street v. PCRB, R82-10-11 (1984)*. In that case the Commissioner justified application of the rule as follows:

It lends stability to the compensation system in that it provides an established period of time for the retroactive application of reclassifications which in turn aids in the accurate fixing of classifications and their corresponding premiums.

The Commissioner went on to say that the Workers' Compensation Act requires every insurer to be a member of an approved rating organization and to comply with the system of classifications approved by the Insurance Commissioner. That system includes the Commissioner's approval of the Manual. The Commissioner directed that insurance policy provisions must be interpreted in a manner which is consistent with those guidelines, including the provisions which limit the retroactive effect of a classification change. Since the policy does not mandate any retroactivity time period, it must be interpreted consistently with Manual rules which limit retroactivity. Thus, even if the insured were correct in arguing that its classification was inaccurate as early as 1992, the policy may not be interpreted as providing an unlimited time to recoup refunds.

The Bureau will continue to update all members of issues concerning employer classifications from time to time. In the interim questions should be directed to the Classification Department at Extension 460.

Timothy L. Wisecarver  
President

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