

ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

ABRAHAM HERNANDEZ-CANIZAL,)
Employee,)
Claimant,) FINAL DECISION AND ORDER
v.)
AWCB Case No. 201607698
TONGASS CUTTING,)
Employer,) AWCB Decision No. 17-0098
and) Filed with AWCB Juneau, Alaska
on August 21, 2017
ALASKA TIMBER INSURANCE)
EXCHANGE,)
Insurer,)
Defendants.)

Tongass Cutting and Alaska Timber Insurance Exchange's (Employer) April 25, 2017 petition for a Social Security offset was heard in Juneau, Alaska on July 25, 2017, a date selected on June 29, 2017. Abraham Hernandez-Canizal appeared telephonically and represented himself. Attorney Martha Tansik appeared and represented Employer. There were no witnesses. As a preliminary matter, Employee requested a continuance to seek legal representation and the panel issued an oral order denying Employee's request. The record closed at the hearing's conclusion on July 25, 2017.

ISSUES

Employee contended the hearing should be continued to allow him to seek legal counsel. Employee contended he needs an attorney to represent him because he does not understand what is going on and he needs additional time to retain an attorney.

Employer objected to a continuance. Employer contended Employee failed to demonstrate good cause to grant a continuance. Employer contended Employee had sufficient time to find another attorney.

1) Was the oral order denying Employee's request for a continuance correct?

Employer contends Employee is receiving Social Security Disability Insurance benefits for his disability that started on the date of Employee's work injury. Employer contends it is entitled to a Social Security offset for Employee's weekly permanent total disability (PTD) benefits.

Employee did not answer or oppose Employer's petition and did not submit a hearing brief. His position on Employer's petition is unknown.

2) Is Employer entitled to a Social Security offset?

FINDINGS OF FACT

1) On May 24, 2016, Employee had only been working for Employer as a timber faller for one month when he sustained a traumatic injury when a falling tree limb struck Employee in the head and shoulder. Employee sustained a left subarachnoid hemorrhage, left subdural hemorrhage, pneumocephalus, left temporal bone fracture with extension into the sphenoid, subgaleal hematoma, left C6 and C7 transverse process fractures with extension of the transverse foramen, first left rib dislocation, left clavicle and scapular fractures, and manubrial fracture. (First Report of Occupational Injury, May 25, 2016; Katherine Theresa Flynn-O'Brien, M.D., Medical Report, May 24, 2016).

2) On May 26, 2016, Employer started paying Employee temporary total disability (TTD) benefits. Employee's compensation rate was \$273.89 based upon gross weekly earnings of \$370.72 and his status as married with four dependents. (Initial Payment Report, June 9, 2016).

3) On June 10, 2016, Employee's level of cognitive functioning was assessed on the Rancho Los Amigos Scale of Cognitive Function and he was with Rancho Level IV. (Emily O'Shea, M.A., CCC-SLP, CBIS, Evaluation, June 10, 2016).

ABRAHAM HERNANDEZ-CANIZAL v. TONGASS CUTTING

4) On July 8, 2016, Employer's claims adjuster and Employee's spouse, Brenda Valdez, stipulated Employee's wife was responsible for making all legal and medical decisions for Employee due to a frontal lobe injury, Employee was earning significantly more at the time of the work injury than he had in the two years prior, and agreed Employee's estimated wages were \$40,000 per year based on the average wage of other similarly situation employees under AS 23.30.220(10). Employee's wife and Employer stipulated Employee's compensation rate should be \$565.09 based on a gross weekly wage of \$800.00. The stipulation also stated, "The parties understand that this compensation rate is subject to offset for social security payments and that any offset will occur within the provision of the Act." (Stipulation, July 8, 2016).

5) On August 12, 2016, Employee's compensation rate was increased to \$565.09 based upon gross weekly earnings of \$800.00 and his status as married with four dependents. (Change in Benefit Type, August 12, 2016).

6) On September 16, 2016, Employee and his spouse contacted the division to discuss Employee's compensation rate. A workers' compensation officer emailed the attorney list to the email address provided by Employee along with the following explanation:

In the event you are unable to resolve your issues, I am attaching an attorney list. These attorneys have expressed an interest in assisting injured workers in the State of Alaska. It is not necessary for an injured worker to be in Alaska and many participate telephonically in their proceedings. Alaska workers compensation statutes and regulations provide for the payment of an injured worker's attorney if they prevail at a hearing. If the attorney does not prevail at hearing, the attorney is precluded by regulation from charging more than \$300 total in attorney's fees for representation of an injured worker, plus necessary costs, such as postage, copies and deposition expenses. Most attorneys on the Board's list do not charge an initial consultation fee or waive the fee if injured workers are unable to pay.

