Alaska Workers' Compensation Appeals Commission

Linda Rockstad,
Movant,

vs.

Chugach Eareckson, Zurich American Insurance Co. and Novapro Risk Solutions,
Respondents.

Final Decision
Decision No. 100 February 20, 2009

AWCAC Appeal No. 08-033
AWCB Decision No. 08-0208
AWCB Case No. 200320305

Motion for Extraordinary Review of Alaska Workers' Compensation Board Interlocutory Decision No. 08-0208 issued on November 6, 2008,[1] by southcentral panel members Janel Wright, Chair, Linda Hutchings, Member for Industry, and Patricia Vollendorf, Member for Labor.

Appearances: Linda Rockstad, pro se, movant.[2] Robert Bredesen, Russell, Wagg, Gabbert & Budzinski, P.C., for the respondents, Chugach Eareckson, Zurich American Ins. Co. and Novapro Risk Solutions.

Commission proceedings: Motion for Oral Argument filed November 18, 2008. Motion to Accept Late Filed Motion for Extraordinary Review filed November 21, 2008. Motion to Waive Fees, Motion for Leave to be Assisted by a Person Who is Not an Attorney and Motion to Accept Late Filed Motion for Extraordinary Review granted by commission order December 11, 2008. Oral argument on Motion for Extraordinary Review presented on January 21, 2009.

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[1] *Linda Rockstad v. Chugach Eareckson Support Servs.,* Alaska Workers' Comp. Bd. Dec. No. 08-0208 (Nov. 6, 2008), *modified, Linda Rockstad v. Chugach Eareckson Support Servs.*, Alaska Workers' Comp. Bd. Dec. No. 08-0237 (Dec. 3, 2008) (correcting date in footnote 38, clarifying a reference to handwriting on a June 18, 2008, medical record, and affirming Bd. Dec. No. 08-0208 in other respects). The board issued another interlocutory decision, *Linda Rockstad v. Chugach Eareckson Support Servs.,* Alaska Workers' Comp. Bd. Dec. No. 09-0016 (Jan. 29, 2009), denying Rockstad's petition to compel discovery of adjuster's loss reserves.

[2] Ms. Rockstad was assisted by Mary Thoeni.

Commissioners: David Richards, Stephen Hagedorn, Kristin Knudsen.

This decision has been edited to conform to technical standards for publication.

By: Kristin Knudsen, Chair.

1. Introduction.

The movant filed several petitions with the board seeking to stay a Second Independent Medical Evaluation (SIME), to delete reports of employer medical evaluations from the binder provided to the examiner, and to certify the employer to the Superior Court for contempt for failure to comply with discovery requests. The board denied the petitions in an interlocutory order. The movant now asks the commission to grant extraordinary review of the board's order. The movant asserts that an important question of law on which there are grounds for differing opinions presented in her motion respecting (1) the board's obligation to assure the contents of the binders are reliable scientific evidence; (2) the board's authority to determine the truth or falsity of the report before it is provided to the examiner; and, (3) whether an oral stipulation is binding on the parties. The movant asserts that the board disregarded its regulations in refusing to sanction the employer's discovery violations and that this presents an issue that would otherwise evade review. Finally, she asserts that the board's order denies her due process because 8 AAC 45.092(i) requires her to prepay the examiner's deposition fees, without a right to obtain a fee waiver as an indigent person.

The respondent contests these assertions, and argues that the motion for extraordinary review is motivated by a desire to delay a hearing on the claim, that the board has issued repeated discovery orders on the same subjects, and that the movant's efforts to exclude the employer medical examination reports have been rejected previously. The respondent also argues that this case has been delayed long enough, and that the board's decision contains no error sufficient to require extraordinary review.

