

ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

VIRGIL A. ADAMS,)	
Claimant,)	INTERLOCUTORY
)	DECISION AND ORDER
v.)	
)	AWCB Case No. 201113128
O&M ENTERPRISES, THE MICHAEL A.)	
HEATH TRUST, and MICHAEL HEATH,)	AWCB Decision No. 15-0039
Alleged Employers,)	
)	Filed with AWCB Anchorage, Alaska
and)	on April 6, 2015
)	
THE ALASKA WORKERS' COMPENSATION)	
BENEFITS GUARANTY FUND)	
Defendants.)	
)	

The Alaska Workers' Compensation Benefits Guaranty Fund's (Fund) January 20, 2015 petition to bifurcate the issues for hearing was heard March 18, 2015 in Anchorage, Alaska. This hearing date was selected on February 17, 2015. Attorney Charles Coe appeared and represented Virgil A. Adams (Claimant). Assistant Attorney General Siobhan McIntyre appeared and represented the Fund. Michael Heath appeared on his own behalf and on behalf of the Michael A. Heath Trust and O&M Enterprises (collectively, Alleged Employers). There were no witnesses. The record closed at the hearing's conclusion on March 18, 2015.

ISSUE

Claimant alleges he was injured in a fall from a roof while working as an employee for one of the Alleged Employers, and is entitled to benefits as a result. The Alleged Employers, who were uninsured at the time of the injury, maintain they are not employers, Claimant was not their

employee, and Claimant's intoxication was the proximate cause of his injury, thus barring his claim.

The Fund maintains the Alleged Employer's defenses are dispositive issues which should be heard before a hearing on the merits of Claimant's claim. The Fund contends that a hearing on each of these issues, in order, is the most logical and efficient way to proceed. The Alleged Employers agree with the Fund. Employee opposes bifurcation, particularly to the extent requested by the Fund. Employee contends that having to proceed sequentially through four hearings to obtain benefits is not quick, fair, and efficient, nor as summary and simple as possible.

Should the issues for hearing be bifurcated, and, if so, in what manner?

FINDINGS OF FACT

The following facts are based on the evidence in the record as of March 18, 2015, and are limited to those facts necessary to resolve the issue presented. The following facts and factual conclusions are undisputed or established by a preponderance of the evidence:

1. On August 8, 2011, Claimant fell from the roof of a home when the ladder he was using slid. He stated the fall was about 40 feet, and he bounced off a deck before hitting the ground and breaking his back. Claimant identified his employer as Michael Heath. (Report of Occupational Injury or Illness, August 28, 2011).
2. On September 20, 2011, Claimant filed a claim for various benefits and identified his employer as O&M Enterprises/Michael Heath. He noted Mr. Heath and O&M Enterprises were uninsured, and asked that the Fund be joined as a party. (Claim, September 20, 2011).
3. On January 9, 2012, the Fund controverted all benefits stating Claimant's intoxication was the proximate cause of his injury. (Controversion Notice, January 5, 2012).
4. On September 24, 2012, Claimant filed an amended claim seeking the same benefits as his 2011 claim, and identifying his employer as Michael Heath. (Amended Claim, September 20, 2012).

5. On January 18, 2013 Mr. Heath filed a “Notice of Compensation Fraud,” which was deemed to be an answer to Claimant’s claims. Mr. Heath stated Claimant did not work for him or O&M Enterprises, and Claimant was not an employee of the Michael Heath Trust. He also stated Claimant was intoxicated at the time of the incident. (Answer, January 15, 2013).
6. On August 15, 2013, Claimant filed a petition seeking to join the Michael A. Heath Trust as an employer. (Petition, August 14, 2013).
7. On October 8, 2013, Claimant filed an Affidavit of Readiness for Hearing on his claims. (Affidavit of Readiness for Hearing, October 7, 2013).
8. On January 22, 2015, the Fund filed a petition identifying three issues and asking that they be determined prior to a determination on the benefits requested by Claimant. The three issues the Fund contended should be decided prior to a hearing on the merits of Claimant’s claim were (1) whether the Alleged Employers are employers under the Alaska Workers' Compensation Act (Act), (2) whether Mr. Adams was an employee under the Act, and (3) whether Mr. Adams' intoxication at the time of his accident on August 18, 2011 barred his claim. The Fund requested hearings be held on each issue, in the order listed. (Petition, January 20, 2015).
9. On March 15, 2015, Claimant filed an answer to the Fund’s January 22, 2015 petition. Claimant opposed bifurcation, particularly into more than two hearings, as doing so would not save time, cost or money, and would unduly delay Claimant’s receipt of benefits. Claimant especially objected to separate hearings on whether the Alleged Employers were employers under the Act and whether one of them was Claimant’s Employer, contending the evidence on the two issues was so intermixed that they needed to be heard at the same time. (Answer, March 9, 2015).
10. At the March 18, 2015 hearing, the Fund argued that hearing the issues in order would provide the quickest, most efficient resolution: it was ready to proceed to hearing on the issue of whether the Alleged Employers were employers under the Act, but further discovery was needed before the other issues could be heard. It pointed out that a decision in its favor on any of the three issues would end the litigation at that point, avoiding further discovery and further hearings. (Fund’s hearing representations). The Alleged Employers concurred with the Fund. (Alleged Employers’ hearing representation).

