

ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

MARTHA WANGARI,)
Employee,)
Claimant,) FINAL DECISION AND ORDER
v.)
UNISEA, INC.,) AWCB Case No. 200524500
Employer,) AWCB Decision No. 15-0002
and) Filed with AWCB Anchorage, Alaska
ALASKA NATIONAL INSURANCE CO.,) on January 5, 2015.
Insurer,)
Defendants.)
_____)

Martha Wangari's March 8, 2014 claim was heard December 11, 2014 in Anchorage, Alaska. This hearing date was selected on September 9, 2014. Ms. Wangari (Employee) did not appear for the hearing. Attorney Richard Wagg appeared and represented Unisea, Inc. and Alaska National Insurance Company (Employer). There were no witnesses. The record closed at the hearing's conclusion on December 11, 2014.

ISSUES

Employee did not appear for the hearing, and an attempt to contact her at her telephone number of record was unsuccessful. The designated chair orally ruled that the hearing proceed in Employee's absence.

1. Was the oral ruling to proceed with the hearing in Employee's absence correct?

Employee contends the work environment was a substantial factor in causing her mental health issues, and she is consequently entitled to medical, disability, and permanent partial impairment benefits. Employer contends the work environment was not a substantial factor in Employee's mental health issues, and she is not entitled to benefits.

2. *Was employment the cause of Employee's disability and need for medical treatment?*

Employer contends Employee's claim should be denied because neither her report of injury nor her claim was timely filed. Employee's position is unknown, but presumably she contends both documents were timely filed.

3. *Did Employee timely report her injury and timely file her claim?*

FINDINGS OF FACT

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

1. Employee began working for Employer as a processor in Dutch Harbor, Alaska on August 12, 2005. (UniSea Personnel File; Report of Injury, September 30, 2010).
2. About 5:00 p.m. on September 4, 2005, Employee's roommate noticed Employee seemed to be depressed and she asked Employee what was wrong. Initially, Employee did not respond to her roommate's questions, but eventually stated she was fine, there was nothing wrong, and "she just wanted to meet people." (UniSea Incident Statement, Rosita Niccum, 5:46 p.m., September 4, 2005).
3. About 7:25 p.m. on September 4, 2005, Employee's roommate encountered Employee walking aimlessly and crying. Employee explained that "she missed her kids." The roommate noted that Employee was supposed to be at work, and told her to go tell Employer she did not feel good. Employee did not respond, and her roommate was able to get her back to their room, but Employee left. The roommate notified Employer's security. (UniSea Incident Statement, Rosita Niccum, 7:57 p.m., September 4, 2005; UniSea, Security Daily Shift Log, September 4, 2005).
4. About 8:30 p.m. on September 4, 2005, Employer's security personnel found Employee in front of another bunkhouse. Employee confirmed she was not physically ill and refused to go to the dispensary. She was not coherent at times, but explained she was depressed

because her family remained in Africa and she was worried for her son. She stated she wanted to continue working. (UniSea, Security Daily Shift Log, September 4, 2005).

5. Security personnel again spoke to Employee about 3:40 a.m. on September 5, 2005 when she was found wandering the hallways crying. She again stated there was no problem. She was advised that if her behavior continued she would be referred for a psychological evaluation. (UniSea, Security Daily Shift Log, September 4, 2005).
6. About 8:00 a.m. on September 5, 2005, security personnel again responded when Employee was unresponsive to other employees' attempts to converse with her. Employee did not respond to the security personnel, but repeatedly "wrote" 911 in the air and showed her employee identification. The security personnel contacted the Unalaska Police Department; Employee did not respond to the officer's questions. (UniSea Personnel File).
7. At the request of the police officer, Employee was examined by George Khoury, M.D., at 4:00 p.m. on September 5, 2005. Dr. Khoury found probable cause that Employee should be taken into protective custody and examined at a mental health facility because she was gravely disabled. He noted she was paranoid with delusional thoughts, such as that people were talking to her from the computer. (Peace Officer/Mental Health Professional Application for Examination, September 5, 2005).
8. Employee was transported to Anchorage by LifeFlight on September 6, 2005. The flight left Dutch Harbor, Alaska about 11:00 a.m., and Employee was transferred to Alaska Psychiatric Institute (API) in Anchorage, Alaska about 2:00 p.m. (LifeFlight Flight Log).
9. On September 8, 2005, Employee was discharged from API to return home to Seattle, Washington. She was diagnosed with a psychotic disorder, and it was recommended she not return to her previous location. (API Discharge Release Order, September 8, 2005).
10. Employee's personnel file contains nothing indicating Employee complained of, or may have had problems with, other employees. (UniSea Personnel File).
11. On September 13, 2005, Employee was taken to Harborview Medical Center (Harborview) Emergency Room in Seattle by a friend after Employee began hallucinating. (Harborview Emergency Notes, September 14, 2014). Employee was unable to participate in the admission interview, and her history was provided by a friend. Employee was admitted for 72 hours. (Harborview, Patient History, September 14, 2005).

