

ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

NOEL A. AGCAOILI,

Claimant,
Respondent,

vs.

H&R INVESTMENTS, INC., and
AMERICAN INTERSTATE INSURANCE
CO.,

Defendants,
Petitioners.

)
) INTERLOCUTORY
) DECISION AND ORDER
)
) AWCB Case No. 200616303
)
) AWCB Decision No. 13-0092
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) Filed with AWCB Anchorage, Alaska
) on August 2, 2013
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H&R Investments, Inc.'s (Employer) November 1, 2012 petition to join and for other relief was heard on July 31, 2013, in Anchorage, Alaska, a date selected on May 14, 2013. Attorney Charles Coe represents Noel Agcaoili (Employee) but did not appear. Employee did not appear. Attorney Michael Budzinski appeared and represented Employer. There were no witnesses. As a preliminary matter, because neither Employee, nor his attorney, nor the party Employer wanted to join to Employee's case appeared, a determination had to be made whether or not to proceed with the hearing. As the party to be joined was not properly notified of its rights in respect to joinder, an oral order issued continuing the hearing. This decision examines the oral order and the joinder issue. The record closed at the hearing's conclusion on July 31, 2013.

ISSUE

When the designated chair noted no other parties but Employer present at hearing, and queried if a hearing continuance may be necessary, Employer contended the hearing should not be continued. It contended the party to be joined, Providence Health Systems (Providence), had ignored previous communication, thus evidencing its unwillingness to participate in this process.

Employer contended Providence should be joined to the claim and Employer's relief requested in respect to Providence's bills should be granted.

As no other parties were present at hearing, Employee's and Providence's position on this issue is unknown. After discussion and deliberation, the panel orally continued the hearing so Providence could be properly noticed with joinder and given an opportunity to object.

Was the oral order continuing the hearing to provide Providence with notice of joinder and an opportunity to object, correct?

FINDINGS OF FACT

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

- 1) On September 30, 2006, Employee was involved in an automobile accident while on the job for Employer. He reported mental confusion, severe headache, neck, head, and right leg and knee injuries (Report of Occupational Injury or Illness, October 2, 2006).
- 2) On December 29, 2010, after considerable litigation, the parties settled. Employee did not waive his right to past or future medical benefits. Among other things, Employer agreed to "process outstanding medical bills . . . for payment under the terms, conditions and limitations provided under the Alaska Workers' Compensation Act" for Employee's work-related medical care from certain, listed providers prior to December 1, 2009. Providence was included in this list (Compromise and Release Agreement, December 29, 2010, at 3).
- 3) On November 2, 2012, Employer filed a petition seeking an order: 1) joining Providence as a necessary party to this case; 2) denying payment for Providence's specified medical costs for Employee; and 3) directing Providence and its agents to cease and desist from all collection efforts against Employee (Petition, November 1, 2012).
- 4) Employer served a copy of this petition on Employee, on Providence's registered agent, and on Providence (*id.*).
- 5) Employee's agency file contains no response to the petition from Providence or its registered agent (observations).
- 6) Employer and its agents received no response to the petition from Providence or its registered agent (Employer's hearing statements).

- 7) On February 1, 2013, Employer filed a hearing request on its petition (Affidavit of Readiness for Hearing, January 31, 2013).
- 8) On April 4, 2013, Employer filed a request for a prehearing conference (Request for Conference, April 3, 2013).
- 9) On April 17, 2013, the workers' compensation division served a prehearing conference notice on Employee, his attorney, Employer's attorney, and Employer's insurer. The division did not serve a copy on Providence or its registered agent (Prehearing Conference Notice, April 17, 2013).
- 10) On May 14, 2013, Employer's attorney appeared at a prehearing conference. No other party or representative appeared. The board's designee reviewed the pleadings and summarized Employer's position concerning Providence's bills. The prehearing conference summary reiterated the relief Employer sought in its petition and scheduled an oral hearing for July 31, 2013. The prehearing conference summary did not contain a "notice of joinder" directed to Providence or any language required by 8 AAC 45.040(g) and did not join Providence as a party (Prehearing Conference Summary, May 14, 2013; observations).
- 11) On June 27, 2013, the division sent a hearing notice to Providence, Providence's registered agent, Employee, Employee's attorney, Employer, and Employer's attorney Employer's insurer (Hearing Notice, June 27, 2013).
- 12) On July 1, 2013, a person with an illegible name and signature signed a United States Postal Service green return receipt requested card for the hearing notice mailed to Employee's attorney (Domestic Return Receipt, July 1, 2013).
- 13) On July 2, 2013, "K. Nichols" signed a green return receipt requested card for the hearing notice mailed to Providence (Domestic Return Receipt, July 2, 2013).
- 14) The July 31, 2013 hearing was scheduled on the trailing calendar to begin at 10:00 a.m. and all parties with valid telephone numbers were so informed on July 30, 2013 (observations).
- 15) On July 31, 2013, the hearing began approximately 49 minutes after the time the parties were previously notified it would begin. Only Employer's attorney and adjuster appeared (observations).
- 16) At hearing on July 31, 2013, upon noticing absent parties, the designated chair queried whether the hearing should proceed or be continued (record).

