

Case: *Wolf Dental Services, Inc. and Fireman's Fund Insurance Co. vs. Randall Wolf, CNA/Northern Adjusters, Principal Life Insurance Co., and Health Care Recoveries, Alaska Workers' Comp. App. Comm'n Dec. No. 031 (February 2, 2007)*

Facts: Employer filed an appeal and sought a stay of the board's order. During the hearing on the motion for a stay, the commission questioned whether it had jurisdiction. Underlying facts are: Dr. Wolf was injured in a vehicle accident in 1996 but argued that his employment aggravated and worsened his condition such that by June 3, 1999, a doctor stated that Wolf would no longer be able to work as a periodontal surgeon. Wolf filed a notice of injury with his workers' compensation insurer, Fireman's Fund, which began insuring his practice in March 1999. Wolf's previous workers' compensation insurer was CNA. In 2003, the board found Fireman's Fund liable for Wolf's benefits under the last injurious exposure rule. Fireman's Fund appealed to the superior court (the commission had not yet been created). The superior court concluded that the board had substantial evidence to support a finding that the employment after the 1996 injury was a substantial factor in "worsening or aggravating the condition." But the court remanded the case to the board to "separately address whether Dr. Wolf's employment while Fireman's Fund was the insurance carrier was a substantial factor in worsening or aggravating his condition." On remand, the board decided to reopen the record to take new evidence and concluded that Fireman's Fund was liable under the last injurious exposure rule. Fireman's Fund appeals these decisions to the commission (created in November 2005).

Applicable law: General rule is that a superior court decision remanding a matter to an administrative agency is not a final, appealable order. *E.g., Gunter v. Kathy-O Estates*, 87 P.3d 65, 71 n.21 (Alaska 2004); *Tlingit-Haida Regional Elec. Authority v. State*, 15 P.3d 754, 761 (Alaska 2001). Court has sole and exclusive jurisdiction over the issues raised on appeal once an appeal was taken. *Fischback & Moore of Alaska, Inc. v. Lynn*, 407 P.2d 174, 176 (Alaska 1965), overruled in other part by *City and Borough of Juneau v. Thibodeau*, 595 P.2d 626, 629 (Alaska 1979). Unless the court remands for a strictly "ministerial" act, the superior court's decision is not final. *Municipality of Anchorage, Police and Fire Retirement Bd. v. Coffey*, 893 P.2d 722, 725 n.6 (Alaska 1995).

Issue: Does the commission or superior court have jurisdiction over the appeal?

Holding/analysis: The superior court has jurisdiction because its remand implicitly reserved jurisdiction over an appeal of the board's decision on remand. It was undisputed that the superior court did not enter a final judgment and remand was not ministerial because the board was required to assess credibility and make findings of fact. In addition, the commission risks conflicting with the jurisdiction of the superior court since one of the issues is addressing the scope of the court's order of remand (i.e. whether the board could reopen the record). The commission concluded the Legislature saved the superior court's jurisdiction over pending matters upon the effective date of its bill creating the commission. Parties can move the superior court to resume proceedings in the original appeal. Dec. No. 031 at 5-6. "Since there is a means to reach the underlying appeal in the superior court without filing a new appeal,

and because this commission, if it decided the merits of the appeal, would necessarily infringe on the exercise of the superior court's jurisdiction, we must decline to act on this appeal unless the court's will is otherwise." Dec. No. 031 at 6.