12. There is a gap in Employee's mental health records until September 22, 2006 when she was seen by Murray Bennett, M.D., for a return consultation. Dr. Bennett noted Employee was "still unclear about last fall's events." He diagnosed postpartum psychosis, noting the onset of Employee's symptoms was six months after delivery. (Dr. Bennett, Chart Note, September 26, 2006).
13. On July 20, 2007, Employee was again seen by Dr. Bennett. Employee recited the history of 2005 incident, explaining that she had a psychotic break while working in Dutch Harbor, Alaska, the evacuation to Anchorage, and transfer to Seattle. Dr. Bennett noted she had stabilized quite well from that, but she was reporting new symptoms. (Dr. Bennett, Chart Note, July 20, 2007).
14. On July 30, 2007, Dr. Bennett wrote a "to whom it may concern" letter stating Employee had been under his care for 18 months, and the separation from her family in Kenya had a significant impact on her emotional well-being. (Dr. Bennett, Letter, July 30, 2007).
15. The absence of Employee's family and her concerns about them are repeatedly noted as stressors in her life. (e.g. Dr. Bennett Chart, Notes, November 29, 2007, April 2, 2008, July 2, 2008, September 17, 2008, December 17, 2008, February 25, 2009, April 29, 2009, July 8, 2009).
16. On September 13, 2010, Employee filed a report of injury. She stated the date of injury was September 2, 2005, and described the injury as "I was working and I had a mental breakdown. For three days I did not eat or drink or work or talk to anyone. On the final day I began saying nonsensical statements and my employer called 911 and I was taken to the hospital." (Report of Injury, September 13, 2010).
17. Included in Employee's medical records is one page of a three-page report dated October 31, 2010 in which Employee related her account of the 2005 incident to a social worker. Employee explained she had been working hard and fast, and her workmates got mad at her. (Final Report, October 31, 2010).
18. On March 8, 2012, Employee filed a claim seeking permanent partial impairment (PPI) benefits. She described the injury as "mental health issues arising from work environment." Her reason for filing the claim was "because my work environment and the employees made me feel uncomfortable and unwanted. Also, I felt wronged because my employer neglected

to seek medical attention for me for 3 days, which resulted in my decompensation.” (Claim, March 8, 2012).

19. At the May 2, 2012 prehearing conference, Employee amended her claim to include a request for medical benefits, temporary total disability (TTD) from September 2005 to June 2009, and temporary partial disability (TPD) benefits for two months in 2006. (Prehearing Conference Summary, May 2, 2012).
20. On February 14, 2014, Employee was seen by Brooke Thorner, M.D., for an employer’s medical evaluation (EME). Dr. Thorner reviewed Employee’s medical records since 2005 and took her personal history. Dr. Thorner noted that Employee’s youngest child was born two months before she came to the United States in March 2005. Employee described her work for Employer to Dr. Thorner. She believed the man supplying fish to the processing line she worked on was playing with the workers’ minds by overwhelming them with too many fish. She had a difficult time remembering exactly what led up to her hospitalization. Dr. Thorner diagnosed Employee with schizophrenia, in partial remission; He explained stress was not a known cause of schizophrenia, and work stress was not the cause of her disorder.
21. At the September 9, 2014 prehearing conference, the board designee set a hearing on Employee’s claim for December 11, 2014. Employee did not attend the prehearing, but the prehearing conference summary was sent to her at her address of record. (Prehearing Conference Summary, September 9, 2014).
22. On November 7, 2014, notice of the December 11, 2014 hearing was sent to Employee by certified mail at her address of record. (Hearing Notice, November 7, 2014). Employee signed the return receipt for the hearing notice on November 21, 2014. (Return Receipt, November 21, 2014).
23. Employee did not appear at the December 11, 2014 hearing, and attempts to reach her at her telephone number of record were unsuccessful. (Record).

