

ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

LAURA ALANIZ,)
Employee,)
Claimant,)
v.) FINAL DECISION AND ORDER
WALMART ASSOCIATES, INC.,) AWCB Case No. 201303616
Employer,) AWCB Decision No. 16-0061
and) Filed with AWCB Anchorage, Alaska
NEW HAMPSHIRE INSURANCE CO.,) on August 10, 2016
Insurer,)
Defendants.)
_____)

Laura Alaniz' (Employee) June 1, 2016 claim was heard on July 26, 2016, in Anchorage, Alaska. The hearing date was selected on June 29, 2016. Attorney Vicki Paddock appeared on behalf of Walmart Associates, Inc. (Employer). Attorney Jon Buchholdt appeared on behalf of Employee. Ms. Alaniz appeared and testified. There were no other witnesses. The record closed at the conclusion of the hearing, on July 26, 2016.

ISSUE

The parties filed a compromise and release (C&R) agreement, which was approved on April 19, 2016. Employee contends she received the proceeds of the (C&R) late. Employee contends because of the delay in receiving her settlement check, she had to take out an expensive payday loan. Employee contends she is entitled to penalty and interest from Employer on the late-paid settlement proceeds related to the April 19, 2016 C&R.

Employer contends it timely sent Employee the settlement proceeds, to the correct address, but that the check may have been lost in the mail. Employer contends as soon as it was notified of the missing check, it ordered stop payment and promptly issued another check. Employer contends Employee is not entitled to penalty or interest on the settlement proceeds related to the April 19, 2016 C&R.

Is Employee entitled to penalties and interest related to late-paid settlement proceeds?

FINDINGS OF FACT

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

- 1) On June 10, 2014, Employee filed a claim related to a March 24, 2014 injury while working as a stocker for Employer. (Workers' Compensation Claim, June 10, 2014).
- 2) On March 21, 2016, the parties filed a C&R. (C&R, March 21, 2016). Employee was represented by attorney Elliott Dennis. (*Id.*). Employer was represented by attorney Vicki Paddock. (*Id.*). Because Employee was waiving all benefits under the Act, the agreement required Board approval. (Record). The agreement was approved on April 19, 2016. (*Id.*).
- 3) On May 4, 2016, Mr. Dennis filed notice of withdrawal as attorney for Employee. (Notice of Withdrawal, May 4, 2016).
- 4) On May 9, 2016, Mr. Dennis emailed Employer's attorney about the status of the settlement check related to the April 19, 2016 C&R and confirming Employee's mailing address. Employer's attorney responded:

Elliott: Ms. Alaniz' check was sent certified mail on 4/22/16 from Fayetteville, AR (72701). The USPS certified tracking number is: 70153430000109770759

I am unable to pull up tracking information online with this number. Please confirm with Ms. Alaniz that she did not receive notice of certified mail in her mailbox. If she has not received notice, my client can issue a stop pay on the check and reissue. (Emails, May 9, 2016).

- 5) On May 12, 2016, Employer's attorney sent an email to Mr. Dennis, which included attachments, and stated:

Attached is the proof of check issuance to Ms. Alaniz on 4/22/16. This includes the check number, the amount, the bank the check was drawn on, and her mailing address. My client has confirmed that this check has not cleared its account and

has not been returned in the mail. A stop pay will be put on [the check] and a new check requested. Once I have the details of that check number, mailing date, and certified mail tracking number, I will provide those to you. . . . (Email, May 12, 2016).

6) On May 17, 2016, Employer's attorney emailed Mr. Dennis stating a new check had been issued, to be mailed that day, and provided USPS tracking information. (Email, May 17, 2016). A copy of a check, dated May 17, 2016 and payable to Employee in the amount of \$20,000, was attached. (*Id.*).

7) On May 19, 2016, the above check was delivered and "left with individual" as described in a USPS tracking confirmation printout. (Employer's Hearing Evidence). Employee emailed Mr. Dennis the same day confirming the check was received. (Email, May 19, 2016).

8) On June 1, 2016, Employee filed a claim for penalties and interest. (Workers' Compensation Claim, June 1, 2016). The claim states, "I did not receive my settlement check on time. I want to get payment for penalties and interest. . . ." (*Id.*).

