

ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

HENRY U. BULLECER,)	
)	
Employee,)	
Claimant,)	
)	INTERLOCUTORY
v.)	DECISION AND ORDER
)	
HORIZON LINES,)	AWCB Case No. 201405076
)	
Employer,)	AWCB Decision No. 14-0166
and)	
)	Filed with AWCB Anchorage, Alaska
ARCH INSURANCE COMPANY,)	On December 12, 2014
)	
Insurer,)	
Defendants.)	
)	

Horizon Lines' (Employer) August 27, 2014 Request for Cross-Examination, Henry U. Bullecer's (Employee) September 25, 2014 Petition to Order Insurance Company to Cease Interference with Mr. Bullecer's Treatment and Declare Dr. Coalwell his Treating Physician and Employer's October 3, 2014 Petition for Review of RBA Eligibility Determination/Abuse of Discretion were heard on December 3, 2014, in Anchorage, Alaska, a date selected on October 16, 2104. Attorney Eric Croft appeared and represented Employee. Attorney Jeffrey Holloway appeared and represented Employer and its workers' compensation insurer. Employee appeared and testified. The record closed at the hearing's conclusion on December 3, 2014.

At the hearing's commencement, the parties notified the panel that they had come to a resolution of the issues set for the December 3, 2014 hearing by withdrawing their respective petitions. Employer agreed to allow Employee to proceed with his reemployment benefits, use Timothy

Coalwell, M.D., as his attending physician, and employee agreed to not pursue its petition concerning interference with Employee's selection of the physician. Neither party waived any rights or defenses. The parties jointly requested a hearing cancellation and requested a written decision memorializing these events. An oral order granted the joint motion for a hearing cancellation. This decision examines the oral order, memorializes it, and addresses an additional issue raised at the hearing but resolved shortly thereafter.

Since the hearing, the parties stipulated to Employee's attorney accepting attorney's fees and costs for services rendered to date in respect to this case under the Alaska Workers' Compensation Act. To make process and procedure under the Act in this instance as summary and simple as possible, this decision and order will also address the parties' attorney's fee and cost stipulation.

ISSUES

As a preliminary matter at hearing, the parties announced they had resolved their differences. Both parties agreed to withdraw their pending petitions and a request for cross-examination. Employer agreed Dr. Coalwell was Employee's attending physician and agreed to withdraw its petition appealing the rehabilitation benefits administrator's designee's decision finding Employee eligible for retraining benefits. Employee also agreed to withdraw his petition seeking a remedy for alleged physician interference by Employer. Given that the three issues set for the December 13, 2014 hearing were amicably resolved, without any party waiving any rights or defenses, the parties jointly requested a hearing cancellation. An oral order granted the cancellation.

1) Was the oral order canceling the hearing correct?

After the December 3, 2014 hearing, the parties stipulated to Employee's attorney fees and costs. They submitted a signed, joint stipulation requesting an order approving an attorney's fee and cost award.

2) Should the parties' joint attorney's fee and cost stipulation be approved?

FINDINGS OF FACT

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

- 1) On September 2, 2014, Employer filed a request for cross-examination of Dr. Coalwell (Request for Cross-Examination, August 27, 2014).
- 2) On September 25, 2014, the rehabilitation benefits administrator designee (RBA designee) found Employee eligible for reemployment benefits (RBA designee determination letter, September 25, 2014).
- 3) On September 25, 2014, Employee filed a petition alleging Employer was interfering with his treatment. Employee's petition also sought an order declaring Dr. Coalwell was his attending physician (Petition to Order Insurance Company to Cease Interference with Mr. Bullecer's Treatment and Declare Dr. Coalwell His Treating Physician, September 25, 2014).
- 4) On October 6, 2014, Employer filed a petition seeking review of the RBA designee's determination that Employee was eligible for reemployment benefits (Petition for Review of RBA Eligibility Determination/Abuse of Discretion, October 3, 2014).
- 5) October 16, 2014, the parties through counsel attended a prehearing conference. The parties agreed to an oral hearing on December 3, 2014 addressing: Employer's August 27, 2014 Request for Cross-Examination; Employee's September 25, 2014 petition; and Employer's October 3, 2014 petition (Prehearing Conference Summary, October 16, 2014).
- 6) Employer vigorously defended against these issues (Prehearing Conference Summary, October 16, 2014).
- 7) At hearing on December 3, 2014, the parties announced they had resolved their differences in respect to all three of the above-referenced request and petitions. Employer agreed to withdraw its request for cross-examination of Dr. Coalwell and its petition seeking review of the RBA designee's determination that Employee was eligible for reemployment benefits. Employer further agreed Dr. Coalwell is Employee's attending physician and Employee may go forward with the reemployment process. Employee agreed to withdraw his petition alleging Employer interfered with his medical treatment. Neither party waived any rights or defenses under the Act. Both parties agreed to stipulate in the future to Employee's attorney's fees and costs related to these issues and to submit an attorney's fee and cost stipulation for board approval. As the only issues set for hearing had been amicably resolved and there was no settlement agreement necessary, the parties jointly requested a hearing cancellation, which was granted (record).

8) On December 8, 2014, the parties filed a stipulation for approval of Employee's attorney's fees and costs. The parties agreed Employee's lawyer is licensed to practice law in Alaska, provided valuable services to Employee in this case and his efforts expedited Employee's receipt of benefits. The parties also agreed considering the nature, length and complexity of the services performed, Employer's resistance, and the benefits Employee obtained as a result of those services, \$14,105.50 in attorney's fees and \$133.64 in legal costs constitutes reasonable attorney's fees and costs in this case for services rendered to date. The parties jointly requested prompt approval of the attorney's fees and costs (Stipulation for Approval of Employee's Attorney Fees and Costs, December 8, 2014).