PRINCIPLES OF LAW

The law in effect at the time of an injury generally determines the parties’ rights and remedies, despite later changes to the law. *See, e.g., Weed v. State*, AWCAC Decision No. 204 (November

13, 2014). Unless noted otherwise, all references are to the Act as it existed at the time of Employee's September 2005 injury.

AS 23.30.010. Coverage.

Compensation is payable under this chapter in respect of disability or death of an employee.

For work injuries occurring prior to the November 7, 2005 effective date of the 2005 amendments to the Alaska Workers' Compensation Act, a work injury is compensable where the employment is "a substantial factor" in bringing about the disability or need for medical care. *Ketchikan Gateway Borough v. Saling*, 604 P.2d 590, 597-98 (Alaska 1979). A work injury is a substantial factor in bringing about the disability or need for medical care if the claimant would not have suffered disability at the same time, in the same way, or to the same degree but for the work injury. *Fairbanks North Star Borough v. Rogers & Babler*, 747 P.2d 528, 532-33 (Alaska 1987).

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.

AS 23.30.100. Notice of injury or death.

(a) Notice of an injury or death in respect to which compensation is payable under this chapter shall be given within 30 days after the date of such injury or death to the board and to the employer.

....

(d) Failure to give notice does not bar a claim under this chapter

(1) if the employer, an agent of the employer in charge of the business in the place where the injury occurred, or the carrier had knowledge of the injury or death and the board determines that the employer or carrier has not been prejudiced by failure to give notice;

- (2) if the board excuses the failure on the ground that for some satisfactory reason notice could not be given;
- (3) unless objection to the failure is raised before the board at the first hearing of a claim for compensation in respect to the injury or death.

AS 23.30.105. Time for filing of claims.

(a) The right to compensation for disability under this chapter is barred unless a claim for it is filed within two years after the employee has knowledge of the nature of the employee's disability and its relation to the employment and after disablement. However, the maximum time for filing the claim in any event other than arising out of an occupational disease shall be four years from the date of injury, and the right to compensation for death is barred unless a claim therefor is filed within one year after the death, except that if payment of compensation has been made without an award on account of the injury or death, a claim may be filed within two years after the date of the last payment of benefits under AS 23.30.041, 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215. It is additionally provided that, in the case of latent defects pertinent to and causing compensable disability, the injured employee has full right to claim as shall be determined by the board, time limitations notwithstanding.

(b) Failure to file a claim within the period prescribed in (a) of this section is not a bar to compensation unless objection to the failure is made at the first hearing of the claim in which all parties in interest are given reasonable notice and opportunity to be heard.

(c) If a person who is entitled to compensation under this chapter is mentally incompetent or a minor, the provisions of (a) of this section are not applicable so long as the person has no guardian or other authorized representative, but are applicable in the case of a person who is mentally incompetent or a minor from the date of appointment of a guardian or other representative, or in the case of a minor, if no guardian is appointed before the person becomes of age, from the date the person becomes of age.

AS 23.30.120. Presumptions.

(a) In a proceeding for the enforcement of a claim for compensation under this chapter it is presumed, in the absence of substantial evidence to the contrary, that

- (1) the claim comes within the provisions of this chapter;
- (2) sufficient notice of the claim has been given;
- (3) the injury was not proximately caused by the intoxication of the injured employee or proximately caused by the employee being under the influence of drugs unless the drugs were taken as prescribed by the employee's physician;
- (4) the injury was not occasioned by the wilful intention of the injured employee to injure or kill self or another.