(Phone Call, September 16, 2016; Email September 16, 2016).

7) On October 31, 2016, an attorney entered an appearance for Employee. (Entry of Appearance, October 31, 2016).

8) On October 31, 2016, Employee filed a claim seeking a compensation rate adjustment, a determination that a social security offset does not apply, interest and attorney fees and costs. (Claim, October 31, 2016).

9) On November 11, 2016, Employee's benefit type changed from TTD to PTD benefits. (Change in Benefit Type Report, November 11, 2016).

ABRAHAM HERNANDEZ-CANIZAL v. TONGASS CUTTING

10) On February 13, 2017, the Social Security Administration (SSA) provided Employee and his wife as representative payee notice he was entitled to monthly disability benefits of \$897.40 beginning November 2016. The SSA found Employee's disability began on May 24, 2016 and reduced his benefits through February 2017 to take into account his workers' compensation payments from Employer. (SSA Notice of Award, February 13, 2017).

11) On April 10, 2017, Employee withdrew his October 31, 2016 claim. (Withdrawal of Workers' Compensation Claim, April 10, 2017).

12) On April 10, 2017, Employee's attorney withdrew his representation for Employee. (Withdrawal of Attorney, April 10, 2017).

13) On April 25, 2017, Employer requested the board order an offset against Social Security Disability benefits related to Employee's work injury under AS 23.30.225(b). Employer filed the SSA's February 13, 2017 "Notice of Award." Employer computed the Social Security offset reduction:

a. Employee's Gross Weekly Earnings at the time of injury (GWE)	\$800.00
b. Employee's Weekly WC Rate	\$565.09
c. Employee's Weekly Social Security benefit (\$897.40 x 12 / 52)	\$207.09
d. Employee's Weekly WC Rate and Weekly SS Benefit	\$772.18
e. Maximum Combined Benefit (80% of GWE)	\$640.00
f. Social Security Offset [d – e]	\$132.18

(Petition, April 25, 2017; Memorandum in Support of Petition for Social Security Offset, April 25, 2017).

14) On May 12, 2017, the division served notice of the June 8, 2017 prehearing conference to the parties by first-class mail. (Prehearing Conference Notice Served, May 12, 2017).

15) On June 8, 2017, Employer attended a prehearing conference scheduled to discuss Employer's April 25, 2017 petition. Employee failed to attend. The board designee included AS 23.30.225(b) and 8 AAC 45.225(b) in the prehearing conference summary to assist Employee in understanding Employer's petition. Employer stated it would file an affidavit of readiness for hearing (ARH) on its April 25, 2017 petition and is considering requesting a hearing date of July 25, 2017. A prehearing conference was scheduled for June 29, 2017. (Prehearing Conference Summary, June 8, 2017).

ABRAHAM HERNANDEZ-CANIZAL v. TONGASS CUTTING

16) On June 8, 2017, Employer filed an ARH on the April 25, 2017 petition. (ARH, June 8, 2017).

17) On June 9, 2017, the division served notice of the June 29, 2017 prehearing conference to the parties by first-class mail. (Prehearing Conference Notice Served, June 9, 2017).

18) On June 29, 2017, at a prehearing conference, the board designee attempted to contact Employee at his telephone number of record and Employee's spouse informed the designee Employee was unavailable for the prehearing conference. Employee was informed he must complete and file an entry of appearance form should he wish his spouse to represent him before the board in this matter. An oral hearing was scheduled in Juneau on July 25, 2017 on Employer's April 25, 2017 petition. (Prehearing Conference Summary, June 29, 2017).

19) On June 29, 2017, the division served Employee at his address of record with the June 29, 2017 prehearing conference summary and July 25, 2017 hearing notice by first-class and certified mail with return receipt requested. The certified mail was delivered on July 5, 2017. (Hearing Notice, June 29, 2017; copy of certified mail envelope; USPS Tracking 9171082133393768807541).

20) On July 6, 2017, Employer filed evidence for hearing, including an Itemized Statement of Earnings from the SSA for Employee. Employee's wages for 2014 totaled \$11,246.75 and for 2015 totaled \$21,019.54. (Employer Evidence, July 6, 2017).