9) Reemployment benefits are typically of significant value to an injured worker (experience, judgment, observations).

10) Given the parties' agreement and stipulation as set forth above, and considering the nature, length and complexity of the services performed, Employer's resistance, and the benefits resulting to Employee from the legal services rendered, the agreed-upon attorney's fees and costs are reasonable for this claim (experience, judgment, observations and inferences drawn from all the above).

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 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, 533-34 (Alaska 1987).

AS 23.30.145. Attorney fees. (a) Fees for legal services rendered in respect to a claim are not valid unless approved by the board, and the fees may not be less than 25 percent on the first \$1,000 of compensation or part of the first \$1,000 of compensation, and 10 percent of all sums in excess of \$1,000 of compensation. . . . In determining the amount of fees the board shall take into consideration the nature, length, and complexity of the services performed, transportation charges, and the benefits resulting from the services to the compensation beneficiaries.

(b) If an employer fails to file timely notice of controversy or fails to pay compensation or medical and related benefits within 15 days after it becomes due or otherwise resists the payment of compensation or medical and related benefits and if the claimant has employed an attorney in the successful prosecution of the claim, the board shall make an award to reimburse the claimant for the costs in the proceedings, including a reasonable attorney fee. The award is in addition to the compensation or medical and related benefits ordered.

AS 23.30.145(a) provides for a statutory minimum attorney’s fee. Subsection 145(b) requires the award of attorney fees and costs to be reasonable. *Wise Mechanical Contractors v. Bignell*, 718 P.2d 971, 974-75 (Alaska 1986). In determining a reasonable fee under AS 23.30.145(b), the board is required to consider the contingent nature of the work for an employee in workers’ compensation cases, the nature, length and complexity of the services performed, the resistance of the employer or carrier, and the benefits resulting from the services performed (*id.*).

8 AAC 45.050. Pleadings. . . .

. . .

(f) Stipulations.

. . .

(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. . . .

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

...

(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).

ANALYSIS

1) Was the oral order canceling the hearing correct?

The parties at a prehearing conference agreed to have three issues heard at the December 3, 2014 hearing. The parties through counsel appeared at hearing and announced they had resolved the three issues set for hearing by stipulation. 8 AAC 050(f)(2). The parties also stipulated neither party waived any rights or defenses. They further stipulated there was no settlement requiring a written agreement; the request for cross-examination and the two pending petitions were simply withdrawn. Therefore, as the issues set for hearing had been resolved without settlement and the parties withdrew their requests and petitions, the oral order canceling the hearing was correct. The oral order provided a quick, efficient way to resolve this scheduled hearing at a reasonable cost to Employer and in a summary and simple manner. AS 23.30.001(1); AS 23.30.005(h).

2) Should the parties' joint attorney's fee and cost stipulation be approved?

To their credit, the parties post-hearing were also able to resolve Employee's attorney's fees and costs associated with these three resolved issues through stipulation. 8 AAC 45.050(f)(1). On December 8, 2014, the parties filed a joint, written stipulation seeking approval of Employee's attorney's fees and costs related to these issues. The parties agreed \$14,105.50 in attorney's fees and \$133.64 in costs for a total award of \$14,239.14 was reasonable. AS 23.30.145; *Bignell*. As a result of Employee's lawyer's efforts in this case on these issues, Employer agreed Dr. Coalwell is Employee's attending physician and has dropped its request for cross-examination. Employee stipulated to withdrawing his petition seeking a remedy for alleged interference by Employer with his medical care. Employer agreed to drop its petition appealing the RBA

designee's eligibility determination, clearing the way for Employee to move forward in the reemployment process. The parties' agreements resolved these three issues and obviated the need for a hearing. Reemployment benefits are likely to be of great benefit to Employee. *Rogers & Babler*. Given the parties' agreements and stipulation as set forth above, and considering the nature, length and complexity of the services performed, Employer's resistance, and the benefits resulting to Employee from the legal services rendered, the agreed-upon attorney's fees and costs are reasonable for this claim. Employee's attorney will be awarded \$14,239.14 in reasonable attorney's fees and litigation costs.

CONCLUSIONS OF LAW

- 1) The oral order canceling the hearing was correct.
- 2) The parties' joint attorney's fee and cost stipulation will be approved.

ORDER

- 1) Employer's August 27, 2014 Request for Cross-Examination, Employee's September 25, 2014 Petition to Order Insurance Company to Cease Interference with Mr. Bullecer's Treatment and Declare Dr. Coalwell his Treating Physician, and Employer's October 3, 2014 Petition for Review of RBA Eligibility Determination/Abuse of Discretion are withdrawn.
- 2) The oral order canceling the December 3, 2014 hearing was correct.
- 3) The parties' December 8, 2014 stipulation is approved.
- 4) Employee's attorney is awarded \$14,105.50 in attorney's fees and \$133.64 in litigation costs for total award of \$14,239.14.

Dated in Anchorage, Alaska on December 12, 2014.

ALASKA WORKERS' COMPENSATION BOARD

William Soule, Designated Chair

Michael O'Conner, Member

Rick Traini, Member

PETITION FOR REVIEW

A party may seek review of an interlocutory of 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 HENRY U. BULLECER, employee / claimant v. HORIZON LINES, employer; ARCH INSURANCE COMPANY, insurer / defendants; Case No. 201405076; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties on December 12, 2014.

Pamela Murray, Office Assistant