(b) If delay in giving notice is excused by the board under AS 23.30.100(d)(2), the burden of proof of the validity of the claim shifts to the employee notwithstanding the provisions of (a) of this section.

(c) The presumption of compensability established in (a) of this section does not apply to a mental injury resulting from work-related stress.

Under AS 23.30.120(a)(1), benefits sought by an injured worker are generally presumed to be compensable. *Meek v. Unocal Corp.*, 914 P.2d 1276, 1279 (Alaska 1996). However, under AS 23.30.120(c), that presumption does not extend to stress-induced mental injury claims. *Williams v. State*, 895 P.2d 99, 101 (Alaska 1995).

AS 23.30.122. Credibility of witnesses.

The board has the sole power to determine the credibility of a witness. A finding by the board concerning the weight to be accorded a witness's testimony, including medical testimony and reports, is conclusive even if the evidence is conflicting or susceptible to contrary conclusions. The findings of the board are subject to the same standard of review as a jury's finding in a civil action.

AS 23.30.185. Compensation for temporary total disability.

In case of disability total in character but temporary in quality, 80 percent of the injured employee's spendable weekly wages shall be paid to the employee during the continuance of the disability. Temporary total disability benefits may not be paid for any period of disability occurring after the date of medical stability.

AS 23.30.190. Compensation for permanent partial impairment; rating guides.

(a) In case of impairment partial in character but permanent in quality, and not resulting in permanent total disability, the compensation is \$177,000 multiplied by the employee's percentage of permanent impairment of the whole person. The percentage of permanent impairment of the whole person is the percentage of impairment to the particular body part, system, or function converted to the percentage of impairment to the whole person as provided under (b) of this section. The compensation is payable in a single lump sum, except as otherwise provided in AS 23.30.041, but the compensation may not be discounted for any present value considerations.

(b) All determinations of the existence and degree of permanent impairment shall be made strictly and solely under the whole person determination as set out in the American Medical Association Guides to the Evaluation of Permanent Impairment, except that an impairment rating may not be rounded to the next five percent. The board shall adopt a supplementary recognized schedule for injuries that cannot be rated by use of the American Medical Association Guides.

AS 23.30.200. Temporary partial disability.

(a) In case of temporary partial disability resulting in decrease of earning capacity the compensation shall be 80 percent of the difference between the injured employee's spendable weekly wages before the injury and the wage-earning

capacity of the employee after the injury in the same or another employment, to be paid during the continuance of the disability, but not to be paid for more than five years. Temporary partial disability benefits may not be paid for a period of disability occurring after the date of medical stability.

AS 23.30.395. Definitions.

In this chapter

....

(17) "injury" means accidental injury or death arising out of and in the course of employment, and an occupational disease or infection which arises naturally out of the employment or which naturally or unavoidably results from an accidental injury; "injury" includes breakage or damage to eyeglasses, hearing aids, dentures, or any prosthetic devices which function as part of the body and further includes an injury caused by the wilful act of a third person directed against an employee because of the employment; *"injury" does not include mental injury caused by mental stress unless it is established that (A) the work stress was extraordinary and unusual in comparison to pressures and tensions experienced by individuals in a comparable work environment, and (B) the work stress was the predominant cause of the mental injury; the amount of work stress shall be measured by actual events; a mental injury is not considered to arise out of and in the course of employment if it results from a disciplinary action, work evaluation, job transfer, layoff, demotion, termination, or similar action, taken in good faith by the employer; (emphasis added).*

AAC 45.070. Hearings

....

(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.

ANALYSIS

1. Was the oral ruling to proceed with the hearing in Employee's absence correct?

When a party does not appear at hearing, but was served with notice of the hearing, the first option in order of priority under 8 AAC 45.070(f) is to proceed with the hearing in the party's

absence. Here, the September 9, 2014 prehearing conference summary stated when the hearing was scheduled; it was served on Employee at her address of record. The hearing notice was mailed to Employee on November 7, 2014 at her address of record. Employee was served with notice of the hearing, and the decision to proceed with the hearing in Employee's absence was correct.

