

FINDINGS OF FACT

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

2. Johnny Edmonds d/b/a Johnny Edmonds Construction is a sole proprietorship located in Dandridge, Tennessee engaged in the business of construction in the state of Tennessee.

3. American Home is an insurance company incorporated under the laws of New York which holds a certificate of authority to sell workers' compensation coverage in the state of Tennessee.

4. On May 25, 2006, American Home issued Workers' Compensation and Employer Liability Policy Number WC896-20-54 (the "Policy") providing workers' compensation insurance coverage for Mr. Edmonds' employees for the policy period May 23, 2006 through May 23, 2007 (the "Policy Period").

5. The terms of the Policy in pertinent part provide as follows:

Part V – Premium, Subpart B – Classification

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.

* * * *

Part V – Premium, Subpart E – Final Premium

The premium shown on the Information Page, schedules, and endorsements is an estimate. The final premium will be determined after this policy ends by using the actual, not the estimated, premium basis and the proper classifications and rates that lawfully apply to the business and work covered by this policy. If the final premium is more than the premium you paid to us, you must pay us the balance.

6. The National Council on Compensation Insurance ("NCCI") is the designated rate service organization for the State of Tennessee.

7. Workers' compensation classification codes are determined in accordance with the *Basic Manual for Workers' Compensation and Employers Liability Insurance* ("Basic Manual") and *Scopes of Manual Classifications* ("Scopes Manual") published by NCCI.

8. American Home conducted a physical audit of the Policy and issued an audit report on August 30, 2007, which determined, among other things, that: (a) Mr. Edmonds' actual payroll (\$115,785) was lower than had been estimated (\$128,000); and (b) that the appropriate classification code applied to carpenters working for Mr. Edmonds pursuant to the Scopes Manual was 5645 - Carpentry—Detached One- or Two-Family Dwelling, rather than 5651 - Carpentry--Three Stories or Less. The net effect of the audit findings was to increase the final premium due under the Policy by \$9,488, from \$17,429 to \$26,917.

9. Mr. Edmonds timely paid all premiums due under the Policy, including additional premium assessed based on the physical audit.

10. Mr. Edmonds filed an appeal with the Department on September 26, 2008, arguing that Tenn. Code Ann. § 56-8-104(13) precluded a premium audit billing after the expiration or renewal date of the Policy without his written consent, and that he did not provide such consent. Mr. Edmonds' did not object to the change in classification codes or otherwise dispute the findings of the audit.

CONCLUSIONS OF LAW

1. Pursuant to Tenn. Comp. R. and Regs. 1360-4-1-.02(7), the Petitioner, Mr. Edmonds, bears the burden of proof in proving by a preponderance of the evidence that the

facts alleged in the Petition are true and that the issues raised therein should be resolved in his favor.

2. Tenn. Code Ann. § 56-5-320 requires each insured to be a member of the designated rate service organization and to adhere to a uniform classification system filed by the designated rate service organization and approved by the Commissioner.

3. NCCI is the Commissioner's designated rate service organization for workers' compensation insurance pursuant to Tenn. Code Ann. § 56-5-320.

4. Tenn. Code Ann. § 56-8-104(13)¹ provided in pertinent part as follows:

The following are defined as unfair trade methods of competition and unfair trade practices in the business of insurance by any person:

* * * *

(13) CHANGING CLASSIFICATION AND RATE AFTER POLICY EXPIRATION OR RENEWAL. With respect to commercial risk insurance, making a change in the classification or rates more than one (1) year after the renewal or expiration date of that policy without the written consent of the insured. This provision does not apply where the insured has failed to cooperate, given misleading information, or made material misrepresentations or omissions. Nothing herein shall prohibit an insurer from making such change where the policy specifically allows for such change.

19. Mr. Edmonds failed to show by a preponderance of the evidence that the change in classification code and premium rate occurred more than one (1) year after the renewal or expiration date of his policy of May 23, 2007. The physical audit was completed and the audit report was issued on August 30, 2007, within four (4) months after the expiration or renewal date of the Policy. Neither Tenn. Code Ann. § 56-8-104(13), or its successor statute, Tenn. Code Ann. § 56-8-104(17), can be construed to prohibit a change in classification code and premium audit assessment based on an audit occurring

¹ Applicable in 2007; recompiled without material change as Tenn. Code Ann. § 56-8-104(17) in 2008.

within less than one year following the expiration or renewal date of a workers' compensation insurance policy.

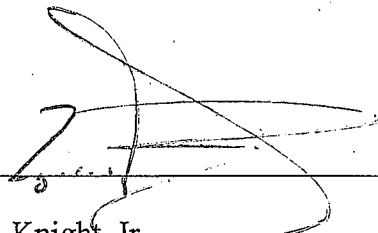
20. Tenn. Comp. R. and Regs. 0780-1-82-10(2)(g) provides that "[o]rders issued under . . . this Rule "shall assign the costs of the appeal, in the commissioner's discretion, to the non-prevailing party."

NOW THEREFORE, based on the foregoing Findings of Fact and Conclusions of Law, it is hereby **ORDERED** as follows:

1. The final premium audit billing issued by American Home in the amount of \$9,488, previously paid by Mr. Edmonds, was correct; and

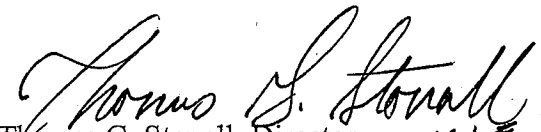
4. Costs of this proceeding are assessed against the Petitioner, Johnny Edmonds d/b/a Johnny Edmonds Construction.

This Final Order is entered and effective this the 4 day of August, 2010.



Larry C. Knight, Jr.
Assistant Commissioner of Insurance

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 5th day of August, 2010.


Thomas G. Stovall, Director
Administrative Procedures Division

CERTIFICATE OF SERVICE

A copy of the within and foregoing document has been served upon,

Johnny Edmonds
Johnny Edmonds Construction
P. O. Box 764
Dandridge, TN 37725

Robins H. Ledyard, Esq.
Bass Berry & Sims
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Michael R. Shinnick
Workers' Compensation Manager
Tennessee Department of Commerce and Insurance
500 James Robertson Parkway, Fourth Floor
Nashville, TN 37243

By depositing same into the United States Mail enclosed in an envelope with adequate postage affixed thereon.

This the 30~~th~~ day of August, 2010.



Dan Birdwell