



Pennsylvania Compensation Rating Bureau

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BUREAU CIRCULAR NO. 1385

To All Members of the Bureau:

Re: **APPEAL DECISION - CONTINUATION OF EXPERIENCE,
GENERAL INCLUSION AND SINGLE ENTERPRISE CLASSIFICATION PROCEDURES**

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 September 10, 1998 - Docket No. RT96-12-018. The appeal was two-fold, involving the application of the Manual's change in ownership rules (Pennsylvania Experience Rating Plan - Section III, 9.) and the General Inclusion principle of classification procedure (Section 1 - Rule IV, B. 3. a. (11)). 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 1992 a metal stamping operation in bankruptcy presented a reorganization plan which was rejected by its creditors. This debtor company then formed a new company to which it transferred all its employees. The new company then leased the employees to the debtor company to perform the same metal stamping operations it had previously performed. Shortly thereafter another reorganization plan was presented which was approved by the Court and by the shareholders of the debtor company. The result was the formation of a third company which took over the sheet metal operation from the debtor company retaining most of the debtor company's employees.

The appellant in their appeal argued that the experience rating of the predecessor companies should not be continued to the surviving company because the change in majority interest was accompanied by the removal of a substantial portion (approximately 15 percent) of the employees of the former company. However, upon examination by the Bureau, it was revealed that, although three executives and a plant supervisor were removed from their positions either at the time of the change in ownership or shortly thereafter, a majority of the prior owner's employees were retained by the new owners.

The appellant objected to the Bureau's interpretation of the words "all or a substantial portion," as contained in the Manual rule. The Manual uses the word "majority" when describing the change in ownership interest but uses the word "substantial" when describing the change in employees. The appellant argued that "substantial" cannot mean 50 percent because 50 percent means a "majority," and the drafters of the Manual would have used "majority" if that was their intent. In rebuttal, the Bureau submitted that it has historically required a change of more than 50 percent in the employee base before

discontinuing experience. This interpretation had been previously affirmed by the Insurance Commissioner in *Tucker House II v. Pennsylvania Compensation Rating Bureau*, R90-10-24 (1991).

The Commissioner in this case reaffirmed the *Tucker House II* interpretation and ruled that the appellant did not meet the requirements of the Manual, Section 6, III, 9. (c) (ii) allowing for a discontinuation of prior experience.

With respect to the classification appeal, the appellant disputed the withdraw of Code 441, Tool Manufacturing, N.O.C., as an authorized classification applicable to its tool and die department. The appellant's company, while under previous ownership, had conducted two businesses. The first business was the shaping of sheet metal by either stamping it or roll-forming it. The second business was the making of tools and dies. A survey done in 1987 revealed that 60 percent of the tools and dies made by the company were shipped outside the company. At the time the Bureau viewed that as insufficient continuity of operations to invoke the tool, dies, mold and fixture general inclusion. Thus, the tool and die department was permitted to be separately classified under Code 441. However, a 1996 survey revealed that the successor company, which took over the business in 1994 (see discussion above), was no longer operating two separate enterprises. In fact, the company no longer shipped out any of its tools and dies. Rather, all of the tools and dies were used in the related metal stamping department. This placed the tool and die work into the General Inclusion described in the Manual, Rule IV, B. 3. a. (11).

The appellant argued Code 441 should be applied to its tool and die department since the tool and die workers operated in a separate place, rarely went into the metal stamping area and did not face the same risks as the metal stamping employees. The appellant also argued that the assignment of only one, more expensive classification (Code 454, Sheet Metal Shop) to an operation such as theirs would create an unreasonable economic hardship. However, at the hearing none of the appellant's witnesses presented any evidence that the tool and die operation constituted a separate business as defined by the Manual. To the contrary, they confirmed that the tools and dies were not shipped out but were used by the press operation in precisely the manner which constituted a general inclusion.

The appellant also recommended that the Commissioner overrule the decision in *Proform Tool Company/Pennsylvania Compensation Rating Bureau*, R84-11-2(1986). In that case the Commissioner had held that, when a tool and die operation is an integral part of the manufacturing process, it falls within the general inclusion and single enterprise approach to classification procedure. As in the instant case, Proform Tool and its parent manufacturing company were physically separate and maintained separate records and payrolls. In the end, the appellant presented no supporting evidence to support its recommendation that the Commissioner overrule *Proform* or change the Bureau Manual.

With respect to the classification appeal, the Commissioner affirmed the Classification and Rating Committee's decision that the tool and die department of the appellant be included in the governing classification, Code 454.

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