



Pennsylvania Compensation Rating Bureau

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PENNSYLVANIA TEST AUDIT PROGRAM BULLETIN #35

TEST AUDIT APPEALS

As per Bureau Circular No. 1285, the results of an insurance carrier appeal are presented to the membership for their information.

"H" Plastics, Inc.

The insured manufactured plastic extrusions for a broad industrial base of customers. All of the insured's business operations were conducted in a one-story warehouse-type structure with approximately 20-foot ceilings. The insured used partitions approximately five feet in height to segregate the office work area from the rest of the operation. The president of the company and the bookkeeper reportedly worked exclusively in that segregated area.

The Bureau's test audit assigned the payroll of both the president and bookkeeper to the governing classification citing a lack of physical separation as called for in the Pennsylvania Workers Compensation Manual.

The carrier's appeal centered around the Bureau's stipulation in the test audit and ensuing correspondence that office areas (other than retail stores) must be separated from all other work places by floor to ceiling partitions.

The carrier's presentation recounted the physical layout of the insured's business premises and proposed the existence of the partitions in place adequately separated the employees in question from the operative hazards of the business.

The carrier reiterated the exclusivity of the clerical and administrative job duties of the employees in question and noted the president lacked expertise in the plastics manufacturing industry as the reason he did not exercise supervision over the shop employees.

Finally, the carrier concluded it would be unrealistic for the insured to erect a floor to ceiling partition to meet the Bureau's restrictive definition of effective physical separation.

A couple of points were noted by the Committee:

1. There was no misrepresentation by the insured that the employees in question worked in a physically separate office.
2. The president did not engage in regular outside sales duties sufficient to qualify him for the application of Code 951, Outside Salespersons.

In Executive Session the Committee reviewed at length the facts presented in this appeal. In particular, the Committee discussed at length the clerical definition contained in the Pennsylvania Workers Compensation Manual as approved by the Pennsylvania Insurance Commissioner and its applicability to the policyholder. The Committee noted that the physical separation criteria for assignment to Code 953 applied only to areas which are separated from all other workplaces of the employer by floor to ceiling partitions (the insured is not a retail store where only a five-foot high partition is required). The Committee concluded the partitions the insured had in place were temporary and not fixed. It was also suggested that given the insured's physical set-up a 20-foot high partition was not necessarily required to ensure compliance with the physical separation criteria but that only a permanently partitioned separate area with a ceiling would qualify.

The Committee voted to sustain the Bureau's position on the test audit and the assignment of the insured's president and bookkeeper to the governing classification and not Code 953 since the insured did not meet the physical separation conditions of the Manual rule for Code 953.

RS/jy