The parties' assertions require the commission to decide if the movant has established that (1) she presents an important question of law on which there are

grounds for differing opinions *and* immediate review may advance the termination of the litigation; or, (2) the board, on review of the prehearing officer's ruling, so far departed from the requirements of due process or the board's regulations as to require the commission's immediate review; or, (3) she presents a strong possibility of prejudicial error that would otherwise evade review and immediate guidance is needed. The commission must also determine that the strong policy of taking appeals from final decisions is outweighed by the circumstances demonstrated by the movant.

2. Summary of decision.

The commission concludes that the movant failed to establish a strong possibility of prejudicial error that outweighs the sound policy favoring appeals from final decisions. The movant did not demonstrate that she will be foreclosed from disclosing information she believes is relevant to her understanding of the history of the injury to the SIME evaluator; waiting for the final decision on the merits of her claim will not result in injustice and unnecessary delay. Immediate review by the commission will not advance termination of the litigation; if the appeal is allowed now, the resolution of the merits of the claim will only be delayed. The speculative possibility that the movant might be faced with having to depose the SIME examiner is insufficient to establish grounds for review because the SIME has not taken place, the examiner has not issued a report, and the movant has not been refused an opportunity to examine, or cross-examine, the SIME examiner. The commission denies the motion for extraordinary review.

3. Factual background and board proceedings.

When deciding if the commission should grant extraordinary review, the commission does not review the board's findings to determine whether the findings are supported by substantial evidence in light of the whole record. The following summary is drawn from the board's decision:

> [Rockstad] was employed by Chugach Eareckson Support Services ("CESS"), which provided support services to Eareckson Air Base on the Aleutian Chain in Shemya, Alaska. The only medical provider in Shemya was the Shemya Clinic. Medical providers at the clinic were employees of the employer.

> This cause of action arose from a work injury reported to the Shemya Clinic by the employee on August 4, 2003. The employee reported increased right thumb and wrist pain after beginning an administrative position with the employer, which required typing and computer work. Prior to the August 4, 2003 report of injury, as a Food Service Worker for the employer, the employee had been treated at Shemya Clinic for complaints of right elbow pain and occasional right wrist pain. The employee at that time reported experiencing right elbow pain when lifting dishes off the conveyor belt at work.[3]
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> [In] four prior decisions we (1) ruled the employer's medical evaluation or "EME" reports will be admitted at hearing;[4] (2) granted the employee's request for a Second Independent Medical Examination ("SIME");[5] (3) ordered the employer to produce copies of its surveillance videos for the employee;[6] and (4) decided that subject to authentication, the surveillance videos will be admissible evidence at hearing.[7] This list by no means exhausts the issues the Board has been called upon to decide. Moreover, since the Board last deliberated on pending matters in this case on June 4, 2008,[8] the parties have raised a multitude of other issues in three separate prehearing conferences before the Board Designee. We summarize here only those matters necessary to decide the issues before us now.[9]
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> [On] July 2, 2008, the employee filed a Petition to Strike the updated reports of EME physicians Dr. Fuller and Dr. Glass,

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[3] *Linda Rockstad v. Chugach Eareckson Support Servs.,* Alaska Workers' Comp. Bd. Dec. No. 08-0208 at 2.

[4] *Linda Rockstad v. Chugach Eareckson Support Servs.,* Alaska Workers' Comp. Bd. Dec. No. 08-0028 (Feb. 22, 2008).

[5] *Linda Rockstad v. Chugach Eareckson Support Servs.,* Alaska Workers' Comp. Bd. Dec. No. 08-0075 (Apr. 24, 2008).

[6] *Id.*

[7] *Linda Rockstad v. Chugach Eareckson Support Servs.,* Alaska Workers' Comp. Bd. Dec. No. 08-0124 (July 1, 2008).

[8] *Id.*

[9] *Id.* at 3.

