

ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

JAMES BRENNAN,

Employee,
Applicant,

v.

MICHAEL VANNING
d/b/a GATEWAY GUIDING,

Putative Employer,

ALASKA WORKERS'
COMPENSATION BENEFITS
GUARANTY FUND,

and

WILTON ADJUSTMENT SERVICE,

Adjuster,
Defendants.

) FINAL DECISION AND ORDER

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) AWCB Case No. 201119848

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) AWCB Decision No. 14-0017

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) Filed with AWCB Fairbanks, Alaska

) on February 14, 2014

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James Brennan's (Employee) December 16, 2011 claim seeking medical benefits from putative employer Michael Vanning (Employer) was heard in Fairbanks, Alaska, on January 16, 2014. The hearing date was selected on October 31, 2013. Employee appeared telephonically and represented himself. Employer did not appear. Velma Thomas appeared telephonically on behalf of the Alaska Workers' Compensation Benefits Guaranty Fund (Fund). Joanne Pride appeared telephonically on behalf of Wilton Adjustment Services, the Fund's claims adjuster. The record closed after conclusion of the hearing, on January 16, 2014.

ISSUES

Employee contends he was injured while working as a hunting guide for Employer. Employee further contends Employer was not insured for purposes of workplace injuries at the time of Employee's injury. Employee further contends he and Employer entered a stipulation by which Employer agreed to pay for reasonable and necessary medical treatment related to Employee's injury. Employee further contends Employer has been unresponsive and uncooperative in paying compensation and benefits arising from Employee's workplace injury. Employee seeks an order affirming the parties' stipulation Employee's injury is compensable and declaring Employer in default of his obligation to pay for medical treatment related to Employee's workplace injury.

The Fund agrees Employee suffered a compensable workplace injury for which Employer is responsible. The Fund agrees Employer has failed to pay for medical treatment related to Employee's workplace injury. The Fund requests an order of default stating Employer has failed to pay compensation for more than thirty days since it became due. The Fund contends it will begin paying compensation related to Employee's workplace injury once the board finds Employer in default.

Employer failed to appear at the hearing, though he was properly served notice of the hearing. His position is therefore unknown.

1) Was James Brennan an "employee" injured in the course and scope of his employment with Michael Vanning, an "employer?"

2) Has Employer failed to pay compensation arising from Employee's work-related injury for a period of more than 30 days after it became due?

FINDINGS OF FACT

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

1) On August 10, 2011, Employee injured his left knee while working as a hunting guide for Employer at a remote site in the Brooks Range. When he notified Employer of his injury,

Employer told Employee to pack his gear and return home to Montana. Employee returned to Montana. (Employee).

2) On August 29, 2011, Employee sought treatment for left knee pain at Flathead Valley Orthopedic Center. Rodney Brandt, MD ordered x-rays and magnetic resonance imaging (MRI), which revealed a lateral meniscus tear. (Dr. Brandt report, August 29, 2011, MRI report, September 7, 2011).

3) On December 19, 2011, Employee filed a workers' compensation claim, seeking medical and transportation costs related to his left knee meniscus tear. Employee stated "Employer told me to leave camp after injury, said I voided a contract, refused to pay me, made me pay for way home to Montana from Alaska." (WCC, December 6, 2011).

4) On February 29, 2012, Employee orally amended his claim to include the Fund as a party. A copy of Employee's December 6, 2011 claim was served on the Fund. (Prehearing Conference (PHC) Summary, February 29, 2012).

5) Employee's claim and the February 29, 2012 PHC summary were served on Employer at 2011 South Steen, Veradale, WA 99037. (Record).

6) On March 5, 2012, the Fund filed its answer to Employee's claim, stating the Fund was not obligated to pay benefits to Employee until the board issued an order of compensability and a supplemental order declaring Employer in default. (Fund's Answer, March 1, 2012).

7) On March 12, 2012, Employee, Fund Administrator Velma Thomas, Fund claims adjuster Joanne Pride, and Special Investigations Unit (SIU) Chief Rhonda Gerharz attended a PHC. SIU was investigating Employer for failure to carry workers' compensation insurance as required by AS 23.30.075. Employer received notice of the PHC but did not attend. (PHC Summary, March 12, 2012).

8) On March 27, 2012, Employer wrote a letter to SIU Chief Rhonda Gerharz:

I am writing to you regarding the claim made by one Jim Brennan, AWCB No. 700003928.¹ I have been traveling for the previous two months, and have only recently returned. Due to my travel schedule and destinations I have been unable to respond to your correspondence regarding the claim of Jim Brennan.

