

# ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

BRUCE BROWN,	)	INTERLOCUTORY
	)	DECISION AND ORDER
Employee,	)	
Petitioner,	)	AWCB Case No. 200820295
	)	
v.	)	AWCB Decision No. 13-0105
	)	
ASRC ENERGY SERVICES, INC.,	)	Filed with AWCB Fairbanks, Alaska
	)	on August 29, 2013
Employer,	)	
and	)	
	)	
ASRC SERVICE CENTER,	)	
	)	
Adjuster,	)	
Respondents.	)	
	)	

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Bruce Brown's (Employee) February 8, 2013 Petition for Change of Venue was heard on the basis of the written record on August 8, 2013. The hearing date was selected on June 3, 2013. Non-attorney representative Michael McLaughlin represented Employee. Robert Bredesen represented ASRC Energy Services and ASRC Service Center (Employer). The record closed on August 8, 2013.

## ISSUE

Employee contends venue should be moved from Fairbanks to Anchorage to better serve the convenience of the parties and witnesses. Employer contends moving venue would significantly delay the case and increase litigation costs.

*Should venue be transferred from Fairbanks to Anchorage under 8 AAC 45.072, based on Employee's petition?*

FINDINGS OF FACT

The following findings of fact and factual conclusions are established by a preponderance of the evidence:

- 1) On December 25, 2008, Employee experienced breathing problems while working as a mechanic for Employer at Northstar Island and was medivaced to Anchorage for treatment. Upon arrival at Providence Hospital, Employee was coughing up blood and was admitted and intubated. (Report of Occupational Injury or Illness, undated).
- 2) On January 5, 2011, Employee filed a workers' compensation claim seeking temporary total disability benefits from December 25, 2008 through "about April 09," permanent partial impairment benefits, medical costs, transportation costs, compensation rate adjustment, penalty, interest, a finding of unfair or frivolous controversion, and attorney's fees and costs. Employee indicated on his claim form he was diagnosed with "E. Coli and Influenza A" and suffered respiratory failure and septic shock. He was in a coma for approximately 3-4 weeks and hospitalized for four months. (Claim, December 20, 2010).
- 3) On January 25, 2011, Employer filed an Answer and Controversion Notice based on a lack of medical evidence linking Employee's illness to his work for Employer. (Answer and Controversion Notice, January 25, 2011).
- 4) On July 10, 2012, Employer filed a medical summary consisting of Transcare Medical Services chart notes dated December 25, 2008 and Providence Alaska Medical Center hospital records dated December 25, 2008 through January 21, 2009. (Medical Summary, July 5, 2012).
- 5) On February 11, 2013, Employee filed a petition to change venue from Fairbanks to Anchorage. (Employee's petition, February 8, 2013).
- 6) On June 3, 2013, the parties attended a prehearing conference. The designee set Employee's venue petition for hearing on August 8, 2013. The designee set Employee's claim for hearing on November 7, 2013, and set an October 31, 2013 deadline for witness lists and written briefs. (Prehearing conference summary, June 3, 2013).
- 7) Employee and his non-attorney representative reside in the Kenai-Soldotna area, approximately 150 miles from Anchorage. (Record).

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- 8) Round-trip airfare from Kenai to Anchorage is approximately \$300.00 per person. Round-trip airfare from Kenai to Fairbanks is approximately \$600.00 per person. (Experience, observations.)
- 9) Round-trip airfare from Prudhoe Bay to Anchorage is slightly more expensive than round-trip airfare from Prudhoe Bay to Fairbanks. (Experience, observations).
- 10) Employer's counsel resides in Anchorage. (Record).
- 11) Apart from the North Slope medevac providers, all of the medical providers who treated Employee's alleged occupational illness are located in Anchorage. (Record.)
- 12) On August 5, 2013, Employer filed its hearing brief on Employee's petition for change of venue. In its brief, Employer stipulated to pay travel and lodging costs for Employee and his representative to attend the November 7, 2013 hearing in Fairbanks. (Employer's Hearing Brief, August 1, 2013).
- 13) On August 26, 2013, the parties attended a prehearing conference. Employer again offered to pay travel and lodging costs for Employee and his representative to appear at the November 7, 2013 hearing in Fairbanks. Employee, through his representative, declined the offer and reiterated his request for a venue change. (Prehearing Conference Summary, August 26, 2013).
- 14) The approximate scheduling time for a full-day hearing in Anchorage is currently five months. (Experience, observations).