> dated April 23, 2008 and May 22, 2008, respectively, from the SIME medical binders and the case record. On July 14, 2008, she filed a Petition to Strike Impartial Medical Opinions, Inc.'s (Drs. Fuller, Glass and Reimer) original EME reports of February, 2006 from the SIME binders and case record. On July 21, 2008, the employee filed her first petition to certify facts for a contempt finding to the Superior Court for alleged discovery and other abuses. On August 21, 2008, the employee filed a second petition to certify facts to the Superior Court for a contempt finding, and on September 2, 2008, she filed a Petition for Investigation of Facts Reflecting Fraudulent Conduct. The employee seeks a stay of the SIME she requested until the Board resolves the issues she has raised in her four pending petitions.[10]

The board, in a decision commendable for organization and clarity, reviewed the pertinent facts and circumstances and the legal arguments of the parties. Applying a well-established standard of review not challenged on appeal, the board considered the decisions of its designee and the petitions presented. The board concluded that the employer medical evaluators' reports produced in

> 2006 and 2008 are "medical records" within the meaning of the Act. We find it will assist the Board in its investigation and understanding of the medical issues in this case for the SIME physicians to review the reports of the EME physicians along with all of the other medical records in this case. We conclude the EME reports are properly included in the SIME binders.[11]

The board denied the petition to strike the employer medical reports.

The board concluded that the petitions for a board order, (certifying to the superior court under AS 44.62.590 that the employer engaged in discovery and other abuses and should be found in contempt), were without merit.[12] The board found that the employer substantially complied with the board's order that a privilege log be produced, that given the amount of documents involved the production was not

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[10] *Linda Rockstad,* Bd. Dec. No. 08-0208 at 4.

[11] *Id.* at 14.

[12] *Id.* at 17-21. The board required briefing on the discovery of loss reserves, *id*. at 18; in a subsequent decision, it held that the setting of loss reserves was not relevant to the causation of the injury. *Rockstad* , Bd. Dec. No. 09-0016.

untimely, and that the petition was "premature and unnecessarily litigious."[13] The other grounds asserted for employer disregard of the board's discovery order were that the job description provided was incorrect; the board held that the objection was without merit because the employee's job at the time of injury, not initial hire, was what the board required and the employer had supplied the description of the job at the time of injury.[14] The petition also asserted employer misrepresentation of a fact based on a date discrepancy in the board's prior decision. Of this petition, the board said:

> [Rockstad] does not explain the relevance of this discrepancy, nor does she cite any prejudice to her resulting from any misrepresentation if indeed there was any. There is no indication the statement she regards as false was a mistake by the employer, or by the Board's restatement of the evidence presented to it. Nor is there a suggestion that if there was indeed a misstatement, it was deliberate, and was made with an intent to mislead on the part of the employer. As the parties well know, the pleadings and medical records in this case are voluminous, now filling four banker's boxes. This discrepancy is by all appearances immaterial. The employee's petition for a contempt certification based on this apparently insignificant fact is frivolous at best. The employee is admonished that further petitions to the Board for trivial matters such as this will not be favorably received. The petition is denied and dismissed.[15]

Finally, the board denied the motion to stay the SIME.

4. Discussion.

The commission will grant extraordinary review of a non-final board order only when the movant demonstrates the circumstances described in 8 Alaska Admin. Code 57.076(a) exist:

> The commission will consider and decide a motion under this section as soon as practicable. The commission will grant a motion for extraordinary review if the commission finds the sound policy favoring appeals from final orders or decisions is outweighed because

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13 *Rockstad,* Bd. Dec. No. 08-0208 at 19.

14 *Id.* at 20.

15 *Id.* at 20-21.

> (1) postponement of review until appeal may be taken from a final decision will result in injustice and unnecessary delay, significant expense, or undue hardship;
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> (2) an immediate review of the order or decision may materially advance the ultimate termination of the litigation, and
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> > (A) the order or decision involves an important question of law on which there is substantial ground for difference of opinion; or
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> > (B) the order or decision involves an important question of law on which board panels have issued differing opinions;
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> (3) the board has so far departed from the accepted and usual course of the board's proceedings and regulations, or so far departed from the requirements of due process, as to call for the commission's power of review; or
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> (4) the issue is one that otherwise would likely evade review, and an immediate decision by the commission is needed for the guidance of the board.