17) At hearing on July 31, 2013, Employer through counsel explained it had been unable after trying for months to obtain required medical records and itemized billing statements from Providence to satisfy its obligation to pay Providence's bills as required by the current parties' settlement. It argued this showed Providence's unwillingness to participate in the process of getting Providence's bills paid. Employer stated Providence had turned Employee's account over to a collection agency notwithstanding Employer's many attempts to obtain the necessary documents from Providence to process the bills for payment. Therefore, Employer contended Providence should be joined as an indispensable party to accord complete relief, the required reimbursement should be denied and Providence and its bill collectors should be ordered to stop dunning Employee with payment requests in violation of AS 23.30.097(f) (Employer's hearing statements).

18) At hearing on July 31, 2013, after on record discussion and deliberation, the panel orally ordered the hearing continued as it appeared Providence had not been properly noticed with joinder and had not received notice of the prehearing conference in May 2013, where the issues may have been resolved had Providence been noticed and appeared (record).

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;

AS 23.30.005. Alaska Workers' Compensation Board.

. . .

(h) The department shall adopt rules . . . and shall adopt regulations to carry out the provisions of this chapter. . . . Process and procedure under this chapter shall be as summary and simple as possible.

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 23.30.097. Fees for medical treatment and services. . . .

. . .

(f) An employee may not be required to pay a fee or charge for medical treatment or service provided under this chapter.

The Alaska Supreme Court in *Barrington v. Alaska Communications Systems Group, Inc.*, 198 P.3d 1122, (Alaska 2008) said, in respect to this statute: “Absent a board determination that the injuries were not work related, subsection .097(f) could well foreclose” a medical provider’s ability to sue the patient for payment. AS 23.30.097(f), formerly AS 23.30.095(f), says the employee may not be required to pay for his own medical benefits. *Estate of Lindekugel v. George Easley Co.*, AWCBC Decision No. 09-0096 (May 18, 2009). *See also, Bockness v. Brown Jug, Inc.*, AWCBC Decision No. 96-0335, at 13 (August 22, 1998) (Stating “withholding payments of medical expenses for overpayment of compensation would be contrary to established case law and the Act,” because it would in essence require the injured worker to pay for his own medical benefits).

AS 23.30.135. Procedure before the board. (a) In making an investigation or inquiry or conducting a hearing the board is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this chapter. The board may make its investigation or inquiry or conduct its hearing in the manner by which it may best ascertain the rights of the parties. . . .

8 AAC 45.040. Parties. (a) Except for a deceased employee’s dependent or a rehabilitation specialist appointed by the administrator or chosen by an employee in accordance with AS 23.30.041, a person other than the employee filing a claim shall join the injured employee as a party.

(b) Except for a rehabilitation specialist appointed by the administrator or chosen by the employee in accordance with AS 23.30.041, a person who files a claim must first prove a compensable injury to be eligible for benefits, or the opposing party must stipulate to or admit facts from which the board can find the employee’s injury is compensable.

(c) Any person who may have a right to relief in respect to or arising out of the same transaction or series of transactions should be joined as a party.

. . .

(f) Proceedings to join a person are begun by

- (1) a party filing with the board a petition to join the person and serving a copy of the petition, in accordance with 8 AAC 45.060, on the person to be joined and the other parties; or
 - (2) the board or designee serving a notice to join on all parties and the person to be joined.
- (g) A petition or a notice to join must state the person will be joined as a party unless, within 20 days after service of the petition or notice, the person or a party files an objection with the board and serves the objection on all parties. If the petition or notice to join does not conform to this section, the person will not be joined.
- (h) If the person to be joined or a party
- (1) objects to the joinder, an objection must be filed with the board and served on the parties and the person to be joined within 20 days after service of the petition or notice to join; or
 - (2) fails to timely object in accordance with this subsection, the right to object to the joinder is waived, and the person is joined without further board action.
- (i) If a claim has not been filed against the person served with a petition or notice to join, the person may object to being joined based on a defense that would bar the employee's claim, if filed.
- (j) In determining whether to join a person, the board or designee will consider
- (1) whether a timely objection was filed in accordance with (h) of this section;
 - (2) whether the person's presence is necessary for complete relief and due process among the parties;
 - (3) whether the person's absence may affect the person's ability to protect an interest, or subject a party to a substantial risk of incurring inconsistent obligations;
 - (4) whether a claim was filed against the person by the employee; and
 - (5) if a claim was not filed as described in (4) of this subsection, whether a defense to a claim, if filed by the employee, would bar the claim. . . .

The Alaska Supreme Court said in *Sherrod v. Municipality of Anchorage*, 803 P.2d 874, 876 (Alaska 1990): "AS 23.30.110 requires the board to provide a hearing to an 'interested party.'"