2. *Was employment the cause of Employee's disability and need for medical treatment?*

Because Employee is claiming a mental injury as a result of workplace stress, the presumption of compensability in AS 23.30.120(a) does not apply. AS 23.30.120(c). Further, at the time of Employee's injury, AS 23.30.395(17) required Employee to show the workplace stress was the predominant cause of her mental injury, a higher standard of causation than the "a substantial factor" standard used for other injuries. Consequently, Employee must prove by a preponderance of the evidence that the workplace stress was the predominant cause of her mental injury.

It is unclear whether Employee contends the stress of her work led to the onset of her mental breakdown, or whether the stress was due to delay in obtaining care once her initial symptoms appeared. The only evidence workplace stress may have led to the onset of Employee's breakdown are her October 31, 2010 statement to a social worker that her coworkers got mad at her for working too hard and fast and her February 14, 2014 statement to Dr. Thorner that the person responsible for the processing line was playing with the workers' minds by overwhelming them with fish. Employee's explanations of the workplace stress are inconsistent and are called into question by Dr. Bennett's September 22, 2006 note that Employee was unclear about the 2005 events and Dr. Thorner's note that Employee had a difficult time remembering exactly what led to her 2005 breakdown. In contrast, Employee's comments to coworkers about her family, Dr. Bennett's diagnosis of postpartum psychosis and his repeated notes about her concerns for her family strongly suggest that the predominant cause of Employee's breakdown was personal, rather than workplace stress. While Dr. Thorner diagnosed schizophrenia rather than psychosis, he also stated stress was not a cause of schizophrenia. More weight is given to the medical opinions than to Employee's conflicting and unsubstantiated statements. Employee did not prove by a preponderance of the evidence that the workplace stress was the predominant

cause leading to the onset of her mental injury.

Likewise, Employee failed to prove by a preponderance of the evidence that a delay in obtaining care was the predominant cause of her mental injury. In her September 13, 2010 report of injury, Employee gave September 2, 2005 as the date of the injury. However, the first evidence that Employee may have been experiencing mental difficulties is two days later, at about 5:00 p.m. on September 4, 2005 when her roommate reported Employee appeared depressed, but stated there was nothing wrong. Later on September 4, 2005, her roommate contacted security when she found Employee walking aimlessly and nonresponsive. Employee then told security personnel that “there was no problem” and she wanted to continue working. At 8:00 a.m. on September 5, 2005 when Employee “wrote” 911 in the air, security personnel contacted the Unalaska Police Department. By 4:00 p.m. on September 5, 2005, less than 24 hours after her first reported symptoms and eight hours after apparently requesting 911, Employee had been examined by Dr. Khoury, who recommended protective custody and an examination at a mental health facility. Employee was transported to Anchorage for further care 11:00 a.m. on September 6, 2005. Employee has not shown an unreasonable delay in obtaining treatment medical care, and there is no medical evidence the delay that did occur caused or worsened her breakdown.

3. Did Employee timely report her injury and timely file her claim?

Because Employee did not prove by a preponderance of the evidence that workplace stress was the predominant cause of her mental injury, it is unnecessary to determine whether she timely reported the injury and timely filed her claim.

CONCLUSIONS OF LAW

1. The oral ruling to proceed with the hearing in Employee’s absence was correct.
2. Employment was not the predominant cause of Employee’s disability and need for medical treatment.
3. It is unnecessary to determine whether Employee timely reported her injury and timely filed her claim.

MARTHA WANGARI v. UNISEA, INC.

ORDER

1. Employee's March 8, 2014 claim is denied.

Dated in Anchorage, Alaska on January 5, 2015.

ALASKA WORKERS' COMPENSATION BOARD

Ronald P. Ringel, Designated Chair

Linda Hutchings, Member

Stacy Allen, 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 MARTHA WANGARI, employee / claimant; v. UNISEA INC, employer; AK NATIONAL INSURANCE CO., insurer / defendants; Case No. 200524500; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties on January 5, 2015.

Cassandra Lederhos, Office Assistant