

STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
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STATE OF ALASKA

DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

IN THE MATTER OF)
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NATIVE VILLAGE OF GAKONA,)
CASE NO. AB-AK-05-2008)
)
Appellant.)
)
)
)

Case No. H 08-04

DECISION

I. Introduction

The Native Village of Gakona (Gakona) is appealing a decision of the National Council on Compensation Insurance (NCCI), a rating organization licensed as such in Alaska, that rejected Gakona's request for a change of classification from Code 2702, Logging and Lumbering, and Code 6217, Excavation and Drivers, to Code 7710, Firefighting. Gakona had originally requested a classification change from the insurer writing their workers' compensation coverage, Alaska National Insurance Company, which was denied.

Gakona initiated this case by requesting a hearing from NCCI, under AS 21.39.090, regarding the classification of brush clearing for fire prevention projects. Correspondence from Gakona indicates that the brush clearing projects are completed with chain saws for the small trees and brush is picked up by hand. On May 30, 2008, NCCI stated its position that the appropriate classifications for wildfire mitigation work are Codes 2702 and 6217. NCCI's reply of May 30, 2008 included the clarification language in Code 2702 to mean the "mitigation of fires by removing small trees using chain saws is considered in the scope of this code" and also states that work applicable to "brush removal performed by a specialty contractor and not performed in connection with timber cutting should be assigned to Code 6217."

Gakona was informed of the appeal procedure it could pursue with the Alaska Workers' Compensation Rating and Classification Grievance Committee (committee). The membership of the committee is the same as the Workers' Compensation Review and Advisory Committee. The members of the committee are not employed by NCCI. Gakona presented its case to the committee on July 17, 2008. The committee decision was released on August 11, 2008; it affirmed that the classifications assigned by Alaska National were correct.

Gakona then appealed the committee's August 11, 2008 decision to the director with the additional information as set out in Mr. Lee H. Bridgman's letter of September 4, 2008. In the

1 pre-hearing conference of October 14, 2008, the Department of Interior, Indian Affairs –
2 Alaska Region, acknowledged that its interest in the matter would be to serve as an informed
3 expert for Gakona and that it was not an actual party to the appeal. Witness Jake Sprankle
4 affirmed that he testified at the July 17, 2008 committee meeting.

5 **II. Issue Presented**

6 Was Gakona's fire mitigation work properly classified in Code 2702, Logging and
7 Lumbering, and Code 6217, Excavation, or should the work have been classified in Code 7710,
8 Firefighting, for the policy period December 14, 2006 to December 14, 2007.¹

9 **III. Discussion**

10 A review of the committee's decision shows that it was based on the Scopes Manual
11 classification language. Code 2702 Logging classification includes "logging or tree removal –
12 nonmechanized operations" regardless of the size of timber being harvested or removed. By
13 analog assignment, the thinning of timberland or mitigation of fires by removing small trees
14 using chain saws is considered within the scope of this logging classification. The Logging
15 classification also specifically includes slash piling and burning, when performed by employees
16 of the logging operation. "Brush removal performed by a specialty contractor and not
17 performed in connection with timber cutting should be assigned to code 6217." These two
18 classifications are currently applied to Gakona's Workers' Compensation premium
19 determination.

20 At the hearing on March 10, 2009, documents and testimony were provided by Sara
21 Verrelli, research analyst for the State of Alaska's Workers' Compensation Division, Juneau,
22 showing the chainsaw accidents in Alaska in the years 2006 and 2007. The incident rates
23 represent the number of injuries and illnesses for a given number of full-time workers (100
24 equivalent full-time workers in a year). AS 21.39.030 provides that loss experience inside and
25 outside this state may be given consideration. In classifications where Alaska experience alone
26 is not statistically credible, national experience may be included. It does not seem that the
27 Alaska numbers related to chain saw accidents, provided at the hearing, were of sufficient
28 quantity to be statistically meaningful.

