

BEFORE THE IOWA INSURANCE COMMISSIONER

IN THE MATTER OF)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
LAMBIC TELCOM,)	AND ORDER
NCCI # 21130, and)	
CHARTIS Policy WC 5319816)	Division File No. 79092

I. INTRODUCTION

Pursuant to Iowa Code §515A.6(7) (2011), a hearing was held via telephone on March 13, 2013 regarding Lambic Telcom's appeal of the Iowa Workers Compensation Appeals Board decision of December 8, 2012. The hearing was scheduled as a result of a request by the Lambic Telcom pursuant to Iowa Code §515A.6(9) (2011) and the National Council on Compensation Insurance, Inc's (NCCI) *Basic Manual*. Assistant Insurance Commissioner Robert Koppin presided over the matter.

II. JURISDICTION

The Commission has jurisdiction over this non-contested proceeding under Iowa Code Chapter 515A (2011) and under the Dispute Resolution Process as set forth in NCCI's *Basic Manual*.

III. ISSUES IN DISPUTE

The rules used to determine the premium base for workers compensation premium assessment are filed with and approved by the state of Iowa in the NCCI *Basic Manual*. The *Basic Manual* describes the manner in which the premium basis will be calculated and allows for the deduction of payments made to reimburse employees for expenses incurred as a valid business expense. The specific text of the rule in dispute is as follows:

Payroll

For purposes of this manual, payroll means money or substitutes for money.

1. [Payroll] Includes:

- p. Expense reimbursements to employees to the extent that an employer's records do not confirm that the expense was incurred as a valid business expense.

Exception:

When it can be verified that the employee was away from home overnight on the business of the employer, but the employer did not maintain verifiable receipts for incurred expenses, a reasonable expense allowance, limited to a maximum of \$30 per day, is permitted.

2. [Payroll] Excludes:

h. Expense reimbursements to employees to the extent that an employer's records confirm that the expense was incurred as a valid business expense. Reimbursed expenses and flat expense allowances (except for hand or hand-held power tools) paid to employees may be excluded from the audit only if all three of the following conditions are met:

1. The expenses are incurred for the business of the employer
2. The amount of each employee's expense payments or allowances are shown separately in the records of the employer
3. The amount of each employee's expense reimbursement is a fair estimate of the actual expenses incurred by the employee in the conduct of his/her work.

Note: When it can be verified that the employee was away from home overnight on the business of the employer, but the employer did not maintain verifiable receipts for incurred expenses, a reasonable expense allowance, limited to a maximum of \$30 per day, is permitted.

Lambic Telcom is a temporary employment contracting company that provides technicians to telephone companies, often in the aftermath of natural disasters like tornadoes or hurricanes. Lambic Telcom pays its employees a flat \$100 per diem for each night they are away from home. Chartis conducted an audit of Lambic Telcom and limited its deduction for the per diem payments to \$30. Lambic Telcom disputes the limitation of \$30 per employee per diem for calculation of its premium base and argues that the full \$100 per employee per diem amount should be deducted.

IV. EVIDENCE PRESENTED

G. James Mohr testified that he is President and owner of Lambic Telecom and argues that Chartis did not correctly follow the rules as spelled out in the *Basic Manual*. Lambic Telecom is mainly in the business of disaster recovery, supplying temporary field technicians to telephone companies such as AT&T, Verizon, CenturyLink and Windstream. Mohr testified that Lambic Telecom has four permanent employees, located in Florida, Iowa and Indiana. Over the course of the past year, Lambic Telecom employees worked in 21 states with 90% of its assignments lasting between three weeks and four months. After completion of an assignment, the temporary employee is released from employment to seek employment with other contracting companies.