I am now available to provide you with the information you are requesting. I have looked into the claim made by Mr. Brennan, and it appears that he is claiming he was employed by me when he was injured. However, Mr. Brennan was never actually employed by me. I was in the same guide camp he was in where he has

¹ AWCB No. 70003928 is the case number for the SIU's Failure to Insure investigation against Employer.

claimed he was injured, but was not employing him at that time. Mr. Brennan was set to work for me in September for moose season. He was being employed by another guide at the time of his injury. There are guide area registration forms, and State of Alaska hunt records that will show that I was not the guide of record during this time frame, nor was I registered to hunt in the area for which Mr. Brennan claims to have been injured. He is apparently mixing up who he was working for and when. I think his claim against me is erroneous since he wasn't under my employ, and that he has wasted a bunch of our time with his faulty reporting and information.

I am happy to help you and participate in any way that I can now that I am available. I apologize for any inconvenience, and look forward to hearing from you.

Employer listed his address as 2011 South Steen, Veradale, WA 99037. (M. Vanning letter to R. Gerharz, March 27, 2012).

9) On April 9, 2012, Employee and the Fund attended a PHC. Employer received notice of the PHC but did not attend. EE and the Fund agreed to set a hearing on Employee's claim for July 12, 2012. (PHC Summary, April 9, 2012).

10) On May 23, 2012, Employee and the Fund attended a PHC. Employer received notice of the PHC but did not attend. (PHC Summary, May 23, 2012).

11) On July 12, 2012, the board held a hearing on Employee's December 6, 2011 claim. The parties agreed to resolve the claim. A PHC summary issued reflecting the parties' agreement:

Today was the day set for the hearing on the merits of EE's claim against ER and the Fund. At the start of the hearing Mr. Vanning clarified he wishes to resolve the claim and agreed to the following:

EE was an employee of Mr. Vanning at the time of his injury, on August 10, 2011. Mr. Vanning was uninsured on the date of injury. Mr. Vanning agreed he is responsible for payment of reasonable and necessary medical treatment related to EE's work injury. EE anticipates he will need surgery for a torn meniscus, but will consult with his treating physician as to recommended treatment.

The parties agreed to sign a stipulation to this effect. Mr. Vanning will be in Fairbanks on July 23, 2012 and can sign the stipulation then.

(PHC Summary, July 12, 2012).

12) On July 23, 2012, Employee and Employer signed and filed a stipulation, which reads in its entirety:

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COME NOW James F. Brennan and Michael C. Vanning dba Gateway Guiding both parties being unrepresented by legal representation, agree and stipulate to the following:

- 1) James F. Brennan was employed by Michael C. Vanning dba Gateway Guiding.
- 2) Michael C. Vanning dba Gateway Guiding was the employer.
- 3) James F. Brennan suffered an injury to the knee while working for Michael C. Vanning dba Gateway Guiding on 8/10/11.
- 4) Michael C. Vanning dba Gateway Guiding agrees to pay for medical treatment and medical bills incurred to date for injury to the knee on 8/10/11.
- 5) Mr. Vanning also agrees, if surgery is necessary, to pay for upcoming surgery, that has not yet been scheduled.

(Stipulation, July 23, 2012).

13) On December 27, 2012, Employee underwent a left knee arthroscopic meniscus repair at the Orthopedic Surgery Center in Kalispell, Montana. (Operative Report, December 27, 2012).

14) After his surgery, Employee underwent a course of physical therapy. (Flathead Performance Training notes, January 2013).

15) Prior to receiving treatment, Employee informed his treating physician, the surgery center and his physical therapist that all bills for medical treatment to his left knee should be sent to Michael Vanning at 2011 South Steen, Veradale, WA 99037. Health insurance claims forms filed before hearing indicate bills were sent to that address. (Employee, record).

16) On September 16, 2013, claims supervisor Joanne Pride filed an affidavit stating:

- 1) That she is an employee of Wilton Adjustment Service with an office located 625 East 34, Suite 400, Anchorage, Alaska, 99503.
- 2) That to the best of her knowledge, the attached medical charges remain outstanding and have not been paid by any party.

(Affidavit of Joanne Pride, September 12, 2013).

17) On November 1, 2013, Fund claims adjuster Joanne Pride sent a letter to Employer, along with a copy of the July 23, 2012 stipulation and a billing itemization for Employee's outstanding medical bills related to his work injury with the bills attached. (J. Pride letter to M. Vanning, November 1, 2013).

18) As a result of his work-related knee injury, Employee has incurred \$7,594.00 in medical costs which remain unpaid. (Medical Bill Itemization, Employee, Joanne Pride).

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 . . . to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to . . . employers . . . subject to . . . this chapter. . . .

AS 23.30.045. Employer's liability for compensation.

