

Case: *Hope Community Resources and Liberty Northwest vs. Veronica Rodriguez*, Alaska Workers' Comp. App. Comm'n Dec. No. 041 (May 16, 2007)

Facts: Case came before commission as a motion for extraordinary review (MER) and a motion for a stay. However, the employer argued it could appeal from board's decision affirming administrator that employee was eligible for reemployment benefits because despite its title as "interlocutory," it was a final, appealable order. Employer also argued that board's decision ordering medical exam was a final appealable order, and that the board lacked authority to order employee to attend a medical examination (which employer would have to pay for) under AS 23.30.110(g). Employer sought stay of board's order for medical examination, but no stay of ongoing reemployment benefits.

Applicable law: The test for determining finality of an administrative order is "essentially a practical one." *Ostman v. State, Commercial Fisheries Entry Comm'n*, 678 P.2d 1323, 1327 (Alaska 1984). In addition the Alaska Supreme Court has said, "[T]he reviewing court should look to the substance and effect, rather than form, of the rendering court's judgment, and focus primarily on the operational or 'decretal' language therein." *Ostman*, 678 P.2d at 1327. In *Ostman*, the Alaska Supreme Court found a decision was final, where it was both a denial of a right and a fixing of a legal relationship as the consummation of the administrative process.

Commission also noted that a board decision is final when it

leaves no further dispute on a pending claim or petition for the board to resolve. . . . The possibility of filing successive or overlapping claims for, or petitions related to, different benefits flowing from the same injury complicates the determination of when a compensation order 'fixes' a legal relationship. However, when there are no pending proceedings before the board, an appeal should not wait upon the possibility that a party will file another claim or petition in the future. Dec. No. 041 at 7.

AS 23.30.127 provides for appeals to the commission.

AS 23.30.125(c), in part:

The payment of the amounts required by an award may not be stayed pending a final decision in the proceeding unless, upon application for a stay, the commission, on hearing, . . . allows the stay of payment, in whole or in part, where the party filing the application would otherwise suffer irreparable damage.

The appeal also must raise "questions going to the merits [of the board decision] so serious, substantial, difficult and doubtful as to make . . . a fair ground for litigation and thus for more deliberate investigation." *Olsen Logging Co. v. Lawson*, 832 P.2d 174, 175-76 (Alaska 1992).

Issues: Are the board decisions final, appealable orders or interlocutory ones that must satisfy the criteria for the commission to grant an MER? Should the commission stay the board's order for a medical examination?

Holding/analysis: Commission held the board's order on reemployment benefits was a final, appealable order. Board decision was final because it fixed the rights of parties with respect to reemployment benefits and no other claim or petition was before the board that could affect liability for reemployment benefits.

Commission also held that the order directing the employee to undergo, and the employer to pay for, a medical examination is also a final appealable order. Decision was final because exam was not ordered to assist board in reaching a decision on the reemployment benefits. In addition, board did not retain jurisdiction to examine exam's results and act on them. No claim was before the board for additional benefits. Commission concluded board order for exam was final, despite its interlocutory title.

The commission stayed the board's order for such an examination under AS 23.30.125(c). Employer would suffer irreparable damage because there were no provisions in the Workers' Compensation Act that would permit employer to recoup the costs (likely in the thousands of dollars) of an improperly ordered medical examination. Moreover, staying the order for an exam would not prevent employee from immediately seeking an impairment rating. Also, "serious" question was raised, whether board had statutory authority to order an examination based on a medical dispute *after* board had already resolved disputed benefit issue.

Notes: This decision addresses only whether the board decisions were final, appealable orders, rather than interlocutory ones. The merits of the employer's appeal would have been addressed in Dec. No. 086, but employee died in the meantime, rendering the issues moot. The commission amended the regulation on stays, 8 AAC 57.100, effective March 24, 2012.