

ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

FRANK L. BANKHEAD,)
)
Employee,)
Applicant,)
)
v.) FINAL DECISION AND ORDER
) ON RECONSIDERATION AND
) MODIFICATION
YARDARM KNOT, INC.,)
) AWCB Case No. 201012684
Employer,)
and) AWCB Decision No. 15-0079
)
NATIONAL UNION FIRE INSURANCE) Filed with AWCB Anchorage, Alaska
CO. OF PITTSBURG,) on July 10, 2015
)
Insurer,)
Defendants.)
)

Frank Bankhead's (Employee) March 9, 2015 petition was heard on June 11, 2015, in Anchorage, Alaska, a date selected on April 8, 2015. Employee appeared, represented himself and testified. Attorney Aaron Sandone appeared and represented Yardarm Knot, Inc., (Employer) and its workers' compensation insurer. The record closed at the hearing's conclusion on June 11, 2015.

ISSUES

Employee contends he failed to properly complete his Affidavits of Readiness for Hearing in 2013. Therefore, he contends the April 25, 2013 hearing, giving rise to *Bankhead v. Yardarm Knot, Inc.*, AWCB Decision No. 13-0084 (July 18, 2013) (*Bankhead I*), never should have occurred and *Bankhead I* should be declared "null and void."

Employer contends Employee cannot object to his own pleading on grounds it was improperly completed. Employer contends Employee requested a hearing and one was scheduled notwithstanding any minor infirmities in his written hearing request. Employer further contends Employee waived any objections to his own pleading by failing to object prior to the 2013 hearing. Lastly, Employer contends the parties orally stipulated to the hearing on numerous occasions thus curing any defect in Employee's paperwork. It contends Employee's petition should be denied.

Should *Bankhead I* be reconsidered or modified?

FINDINGS OF FACT

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

- 1) On June 8, 2010, Employee injured his spine while working for Employer. (Report of Occupational Injury or Illness, undated).
- 2) On September 2, 2011, Employee's former attorney filed a claim requesting temporary total disability (TTD) from March 17, 2011 and continuing; permanent partial impairment (PPI); medical costs and related transportation expenses; a review of a reemployment benefits decision; interest; attorney's fees and costs; and an SIME. (Workers' Compensation Claim, August 31, 2011).
- 3) On January 16, 2013, Employee filed an Affidavit of Readiness for Hearing stating he had completed necessary discovery, obtained necessary evidence, and was fully prepared for hearing on issues set forth in his workers' compensation claim. (Affidavit of Readiness for Hearing, undated).
- 4) Employee filed his Affidavit of Readiness for Hearing solely because he was told he had to file for hearing within two years of his claim being controverted, or his claim may be barred. (Employee).
- 5) On April 25, 2013, Employee, as a self-represented litigant, and Employer's counsel attended a prehearing conference. The issues listed for the June 19, 2013 hearing included temporary partial disability (TPD); permanent total disability (PTD); future medicals; future transportation; compensation rate adjustment; penalty; interest; and a request for a finding Employer had made an unfair or frivolous controversion. The parties stipulated to a June 19, 2013 hearing. (Prehearing Conference Summary, April 25, 2013).
- 6) At hearing on June 19, 2013, Employee made a preliminary request for a continuance, contending he had not received requested discovery from Employer. Employer objected to a

continuance, contending it had timely provided discovery. The panel issued an oral order denying the continuance, and *Bankhead I* examined the oral order and found it was correct. (*Bankhead I*).

7) At the June 19, 2013 hearing, Employee made numerous arguments about the issues properly raised but did not object to the hearing on grounds his Affidavit of Readiness was improper. Employee's arguments and testimony were difficult to understand and follow as he spoke in vague generalities. (Employee; record; judgment and observations).

8) When asked at the June 19, 2013 hearing, Employee said he had been given adequate time to present his case, though he was in considerable pain by the time the hearing was over. (Employee).