21) At hearing on July 25, 2017, the designated chair attempted to contact Employee by telephone at his telephone number of record. Employee's spouse answered and informed the designee Employee was not available because he was attending an eye doctor appointment. She stated Employee would be available in about 30 minutes. The designee successfully contacted Employee at his telephone number of record approximately 30 minutes later. (Record).

22) At hearing, Employee requested a continuance to seek an attorney. Employee stated he needs an attorney to represent him because he does not understand what is going on. Employee requested a Spanish speaking interpreter. (Employee).

23) At hearing, the board designee informed Employee the division provides interpreters at no cost to injured workers. The designee advised Employee she would place him on hold to secure a telephonic Spanish interpreter and join the calls to continue the hearing with the assistance of an interpreter. The designee placed Employee on hold and called and secured a telephonic Spanish interpreter. Employee's call disconnected before the call with the Spanish interpreter

could be joined with Employee's call. With the interpreter on hold, the board designee attempted to contact Employee at his telephone number of record three times but he did not answer and no voicemail was set up. (Record).

24) Employer opposed a continuance and requested the hearing continue without Employee's participation. (Record).

25) After deliberation, the panel issued an oral order denying the continuance and ordering the hearing to proceed in Employee's absence. (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.

...

8 AAC 45.074. Continuances and cancellations.

....

(b) Continuances or cancellations are not favored by the board and will not be routinely granted. A hearing may be continued or cancelled only for good cause and in accordance with this section. For purposes of this subsection,

(1) good cause exists only when

(A) a material witness is unavailable on the scheduled date and deposing the witness is not feasible;

(B) a party or representative of a party is unavailable because of an unintended and unavoidable court appearance;

(C) a party, a representative of a party, or a material witness becomes ill or dies;

(D) a party, a representative of a party, or a material witness becomes unexpectedly absent from the hearing venue and cannot participate telephonically;

(E) the hearing was set under 8 AAC 45.160(d);

(F) a second independent medical evaluation is required under AS 23.30.095(k);

(G) the hearing was requested for a review of an administrator's decision under AS 23.30.041(d), the party requesting the hearing has not had adequate time to prepare for the hearing, and all parties waive the right to a hearing within 30 days;

(H) the board is not able to complete the hearing on the scheduled hearing date due to the length of time required to hear the case or other cases scheduled on that same day, the lack of a quorum of the board, or malfunctioning of equipment required for recording the hearing or taking evidence;

(I) the parties have agreed to and scheduled mediation;

(J) the parties agree that the issue set for hearing has been resolved without settlement and the parties file a stipulation agreeing to dismissal of the claim or petition under 8 AAC 45.050(f)(1);

(K) the board determines that despite a party's due diligence in completing discovery before requesting a hearing and despite a party's good faith belief that the party was fully prepared for the hearing, evidence was obtained by the opposing party after the request for hearing was filed which is or will be offered at the hearing, and due process required the party requesting the hearing be given an opportunity to obtain rebuttal evidence;

(L) the board determines at a scheduled hearing that, due to surprise, excusable neglect, or the board's inquiry at the hearing, additional evidence or arguments are necessary to complete the hearing;

(M) an agreed settlement has been reached by the parties less than 14 days before a scheduled hearing, the agreed settlement has not been put into writing, signed by the parties, and filed with the board in accordance with 8 AAC 45.070(d)(1), the proposed settlement resolves all disputed issues set to be heard, and the parties appear at the scheduled hearing to state the terms of the settlement on the record; or

(N) the board determines that despite a party's due diligence, irreparable harm may result from a failure to grant the requested continuance or cancel the hearing;

(2) the board or the board's designee may grant a continuance or cancellation under this section

(A) for good cause under (1)(A) - (J) of this subsection without the parties appearing at a hearing;

(B) for good cause under (1)(K) - (N) of this subsection only after the parties appear at the scheduled hearing, make the request and, if required by the board, provide evidence or information to support the request; or

(C) without the parties appearing at the scheduled hearing, if the parties stipulate to the continuance or cancellation for good cause as set out in (1)(A) - (J) of this subsection.

8 AAC 45.070. Hearings.

(a) Hearings will be held at the time and place fixed by notice served by the board under 8 AAC 45.060(e). . . .

. . . .

