Case: *Denny's of Alaska, Alaska Insurance Guaranty Association, and Northern Adjusters, Inc. vs. Laura H. Colrud*, Alaska Workers' Comp. App. Comm'n Dec. No. 148 (March 10, 2011)

Facts: Laura Colrud (Colrud) injured her back while working for Denny's of Alaska (Denny's) in June 1992. In 2007, Colrud was receiving medical benefits. Denny's controverted all medical benefits (except for a prescription) on May 21, 2007, based on an employer's medical evaluation. Colrud filed a claim on a board-prescribed claim form on May 30, 2007. She indicated that she was claiming an unfair controversion, did not check a box seeking medical costs, and explained, "After the insurance company received their chosen Drs. opinion, they denied my claim immediately." Denny's answered the claim and also filed a controversion on July 5, 2007, denying medical costs and unfair controversion. At a prehearing conference in September, Colrud verbally amended her claim to include medical costs and dropped the unfair controversion assertion.

Over the next two years, Colrud missed prehearing conferences and one hearing. Of the two hearings in which she did participate, she testified at one only because the board called her twice during the hearing. Although she eventually was deposed, she failed to attend other scheduled depositions numerous times. On June 23, 2009, Denny's attorney sent her a certified letter quoting the back of the controversion form to advise Colrud that she needed to file a request for hearing by July 2, 2009, or her claim would be dismissed. The attorney enclosed a copy of the board's Affidavit of Readiness for Hearing (ARH) form. Although the letter properly advised Colrud how to determine when her request for hearing was due, it misstated the date that she had to file by; she actually had until July 6, 2009.

Colrud never requested a hearing. Denny's sought to dismiss Colrud's claim as time-barred. At the hearing on the petition to dismiss, Colrud acknowledged receiving the June 2009 letter and filling out the ARH form, but she never mailed it. "I had to work two days straight, and when I got off I completely forgot about it." She testified that her memory was affected by a "medical problem [that] has got something to do with nerves in my . . . brain." She also testified that at that time, she worked delivering newspapers seven days a week, and regularly attended doctor's appointments, keeping track of it all by writing everything down.

The board decided that because requesting a finding of "unfair controversion" was not a request for "benefits," it was not a "claim" because a "claim" for the purposes of subsection .110(c) is a "written request for benefits." Further, the board decided that Colrud's verbal amendment of her claim to include medical costs could not relate back to the unfair controversion request because "there was never any claim for benefits in the first instance[.]" Moreover, the request for medical benefits at the September 2007 prehearing conference was not a validly filed claim by itself because of the requirement that she sign the claim. Thus, the board concluded that it could not dismiss a claim for medical benefits as time-barred without a valid claim for those benefits. The board denied Denny's petition, and directed Colrud to file a signed claim for medical benefits. Denny's appeals.

Applicable law: AS 23.30.110(c) states in part, "If the employer controverts a claim on a board-prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied."

The Alaska Supreme Court (supreme court) has interpreted "claim" in subsection .110(c) to mean a "written application for benefits filed with the [b]oard[.]" Moreover, the employer's controversion must come after the employee's filing of a claim to start the running of the two-year time period to request a hearing. *Jonathan v. Doyon Drilling, Inc.*, 890 P.2d 1121, 1124-25 (Alaska 1995).

8 AAC 45.050(e) provides that when an "amendment arose out of the conduct, transaction, or occurrence set out or attempted to be set out in the original pleading, the amendment relates back to the date of the original pleading."

The supreme court permits substantial compliance with subsection .110(c). Substantial compliance does not mean claimants can ignore the statutory deadline and fail to file anything; but, if they are not ready for hearing within the two years, they may comply with subsection .110(c) by filing a request for additional time to prepare. *Kim v. Alyeska Seafoods, Inc.*, 197 P.3d 193, 198 (Alaska 2008).

A claimant may establish a recognized form of equitable relief as an excuse from filing on time. A self-represented litigant's delay in filing might be excused by lack of mental capacity or incompetence; lack of notice of the time-bar; equitable estoppel against a governmental agency; or the board's failure to provide information when it had a duty to do so. *Bohlmann v. Alaska Constr. & Eng'g, Inc.*, 205 P.3d 316, 320-21 (Alaska 2009); *Providence Health System v. Hessel*, Alaska Workers' Comp. App. Comm'n Dec. No. 131, 17 (March 24, 2010).

Issues: Did the board err in concluding Colrud never filed a valid claim for medical benefits? Did Colrud either substantially comply with the requirements of subsection .110(c) or establish a form of equitable relief that operates to excuse her lack of compliance?

Holding/analysis: Colrud filed a claim for the purpose of the time-bar on May 30, 2007; she completed all the necessary sections. "To say that requesting a finding of unfair or frivolous controvert is not a claim defies logic, and effectively invalidates the board's own form meant to assist employees filing claims for benefits." Dec. No. 148 at 9. Her verbal amendment to include medical costs related back to the May claim. "This amendment clearly arose out of the insurance company's denial of her claim based on its doctor's opinion, that Colrud set out in her original pleading." *Id.* at 10. Thus, the period for requesting a hearing under subsection .110(c) began to run. Colrud had until July 6, 2009, to request a hearing on medical costs, and she did not do so.

Colrud did not substantially comply with subsection .110(c) because she never filed anything requesting a hearing or more time to prepare. Colrud's forgetfulness did not rise to the level of mental incompetence because she was capable of conducting her daily affairs, delivering papers, and attending appointments. Colrud received notice

about the subsection .110(c) deadline because she was mailed two controversion notices with the warning about the deadline. The commission distinguished Colrud's case from the circumstances in *Bohlmann*. Like *Bohlmann*, Colrud was misinformed by the employer about when the deadline would run. But unlike *Bohlmann*, the board had no obligation to correct the misinformation because it was unaware of the employer's erroneous assertion. Furthermore, unlike Bohlmann, the board did not find, and lacked substantial evidence to conclude, that Colrud would have complied with the deadline had she not been misinformed about the precise date. Colrud testified she did not file the request because she was busy and forgot and she had a history of not timely prosecuting her case by failing to appear for depositions and hearings.

The commission concluded Colrud's claim for medical costs was time-barred under AS 23.30.110(c).