

# ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

MICHAEL J. REED,	)	
Employee,	)	
Claimant,	)	FINAL DECISION AND ORDER ON
	)	RECONSIDERATION
v.	)	
	)	AWCB Case No. 201202404
24/7 PLUMBING & HEATING, INC.,	)	
Employer,	)	AWCB Decision No. 14-0053
	)	
and	)	Filed with AWCB Anchorage, Alaska
	)	on April 16, 2014
ALASKA WORKERS' COMPENSATION	)	
BENEFITS GUARANTY FUND,	)	
Defendants.	)	

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The Alaska Workers' Compensation Benefits Guaranty Fund's (Fund) April 8, 2014 petition for reconsideration was heard on the written record on April 15, 2014 in Anchorage, Alaska. This hearing date was selected on April 15, 2014. Velma Thomas represented the Fund. As this hearing was on the written record, there were no witnesses. The record closed at the hearing's conclusion on April 15, 2014.

## ISSUE

The Fund contends *Reed v. 24/7 Plumbing and Heating, Inc.* AWCB Decision No. 14-0046 (April 1, 2014) (*Reed I*) failed to find the officers of 24/7 Plumbing and Heating, Inc. (Employer) jointly liable with Employer and that the Fund was entitled to seek reimbursement from the officers and Employer.

***Should the Fund's request for reconsideration of Reed I be granted to allow additional argument?***

### FINDINGS OF FACT

All findings of fact in *Reed I* are incorporated herein. The following facts and factual conclusions are reiterated from *Reed I*, or established by a preponderance of the evidence:

1. On December 27, 2012, the Fund filed a petition seeking to join Employer's officers as parties to the case. (Petition, December 27, 2012).
2. On June 27, 2013, the Fund filed a petition seeking reimbursement for benefits it had paid to Employee. (Petition, June 27, 2013).
3. At the September 10, 2013 prehearing conference, the parties stipulated that the corporate officers be joined as parties. (Prehearing Conference Summary, September 10, 2013).
4. The hearing for *Reed I* was set at the January 21, 2014 prehearing conference. A representative of the Fund appeared at the prehearing conference. The board designee stated "A hearing on Mr. Reed's 11/8/2012 WCC – TTD/TPD, PPI, medical costs, compensation rate adjustment, is set for March 4, 2014, for two hours." The prehearing conference summary does not include the Fund's petition for reimbursement as an issue for hearing. (Prehearing Conference Summary, January 21, 2014).
5. No one requested modification or amendment of the prehearing conference summary. (Record).

### PRINCIPLES OF LAW

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

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(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. . . .

#### **AS 44.62.540. Reconsideration.**

(a) The agency may order a reconsideration of all or part of the case on its own motion or on petition of a party. To be considered by the agency, a petition for reconsideration must be filed with the agency within 15 days after delivery or mailing of the decision. The power to order a reconsideration expires 30 days after the delivery or mailing of a decision to the respondent. If no action is taken on a petition within the time allowed for ordering reconsideration, the petition is considered denied.

(b) The case may be reconsidered by the agency on all the pertinent parts of the record and the additional evidence and argument that are permitted, or may be assigned to a hearing officer. . . .

**8 AAC 45.065. Prehearings.**

(c) After a prehearing the board or designee will issue a summary of the actions taken at the prehearing, the amendments to the pleadings, and the agreements made by the parties or their representatives. The summary will limit the issues for hearing to those that are in dispute at the end of the prehearing. Unless modified, the summary governs the issues and the course of the hearing.

(d) Within 10 days after service of a prehearing summary issued under (c) of this section, a party may ask in writing that a prehearing summary be modified or amended by the designee to correct a misstatement of fact or to change a prehearing determination. The party making a request to modify or amend a prehearing summary shall serve all parties with a copy of the written request. If a party's request to modify or amend is not timely filed or lacks proof of service upon all parties, the designee may not act upon the request. . . .

ANALYSIS

***Should the Fund's request for reconsideration of Reed I be granted to allow additional argument?***

The Fund contends *Reed I* should have addressed the issues it raised in its June 27, 2013 petition: its right to reimbursement and the liability of Employer's officers. However, the January 21, 2014 prehearing conference summary did not include those issues in the issues for the March 4, 2014 hearing. Under 8 AAC 45.070(g), the prehearing conference summary governed the issues for the hearing. The Fund's issues were properly not considered in *Reed I*, and the Fund's petition will be denied.

CONCLUSION OF LAW

*Reed I* will not be reconsidered.

ORDER

The Fund's April 8, 2014 petition for reconsideration is denied.

MICHAEL J. REED v. 24/7 PLUMBING & HEATING, INC.

MICHAEL J. REED v. 24/7 PLUMBING & HEATING, INC.

Dated in Anchorage, Alaska on April 16, 2014.

ALASKA WORKERS' COMPENSATION BOARD

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Ron Ringel, Designated Chair

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David Kester, 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.

#### CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Final Decision and Order in the matter of MICHAEL J. REED, employee / claimant; v. 24/7 PLUMBING & HEATING, INC., employer and ALASKA WORKERS' COMPENSATION BENEFITS GUARANTY FUND; defendants; Case No. 201202404; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties on April 16, 2014.

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Mariaanna Subeldia, Office Assistant