(f) If the board finds that a party was served with notice of hearing and is not present at the hearing, the board will, in its discretion, and in the following order of priority,

- (1) proceed with the hearing in the party's absence and, after taking evidence, decide the issues in the application or petition;
- (2) dismiss the case without prejudice; or
- (3) adjourn, postpone, or continue the hearing.

AS 23.30.110. Procedure on claims.

....

(c) . . . The board shall give each party at least 10 days' notice of the hearing, either personally or by certified mail. . . .

8 AAC 45.060. Service.

....

(b) . . . Except for a claim, a party shall serve a copy of a document filed with the board upon all parties or, if a party is represented, upon the party's representative. Service must be done, either personally, by facsimile, electronically, or by mail, in accordance with due process. Service by mail is complete at the time of deposit in the mail if mailed with sufficient postage and properly addressed to the party at the party's last known address.

AS 23.30.155. Payment of compensation.

....

(j) If an employer has made advance payments or overpayments of compensation, the employer is entitled to be reimbursed by withholding up to 20 percent out of each unpaid installment or installments of compensation due. More than 20 percent of unpaid installments of compensation due may be withheld from an employee only on approval of the board. . . .

AS 23.30.155(j) permits withholding up to 20 percent of future compensation installments and can be invoked at an employer's discretion. *Davenport v. K&L Distributors, Inc.*, AWCB Decision No. 92-0180 (July 22, 1992).

AS 23.30.225. Social Security and Pension or Profit Sharing Plan Offsets.

....

(b) When it is determined that, in accordance with 42 U.S.C. 401 - 433, periodic disability benefits are payable to an employee or the employee's dependents for an injury for which a claim has been filed under this chapter, weekly disability benefits payable under this chapter shall be offset by an amount by which the sum of (1) weekly benefits to which the employee is entitled under 42 U.S.C. 401 - 433, and (2) weekly disability benefits to which the employee would otherwise be

entitled under this chapter, exceeds 80 percent of the employee's average weekly wages at the time of injury. . . .

Stanley v. Wright-Harbor, AWCB Decision No. 82-0039 (February 19, 1982) *aff'd* 3 AN-82-2170 Civil (Alaska Super. Ct. May 19, 1983), established guidelines for calculating an employer's Social Security offset under AS 23.30.225(b) and held an offset must be based upon an employee's initial Social Security entitlement. Social Security offsets are calculated as follows:

- A. Determine employee's Gross Weekly Earnings (GWE)
- B. From GWE, determine Weekly Compensation Rate for worker's compensation (Weekly WC Rate)
- C. Calculate employee's Weekly Social Security benefit by multiplying monthly payment x 12 and ÷ 52 (Weekly SS Benefit)
- D. Add Weekly WC Rate + Weekly SS Benefit [B + C]
- E. Calculate 80% of GWE [80% of A]
- F. Calculate Social Security Offset [D – E]

Id.

8 AAC 45.225. Social security and pension or profit sharing plan offsets.

....

(b) An employer may reduce an employee's weekly compensation under AS 23.30.225(b) by

(1) getting a copy of the Social Security Administrations award showing the

- (A) employee is being paid disability benefits;
- (B) disability for which the benefits are paid;
- (C) amount, month, and year of the employee's initial entitlement;
- and
- (D) amount, month, and year of each dependent's initial entitlement;

(2) computing the reduction using the employee or beneficiary's initial entitlement, excluding any cost-of-living adjustments;

(3) completing, filing with the board, and serving upon the employee a petition requesting a board determination that the Social Security Administration is paying benefits as a result of the on-the-job injury; the petition must show how the reduction will be computed and be filed together with a copy of the Social Security Administration's award letter;

(4) filing an affidavit of readiness for hearing in accordance with 8 AAC 45.070(b); and

(5) after a hearing and an order by the board granting the reduction, completing a Compensation Report form showing the reduction, filing a copy with the board, and serving it upon the employee.

In *Underwater Construction, Inc. v. Shirley*, 884 P.2d 150 (Alaska 1994), the Supreme Court held “average weekly wages” as a benefit cap under AS 23.30.225(b) is synonymous with ‘gross weekly earnings’ under AS 23.30.220, insofar as both terms represent a measure of historical earning capacity.” *Id.* at 156.

ANALYSIS

1) Was the oral order denying Employee’s request for a continuance correct?