The commission does not grant extraordinary review lightly. The commission has consistently adhered to the strong policy favoring appeals from final decisions, even in the face of possible board error. The commission has denied motions for extraordinary review where there is no ripe dispute requiring commission intervention.[16] The commission has denied review, although an important question of law was presented, because commission review would not materially advance termination of the litigation due to an incomplete factual record, or where resolution of disputed facts could render the disputed issue moot.[17] The commission denied a motion for

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[16] *BP Exploration Alaska, Inc. v. Stefano*, Alaska Workers' Comp. App. Comm'n Dec. No. 076, 2008 WL 2065075 (May 6, 2008); *Smith v. CSK Auto, Inc.*, Alaska Workers' Comp. App. Comm'n Dec. No. 017, 2006 WL 3325419 (Aug. 28, 2006); *Berrey v. Arctec Services*, Alaska Workers' Comp. App. Comm'n Dec. No. 009, 2006 WL 3325413 (Apr. 28, 2006); *Municipality of Anchorage v. Syren,* Alaska Workers' Comp. App. Comm'n Dec. No. 007, 2006 WL 3325412 (Mar. 7, 2006); *Eagle Hardware & Garden v. Ammi*, Alaska Workers' Comp. App. Comm'n Dec. No. 003, 2006 WL 3325404 (Feb. 21, 2006).

[17] *Pacific Log & Lumber v. Carrell*, Alaska Workers' Comp. App. Comm'n Dec. No. 047, 2007 WL 1965954 (June 29, 2007); *ENCO Heating v. Borgens*, Alaska Workers'

extraordinary review because it was filed late, despite a strong possibility of board error.[18]

Every appeal involves a party's claim that the board erred as a matter of law; legal error, if it exists, generally will not result in injustice if the error may be corrected on appeal.[19] Thus, the commission has denied review, although an important question of law was presented, because it was not likely to evade review and the party requesting review will not suffer injustice by waiting for a final decision on the merits.[20]

The commission's regulations at 8 Alaska Admin. Code 57.072—.076 are designed to avoid unnecessary meddling in the board's fact-finding process. The burden is on the movant to demonstrate the circumstances that require commission intervention exist in a particular case. The test for extraordinary review is difficult to satisfy and the decision to grant review is always based on the facts of a particular case. The commission concludes that the movant failed to demonstrate that those circumstances are present in this case.

a. The movant failed to demonstrate prejudice to her rights requiring immediate review because records were excluded from the SIME binders.

The movant included in her copy of SIME binders a statement she authored in 2002 regarding an incident at a cafeteria that occurred prior to the work injury. The movant asserted it was relevant to her mental state at the time of the injury. The pre-hearing officer initially sustained the employer's objection to inclusion of the statement in the SIME binder as a medical record. The movant thereafter took the record to a

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Comp. App. Comm'n Dec. No. 034, 2007 WL 687635 (Feb. 26, 2007); *Chena Hot Springs v. Elliott*, Alaska Workers' Comp. App. Comm'n Dec. No. 026 (Jan. 11, 2007); *Alaska Ins. Guaranty Ass'n. and Northern Adjusters vs. Edwin Simons,* Alaska Workers' Comp. App. Comm'n Dec. No. 011 (June 2, 2006).

[18] *Kuukpik Arctic Catering v. Harig*, Alaska Workers' Comp. App. Comm'n Dec. No. 038, 2007 WL 1456190 (Apr. 27, 2007).

[19] *BP Exploration Alaska, Inc. v. Stefano*, Alaska Workers' Comp. App. Comm'n Dec. No. 076 at 19.