9) Employee is an inexperienced claimant, unfamiliar with workers' compensation law and procedures. Though he had a difficult time at the June 19, 2013 hearing understanding the designated chair's explanations, Employee's testimony was credible. (Experience, judgment, observations and inferences drawn from all the above).

10) During the June 16, 2013 hearing, Employee said his intent in making his claim and having a hearing, with exception of his penalty and interest claims and his unfair or frivolous controversion finding request, was to obtain "future" benefits if he ever needed them. (Employee).

11) On July 18, 2013, *Bankhead I* ordered the following:

- 1) The oral order denying Employee's continuance request was correct.
- 2) Employee's TPD claim is premature and denied without prejudice.
- 3) Employee's PTD claim is premature and denied without prejudice.
- 4) Employee's claim for reemployment benefits is not an issue for this decision and is denied without prejudice.
- 5) Employee's claim for medical and related transportation expenses is premature and denied without prejudice.
- 6) Employee's compensation rate adjustment claim is denied without prejudice.
- 7) Employee's claim for a 25 percent penalty on his three out-of-pocket medical expenses is granted in accordance with this decision.
- 8) Employee's claim for interest on his three out-of-pocket medical expenses is granted in accordance with this decision.
- 9) Employee's request for an order finding Employer filed an unfair or frivolous controversion is denied.
- 10) Employee's right to file claims for future benefits or petitions for other relief and Employer's right to defend are preserved in accordance with the Act and administrative regulations. (*Bankhead I* at 20).

12) Employee did not prevail on his continuance or “unfair or frivolous controversion” requests. However, Employee prevailed on his penalty and interest claims, and all other claims were denied “without prejudice” because they were premature. Employee retained his right to file a claim for any and all future benefits to which he thinks he may be entitled under the law. (*Bankhead I*; experience, judgment and inferences drawn from the above).

13) *Bankhead I* had the following, standard information stated at the decision’s conclusion:

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. (*Bankhead I* at 21-22).

- 14) Employee did not petition for reconsideration within 15 days, did not appeal within 30 days and did not petition to modify *Bankhead I* within one year. (Employee; record).
- 15) On February 24, 2014, Employee and attorney Sandone attended a prehearing conference. The parties discussed Employee's reasons for missing Employer's medical evaluation. Employee did not raise any issues about *Bankhead I*. (Prehearing Conference Summary, February 25, 2014).
- 16) On November 10, 2014, Employee filed a hand-written petition with an attached, typed letter explaining why he missed a doctor's appointment. This petition does not raise any issue in respect to *Bankhead I*. (Petition, undated).
- 17) By at least November 10, 2014, Employee had someone assisting him by reviewing his documents and typing letters. (Experience, judgment, observations and inferences drawn from all the above).
- 18) On February 11, 2015, the parties appeared at another prehearing conference to discuss a resolved petition to strike an EME report. After the board designee decided to cancel a hearing that had been scheduled on Employee's petition to strike the EME report, Employee mentioned he wanted to argue *Bankhead I* "should be invalidated because his 1/18/2013 ARH should not have been accepted by the AWCB." Employee contended *Bankhead I* was, therefore, "illegal." The designee canceled the scheduled hearing on Employee's petition to strike, and advised Employee he should file a petition clearly raising any additional issues he wanted the board to decide. (Prehearing Conference Summary, February 11, 2015).
- 19) On March 16, 2015, Employee filed another hand-written petition, checked the "other" box and attached a neatly typed letter which stated:

After I sent an Affidavit of Readiness for Hearing on 1-09-2013, it was accepted and set for hearing on July 18, 2013. Then I was [sic] received a Controversion Notice on 5-2-2013 from Aaron Sandone, lawyer for Northern Adjusters.

I copied off of the Affidavit of Readiness that was sent on 1-9-2013 and sent the new one on 5-09-2013, and it was rejected even though they were both filled out the same. On June 17, 2013, I received a letter from Carol C. Quam from workers['] compensation stating it was rejected because of no signature even though the first one was accepted without a name, signature[,], date and a reason for hearing. This is not legal without the signature, and the first one should have been rejected as well.