Continuances are not favored and will not be routinely granted. 8 AAC 45.074(b). Continuances are granted for good cause. *See* 8 AAC 45.074(b)(1)(A)-(N). Employee did not demonstrate his situation fit into any of the limited grounds for good cause. The grounds for good cause related to an absent legal representative do not apply because Employee’s previous attorney withdrew his representation on April 10, 2017. 8 AAC 45.074(b)(1)(B)-(D). Employee did not demonstrate how irreparable harm may come from proceeding with the July 25, 2017 hearing without legal representation; nor did because Employee demonstrate due diligence in attempting to secure representation. 8 AAC 45.074(b)(1)(N). Employee was informed of his right to seek an attorney and did so. Employee had three months to secure legal representation after his attorney withdrew on April 10, 2017 and Employer filed its April 25, 2017 petition. Employee received notice of the hearing more than 10 days before the July 25, 2017 hearing date. It was Employee’s responsibility to secure legal representation; he should have exercised greater diligence to find an attorney in a timely manner. His failure to do so does not constitute good cause to continue the hearing under 8 AAC 45.074.

Further, Employee did not demonstrate how irreparable harm may come from representing himself. 8 AAC 45.074(b)(1)(N). While Employee’s spouse was appointed as representative payee for his Social Security Benefits and the July 8, 2016 stipulation stated Employee’s spouse made legal and medical decisions for Employee, this does not constitute substantial evidence of mental incompetence at the time of the July 24, 2017 hearing rendering Employee unable to

adequately participate. There is no medical report stating Employee is currently mentally incompetent. Neither Employee nor Employer petitioned for the appointment of a guardian. Employee requested a continuance and provided a rational and coherent argument supporting his request; he clearly understands his right to seek an attorney and requested a continuance. As Employee failed to participate in the remainder of the hearing, it is unknown why Employee stated he does not understand what is going on. The issue in Employer's petition for a Social Security offset is a procedural matter and the basis for the offset lies in the record.

Employee's failure to participate in the remainder of the hearing is not necessarily good cause to grant a continuance. When a party is served with hearing notice and is not present at hearing, the first priority is to proceed with the hearing, take evidence and decide the issue. 8 AAC 45.070(f)(1). Employee was served with the hearing notice and was actually present when the hearing commenced. AS 23.30.110(c); 8 AAC 45.060(b); 8 AAC 45.060(f). Employee's inability to participate in the hearing's remainder was not because of an unintended and unavoidable court appearance nor was it because he was ill or deceased. 8 AAC 45.074(b)(1)(B)-(C). There is no evidence Employee's absence was due to an inability to participate telephonically because Employee initially participated telephonically. 8 AAC 45.074(b)(1)(D). Employee received actual notice of the hearing twenty days prior to the July 25, 2017 hearing date. Employee failed to file a petition seeking a continuance or request assistance once the hearing date was set and did not file a petition seeking a continuance before Employer's attorney prepared and appeared for the hearing. There is no evidence in the record to demonstrate a satisfactory reason for failing to do so. It was Employee's responsibility to participate in the entire July 25, 2017 hearing; he should have exercised greater diligence to ensure his participation. Allowing a continuance when good cause does not exist under 8 AAC 45.074 would frustrate the legislature's intent for quick efficient, fair and predicable delivery of benefits to Employee at a reasonable cost to Employer. AS 23.30.001(1).

Lastly, in the event Employee is dissatisfied with this decision, he has a right to seek prompt appellate review by filing a "petition for review" with the Alaska Workers' Compensation Appeals Commission. The commission, in its discretion, can remedy any errors or infirmities in

this decision and can prevent any perceived “irreparable harm.” This further protects Employee’s due process rights. The oral order denying Employee’s request for a continuance was correct.

2) Is Employer entitled to a Social Security offset?

An employer seeking a Social Security offset to reduce an employee’s weekly compensation must first obtain an order before it is entitled to offset its compensation liability against an employee’s Social Security disability benefit entitlement. 8 AAC 45.225(b). Employer has complied with the required procedures for its Social Security offset request. 8 AAC 45.225(b). Employer filed a petition for an offset on April 25, 2017. 8 AAC 45.225(b)(3). Employer obtained a copy of the SSA’s Notice of Award showing Employee receives monthly Social Security disability benefits of \$897.40 and his initial entitlement was November 2016. 8 AAC 45.225(b)(1)(A) and (C). The award notice states Employee is receiving Social Security disability benefits for his disability that started on May 24, 2016, the day of Employee’s work injury. 8 AAC 45.225(b)(1)(B). Employee is married and has four dependents. 8 AAC 45.225(b)(1)(D). The record reflects no dispute between the parties on Employee’s GWE because Employee withdrew his claim disputing his compensate rate. Employer correctly calculated the \$132.18 Social Security offset using Employee’s initial monthly entitlement and showed how the reduction was calculated. 8 AAC 45.225(b)(2) and (3). Finally, Employer filed its affidavit of readiness for hearing on June 8, 2017. 8 AAC 45.225(4). Employer has met the criteria to reduce Employee’s weekly compensation. 8 AAC 45.225(b).