9) Employer's hearing evidence included an affidavit executed by Kimberly Lilly, an employee of Employer's attorney, and also a copy of a check dated April 22, 2016, payable to Employee, in the amount of \$20,000. (Employer's Hearing Evidence). Ms. Lilly testifies the check was "issued" to Employee on April 22, 2016. (*Id.*). Also filed was a USPS Certified Mail envelope with digitally printed postage date of April 22, 2016. (*Id.*).

10) Employee testified: After speaking with Mr. Dennis about the missing check, she went to the Russian Jack post office in Anchorage and provided the original tracking number, as well as her driver's license for identification. The post office clerks were unable to pull the tracking number, and no package bearing that number had arrived or been processed by the postal service. Because of the delay in receiving her settlement check, Employee had to take out an expensive payday loan. (Employee).

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. . .

(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 23.30.135. 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 23.30.155. Payment of compensation. (a) Compensation under this chapter shall be paid periodically, promptly, and directly to the person entitled to it, without an award, except where liability to pay compensation is controverted by the employer. . .

(f) If compensation payable under the terms of an award is not paid within 14 days after it becomes due, there shall be added to that unpaid compensation an amount equal to 25 percent of the unpaid installment. The additional amount shall be paid at the same time as, but in addition to, the compensation, unless review of the compensation order making the award as provided under AS 23.30.008 and an interlocutory injunction staying payments is allowed by the court. The additional amount shall be paid directly to the recipient to whom the unpaid compensation was to be paid. . . .

The Alaska Supreme Court has held the Board reasonably interpreted the statute imposing a 25 percent penalty for failure to pay compensation within 14 days after it becomes due to mean that a check must be deposited in the mail before the 14-day period expires; it was appropriate that the Board follow a bright line such as the “date of mailing” rule so that all parties could operate with some predictability. *American Int’l Group v. Carriere*, 2 P.3d 1222, 1225 (Alaska 2000). Additionally, the workers’ compensation insurer’s stopping payment on the initial compensation check at claimant’s request reinstated insurer’s payment obligation, imposing a new 14-day deadline pursuant to the statute imposing a 25 percent penalty for failure to pay compensation within 14 days after it becomes due; once the original check became non-negotiable, the statutory obligations were re-imposed, and the clock restarted, even though the insurer had not received the bank’s written stop order confirmation. *Id.*

ANALYSIS

Is Employee entitled to penalties and interest related to late-paid settlement proceeds?

The Act imposes a penalty on compensation not paid within 14 days after it becomes due equal to 25 percent of the unpaid installment. AS 23.30.155(f). The statute imposing a 25 percent penalty for failure to pay compensation within 14 days after it becomes means that a check must be deposited in the mail before the 14-day period expires. *Carriere*. An employer or insurer’s stopping payment on the initial compensation check at a claimant’s request reinstates the employer or insurer’s payment obligation and re-starts the 14-day clock under AS 23.30.155(f). *Id.*

Employer has provided reliable evidence the first check related to the April 19, 2016 C&R was timely mailed on April 22, 2016, but that it was lost in the mail. AS 23.30.001; AS 23.30.135; AS 23.30.155(f); *Rogers & Babler*. On May 9, 2016, Mr. Dennis emailed Employer’s attorney about the status of the first settlement check. On May 12, 2016, Employer’s attorney informed Mr. Dennis its investigation could not determine the whereabouts of the April 22, 2016 check, and that a stop payment would be ordered and a new check issued. On May 17, 2016, the new check was mailed, which was delivered at Employee’s address on May 19, 2016.

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The weight of the evidence supports Employer's affirmative defense that the first check was lost in the mail, a stop payment was ordered, and a second check was timely mailed. AS 23.30.001; AS 23.30.135; AS 23.30.155(f); *Rogers & Babler*; *Carriere*. Employee is not entitled to a penalty or interest related to the April 19, 2016 C&R and her June 1, 2016 claim will be denied. *Id.*

CONCLUSION OF LAW

Employee is not entitled to penalties or interest related to late-paid settlement proceeds.

ORDER

Employee's June 1, 2016 claim is denied.

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 LAURA E ALANIZ, employee / claimant; v. WALMART ASSOCIATES INC, employer; NEW HAMPSHIRE INSURANCE CO, insurer / defendants; Case No. 201303616; 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 August 10, 2016.

Pamela Murray, Office Assistant