

Case: *Margaret Augustyniak vs. Carr-Gottstein Foods, Safeway, Inc.*, Alaska Workers' Comp. App. Comm'n Dec. No. 064 (November 20, 2007)

Facts: Mary Thoeni (Thoeni) wanted to represent the employee in an appeal before the commission after she had provided representation before the board. The board had decided in an interlocutory decision that the employee had changed physicians excessively. Thoeni filed an appeal within 30 days on behalf of the employee. But because the decision was interlocutory, she should have filed a motion for extraordinary review (MER) within 10 days. The employee executed a power of attorney in an attempt to have Thoeni represent her before the commission. The employee was not paying Thoeni for her services.

Applicable law: AS 23.30.110(d) specifically permits parties to a workers' compensation hearing before the board to "be represented by any person authorized in writing for that purpose." No such provision applies to the commission in either the statutes or regulations.

A power of attorney does not permit a person who was not an attorney to represent a claimant in small claims court. *Christensen v. Melinda*, 857 P.2d 345 (Alaska 1993).

AS 08.08.210(a) bars the unlicensed practice of law. Per *Melinda*, 857 at 346 n.4, Alaska Bar Rule 63 defines the conduct that, at a minimum, constitutes the unlicensed practice of law: "either (i) representing another before a court or governmental body which is operating in its adjudicative capacity, including the submission of pleadings, or (ii), for compensation, providing advice or preparing documents for another which affect legal rights or duties."

Issues: Can non-attorneys represent, or otherwise help, parties before the commission? Should commission accept late-filed motion, given that pro se appellant appealed on time (within 30 days of decision) but because the board's decision was interlocutory, appellant should have filed an MER and such a motion would be late (not filed within 10 days of decision)?

Holding/analysis: "In the absence of a specific statute exempting commission appeals, the general bar in AS 08.08.210 against non-attorney representation before governmental adjudicative bodies applies to the commission." Dec. No. 064 at 12. Commission discussed how proceedings before the commission differ from board proceedings as well as the risks of non-attorney representation before the commission (such as not being subject to disciplinary sanctions the way attorneys are).

But non-attorneys can assist parties before the commission:

We impose the following *minimum* limits on Thoeni's assistance to Augustyniak. Thoeni may inform Augustyniak of the rules, procedures, regulations, statutes and decisions respecting workers' compensation that may be applicable to her appeal and provide copies of them to her. She may help Augustyniak complete forms and prepare pleadings and correspondence, but all pleadings, correspondence, and forms must be signed and dated by Augustyniak. Pleadings must include a verification

that Augustyniak read and understood what she signed. Thoeni may help Augustyniak assemble records, make copies, and type documents for her. Thoeni may help Augustyniak prepare for oral argument, sit at the counsel table with her and provide support, but she may not address the commission at oral argument. If Augustyniak appears by telephone and wishes Thoeni to assist her, then Thoeni must be available telephonically as well. Thoeni may not pay filing or transcript fees or receive service of process for Augustyniak. Thoeni may not correspond with other parties or the commission on her behalf respecting the appeal, or represent, speak for, communicate, or act on behalf of Augustyniak in regard to the appeal. If Thoeni ceases to assist Augustyniak, she must promptly notify Augustyniak, the opposing party and the commission in writing. If it appears to the commission that Thoeni's assistance is (1) not in the interests of justice, (2) given in a manner inconsistent with the rights of all parties and the orderly and prompt resolution of Augustyniak's appeal, or, (3) contrary to the above stated minimum limits, the commission will withdraw its permission for Thoeni's recognized status as an assistant in Augustyniak's appeal. Dec. No. 064 at 14-15.

The commission allowed the appeal to be converted to a late-filed MER because Thoeni made a mistake when she was acting as Augustyniak's representative and it would work an injustice to not allow the conversion. Commission cautioned, however, that it would still weigh the factors in deciding whether to grant the MER.