Chartis submitted the testimony of Matt Raines, manager of litigation and consumer complaints at AIG, the parent company of Chartis. Chartis testified that during the conduct of the premium audit, it came to the attention of the auditor that the employer was including in the employee's compensation a payroll item which the employer described as a "per diem expense reimbursement." Lambic informed the auditor that rather than require the employee to submit expense reports and receipts and wait for the reimbursement for out-of-pocket expenses, Lambic had adopted a per diem system. Lambic was now including in the employee's salary \$100 per day for every day the employee had worked away from home. During the audit, Lambic admitted to the auditor that it no longer maintained receipts or any other documentation to verify that the expense had been incurred by the employee on behalf of Lambic. At hearing, Lambic Telecom did not dispute this testimony.

V. CONCLUSIONS OF LAW

The rules used to determine the premium base for Workers' Compensation premium assessment are filed with and approved by the Iowa Insurance Division. NCCI's *Basic Manual* is approved by the Division and is the document that describes the manner in which premium will be calculated. The *Basic Manual* has two rules that address Lambic's situation. The first rule that addresses flat expense reimbursements is found in Rule 2 "Premium Basis and Payroll Allocation" part 1(p) where the *Basic Manual* defines Payroll as any "Expense reimbursements to employees to the extent that an employer's records do not confirm that the expense was incurred as a valid business expense." This rule also contains an important exception that says that "[w]hen it can be verified that the employee was away from home overnight on the business

of the employer, but the employer did not maintain verifiable receipts for incurred expenses, a reasonable expense allowance, limited to a maximum of \$30 per day, is permitted. This rule contains two elements. First, the exception clause of the rule defines the “valid business expense” as an expense for which the employer maintained verifiable receipts for the incurred expense. A receipt from a third-party provides proof that the employee incurred a business expense on behalf of the employer. Because Lambic did not maintain receipts, there is no methodology to confirm that per diem is a reimbursement for a valid business expense. Secondly, in instances where it can be verified that the employee was away from home overnight on the business of the employer but the employer did not maintain receipts, the exception clause of the rule provides a remedy to an employer in that a maximum of \$30 per day can be excluded. In this case, the auditor correctly limited Lambic Telcom’s exclusion of \$30 per day, per employee for calculation of its premium base.

The second rule that addresses flat expense reimbursements is Rule 2 “Premium Basis and Payroll Allocation” part 2 where the *Basic Manual* excludes from payroll several categories of payments. Relevant to the Lambic Telcom is subsection (h) that states that expense reimbursements to employees are excluded from payroll to the extent that an employer’s records confirm that the expense was incurred as a valid business expense. However, the rule also requires that three conditions are met:

- (1) The expenses are incurred for the business of the employer
- (2) The amount of each employee’s expense payments or allowances are shown separately in the records of the employer
- (3) The amount of each employee’s expense reimbursement is a fair estimate of the actual expenses incurred by the employee in the conduct of his/her work

The rule also provides an important note that states that when it can be verified that the employee was away from home overnight on the business of the employer, but the employer did not maintain verifiable receipts for incurred expenses, a reasonable expense allowance, limited to a maximum of \$30 per day, is permitted. This note is important because, as Lambic admits, it did not maintain verifiable receipts for incurred expenses. As such, the auditor correctly applied note by limiting the expense deduction to \$30 per day.

After a careful review of all testimony, argument and exhibits presented, the Commissioner concludes that the Chartis audit was correct in its application of the NCCI *Basic Manual* as it applies to Lambic Telecom's per diem reimbursements.

IT IS THEREFORE ORDERED that: The Iowa Workers Compensation Appeals Board Case Summary and Board Decision dated December 28, 2012 is affirmed.

This Order shall be considered final agency action for the purposes of Iowa Code chapter 17A (2011). A party to this matter may seek judicial review pursuant to Iowa Code chapter 17A. Any action challenging the Order shall comply with the requirements of Iowa Code chapter 17A (2011).

DATED this 11th day of July, 2013.



Robert Koppin
Assistant Insurance Commissioner

Copies to:

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CERTIFICATE OF SERVICE

I certify under penalty of perjury and pursuant to the laws of Iowa that copies of the foregoing instrument(s) were served to the names and addresses of the parties by the methods listed, with proper posted affixed thereto as required on this

11 day of July, 2013.

Irene Vega

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