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PENNSYLVANIA TEST AUDIT PROGRAM **BULLETIN #114**

TEST AUDIT APPEAL DECISION

The result of an insurance carrier appeal to the PCRB Audit Committee is presented to the membership for their information.

The appeal centered on the allocation of payroll for one employee of a beverage manufacturing and distribution operation. The PCRB's test audit had assigned the employee to Code 951, Outside Salesperson, while the carrier's audit had assigned the employee's payroll to the governing classification, Code 112, Beverage Mfg.

As part of its appeal presentation the carrier referenced a conclusion outlined in a prior PCRB letter indicating that all of the insured's sales employees had the same duties. The carrier then cited two claims involving a different employee (claimant) than the one in question, whom the carrier audit and PCRB test audit had both assigned to Code 951. The claimant had been assigned to Code 112 by the carrier based upon the description of duties (stocking and straightening merchandise on store shelves) included in the information provided by the claimant. The carrier argued that if all the insured's salespersons shared the same duties then the description of duties provided by the claimant for claim documentation purposes should be used in determining the proper classification for all of the insured's employees designated as sales.

In response staff noted that the employee in question was not listed individually on the carrier's audit, but instead had been included in the balance. Accordingly his duties were not specifically described. Further, staff noted that the PCRB had followed up with the insured with respect to the duties performed by the employee and confirmed the information it used to make its classification determination. Staff also stressed that claims information was not used by the PCRB to classify employees and that the duties of the claimant should not necessarily be considered relevant to classifying the employee in question. Staff pointed out that the PCRB test audit and follow-up information were supportive of an assignment of Code 951.

Staff also pointed out that the PCRB's test audit was consistent in that all sales employees had been assigned to Code 951. That assignment was sustained upon follow-up with the insured. The carrier then questioned who was stocking the shelves. Staff indicated that at this point it would be an assumption as to who was stocking the shelves. Nevertheless the PCRB must act in accordance with the information that was presented at the time of the audit. The carrier reiterated that the claims information supported the fact that the insured's sales personnel performed duties beyond those contemplated by Code 951. However, staff indicated that a broader, more comprehensive review must be taken into account, not just a single piece of information such as a claim. The carrier then asked whether the PCRB would have used the claim information for classification assignment purposes if the employee in question was the

claimant. Staff responded that they would not have done so because a claim represented only what an employee was doing at the time on injury and not necessarily their total job duties.

A Committee member opined that if there was more detail in the carrier's audit regarding the duties of the employee in question then perhaps its appeal could be justified. The carrier was then asked whether its position was that all of the insured's salesmen belonged in the governing class (Code 112) based on the claim filed by the separate claimant. The carrier answered in the affirmative. Staff again responded that various factors must be considered including, and in particular, the "regular and frequent" duties of the employee in question. PCRB information indicated that this employee did not stock and/or straighten shelf merchandise on a regular and frequent basis.

The Committee questioned the quality of the information provided to the PCRB for the test audit, and whether the informants were familiar enough with the business to be in the position to provide detailed job duties. Staff advised that two separate individuals (one an assistant to the corporate officers) had provided the same description of job duties for the employee in question on two separate occasions. Though there were no guarantees, staff felt comfortable with the quality of information it had been provided.

In executive session the Committee noted that the issue in dispute was the classification treatment of a particular employee and not the classification of the insured's sales personnel in general. Concern was expressed regarding the conflict between the PCRB's information and the carrier's information with respect to the duties and the associated classification of the sales personnel (Code 112 vs. Code 951). Related to that concern was the Committee's desire that the PCRB's assignment of Code 951 for the insured's sales personnel be understood to be limited to the policy period in question, subject to subsequent periodic reexamination. From there a consensus developed that the carrier's audit was fatally flawed since the information presented in support of their appeal (claims information for a separate individual which appeared to support the assignment of Code 112 for all of the insured's sales personnel) was inconsistent with their actual audit (other than the employee in question, the carrier had classified the insured's sales personnel under Code 951). The PCRB had based its assignment of Code 951 for the employee in question on the information provided by the insured (on two separate occasions) and had been consistent in assigning Code 951 to all of the insured's sales personnel.

In conclusion the Committee voted to deny the carrier's appeal and sustain the test audit difference. The motion was passed unanimously.