LETTER OPINION
93-L-235

August 23, 1993

Ms. Diane Alm
Executive Director
Workers Compensation Bureau
500 East Front Avenue
Bismarck, ND 58504-5685

Dear Ms. Alm:

Thank you for your August 19, 1993, letter requesting clarification of the Bureau's authority in establishing employer experience rating and premiums. An issue has arisen whether the Bureau must set rates at the maximum rate allowed by the Legislature in N.D.C.C. ? 65-04-17 for an employer with a negative rating and at the minimum rate for any employer with a positive rating.

N.D.C.C. ? 65-04-17 provides as follows:

> **Experience rating of employers.** The bureau may establish a system for the experience rating of risks of employers contributing to the fund, and such system shall provide for the credit rating and the penalty rating of individual risks within such limitations as the bureau may establish from time to time.
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> In calculating the experience rating, the bureau shall determine the maximum and minimum rates for each employment classification by:
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> 1. Multiplying the required average premium rate by one and seventy-five hundredths to get the maximum rate assigned to an employer with a negative experience rating; and

2. Multiplying the required average premium rate by twenty-five hundredths to get the minimum rate assigned to an employer with a positive experience rating.

N.D.C.C. ? 1-02-02 provides that "[w]ords used in any statute are to be understood in their ordinary sense, unless a contrary intention plainly appears, but any wordsexplained in this code are to be understood as thus explained." This section codifies the common law rule that "[a] statute should be construed so that an ordinary person reading it would get from it the usual accepted meaning." Wills v. Schroeder Aviation, Inc., 390 N.W.2d 544 (N.D. 1986).

The plain and ordinary meaning of minimum and maximum is that they set a lower and an upper bound on a quantity. They allow for a range of permissible values within those limits but do not mandate any particular quantity within that range, nor do they mandate that the quantity must be at the minimum or maximum value. Maximum is defined as "[a]n upper limit stipulated by law or other authority." American Heritage Dictionary, p. 774 (2d Col. Ed. 1991). Minimum is defined as "the lower limit of variation." Id. at 799. As used in N.D.C.C. ? 65-04-17, the minimum and maximum bounds for experience rating of employers set the legislative limits beyond which the Bureau cannot go. The Legislature, however, by setting the limits left the setting of the discount or surcharge in any particular case to the determination of the Bureau. The Legislature did not choose to set a discount or surcharge at seventy-five percent; instead, it gave the Bureau the authority to impose a credit or penalty of at most seventy-five percent. This is consistent with the broad powers granted to the Bureau in the remainder of N.D.C.C. ? 65-04-17. By its plain language, N.D.C.C. ? 65-04-17 places limits on the Bureau, but does not mandate any particular penalty or credit in any particular case.

Because this statute is clear and unambiguous, there

is no need to rely on the legislative history for explanation. However, the sparse legislative history also supports the above construction of the statute. The bill's sponsor, Representative Jack Dalrymple, testified that the purpose of the statute was to widen the range of the Bureau's current merit rating system from "40% discount maximum and a maximum penalty of 40%" to a 75% discount maximum and a 75% penalty maximum. Hearing on H.B. 1321 Before the House Comm. on Industry, Business, and Labor, 52nd Leg. (February 6, 1991) (Statement of Rep. Jack Dalrymple). There is no mention that the penalty rating must be at seventy-five percent or that the discount rating must be seventy-five percent, nor any indication that the statute was intended to take from the Bureau the authority to set the credit or penalty in any particular case.

Therefore, it is my opinion that the Bureau may set the surcharge for an employer with a negative experience rating at any rate at or between 1.0 and 1.75 times the average premium rate for that rate class. Similarly, the Bureau may set the discount for an employer with a positive experience rating at any rate at or between 0.25 and 1.0 times the average premium rate for that rate class.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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