[20] *State of Alaska, Dep't of Corrections v. Dennis*, Alaska Workers' Comp. App. Comm'n Dec. No. 032, 2007 WL 1040845 (Mar. 27, 2007).

psychotherapy appointment. The record was attached to her therapy note, and she again sought its inclusion as a medical record. The board reviewed the text of the record and the circumstances and made the following findings:

> We find from the June 18, 2008 chart note as a whole that Nurse Judd did not form or modify a medical opinion based on her reading of the 2002 incident report that day, but merely restated the employee's rendition of those events. We find the incident report does not lend any more information to the medical record than is already contained in Nurse Judd's medical records dating back to 2005. We find the employee will suffer no prejudice by exclusion of the incident report as the relevant portions of it are contained in Judd's chart notes dating back to June, 2005.[21]

The board held the 2002 incident report was not a "medical record" within the meaning of 8 Alaska Admin. Code 45.092, notwithstanding its attachment to a medical record.

The board may establish that documents provided to its SIME examiner as "medical records" are produced by, or at the instance of, medical providers, and not statements originated by the examined party for non-medical purposes before the treatment began. This does not mean the board is unable to provide other documents or evidence to the SIME examiner if the board finds it will assist the SIME in rendering an opinion, so long as the origin of the documents or evidence is unmistakably shown and the board clearly states that the board does not vouch for (or against) the trustworthiness of the documents or evidence.[22] For example, in a case involving an

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[21] *Rockstad*, Bd. Dec. No. 08-0208 at 24-25.

[22] A physician gains experience in assessing the value and trustworthiness of various forms of medical records, but not other documents. When the board includes non-medical documents, the board should be careful to inform the physician that the board does not, by including them for review, vouch for their credibility or reliability.

Inclusion of non-medical records may lead an examiner to assume that the board vouches for the record's credibility, or that the examiner should rely on them as a condition of the examination, or even that the examiner should examine the credibility of the non-medical record. In short, inclusion of non-medical records may draw the SIME examiner into the board's function. These are sound reasons for the board's policy of avoiding inclusion of non-medical records in SIME binders, as reflected in its regulation at 8 Alaska Admin. Code 45.092(h), which provides in relevant part:

injury handling a particular chemical compound, a sample of the product used and accompanying material data safety sheet might be useful to the SIME examiner. An examiner may find a video of equipment operation useful in opining on injury causation in a claim of repetitive use injury during operation of the equipment. However, the

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> If the board requires an evaluation under AS 23.30.095 (k), the board will, in its discretion, direct
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> > (1) a party to make two copies of all medical records, including medical providers' depositions, regarding the employee in the party's possession, . . . and put the copies in two separate binders;
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> > (2) the party making the copies to serve the two binders of medical records upon the opposing party . . . ;
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> > (3) the party served with the binders to review the copies of the medical records to determine if the binders contain copies of all the employee's medical records . . . and, if the binders are
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> > > (A) complete, the party served with the binders must file the two sets of binders upon the board together with an affidavit verifying that the binders contain copies of all the employee's medical records in the party's possession; or
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> > > (B) incomplete, the party served with the binders must file the two binders upon the board together with two supplemental binders with copies of the medical records in that party's possession that were missing from the binders and an affidavit verifying that the binders contain copies of all medical records in the party's possession. . . . The party must also serve the party who prepared the first set of binders with a copy of the supplemental binder . . . ;
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> > (4) the party, who receives additional medical records after the two binders have been prepared and filed with the board, to make three copies of the additional medical records, . . . file two of the additional binders with the board within seven days after receiving the medical records. The party must serve one of the additional binders on the opposing party, . . . within seven days after receiving the medical records.

SIME examiner is not a trier of fact. His or her *medical opinion* is sought to assist the board in deciding disputed facts, but the SIME examiner is no substitute for the board. It is the board, not the SIME examiner, that ultimately assigns the weight to opinion evidence when the claim comes to hearing. Assessing the weight of evidence before the hearing violates the requirement that the determination whether the presumption has been raised or overcome be done without weighing the evidence.

