

ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

RYAN STRAIGHT,)	
Employee,)	INTERLOCUTORY
Claimant,)	DECISION AND ORDER
)	
v.)	AWCB Case No. 201514431
)	
JOHNSTON CONSTRUCTION &)	AWCB Decision No. 16-0030
ROOFING, LLC,)	
Employer,)	Filed with AWCB Anchorage, Alaska
)	on April 11, 2016
and)	
)	
AMERICAN INTERSTATE INSURANCE)	
COMPANY ,)	
Insurer,)	
Defendants.)	

Ryan Straight's April 4, 2016 petition for modification of *Straight v. Johnston Construction and Roofing, LLC*, AWCB Decision No. 16-0026 (March 31, 2016) (*Straight I*) was heard on the written record on April 7, 2016 in Anchorage, Alaska. This hearing date was selected on April 6, 2016 on the board's motion. Attorney Joseph Kalamarides represented Ryan Straight (Employee). Attorney Michael Budzinski represented Johnston Construction & Roofing, LLC and American Interstate Insurance Company (Employer). The record closed at the hearing's conclusion on April 7, 2016.

ISSUE

Straight I was captioned as an interlocutory decision and order. Employee contends the decision and order was final, and the caption should be modified accordingly. It is unclear whether a change to the caption of a case would be considered modification or reconsideration. Because the time in which the board may reconsider a decision is significantly shorter than the time

allowed for modification, Employee's petition will be addressed as a petition for reconsideration. Under the law, the time in which the board may address a petition for reconsideration expires before an opposing party's answer to the petition is due. As a result, Employer had not yet responded to Employee's petition at the time of the written record hearing.

Should the caption of Straight I be amended?

FINDINGS OF FACT

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

1. In his October 7, 2015 claim, Employee identified the date of injury as September 11, 2015, and requested TTD "From: 9/11/15 Through: 4/11/15." (Claim, October 7, 2015).
2. The hearing in *Straight I* was set at the February 17, 2016 prehearing conference. The prehearing conference summary lists the parties' pleadings, including Employee's claim:

10/07/2015 WCC (10/11/15) *verbally amended at 11/19/15 Prehearing Conference*

-TTD 4/11/15 – 9/11/15

-*Compensation Rate Adjustment*

-*Attorney's fees and costs* (italics original)

The prehearing conference summary then identified the issues for the March 22, 2016 hearing as Employee's claim for compensation rate adjustment and attorney fees and costs. TTD was not included as an issue for the hearing. (Prehearing Conference Summary, February 17, 2016).

3. Neither party requested the February 17, 2016 prehearing conference summary be revised. (Record).
4. The only compensation report in the board's file indicates Employee was paid TTD from September 11, 2015 through October 15, 2015. (Compensation Report, October 12, 2015).
5. At the March 22, 2016 hearing, neither party presented argument or evidence related to the time period for which Employee should have received TTD, and Employee did not withdraw his claim for TTD. (Record).
6. Finding of Fact 11 in *Straight I* stated:

On October 15, 2015, Employee filed a claim seeking temporary total disability (TTD) benefits. (Claim, October 7, 2015). At the November 19, 2015 prehearing conference, Employee's claim was amended to include a compensation rate

adjustment and attorney fees and costs. (Prehearing Conference Summary, November 19, 2015).

7. In his petition, Employee does not contend Finding of Fact 11 was wrong, but states that his claim for compensation rate adjustment is the only issue in dispute. (Petition, April 4, 2016).

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;

(2) workers' compensation cases shall be decided on their merits except where otherwise provided by statute;

(3) this chapter may not be construed by the courts in favor of a party;

(4) hearings in workers' compensation cases shall be impartial and fair to all parties and that all parties shall be afforded due process and an opportunity to be heard and for their arguments and evidence to be fairly considered.

The board may base its decision not only on direct testimony, medical findings, 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 23.30.130. Modification of awards.

(a) Upon its own initiative, or upon the application of any party in interest on the ground of a change in conditions, including, for the purposes of AS 23.30.175, a change in residence, 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.

(b) A new order does not affect compensation previously paid, except that an award increasing the compensation rate may be made effective from the date of

the injury, and if part of the compensation due or to become due is unpaid, an award decreasing the compensation rate may be made effective from the date of the injury, and payment made earlier in excess of the decreased rate shall be deducted from the unpaid compensation, in the manner the board determines.

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. A reconsideration assigned to a hearing officer is subject to the procedure provided in AS 44.62.500. If oral evidence is introduced before the agency, an agency member may not vote unless that member has heard the evidence.

8 AAC 45.070. Hearings.

....

(g) Except when the board or its designee determines that unusual and extenuating circumstances exist, the prehearing summary, if a prehearing was conducted and if applicable, governs the issues and the course of the hearing.

In *Hope Community Resources v. Rodriguez*, AWCAC Decision No. 041 (May 16, 2007), the Appeals Commission stated that a decision is final when it leaves no further dispute on a pending claim or petition for the board to resolve. It recently reaffirmed that statement in *Cornelison v. Rappe Excavating, Inc.*, Unpublished Memorandum and Order, AWCAC Appeal No. 15-031 (December 9, 2015).

ANALYSIS

Should the caption of Straight I be amended?

Employee's October 7, 2015 workers' compensation claim included a claim for TTD, although the time period is unclear. The February 16, 2016 prehearing conference summary states that Employee was seeking TTD from April 11, 2015 to September 11, 2015. Although this time period would be before the work injury, neither party asked that the summary be amended.

While Employee was paid TTD from September 11, 2015 through October 15, 2015, it is not clear Employee was paid all of what he believed was due, and he has not withdrawn the claim. Because *Straight I* did not address TTD, there appears to be a further dispute on a pending claim for the board to resolve. Consequently, *Straight I* was properly captioned as interlocutory.

CONCLUSION OF LAW

The caption of *Straight I* will not be amended.

ORDER

Employee's April 4, 2016 petition is denied.

RYAN STRAIGHT v. JOHNSTON CONSTRUCTION & ROOFING, LLC

Dated in Anchorage, Alaska on April 11, 2016.

ALASKA WORKERS' COMPENSATION BOARD

Ronald P. Ringel, Designated Chair

Rick Traini, Member

PETITION FOR REVIEW

A party may seek review of an interlocutory 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 RYAN STRAIGHT, employee / claimant; v. JOHNSTON CONSTRUCTION & ROOFING, LLC, employer; AMERICAN INTERSTATE INSURANCE COMPANY -, insurer / defendants; Case No. 201514431; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties by First-Class U.S. Mail, postage prepaid, on April 11, 2016.

Elizabeth Pleitez, Office Assistant