In *Barrington v. Alaska Communications Systems Group, Inc.*, 198 P.3d 1122 (Alaska 2008), the Alaska Supreme Court noted there can be more than one “real party in interest in a given law suit or claim” and recognized “the board regulations do not use the term ‘real party in interest’ in discussing the status of parties” and the court used the term in its decision “only because the appeals commission used the term” (*id.* 1128-1129). *Barrington* said:

Unlike the Alaska Civil Rules, board regulations do not otherwise clearly distinguish between permissive and compulsory joinder (footnote omitted). 8 AAC 45.040(c) states that a person who ‘may have a right to relief in respect to or arising out of the same transaction . . . should’ be joined. This subsection seems to give the board some discretion in deciding whether to allow or require joinder. But the board’s discretion is not absolute; in this case, Dr. Barrington was a necessary party whose absence, as we will see, violated due process (footnote omitted) (*Barrington* at 1129).

ANALYSIS

Was the oral order continuing the hearing to provide Providence with notice of joinder and an opportunity to object, correct?

Employee and Providence were properly noticed with the date and time of the July 31, 2013 hearing. The hearing began about 49 minutes after it was scheduled to begin so late arrival could not have been an issue. As Employee and Providence were both properly noticed but did not appear, a preliminary determination had to be made whether or not to proceed with the hearing or continue it. 8 AAC 45.070(f). Employer argued the hearing should proceed, as Providence had not been participating in the proceedings and Employee apparently felt no reason to participate. However, Employer agreed Providence was an indispensable party and should be joined to Employee’s claim given Employer’s difficulty in obtaining necessary documentation to pay Providence’s bills, as agreed in the settlement agreement and given Providence had turned Employee’s account over to collections.

Employer is commended for trying to satisfy its obligation to pay Providence’s bills as set forth in the current parties’ settlement agreement. As Providence has not participated in this matter, it is unclear why Providence has not provided the documentation required so Employer can pay

Employee's work-related, outstanding medical bills. It is possible Providence forwarded legal documents to its collection agency, and the collection agency does not know how to proceed. It is possible Providence believes the matter is out of its hands since it sent Employee's account to collections. Nevertheless, as Providence has not been given notice to join and is not properly a party, it is inappropriate for this decision to simply join Providence as a party without giving it an opportunity to object or otherwise be heard. Providence was not given notice of the May 14, 2013 prehearing conference where this matter might have been resolved without further hearings had Providence been noticed and appeared. If Providence had been joined as a party to the July 31, 2013 hearing, and had the hearing gone forward, Providence's property rights may have been affected without due process if the decision denied payment of Providence's bills.

Therefore, the oral order continuing the hearing so Providence could be given "notice of joinder" was correct. The oral order, now memorialized as a written decision will help ensure quick, efficient, fair, and predictable delivery of indemnity and medical benefits to Employee and his provider Providence at a reasonable cost to Employer because it will prevent appeals. AS 23.30.001(1). This process will also help provide a summary and simple remedy to all parties and aid in best ascertaining the rights of all parties and putative parties because it will minimize additional litigation. AS 23.30.005(h); AS 23.30.135.

Providence is a necessary party to this case. Even though there is no "claim" pending because the issues were resolved through settlement, there remains a legal obligation for Employer to pay Providence's bills as directed in the settlement agreement. Providence should provide the necessary information to Employer's representatives or direct its collectors to do so. If the documentation is provided, Providence's outstanding work-related medical bills for Employee will be processed and paid promptly in accordance with the Act. To further move this matter toward resolution, this decision will provide Providence with a "notice to join" as set forth in the order, below. 8 AAC 45.040(f), (g) and (h).

It is unlawful for Providence or its collection agencies to require Employee to pay for medical treatment or services provided under the Alaska Worker's Compensation Act. AS 23.30.097(f).

Providence's rights to the medical services at issue have been protected through the settlement agreement. The parties and Providence are encouraged to resolve this relatively simple issue amicably without further, unnecessary litigation. AS 23.30.001(1); AS 23.30.005(h); AS 23.30.135.

CONCLUSION OF LAW

The oral order continuing the hearing to provide Providence with notice of joinder and an opportunity to object was correct.

ORDER

- 1) The oral order continuing the July 31, 2013 hearing is memorialized.
- 2) **As set forth in 8 AAC 45.040(f)(2), (g), and (h)(1-2), this decision hereby serves “notice to join” on Providence and on all current parties. Providence will be joined as a party unless within 20 days after service of this decision and notice, Providence or a current party files an objection with the board and serves the objection on all other parties. If Providence or a current party objects to Providence’s joinder, its objection must be filed with the board and served on all parties within 20 days after service of this decision. If Providence or a current party fails to timely object to Providence’s joinder, the right to object to Providence’s joinder is waived and Providence is joined without further Board action.**

Dated in Anchorage, Alaska on August 2, 2013.

ALASKA WORKERS' COMPENSATION BOARD

William J Soule, Designated Chair

Patricia Vollendorf, Member

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.

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.

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Interlocutory Decision and Order in the matter of Noel R. Agcaoili; Case No. 200616303, dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, on August 2, 2013.

Pamela Hardy, Office Assistant