29 Messrs. Dave Jandt of Alaska Fire Service; Will Putnam of Tanana Chiefs Conference,
30 Forestry; Steve Heppner of Department of Interior, Bureau of Indian Affairs; and Larry Adams

31 ¹ In this appeal, Gakona also tried to use the decision *In the Matter of Sealaska*
32 *Corporation*, OAH No. 06-0641-INS; Division Case No. H 06-05 to support its request for a
33 classification change. Gakona relied particularly the Proposed Decision's finding that the rates
34 charged for silviculture work were "unfairly discriminatory." However, the final Order on the
35 Proposed Decision of January 9, 2008 specifically did not affirm that portion of the Proposed
36 Decision that concluded that rates charged for silviculture work were "unfairly discriminatory."
37 Further, the new classification code 0124, Reforestation & Drivers, resulting from the *Sealaska*
38 decision, was not effective until March 28, 2008. Since Gakona's appeal concerns the policy
39 period December 14, 2006 to December 14, 2007, the new classification code could not be
40 applied here, even if it was appropriate to consider it, and it is not. In short, the *Sealaska*
41 decision is not germane to this appeal.

1 of Department of Interior, Bureau of Indian Affairs, Regional Fuels Management Specialist,
2 provided expert testimony. Their experience noted the similarities of Gakona's operations to
3 those in various Firewise programs held in Hughes, Nikolai, and Tanacross, Alaska. Alaska
Fire Service has a program in Eagle, Alaska that parallels the operations of Gakona.

4 Testimony and documents presented also showed that Firewise Alaska promotes
5 identification of fire hazards and values. The program encourages prefire preparedness and
6 community involvement. Fire hazard mitigation is the basis of the Firewise programs. Fire
7 hazard mitigation includes brush and various tree thinning or clearing to reduce fuels for forest
8 fires or to create fire breaks in or near to communities and their infrastructures. Many of the
9 workers employed for the tree thinning operations have fire fighter experience. Operations for
fuel reduction are dependant on the terrain, size, and nature of the timber and brush, and the
remoteness of the community. In the communities of Hughes, Nikolai, Tanacross, and Gakona,
the programs may utilize chain saws for the trees and debris. Slash pile are created and
material not utilized by the communities may be subject to controlled burns in the rainy or
snow seasons. There is no commercial value in the wood thinned or cleared.

10 Mr. David Jandt testified and provided photographs of "Alaska Fire Service
11 Firefighting - Eagle, AK," which demonstrated the value of having fire mitigation, such as fuel
12 breaks, in place prior to a fire. The goal of the programs is to strategically think of how to
manage asset protection and includes the creation of fuel breaks for an added margin of time.

13 The undisputed testimony supports a finding that the work done by Gakona, thinning
14 and cutting wood and brush and piling and burning slash, was for fire mitigation, but was not
15 direct firefighting. The testimony also indicated that the fire mitigation work done by Gakona
does not have the same risks as large scale commercial logging operations.

16 Charlene Nollner, Tribal Administrator, Gakona Village Council, acknowledged that
17 the people hired for the work completed under this contract were not hired as fire fighters. A
18 specific log of duties was not maintained during the policy period in question. Ms. Nollner
19 described the work in an email to Tim Hughes of NCCI: "work will consist of felling trees,
20 harvesting usable wood fiber and disposing of the slash and unused portions of thinned trees by
21 hand piling, burning and/or other approved methods. They thin trees around homes for fire
22 safety. When needed they use chainsaws to fall trees, then they pick up the willows, brush and
23 trees and put them in a pile."

24 The affidavit of Jake Sprankle, as well as his testimony, describes the Gakona program
25 as a Hazard Fuel Reduction project. According to Mr. Sprankle, the "work involved consists of
26 cutting trees and brush with chainsaws and brush cutters and pruning residual trees, stacking
the brush and slash, and then burning the slash piles usually when there is snow cover. 60% or
more of the work involved in creating a shaded fuel break is the stacking of the slash piles and
wood. Felling and cutting the trees accounts for about 15-20% of the work involved and the
burning of the slash is about the same, 15-20%". Mr. Sprankle testified that the projects are not
comparable to the logging work intended to be covered by the NCCI Classification Codes 2702
or 6217.

