

**DEPARTMENT OF INSURANCE
ADMINISTRATIVE HEARING BUREAU
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**BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA**

In the Matter of the Appeal of)	
)	
VAN DE POL ENTERPRISES, INC.;)	FILE AHB-WCA-17-42
FUEL DELIVERY SERVICES, INC.)	
)	
Appellants,)	
)	
From the Decision of)	
)	
CALIFORNIA INSURANCE COMPANY;)	
APPLIED UNDERWRITERS CAPTIVE)	
RISK ASSURANCE COMPANY)	
)	
Respondents.)	

**ALJ'S RESPONSE TO NOTICE OF NON-ADOPTION
OF PROPOSED DECISION AND ORDER OF REFERRAL**

On June 27, 2019, the Commissioner issued a Notice of Non-Adoption of Proposed Decision; and Order of Referral (the "June 2019 Order"), in which the Commissioner declined to adopt Administrative Law Judge ("ALJ") Clarke de Maigret's June 6, 2019 Proposed Decision in the above matter. The June 2019 Order referred the matter to the ALJ to take additional evidence as follows:

1. The Proposed Decision includes findings that the rates set forth in the guaranteed cost policies comport with Respondents' rate filings under Insurance Code section 11735, and that there has been no allegation in this appeal that any portion of the guaranteed cost policies is unlawful. Given the above, does the precedent decision *In the Matter of the Appeal of Shasta Linen Supply, Inc.* (Cal. Ins. Comm'r, Jun. 20, 2016, AHB-

- WCA-14-31)¹ compel the conclusion that Appellants² are obligated to pay the full guaranteed cost policy premium?
2. If payment of the full guaranteed cost policy premium is not required, what remedies may the Commissioner implement under his broad authority to award remedies in workers' compensation appeals in order to properly 'affirm, modify or reverse' Respondents' action in this case?
 3. Is there any other guidance on the question of available administrative remedies that the parties or the Commissioner should expressly seek from a court of law that may review the Commissioner's ultimate decision in this case?

(June 2019 Order at pp. 2-3.)

Applicable Law

These proceedings are governed by California Code of Regulations, title 10, sections 2509.40 through 2509.78. Section 2509.69, subdivision (g) provides, in relevant part, that the Commissioner may refer a matter to an ALJ to take additional evidence after the ALJ has submitted a proposed decision.

The rules of evidence in administrative appeals are considerably relaxed compared to the rules generally applicable in court proceedings. (See Cal. Code Regs., tit. 10, § 2509.62.) However, as in court, evidence is admissible here only if it is relevant. (See Cal. Code Regs., tit. 10, § 2509.62, subd. (d); *Coburn v. State Personnel Bd.* (1978) 83 Cal.App.3d 801, 812.) Evidence is relevant if it has a "tendency in reason to prove or disprove any disputed *fact* that is of consequence to the determination of the action." (Evid. Code, § 210, italics added.)

Analysis and Conclusions

None of the issues on which the June 2019 Order directs the ALJ to take additional evidence are questions of *fact*. Instead, whether *Shasta Linen* compels a particular conclusion given that the guaranteed cost policy rates were filed, what remedies the Commissioner may


¹ Hereafter, "*Shasta Linen*."

² I.e., Van De Pol Enterprises, Inc. and Fuel Delivery Services, Inc.

implement, and whether further judicial guidance may be applicable are all questions of *law*. As such, there can be no relevant evidence on those issues. Instead, the Commissioner or his designee must refer to legal authority if they believe the Proposed Decision insufficiently addresses those issues.

The ALJ will submit an Amended Proposed Decision to the Deputy Commissioner and Special Counsel. Other than updating the procedural history and correcting non-substantive drafting errors, the Amended Proposed Decision will be identical to the June 6, 2019 Proposed Decision.

Dated: July 18, 2019



CLARKE de MAIGRET
Administrative Law Judge
Administrative Hearing Bureau

DECLARATION OF SERVICE BY MAIL (AND FAX)

Case Name/No.: In the Matter of the Appeal of:
VAN DE POL ENTERPRISES, INC.;
FUEL DELIVERY SERVICES, INC.
FILE NO.: AHB-WCA-17-42

I, CAMILLE E. JOHNSON, declare that:

I am employed in the County of San Francisco, California. I am over the age of 18 years and not a party to this action. My business address is State of California, Department of Insurance, Administrative Hearing Bureau, 45 Fremont Street, 22nd Floor, San Francisco, California, 94105.

I am readily familiar with the business practices of the San Francisco Office of the California Department of Insurance for collection and processing of correspondence for mailing with the United States Postal Service. Said ordinary business practice is that correspondence is deposited with the United States Postal Service that same day in San Francisco, California.

On July 18, 2019, following ordinary business practices, I caused a true and correct copy of the following document(s):

**ALJ'S RESPONSE TO NOTICE OF NON-ADOPTION
OF PROPOSED DECISION AND ORDER OF REFERRAL**

to be placed for collection and mailing at the office of the California Department of Insurance at 45 Fremont Street, San Francisco, California, with proper postage prepaid, in a sealed envelope(s) addressed as follows:

(SEE ATTACHED PARTY SERVICE LIST)

In addition, on July 18, 2019, I also faxed a copy of said document to all parties where indicated to the FAX number which is printed under each address on this Declaration.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed at San Francisco, California, on July 18, 2019.

July 18, 2019

DATE


C. E. JOHNSON

PARTY SERVICE LIST
VAN DE POL ENTERPRISES, INC.;
FUEL DELIVERY SERVICES, INC.
FILE NO.: AHB-WCA-17-42

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