The hearing that was conducted on July 18, 2013 shouldn't have happened and therefore it is null and void.

I do believe these actions by Northern adjusters are illegal and immoral, and should be accepted by the board. (Petition, March 9, 2015).

20) At hearing on June 11, 2015, Employee said the adjuster was not paying him benefits so he filed a 2011 claim. He contended the board designee at a prehearing conference "goaded" him into requesting a hearing on his claim, telling him he had to request a hearing within two years or he may lose his benefits. Employee further testified he filed two Affidavits of Readiness for Hearing in this case, one in January 2013, and one in May 2013. He contended the board rejected one Affidavit of Readiness for Hearing, but accepted the other even though they were both identical and lacked his signature. Employee stated, "Where I come from if it's not signed it's not legal." Thus, Employee objected to his own pleading as being ineffective to obtain a hearing. Employee contended the hearing giving rise to *Bankhead I*, and *Bankhead I* itself, were, therefore "illegal" and should be rendered "null and void." Employee contended the board made a legal error by holding the June 19, 2013 hearing because his Affidavit of Readiness for Hearing was not signed and was therefore not legal. (Employee).

21) The designated chair explained to Employee at hearing that a party who did not like *Bankhead I* had three remedies: First, a party could appeal to a higher authority; second, a party could file a petition for reconsideration alleging the board made a legal error; third, a party could petition for modification alleging the board made a factual error or conditions had changed. (Record).

22) Employee concedes he did not appeal *Bankhead I* but said he did not know he could. He also agreed he did not petition for reconsideration within 15 days or for modification within one year. The only petition Employee filed relevant to this issue was his March 9, 2015 petition to "nullify" *Bankhead I*. Employee said he has dyslexia but could read well enough to "get by." He also alleged he called the board's offices from time to time and spoke with technicians but claimed they failed to give him real answers to his questions. Employee said board technicians frequently referred him to a website. Employee implied he did not have access to a computer. (Employee).

23) The designated chair advised Employee his certified mail from the board had been returned on at least one occasion as "unclaimed." Employee verified his mailing address and asserted his back pain and "pills" sometimes rendered him unable to leave the house. His mailbox is about a

block away and occasionally he cannot go get his mail. Employee further stated Employer had “spies” who were “bugging the phone,” so sometimes his phone is turned off because he does not want Employer listening in on his personal conversations. (Record; Employee).

24) Employer contended Employee’s petition requesting relief was too late. It further contended he made no objection to the 2013 hearing and waived any objection. Employer contended the parties agreed to the June 2013 hearing at a prehearing conference. It contended the parties had a binding stipulation which negated any argument concerning Employee’s ineffective Affidavit of Readiness for Hearing. (Employer’s hearing arguments).

25) In response, Employee contends he is a layman and, even if he had the Alaska Workers’ Compensation Act and regulations, he probably could not have read them because they are written in “lawyer language” and not in plain English. He implied he did not raise the ineffective Affidavit of Readiness for Hearing argument earlier because he did not realize the document was not signed until after the hearing was over and he reviewed his file when preparing a petition to strike an EME report. But, Employee conceded when he filed his January 2013 Affidavit of Readiness for Hearing giving rise to the 2013 hearing, he wanted to have a hearing because his medical bills were not getting paid. Employee said he was not objecting to the 2013 hearing because he thought it did not result in a fair hearing; rather, he objected to the 2013 hearing simply because his Affidavit of Readiness for Hearing was not signed. (Employee).

PRINCIPLES OF LAW

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 23.30.125. Administrative review of compensation order. (a) A compensation order becomes effective when filed with the office of the board as provided in AS 23.30.110, and, unless proceedings to reconsider, suspend, or set aside the order are instituted as provided in this chapter, the order becomes final on the 31st day after it is filed.

(b) Notwithstanding other provisions of law, a decision or order of the board is subject to review by the commission as provided in this chapter.

(c) If a compensation order is not in accordance with law or fact, the order may be suspended or set aside, in whole or in part, through proceedings in the commission brought by a party in interest against all other parties to the proceedings before the board. . . .