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1 Steve Heppner gave testimony regarding the standard contract that was used between
2 the Bureau of Interior and Gakona. Fifteen percent of the contract work would be sawing or
cutting and the balance of the work would be manual thinning or stacking and clearing.

3 Patricia Henderson, Vice President - Audit for Alaska National Insurance Company,
4 confirmed that the classification codes 6217 and 2702 were used based on information
5 developed through correspondence with Gakona. Ms. Henderson attributed 80% of the
6 Firewise work done by Gakona to Code 6217 and 20% to Code 2702. The use of 20% of the
payroll toward the logging classification based on the use of chain saws and the clearing of the
wood piles was consistent with Ms. Henderson's experience in auditing.

7 In workers' compensation insurance, establishing a classification system is essential.
8 Each classification should be large enough to provide a meaningful statistical base. The
9 classification must be sufficiently large to produce payroll and losses that will be meaningful
for ratemaking purposes, even though no two businesses will be identical.

10 The Scopes Manual describes the following classification codes:

11 **2702 – Logging or Tree Removal:** applies to all types of logging and tree removal
12 operations regardless of the size of the timber being harvested or removed. The thinning of
13 timberland or mitigation of fires by removing small trees using chain saws is considered within
the scope of this classification.

14 Code 2702 also includes additional notations regarding related operations not classified
15 to Code 2702: Brush removal performed by a specialty contractor and not performed in
16 connection with timber cutting should be assigned to Code 6217 – Excavation and Drivers.

17 While the work performed in Gakona is not logging as it might be performed in the
18 commercial harvesting of large trees, it clearly falls within the Analogy Assignments of the
Scopes Manual for NCCI Classifications, which states: "The thinning of timberland or
mitigation of fires by removing small trees using chain saws is considered within the scope of
this classification."

19 **6217 – Excavation & Drivers:** Analogy Assignments ... Tree removal operations
20 assigned to Code 6217 include the removal of one or a few trees on developed sites, not tree
21 removal operations involving large numbers of trees in order to clear a right-of-way. As noted
22 above, Code 2702 cross references Code 6217 and says that brush removal by a specialty
contractor and not performed in connection with timber cutting should be assigned to Code
6217.

23 **7710 – Firefighters & Drivers:** specifically applies to firefighting entities that provide
24 services for the protection of the public or insureds engaged in the business of forest or
wildland firefighting

25 It is clear that the Gakona is not engaged in firefighting. The Firewise program is a
26 prefire prevention program that provides clear areas of protection from fires to the village
buildings. From the testimony provided, it also appears that the Firewise program provides
employment opportunities to the people of Gakona and additionally furnishes a source of free

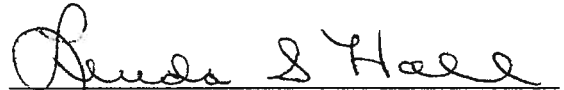
1 wood for the village. The Firewise program certainly seems to provide great benefit to the
2 communities that adopt it. The benefit, however, does not impact the workers' compensation
3 classification system.²

4 **IV. Decision**

5 Fire mitigation using chain saws is expressly within Code 2702 Logging or Tree
6 Removal. Brush removal is expressly within Code 6217 Excavation and Drivers. The
7 undisputed facts are that the Gakona work was fire mitigation, not firefighting. Therefore, the
8 committee was correct in holding that the Gakona work should be classified under Codes 2702
9 and 6217 and not Code 7710 (firefighting). The classification of the Native Village of Gakona
10 workers' compensation payroll for the Firewise work for the policy period December 14, 2006
11 to December 14, 2007 is AFFIRMED.

12 DATED and effective this 24th day of April, 2009.

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Linda S. Hall
Director of Insurance

² Apparently Firewise and similar fire mitigation programs are being used in an increasing number of communities across the United States. NCCI is encouraged to work with these groups to see if there is a large enough statistical base to justify creation of a national code classification for these types of fire mitigation programs.

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