Employee’s entitlement to Social Security Disability benefits began November 2016 and he continues to receive them. Since November 2016, Employee has received PTD benefits. Employee received reduced Social Security Disability benefits from November 2016 through February 2017. Employer is entitled to take a weekly \$132.18 Social Security offset both prospectively and retroactively to March 2017, the date the SSA stopped reducing Employee’s disability benefit. Employee’s compensation rate reduced by the Social Security offset is \$432.91 ($\$565.09 - \$132.18 = \432.91).

Employer has been overpaying Employee \$132.18 per week, the amount of its Social Security offset beginning March 2017. Employer has not requested to withhold more than 20 percent of Employee's future unpaid compensation payments. Therefore, an order is not required for Employer to exercise its entitlement to withhold 20 percent of each unpaid compensation installment. AS 23.30.1559(j). The amount Employer is entitled to withhold is \$86.58 per week until Employer has recouped its overpayment ($\$432.19 \times 0.2 = \86.58). On a biweekly basis, the amount withheld will be \$173.16.

From March 1, 2017 to August 21, 2017, a 24-week period, Employer has been overpaying Employee \$132.18 per week, the amount of its Social Security offset. Employer received an overpayment totaling \$3,172.32 ($\$132.18 \times 24 = \$3,172.32$). Employee is advised his compensation rate with both Social Security offset and Employer's 20 percent reimbursement on a weekly basis is \$346.33. On a biweekly basis Employee will receive \$692.66 in PTD benefits. Once Employer has recouped its overpayment, Employee's weekly PTD compensation rate will return to \$432.91 and he will receive \$865.82 biweekly.

CONCLUSIONS OF LAW

- 1) Employer is entitled to a Social Security offset.
- 2) Employer is entitled to withhold 20 percent of Employee's future compensation to reimburse Employer for PTD overpayments.

ORDER

- 1) Employer is entitled to take a \$132.18 offset retroactively to March 2017.
- 2) Employer has made overpayment from March 2017 until the date this decision is issued. Employer is entitled to reimbursement of its \$3,172.32 overpayment.
- 3) Employer may withhold no more than 20 percent of Employee's future compensation payments due Employee.

Dated in Juneau, Alaska on August 21, 2017.

ALASKA WORKERS' COMPENSATION BOARD

/s/

Kathryn Setzer, Designated Chair

/s/

Charles Collins, Member

/s/

Bradley Austin, Member

APPEAL PROCEDURES

This compensation order is a final decision. It becomes effective when filed in the office of the board unless proceedings to appeal it are instituted. Effective November 7, 2005 proceedings to appeal must be instituted in the Alaska Workers' Compensation Appeals Commission within 30 days of the filing of this decision and be brought by a party in interest against the boards and all other parties to the proceedings before the board. If a request for reconsideration of this final decision is timely filed with the board, any proceedings to appeal must be instituted within 30 days after the reconsideration decision is mailed to the parties or within 30 days after the date the reconsideration request is considered denied due to the absence of any action on the reconsideration request, whichever is earlier. AS 23.30.127.

An appeal may be initiated by filing with the office of the Appeals Commission: 1) a signed notice of appeal specifying the board order appealed from and 2) a statement of the grounds upon which the appeal is taken. A cross-appeal may be initiated by filing with the office of the Appeals Commission a signed notice of cross-appeal within 30 days after the board decision is filed or within 15 days after service of a notice of appeal, whichever is later. The notice of cross-appeal shall specify the board order appealed from and the ground upon which the cross-appeal is taken. AS 23.30.128.

RECONSIDERATION

A party may ask the board to reconsider this decision by filing a petition for reconsideration under AS 44.62.540 and in accord 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 accord with 8 AAC 45.150 and 8 AAC 45.050.