The board's decision to exclude the employee's October 2002 statement from the SIME medical records binder because it was not a medical record generated in 2008 does not prevent the movant from conveying the same information in giving a history or in presenting it to the examiner with a question under 8 Alaska Admin. Code 45.092(j)(2).[23] We conclude there is no prejudice to the employee's right to present her claim to the board and any error, if there was error, does not require immediate review.

For similar reasons, we conclude that the board's decision not to strike the employer medical evaluators' reports from the SIME binders does not prejudice the movants' rights to present her claim to the board. The facts underlying medical reports are decided by the board in hearing on the claim; the medical evidence may not be weighed until the board determines that the presumption is over come. The movant seeks to put the cart before the horse, requiring the board to weigh the evidence before the hearing on the claim and before the board, faced with conflicting medical

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[23] 8 Alaska Admin. Code 45.092(j)(2) provides:

> After a party receives an examiner's report, communication with the examiner is limited as follows and must be in accord with this subsection. If a party wants the opportunity to
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> > (1) . . .
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> > (2) communicate with the examiner regarding the evaluation or report, the party must communicate in writing, serve the other parties with a copy of the written communication at the same time the communication is sent or personally delivered to the examiner, and file a copy of the written communication with the board;

opinions, obtains the opinion of its own medical expert on the medical disputes. The movant would render the SIME useless, except to impose costs upon the employer and delay resolution of the claim. Allowing the other party to submit its evidence does not prejudice the movant's ability to submit her evidence. Any error, if there was error, does not require immediate review.

b. The movant failed to establish an important question of law on which there are substantial grounds for differing opinions that, if decided by the commission, will materially advance termination of the litigation.

The movant advances a number of issues[24] which she urges as "important question[s] of law on which there [are] substantial ground[s] for difference of opinion." She did not identify a specific conflict in board decisions. Although she asserted these issues were important, she failed to state the differing positions on the questions of law she listed and how a decision on each question would materially advance the termination of the litigation.

The movant asks the commission to allow an appeal of a decision putting an end to discovery disputes and allowing the second SIME examination to take place. The movant does not contest that she requested the SIME. She stated in oral argument that she wants the SIME to take place. She assumes that an SIME examiner will agree with her if the EME reports are excluded from the SIME binder, and that the SIME examiner report will not favor her if they are not excluded. However, the SIME examiner could independently formulate an opinion different from the employer's physician based on his or her own examination.[25] If the commission were to take

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[24] Some issues the movant asserted were: if the board may redact physician reports before inclusion in the SIME binder; if hearsay may be submitted in the SIME binder; if the board must assess the reliability of the scientific evidence before submitting it to the SIME examiner; if a verbal stipulation at a prehearing conference is binding; appropriate sanctions for repeated discovery violations; and, privilege log contents.

[25] The movant advanced as a reason for appeal that the board's regulations concerning interrogatories, depositions, or presentation of testimony at hearing of an SIME examiner require prepayment of the examiner's fees, which she asserts is a denial of due process. The commission determines this is not a ripe dispute which must be

jurisdiction, stay the SIME, and hear an appeal of the board's decision, the termination of the litigation would be only delayed – not advanced. If the commission decided the issues in movant's favor, no relief the commission could grant if she prevailed would hasten the resolution of this case; on remand to the board the SIME would take place and the case proceed to hearing. On the other hand, if the commission refrains from exercising review, the SIME will take place, the parties will proceed to hearing and the board will reach a final decision on the merits of the claim. The movant has preserved her objection for appeal after the board reaches a final decision.

The commission concludes that resolution of this case will not be hastened by the commission's review of the board's decision. Under 8 Alaska Admin. Code 57.076(a)(2)(A), a movant must demonstrate that resolution of the disputed issue will "materially advance the ultimate termination of the litigation." Because the movant fails to demonstrate that action by the commission will advance the termination of this litigation, the motion for extraordinary review is denied.