PRINCIPLES OF LAW

**AS 23.30.001. Intent of the legislature and construction of chapter.**

It is the intent of the legislature that

- (1) This chapter be interpreted so as to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of this chapter. . . .

The board may base its decision not only on direct testimony, medical findings, and other tangible evidence, but also on the board's "experience, judgment, observations, unique or peculiar facts of the case, and inferences drawn from all of the above." *Fairbanks North Star Borough v. Rogers & Babler*, 747 P.2d 528, 533-534 (Alaska 1987).

**AS 23.30.005. Alaska Workers' Compensation Board.**

The Alaska Workers' Compensation Board consists of a southern panel of three members sitting for the first judicial district, two northern panels of three members sitting for the second and fourth judicial districts, five southcentral panels of three members each sitting for the third judicial district, and one panel of three members that may sit in any judicial district. . . .

**8 AAC 45.070. Hearings.**

...

(b) Except as provided in this section and 8 AAC 45.074(c), a hearing will not be scheduled unless a claim or petition has been filed, and an affidavit of readiness for hearing has been filed and that affidavit is not returned by the board or designee nor is the affidavit the basis for scheduling a hearing that is cancelled or continued under 8 AAC 45.074(b) ....

(1) A hearing is requested by using the following procedures:

...

(D) On a venue dispute, a party must file a petition asking the board to determine the venue and an affidavit of readiness for hearing on the written record. In accordance with 8 AAC 45.072, the board will consider the parties' written arguments and evidence in the case file, and an in-person hearing will not be held.

**8 AAC 45.071. Hearing officer as a commissioner's designee.**

(a) A hearing officer shall serve as a commissioner's designee to hear and decide procedural and stipulated matters without a panel. An action of a hearing officer under this section is an action of the full board.

(b) For purposes of this section,

(1) a procedural matter is limited to

...

(C) venue....

**8 AAC 45.072. Venue.**

A hearing will be held only in a city in which a division office is located. Except as provided in this section, a hearing will be held in the city nearest the place where the injury occurred and in which a division office is located. The hearing location may be changed to a different city in which a division office is located if (1) the parties stipulate to the change;

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(2) after receiving a party's request in accordance with 8 AAC 45.070(b)(1)(D) and based on the documents filed with the board and the parties' written arguments, the board orders the hearing location changed for the convenience of the parties and the witnesses; the board's panel in the city nearest the place where the injury occurred will decide the request filed under 8 AAC 45.070(b)(1)(D) to change the hearing's location; or

(3) the board or designee, in its discretion and without a party's request, changes the hearing's location for the board's convenience or to assure a speedy remedy.

In determining whether to retain or change venue at a party's request in a particular case, the board may not consider its own convenience. A finding that a particular venue better serves the convenience of the parties and witnesses must be supported by substantial evidence. *Voorhees Concrete Cutting v. Monzulla*, AWCAC Decision No. 114 (August 6, 2009).

ANALYSIS

Employee became ill while working on the North Slope and alleges his workplace activity is the substantial cause of his illness and disability. Per 8 AAC 45.072, venue was properly set in Fairbanks. However, Employee contends retaining venue in Fairbanks would be considerably inconvenient for the parties and witnesses, and requests venue be changed to Anchorage.

Employee contends changing venue to Anchorage would better convenience the parties. Airfare from Kenai to Fairbanks is approximately \$600 per person, and driving to Fairbanks would require a full-day of travel time plus the cost of two overnights in a hotel. In comparison, a hearing in Anchorage would require Employee and his representative to drive roughly two and one-half hours from Sterling and stay one night in Anchorage. Alternatively, they could fly from Kenai to Anchorage, at a cost of approximately \$300 per person.

