BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

CHRISTINA ALLEN, Claimant, v. ANNE M. REYNOLDS, Employer, and STATE INSURANCE FUND, Surety, Defendants.	)	**IC 2004-010769**
ANNE M. REYNOLDS, (In the matter of Christina Allen v. Anne M. Reynolds and State Insurance Fund) v. STATE INSURANCE FUND, Surety, Defendant.	)	**FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDATION** Filed June 1, 2007

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Michael E. Powers, who conducted a hearing in Boise on November 29, and 30, 2006. John F. Croner of Boise represented Claimant. Neither Claimant nor her attorney was present at the hearing as this is a coverage case. Andrew E. Schepp of Boise represented Employer Anne M. Reynolds ("Reynolds"). Jon M. Bauman, also of Boise, represented the State Insurance Fund ("SIF"). Oral and documentary evidence was presented. No post-hearing

depositions were taken. The parties submitted post-hearing briefs and this matter came under advisement on March 5, 2007.

ISSUE

The sole issue to be determined as the result of the hearing is whether Reynolds and/or her limited liability corporation was/were insured for workers' compensation purposes on the date of Claimant's accident.

CONTENTIONS OF THE PARTIES

Reynolds contends there was, or should have been, a workers' compensation policy issued by SIF in force and effect at the time of Claimant's July 14, 2004, accident and injury. She alleges that SIF improperly cancelled a policy or is now estopped to deny coverage based on a course of dealing between her and SIF. Reynolds reasonably believed that the policy erroneously issued to her by SIF as a sole proprietor with no employees was being, or had been, converted to her limited liability corporation and, therefore, she had coverage for Claimant's injury.

SIF responds that because Reynolds failed to provide them with payroll information and other pertinent information, SIF was justified in canceling her policy, and she received proper and timely notice of the cancellation that was effective prior to Claimant's accident. Further, even if Reynolds' policy was not properly cancelled, it is of no help to her because Claimant was never covered by the policy in the first place. Finally, SIF went out of its way to effectuate a change in the insured entity but Reynolds' lack of timely cooperation with their request for information delayed the issuance of a new policy to beyond the date of Claimant's accident.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Anne M. Reynolds, Dixie Black, Thomas Charles Hart, Katherine Marie Howard, Kathleen Sue Gill, William Clemo, Darlene Parks, and Sue Cenarrusa taken at the

hearing.

2. Reynolds' Exhibits 1-69 admitted at the hearing.

3. SIF's Exhibits 1-15 admitted at the hearing.

All objections made during the taking of Clark Putzek's pre-hearing deposition are overruled.

After having considered all the above evidence and the briefs of the parties, the Referee submits the following findings of fact and conclusion of law for review by the Commission.

FINDINGS OF FACT

1. Reynolds has owned and operated a horse raising and training operation in Elmore County named Why Worry Ranch since 1983. In 2000, Reynolds converted the ranch to a limited liability corporation ("WWR, LLC"), she being the only member. Employees were hired and paid by WWR, LLC. From 2000 to 2004, Reynolds had obtained her workers' compensation insurance from Western Community Insurance Company through Thomas Hart ("Hart"), a local agent, and Farm Insurance Brokerage ("FIB"). In May 2003, Western Community ceased writing workers' compensation insurance in Idaho and began the process of transferring its 1200-1400 insureds to SIF.

2. As a part of the transfer, Reynolds' agent Hart received pre-printed applications from Farm Bureau Mutual, an affiliate of FIB, to forward to SIF for its consideration. As part of the pre-printed application, the applicant's name was typed as "Anne M. Reynolds" and the type of business ownership was checked as "individual." The application does not include the name of WWR or WWR, LLC. In a cover letter to Hart accompanying the application, FIB directed him to process the application and ensure that all the pre-printed information was correct.

3. On February 4, 2004, Dixie Black, Hart's office assistant, visited with Reynolds at her ranch and entered information from her necessary to complete the application. Reynolds testified that she probably did not read everything on the application and did not notice that WWR,

LLC was not mentioned anywhere on the application. Reynolds signed the application in Black's presence.

4. FIB submitted the application to SIF and an SIF underwriter reviewed the same on February 20, 2004. The underwriter sent Reynolds a quote requiring a premium deposit of $1,177.00. The quote listed "Anne M. Reynolds" as the insured business and described her as "Exempt-sole proprietor." Reynolds testified that it did not occur to her that the foregoing information should have been changed to reflect WWR, LLC as the insured entity. On March 7, 2004, Reynolds signed a check drawn on the account of WWR, LLC to cover the premium deposit. On March 12, 2004, another SIF underwriter noticed that the premium deposit check was not drawn on the applicant's (Reynolds') account, which in and of itself was not that uncommon. The underwriter called FIB to find out if WWR, LLC should be on the policy. On March 17, 2004, FIB informed the SIF underwriter that the agent with that information was gone for two weeks. The underwriter then extended coverage to Reynolds as sole proprietor. Because the premium deposit check, although drawn on WWR, LLC's account, contained Reynolds' name, signature, and application number, as did the application itself, the underwriter believed that Reynolds was the intended insured.

5. On March 18, 2004, the underwriter sent FIB a coverage advisory form asking Reynolds to acknowledge that SIF was only covering Reynolds and not WWR, LLC. Reynolds, unbeknownst to SIF, refused to sign and return the form because she "is" WWR, LLC. When SIF did not receive the first coverage advisory form, they sent another on April 18, 2004. Again, Reynolds refused to sign and return the form. An underwriting supervisor at SIF testified that the failure of Reynolds to return the coverage advisory form would have led to the cancellation of the policy because SIF was unable to determine the nature of the risk it was to be insuring.