5. Conclusion.

The motion for extraordinary review is DENIED.

Date: *20 Feb. 2009* ALASKA WORKERS' COMPENSATION APPEALS COMMISSION

Signed
David Richards, Appeals Commissioner

Signed
Stephen Hagedorn, Appeals Commissioner

Signed
Kristin Knudsen, Chair

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decided on immediate review. First, there is no examiner's opinion; second, she has not sought to depose, subpoena as a witness, or interrogate the SIME examiner and been denied the opportunity because of a failure to prepay; and third, she fails to demonstrate that supplementation of the opinion without cost under 8 Alaska Admin. Code 45.092(j)(2) will be inadequate to allow her to present her case at hearing.

APPEAL PROCEDURES

This is a final decision on the merits of this motion for extraordinary review, but it is not a final decision on Linda Rockstad's claim for workers' compensation, AWCB Case No. 200320305. The effect of this decision is that the commission will not hear an appeal of the board's interlocutory order No. 08-0208 and the workers' compensation claim may continue to proceed to hearing or other resolution before the Alaska Workers' Compensation Board. This decision does not affect the final decision of the board on the claim or the right to raise similar issues on appeal from a final decision.

Because this is not a final commission decision on an appeal of a final board order on a claim, the Supreme Court may not accept an appeal under AS 23.30.129. An appeal, if available, must be instituted in the Supreme Court within 30 days of the date this decision is distributed. See the box below to find the date of distribution.

Other forms of review are also available under the Alaska Rules of Appellate Procedure, including a petition for review or a petition for hearing under the Appellate Rules. If you believe grounds for review exist under Appellate Rule 402, you should file your petition for review or hearing within 10 days after the date of distribution of this decision. You may wish to consider consulting with legal counsel before filing a petition or an appeal.

If you wish to appeal (or petition for review or hearing) to the Alaska Supreme Court, you should contact the Alaska Appellate Courts immediately:

Clerk of the Appellate Courts
303 K Street,
Anchorage, AK 99501-2084
Telephone 907-264-0612

RECONSIDERATION

A party may ask the commission to reconsider this decision by filing a motion for reconsideration in accordance with 8 AAC 57.230. The motion requesting reconsideration must be filed with the commission within 30 days after delivery or mailing of this decision. If a request for reconsideration of this final decision is timely filed with the commission, any proceedings to appeal, if appeal is available, must be instituted within 30 days after the reconsideration decision is mailed to the parties, or, if the commission does not issue an order for reconsideration, within 60 days after the date this decision is mailed to the parties, whichever is earlier. AS 23.30.128(f). If appeal is not available, proceedings for other review under the Appellate Rules must be instituted within 10 days after the reconsideration decision is mailed to the parties, or, if the commission does not issue an order for reconsideration, within 40 days after the date this decision is mailed to the parties, whichever is earlier.

CERTIFICATION

I certify that the foregoing is a full, true and correct copy of Alaska Workers' Compensation Appeals Commission Decision No. 100, Final Decision on the Motion for Extraordinary Review in *Linda Rockstad vs. Chugach Eareckson, Zurich American Insurance Co. and Novapro Risk Solutions*, Appeal No. 08-033, dated and filed in the office of the Alaska Workers' Compensation Appeals Commission at Anchorage, Alaska, this *20th* day of *February*, 200*9*.

Signed
L. Beard, Appeals Commission Clerk

Certificate of Distribution

I certify that on *2/20/09* a copy of this Final Decision in AWCAC Appeal No. 08-033 was mailed to L. Rockstad (certified), M. Thoeni, & R. Bredesen at the addresses on record, and faxed to: R. Bredesen, AWCB Appeals Clerk, & Director WCD.

Signed
B. Ward, Deputy Appeals Commission Clerk