AS 23.30.130. Modification of awards. (a) Upon its own initiative . . . on the ground of a change in conditions . . . or because of a mistake in its determination of a fact, the board may, before one year after the date of the last payment of compensation benefits under AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, whether or not a compensation order has been issued, or before one year after the rejection of a claim, review a compensation case under the procedure prescribed in respect of claims in AS 23.30.110. Under AS 23.30.110 the board may issue a new compensation order which terminates, continues, reinstates, increases, or decreases the compensation, or award compensation. . . .

In the case of a factual mistake or a change in condition, a party “may ask the board to exercise its discretion to modify the award at any time until one year” after the last compensation payment is made, or the board rejected a claim. *George Easley Co. v. Lindekugel*, 117 P.3d 734, 743 (Alaska 2005).

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. . . .

AS 44.62.540 limits authority to reconsider and correct a decision under this section to 30 days. *George Easley Co. v. Lindekugel*, 117 P.3d 734, 743, n. 36 (Alaska 2005).

ANALYSIS

Should *Bankhead I* be reconsidered or modified?

The law does not provide authority for this decision to “nullify” or render a prior decision and order “null and void.” As explained to Employee at hearing, parties have three procedural remedies if they are dissatisfied with a decision and order: First, a party can appeal to the Alaska Workers’ Compensation Appeals Commission; second, a party can petition the panel issuing the decision and order to modify its decision if a party thinks a factual error was made or conditions have changed;

and third, a party can petition the panel to reconsider its decision if the party thinks a legal error was made. AS 23.30.125; AS 23.30.130; AS 44.62.540. Employee admitted he did not appeal *Bankhead I*. Therefore, because Employee as an inexperienced claimant did not specify under which provision he sought relief, this decision treats his March 9, 2015 petition as a request to reconsider or modify *Bankhead I*.

Since Employee did not appeal *Bankhead I*, his only possible remedies lie under a reconsideration or modification request. But Employee also conceded he did not petition for reconsideration within 15 days or for modification within one year of the date *Bankhead I* was issued. His purported reasons for not timely petitioning for relief are immaterial, as the law does not provide leeway to extend these deadlines. Employee's March 9, 2015, petition filed on March 16, 2015, even when treated as a petition for reconsideration and modification, was too late. Because Employee did not timely file a petition seeking reconsideration or modification, this decision has no authority to review *Bankhead I* under any statute, regulation or legal precedent. Therefore, Employee's March 9, 2015 petition will be denied. AS 23.30.130; AS 44.62.540.

Employee is encouraged to promptly pick up his mail, or arrange to have it picked up for him. He is further encouraged to read his mail thoroughly, and to pay particular attention to time limits set forth for appealing or for seeking reconsideration and modification. If Employee needs assistance reading or understanding this decision and other mail he may receive from Employer or from the Alaska Workers' Compensation Division, he is encouraged to contact whomever assisted him in the past with his petitions and attachments, or to call a workers' compensation technician for assistance and general advice. Employee is encouraged to seek assistance from an attorney. He may also call the Alaska Workers' Compensation Appeals Commission for similar advice about how to perfect an appeal.

CONCLUSION OF LAW

Bankhead I will not be reconsidered or modified.

ORDER

Employee's March 9, 2015 petition is denied.

Dated in Anchorage, Alaska, on July 10, 2015.

ALASKA WORKERS' COMPENSATION BOARD

William Soule, Designated Chair

Stacy Allen, Member

Ron Nalikak, Member

APPEAL PROCEDURES

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CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Final Decision and Order on Reconsideration and Modification in the matter of FRANK L. BANKHEAD Employee/ applicant v. YARDARM KNOT, INC., Employer; NATIONAL UNION FIRE INSURANCE CO. OF PITTSBURG, insurer / defendants; Case No. 201012684; dated and filed in the office of the Alaska Workers' Compensation Board in Anchorage, Alaska, and was served upon the parties July 10, 2015.

Pamela Murray, Office Assistant