



## Pennsylvania Compensation Rating Bureau

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### **PENNSYLVANIA TEST AUDIT PROGRAM** **BULLETIN # 100**

#### **TEST AUDIT APPEAL DECISION**

Per Bureau Circular No. 1532, the result of an insurance carrier appeal to the Audit Committee is presented to the membership for their information.

The carrier came before the Audit Committee to appeal the Bureau's test audit of its insured, a bed and breakfast operation. The appeal centered on the classification of one employee. The Bureau's test audit had assigned this employee to the governing classification, Code 975, Restaurant; N.O.C. The carrier believed this employee should be assigned to Code 953, Office.

The carrier began its presentation by distributing a handout which included the Bureau's test audit and difference memo, the carrier's audit, correspondence between the Bureau and carrier and a signed statement from the employee. The carrier indicated that the insured owned several restaurants and that the employee was responsible for performing the accounting function for all of those entities. It was further asserted that the employee worked in a small office and was exclusively engaged in clerical operations, despite a prior claim that she spent 95 percent of her time in the office.

The carrier argued that the employee referred to herself as a General Manager, but she was truly not the General Manager, only the Office Manager. Reportedly her duties were performed in a small office, and she had no functions outside of the office (the carrier did concede that the employee on three occasions stated to the carrier auditor that she would do whatever work needed to be done). The signed statement regarding the employee's duties listed processing receipts, payroll, employee recordkeeping and handling accounts receivable and payable. The carrier stated that the employee would also place orders for supplies for the restaurant. In conclusion, the carrier submitted that, since the employee reportedly performed all of her duties in the office and they were accounting-related, he believed that she should be considered clerical. The carrier then questioned why the Bureau test audit had included the employee in the balance, as opposed to listing her individually.

In support of the Bureau's position, staff noted that general audit practice was not to list every employee whose duties fell under the governing classification. Staff went on to point out that the test audit description of operation stated that the manager (presumably the employee in question) would seat patrons. It was also noted that the employee was working at the front desk during the Bureau's test audit visit and was observed checking out a couple from the bed and breakfast.

After the carrier's initial difference response that the employee spent 95 percent of her time in the office and five percent out of the office, the Bureau had followed up with the employee and obtained more quantitative information. Specifically, the Bureau field representative had been advised that the employee worked 10 - 12 hour days, including weekends. The employee stated that only two hours out of her work day was spent working in the office, while the balance of her work time was spent out and about the premises and directly managing the business (the "front part of the house"). The employee also referred to herself as a "multi-tasker."

Finally, staff cited a test audit of the employer's 1999 policy period which had placed the employee in Code 975 and listed 50 percent of her duties being in the office and 50 percent checking operations in the restaurant. Based upon the employee's schedule, the job description she provided and duties she was observed performing, the Bureau's position was that she could not be considered clerical.

The Committee questioned where the employee's office was located. The carrier advised it was located behind the front desk area and that she could see from her office if there were guests waiting for service at the front desk. There were also questions raised about the employee's supply ordering duties and if she would take inventory prior to placing an order. The carrier advised that the orders were written up by the bartender and chef and then placed by the employee.

There was some further discussion prompted by the carrier as to whether the Bureau should be entitled to revisit an employer to obtain additional information once a carrier responded to a test audit difference. The carrier felt that allowing the Bureau to re-contact the employer was violating the standard of completing the audit within six months of expiration, as defined by the Test Audit Program. The carrier also noted that repeated Bureau visits to the insured to verify the information in the test audit could present an undue burden to the insured.

Staff responded that the Test Audit Program provision referred to by the carrier required that the initial test audit be completed within six months of the expiration of the policy. That provision had been met in this case. Further, one of the primary purposes of the Test Audit Program was to promote and maintain data quality. To that end it was incumbent on both the Bureau and carriers to produce premium audits that were as accurate as possible. Therefore, reasonable follow-up to obtain additional and pertinent information to produce an accurate audit result was acceptable under the Test Audit Program.

The Committee then went into executive session. After limited discussion, the Committee concluded that the evidence presented by the carrier did not support their conclusion. Specifically, the documentation provided as part of the carrier's initial audit was not supportive of a clerical assignment. Code 953 had a very specific definition that must be met. In the view of the Committee, that definition had not been met based on the information contained in the carrier's initial audit and expounded upon in subsequent correspondence and discussion, including the carrier's presentation at this meeting. Accordingly, upon motion made and duly seconded, it was voted to sustain the Bureau decision of assigning the governing classification, Code 975, to payroll developed by the employee in question. The vote was unanimous.