6. While the above was taking place, there was also an issue of payroll reporting. In

order for the SIF to determine the appropriate premium, it is necessary for them to know the actual payroll of the insured entity. With that in mind, on March 28, 2004, the SIF sent Reynolds a payroll report form specifically tailored to Reynolds' policy with a self-addressed return envelope. The form indicated a due date of April 23, 2004. It further indicated, "Cancellation may be initiated if report is not received by the due date." SIF Exhibit 2. The report is coded in such a way that the SIF is made aware of its return thus preventing a reminder letter or cancellation notice from being sent out to the insured. Here, Reynolds never returned the form so a reminder letter was sent on April 26, 2004. Reynolds still did not return the report. A Notice of Cancellation was sent to Reynolds by certified mail on May 11, 2004. Reynolds' husband signed for the notice on May 14 and read it to Reynolds over the phone that same day. The policy was cancelled effective May 31, 2004, for non-reporting of payroll. Reynolds still did not send in the payroll report prior to the effective date of cancellation.

DISCUSSION AND FURTHER FINDINGS

Idaho Code § 72-311(2) governs the cancellation of a workers' compensation insurance policy:

> No policy of insurance or guaranty contract or surety bond issued against liability arising under this act, where the policy, contract, or bond is intended to provide coverage of greater than one hundred eighty (180) days, shall be cancelled or not renewed until at least sixty (60) after notice of cancellation has been filed with the industrial commission, and also served on the other contracting party either personally or by certified mail to the last known address of the other contracting party. If cancellation is due to failure to pay premiums, material misrepresentations by the insured, substantial breaches of contractual duties, conditions or warranties, or the policy is being cancelled or not renewed at the request of the policyholder, then at least ten (10) days notice of cancellation is required and the notice shall be filed as required in this section. For purposes of this section, service by certified mail is complete either on acknowledgement of receipt or refusal of the notice by the contracting party or the fifteenth day after the date the postal authority first attempts to deliver the certified mail as evidenced by P.S. form 3849 or other similar document.

7. The reason for cancellation given by SIF was for non-payment of premium. Reynolds argues that the reason given is untrue because she paid her premium deposit. SIF responds that failure to provide a payroll report is equivalent to non-payment of premium because a premium amount cannot be calculated without the payroll report. SIF further argues that the form provided by the National Council on Compensation Insurance ("NCCI") to provide notice to NCCI and the Industrial Commission does not have a menu for failing to provide payroll reports. The closest menu is for failure to pay premiums. The Referee agrees with SIF's position. Premium amounts cannot be calculated without payroll reports. Reynolds never submitted payroll reports. SIF was justified in canceling Reynolds' policy and gave proper notice of the same to both Reynolds and the Industrial Commission in strict compliance with Idaho Code § 72-311(2). Even if they did not, it is irrelevant to this matter because that coverage did not extend to Claimant herein in any event.

8. The Referee finds that Reynolds and/or WWR, LLC did not have workers' compensation coverage on July 14, 2004.

9. Reynolds also argues that she was somehow misled to her prejudice by SIF, Hart, her bookkeeper, and FIB because one, some, or all were supposed to assign or in some other manner convert the Reynolds policy to WWR, LLC and did not. That argument is without merit. Once the policy was properly cancelled, there was nothing to assign or convert. A new contract would have had to have been entered into. Negotiations to that effect were begun. SIF was under no obligation to issue a new policy, let alone "assign" Reynolds' policy to WWR, LLC. SIF eventually issued a policy to WWR, LLC in August of 2004. The record in this case is replete with instances where Reynolds "relied" on others to do the relatively simple things asked of her by SIF in order to obtain the proper insurance. In fact, she has sued Hart, FIB, and SIF in civil court. Perhaps she will find the relief there that she has not found here.

CONCLUSION OF LAW

Employer Reynolds and/or WWR, LLC did not have workers' compensation insurance coverage on July 14, 2004.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusion of Law, the Referee recommends that the Commission adopt such findings and conclusion as its own and issue an appropriate final order.

DATED this __23rd___ day of __May___, 2007.

INDUSTRIAL COMMISSION

__/s/_____
Michael E. Powers, Referee

ATTEST:

__/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the ___1st____ day of __June___, 2007, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following persons:

JOHN F CRONER
1215 W HAYS ST
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ANDREW E SCHEPP
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JON BAUMAN
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ge _/s/_____

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Pursuant to Idaho Code § 72-717, Referee Michael E. Powers submitted the record in the above-entitled matter, together with his proposed findings of fact and conclusion of law to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendation of the Referee. The Commission concurs with this recommendation. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusion of law as its own.

Based upon the foregoing reasons, IT IS HEREBY ORDERED that:

1. Employer Reynolds and/or Why Worry Ranch, LLC did not have workers' compensation insurance coverage on July 14, 2004.

2. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all issues adjudicated.

DATED this __1st___ day of ___June____, 2007.

INDUSTRIAL COMMISSION

__/s/_____
James F. Kile, Chairman

__/s/_____
R. D. Maynard, Commissioner

__/s/_____
Thomas E. Limbaugh, Commissioner

ATTEST:
__/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the __1st___ day of ___June___, 2007, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following persons:

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