(a) An employer is liable for and shall secure the payment to employees of the compensation payable under AS 23.30.041, 23.30.050, 23.30.095, 23.30.145, and 23.30.180 - 23.30.215....

AS 23.30.075. Employer's liability to pay.

(a) An employer under this chapter, unless exempted, shall either insure and keep insured for the employer's liability under this chapter in an insurance company or association duly authorized to transact the business of workers' compensation insurance in this state, or shall furnish the division satisfactory proof of the employer's financial ability to pay directly the compensation provided for. If an employer elects to pay directly, the board may, in its discretion, require the deposit of an acceptable security, indemnity, or bond to secure the payment of compensation liabilities as they are incurred.

(b) If an employer fails to insure and keep insured employees subject to this chapter or fails to obtain a certificate of self-insurance from the division, upon conviction, the court shall impose a fine of \$10,000 and may impose a sentence of imprisonment for not more than one year. If an employer is a corporation, all persons who, at the time of the injury or death, had authority to insure the corporation or apply for a certificate of self-insurance, and the person actively in charge of the business of the corporation shall be subject to the penalties prescribed in this subsection and shall be personally, jointly, and severally liable together with the corporation for the payment of all compensation or other benefits for which the corporation is liable under this chapter if the corporation at that time is not insured or qualified as a self-insurer.

AS 23.30.082. Workers' Compensation Benefits Guaranty Fund.

...

(c) Subject to the provisions of this section, an employee employed by an employer who fails to meet the requirements of AS 23.30.075 and who fails to pay compensation and benefits due to the employee under this chapter may file a claim for payment by the fund. In order to be eligible for payment, the claim form must be filed within the same time, and in the same manner, as a workers' compensation claim. The fund may assert the same defenses as an insured employer under this chapter.

(d) If the fund pays benefits to an employee under this section, the fund shall be subrogated to all of the rights of the employee to the amount paid, and the employee shall assign all right, title, and interest in that portion of the employee's workers' compensation claim and any recovery under AS 23.30.015 to the fund. Money collected by the division on the claim or recovery shall be deposited in the fund.

(e) If the money deposited in the fund is insufficient at a given time to satisfy a duly authorized claim against the fund, the fund shall, when sufficient money has been deposited in the fund and appropriated, satisfy unpaid claims in the order in which the claims were originally filed, without interest.

(f) The division may contract under AS 36.30 (State Procurement Code) with a person for the person to adjust claims against the fund. The contract may cover one or more claims.

(g) In this section, "fund" means the workers' compensation benefits guaranty fund.

AS 23.30.095. Medical treatments, services, and examinations.

(a) The employer shall furnish medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus for the period which the nature of the injury or the process of recovery requires, not exceeding two years from and after the date of injury to the employee. However, if the condition requiring the treatment, apparatus, or medicine is a latent one, the two-year period runs from the time the employee has knowledge of the nature of the employee's disability and its relationship to the employment and after disablement. It shall be additionally provided that, if continued treatment or care or both beyond the two-year period is indicated, the injured employee has the

right of review by the board. The board may authorize continued treatment or care or both as the process of recovery may require....

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8 AAC 45.050. Pleadings.

...

(f) Stipulations.

(1) If a claim or petition has been filed and the parties agree that there is no dispute as to any material fact and agree to the dismissal of the claim or petition, or to the dismissal of a party, a stipulation of facts signed by all parties may be filed, consenting to the immediate filing of an order based upon the stipulation of facts.

(2) Stipulations between the parties may be made at any time in writing before the close of the record, or may be made orally in the course of a hearing or a prehearing.

(3) Stipulations of fact or to procedures are binding upon the parties to the stipulation and have the effect of an order unless the board, for good cause, relieves a party from the terms of the stipulation. A stipulation waiving an employee's right to benefits under the Act is not binding unless the stipulation is submitted in the form of an agreed settlement, conforms to AS 23.30.012 and 8 AAC 45.160, and is approved by the board.

(4) The board will, in its discretion, base its findings upon the facts as they appear from the evidence, or cause further evidence or testimony to be taken, or order an investigation into the matter as prescribed by the Act, any stipulation to the contrary notwithstanding.

8 AAC 45.177 Claims against the workers' compensation benefits guaranty fund.

...

(e) The fund may not be obligated to pay the injured worker's claim unless the

(1) employee and employer stipulate to the facts of the case, including that the employee's claim is compensable, which has the effect of an order under 8 AAC 45.050(f), or the board issues a determination and award of compensation; and

(2) the employer defaults upon the payment of compensation for a period of 30 days after the compensation is due.

(f) In case of default by the employer in the payment of compensation due under an award and payment of the awarded compensation by the fund, the board shall issue a supplementary order of default. The fund shall be subrogated to all the rights of the employee and may pursue collection of the defaulted payments under AS 23.30.170.