11. At the hearing, Claimant argued the Fund's approach was not quick, efficient, or fair as he would have to proceed through four hearings to establish his right to benefits. He noted that a finding that an Alleged Employer was an employer under the Act did little to further the case without a finding they were also Claimant's employer. (Claimant's hearing representations).

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) . . . Process and procedure under this chapter shall be as summary and simple as possible.

AS 23.30.135. Procedure before the board.

(a) In making an investigation or inquiry or conducting a hearing the board is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this chapter. The board may make its investigation or inquiry or conduct its hearing in the manner by which it may best ascertain the rights of the parties.

AS 23.30.235. Cases in which no compensation is payable.

Compensation under this chapter may not be allowed for an injury

....

(2) proximately caused by 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

AS 23.30.395. Definitions.

In this chapter,

....

(19) "employee" means an employee employed by an employer as defined in (20) of this section;

(20) "employer" means the state or its political subdivision or a person employing one or more persons in connection with a business or industry coming within the scope of this chapter and carried on in this state;

8 AAC 45.065. Prehearings.

(a) After a claim or petition has been filed, a party may file a written request for a prehearing, and the board or designee will schedule a prehearing. Even if a claim, petition, or request for prehearing has not been filed, the board or its designee will exercise discretion directing the parties or their representatives to appear for a prehearing. At the prehearing, the board or designee will exercise discretion in making determinations on

(1) identifying and simplifying the issues

. . . .

(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.

The board has applied AS 23.30.135 and 8 AAC 45.065 to bifurcate issues for hearing. *See, e.g., Figon v. Norcon, Inc.*, AWCB Decision No. 11-0118 (August 12, 2012).

8 AAC 45.120. Evidence

. . . .

(f) Any document, including a compensation report, controversion notice, claim, application for adjustment of claim, request for a conference, affidavit of readiness for hearing, petition, answer, or a prehearing summary, that is served upon the parties, accompanied by proof of service, and that is in the board's possession 20 or more days before hearing, will, in the board's discretion, be relied upon by the board in reaching a decision unless a written request for an opportunity to cross-examine the document's author is filed with the board and served upon all parties at least 10 days before the hearing. The right to request cross-examination specified in this subsection does not apply to medical reports filed in accordance with 8 AAC 45.052; a cross-examination request for the author of a medical report must be made in accordance with 8 AAC 45.052.

ANALYSIS

Should the issues for hearing be bifurcated, and, if so, in what manner?

The Fund has identified three potentially dispositive issues and contends they should be heard before any hearing on the merits of Claimant's claim. Because none of these issues have yet been set for hearing, the 8 AAC 45.120(f) deadline for filing evidence has not passed. Consequently, this decision does not consider the merits of any of the issues; it only addresses the question of whether or how the issues should be divided for hearing.

Although AS 23.30.135 and 8 AAC 45.065 provide the authority for bifurcating a hearing, bifurcation is only appropriate when doing so is likely to further the goals of a summary and simple process and is quick, efficient, fair, and at a reasonable cost. In the past, when the determination of a relatively straight-forward issue could be dispositive and an early resolution of the issue might avoid the need to prepare for a complicated hearing on other issues, the board has bifurcated the hearing, addressing the potentially dispositive issue first.

This case is somewhat unusual in that there are three potentially dispositive issues. If Claimant prevails on those issues, it is unclear whether there are any disputes over the specific benefits he is seeking. Consequently, deciding the dispositive issues first, and then addressing the disputes over benefits, if any, is likely to be the quickest, simplest and most efficient approach. While bifurcation is appropriate, the question remains whether a hearing on each issue would be the best approach.

The Fund's contention that each issue should be heard in order is a logical, methodical approach. Claimant correctly points out, however, that it has the disadvantage of potentially forcing him through multiple hearings. Because it is unknown which, if any, of the dispositive issues might resolve the case, considering them all at the first hearing appears to be the quickest, simplest, most efficient approach. Doing so may require additional discovery or preparation by the parties, but will ultimately result in a quicker determination of whether Claimant is entitled to benefits, even though disputes over specific benefits may remain.

CONCLUSION OF LAW

The issues for hearing will be bifurcated; the issues of whether the Alleged Employers are employers under the Act, whether Claimant was an employee, and whether intoxication was the proximate cause of Claimant's injuries will be heard in a single hearing.

ORDER

1. The Fund's January 20, 2015 petition is granted in part.
2. The issues of whether the Alleged Employers are employers under the Act, whether Claimant was an employee, and whether intoxication was the proximate cause of Claimant's injuries will be heard at an initial hearing. If necessary, a second hearing will be held to determine Claimant's eligibility for specific benefits.

VIRGIL A. ADAMS v. O&M ENTERPRISES *et al.*

Dated in Anchorage, Alaska on April 6, 2015.

ALASKA WORKERS' COMPENSATION BOARD

Ronald P. Ringel, Designated Chair

Stacy Allen, Member

Ron Nalikak, 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 VIRGIL A. ADAMS, claimant; v. O&M ENTERPRISES, THE MICHAEL A. HEATH TRUST, and MICHAEL HEATH, alleged employers; and THE ALASKA WORKERS' COMPENSATION BENEFITS GUARANTY FUND, dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties on April 6, 2015.

Pamela Murray, Office Assistant