In its hearing brief, Employer stipulated to pay travel and lodging costs for Employee and his representative to travel to Fairbanks for the November 7, 2013 hearing. In light of this concession, Employee's argument moving venue to Anchorage would be more convenient for the parties is unpersuasive. The question then turns to the convenience of the potential witnesses in this case.

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The parties have not yet exchanged witness lists. Witness lists are due October 31, 2013. In his venue petition, Employee indicates he intends to call the Providence Medical Center physicians who treated Employee during his hospital stay. Employer has not yet determined which lay witnesses it will call, but it is assumed Employer may call ASRC employees who witnessed Employee when he became ill on the North Slope. In that event, air travel from the North Slope to Anchorage is not significantly more expensive or inconvenient than air travel to Fairbanks. Apart from the North Slope medevac providers, all of the medical providers who treated Employee's alleged occupational illness are located in Anchorage.

While the board may not consider its own convenience in determining whether to grant a party's request for venue change, such decision, like all others the board makes, must be made in light of the legislature's mandate to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to employers. Employer contends moving venue to Anchorage will cause unnecessary delay in the case and will result in an additional six months of litigation costs. A hearing on Employee's claim is set in Fairbanks on November 7, 2013, roughly two months from now. While the judicial docket in Anchorage at one time may have been significantly more congested than the Fairbanks docket, currently full-day merit hearings are being set in Anchorage approximately five months in the future, a timeline similar to that in Fairbanks. As to Employer's contention a delay will increase Employer's litigation costs, discovery is nearly complete and the parties are preparing for hearing. A few months delay in scheduling a hearing will not significantly increase the parties' litigation costs.

Under 8 AAC 45.072(2), moving this case to Anchorage will better serve the convenience of potential witnesses, and will cause minimal delay. Employee's petition to change venue from Fairbanks to Anchorage will be granted.

To minimize delay, an Anchorage board designee will be directed to schedule a prehearing conference at the first available time after the time has run to petition the Appeals Commission for review of this decision, at which time a hearing on Employee's December 20, 2010 claim may be set.

CONCLUSION OF LAW

Venue will be transferred from Fairbanks to Anchorage.

ORDER

- 1) Employee's February 8, 2013 petition to change venue from Fairbanks to Anchorage is GRANTED. Venue will be moved to Anchorage.
- 2) An Anchorage board designee is directed to schedule a prehearing conference at the earliest possible time after the time has run for Employer to petition the Appeals Commission for review of this decision, at which time a hearing on Employee's December 20, 2010 claim may be set.

Dated at Fairbanks, Alaska this 29<sup>th</sup> day of August, 2013.

ALASKA WORKERS' COMPENSATION BOARD

\_\_\_\_\_/s/\_\_\_\_\_  
Amanda Eklund, Hearing Officer

RECONSIDERATION

A party may ask the board to reconsider this decision by filing a petition for reconsideration under AS 44.62.540 and in accordance with 8 AAC 45.050. The petition requesting reconsideration must be filed with the board within 15 days after delivery or mailing of this decision.

MODIFICATION

Within one year after the rejection of a claim, or within one year after the last payment of benefits under AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, a party may ask the board to modify this decision under AS 23.30.130 by filing a petition in accordance with 8 AAC 45.150 and 8 AAC 45.050.

PETITION FOR REVIEW

A party may seek review of an interlocutory or other non-final Board decision and order by filing a petition for review with the Alaska Workers' Compensation Appeals Commission. Unless a petition for reconsideration of a Board decision or order is timely filed with the board under AS 44.62.540, a petition for review must be filed with the commission within 15 days after service of the board's decision and order. If a petition for reconsideration is timely filed with the board, a petition for review must be filed within 15 days after the board serves the reconsideration decision, or within 15 days from date the petition for reconsideration is considered denied absent Board action, whichever is earlier.

CERTIFICATION

I hereby certify that the foregoing is a full, true and correct copy of the Interlocutory Decision and Order in the matter of BRUCE BROWN, employee/petitioner; v. ASRC ENERGY SERVICES, self-insured employer/respondent; Case No. 200820295; dated and filed in the office of the Alaska Workers' Compensation Board in Fairbanks, Alaska, on August 29, 2013.

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Nicole Hansen, Office Assistant II