ANALYSIS

Was James Brennan, an “employee” injured in the course and scope of his employment with Michael Vanning, an “employer?”

Though he initially disputed Employee worked for him on the date of his injury, Employer conceded at the July 2012 hearing he was Employee’s employer and Employee was injured in the course and scope of his employment. The parties agreed Employer would pay for all necessary medical treatment related to Employee’s work injury and Employee agreed to have the medical bills sent to Employer. The parties memorialized this agreement in a written stipulation which was filed with the board on July 23, 2012. Per 8 AAC 45.050(f), stipulations are binding upon the parties to the stipulation and have the effect of an order unless the board, for good cause, relieves a party from the terms of the stipulation. Employer received notice of the January 16, 2014 hearing and failed to appear. Employer has not presented just cause to relieve him from the terms of the July 23, 2012 stipulation. Employee suffered a compensable work injury on August 10, 2011. Employer was uninsured for purposes of workplace injuries on that date.

Has Employer failed to pay compensation arising from Employee’s work-related injury for a period of more than 30 days after it became due?

Employee testified at the January 16, 2014 hearing he informed his medical providers Employer was responsible for his medical treatment and instructed them to bill Employer directly. Claims adjuster Joanne Pride presented an affidavit stating the bills remained unpaid. The panel has reviewed the medical bills in the record which identify Michael Vanning, 2011 South Steen, Veradale, WA 99037 as addressee. 8 AAC 45.177 provides the Fund is not obligated to pay compensation to an employee until the employer defaults upon the payment of compensation for a period of 30 days after the compensation is due. Per 8 AAC 45.082(d), medical bills for an employee’s treatment are due and payable no later than 30 days after the date the employer received the medical provider’s bill. In this case, while the bills themselves do not indicate what date they were sent to Employer, Joanne Pride sent a letter to Employer on November 1, 2013 and

attached a bill itemization and the individual bills. Therefore, it is reasonable to assume Employer received the medical bills no later than November 15, 2013, and he therefore had until December 15, 2013 to pay for the treatment or be declared in default. Employer has failed to pay for any medical treatment related to Employee's August 10, 2011 work injury. Employer remains in default for \$7,594.00. A default order will be issued.

CONCLUSIONS OF LAW

- 1) James Brennan is an employee and was injured in the course and scope of his employment with Michael Vanning, an employer.
- 2) Employer has failed to pay compensation arising from Employee's work-related injury for a period of more than 30 days after it became due.

ORDER

- 1) Per the parties' July 23, 2012 stipulation, Employer is liable for compensation arising out of Employee's August 10, 2011 work injury.
- 2) Employer has failed to pay compensation of \$7,594.00 in medical costs related to Employee's work injury for a period of more than 30 days since it became due.
- 3) The Fund is ordered to pay compensation related to the August 10, 2011 work injury. Per 8 AAC 45.177(f), the Fund shall be subrogated to all Employee's rights and may pursue collection of the defaulted payments under AS 23.30.170.

Dated this 14th day of February, 2014, in Fairbanks, Alaska.

ALASKA WORKERS' COMPENSATION BOARD

_____/S/_____
Amanda K. Eklund, Designated Chair

_____/S/_____
Krista Lord, Member

_____/S/_____
Zeb Woodman, Member

APPEAL PROCEDURES

This compensation order is a final decision and becomes effective when filed in the board's office, unless it is appealed. Any party in interest may file an appeal with the Alaska Workers' Compensation Appeals Commission within 30 days of the date this decision is filed. All parties before the board are parties to an appeal. 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 because the board takes no action on reconsideration, whichever is earlier.

A party may appeal by filing with the Alaska Workers' Compensation Appeals Commission: (1) a signed notice of appeal specifying the board order appealed from; 2) a statement of the grounds for the appeal; and 3) proof of service of the notice and statement of grounds for appeal upon the Director of the Alaska Workers' Compensation Division and all parties. Any party may cross-appeal by filing with the Alaska Workers' Compensation 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 grounds upon which the cross-appeal is taken. Whether appealing or cross-appealing, parties must meet all requirements of 8 AAC 57.070.

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 Final Decision and Order in the matter of JAMES BRENNAN Employee / claimant; v. MICHAEL VANNING, Employer, and THE ALASKA WORKERS' COMPENSATION BENEFITS GUARANTY FUND, and WILTON ADJUSTMENT SERVICE, Adjuster / defendants; Case No. 201119848, dated and filed in the office of the Alaska Workers' Compensation Board in Fairbanks, Alaska, and served upon the parties this 14th day of February, 2014.

Darren Lawson
Office Assistant II