

ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

GARY R. DAVIS,)	
)	
Employee,)	FINAL DECISION AND ORDER
Claimant,)	ON RECONSIDERATION
)	
v.)	AWCB Case No. 198803834
)	
WRANGELL FOREST PRODUCTS,)	AWCB Decision No. 18-0032
)	
Employer,)	Filed with AWCB Juneau, Alaska
)	on March 28, 2018
and)	
)	
WAUSAU UNDERWRITERS)	
INSURANCE COMPANY,)	
)	
Insurer,)	
Defendants.)	

Gary R. Davis's (Employee) March 12, 2018 petition for reconsideration was heard on the written record on March 20, 2018, in Juneau, Alaska. Wrangell Forest Products (Employer) did not file a response as of the hearing date. There were no witnesses. The record closed at the conclusion of the hearing on March 20, 2018.

ISSUE

Employee's contends *Davis v. Wrangell Forest Products*, AWCB Decision No. 18-0018 (February 27, 2018) (*Davis III*) should be reconsidered.

Employer did not file a response as of the date of the hearing. It is presumed Employer opposes Employee's March 12, 2018 petition.

Should *Davis III* be reconsidered?

FINDINGS OF FACT

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

- 1) On February 6, 2018, Employer's petition to dismiss Employee's August 7, 2013 workers' compensation claim was heard in Juneau, Alaska. (Record).
- 2) On February 27, 2018, *Davis III* granted Employer's petition to dismiss under AS 23.30.110(c) and dismissed Employee's claim for left knee medical benefits. (*Davis III*; Errata to *Davis III*, February 28, 2018).
- 3) On March 12, 2018, Employee filed a petition for reconsideration of *Davis III*. Employee's petition and attached letter states:

Please reconsider your decision on my case (AWCB 18-0018). I have spent 4 ½ years trying to get my case heard. I have filled out forms, went to all my appointments, [and] was present for all phone conferences.

All I have ever wanted was for the board to hear my case. I would never knowingly do anything to prevent my case from being heard.

I'm a little puzzled by the timing of [Employer]'s decision to dismiss my case. According to the [rules] this action should have taken place sometime in 2015. Why now? Did [Employer] decide to be nice to me and give me two extra years to discover my mistake. I think not. I believe [Employer] also forgot about this form and are scrambling to prevent my case from being heard.

I made a mistake; we all make mistakes. I noticed in your original decision you got the wrong body part. A correction was sent the next day.

If counsel can have my case dismissed because of a mistake can I have your decision dismissed as well?

I have maintained from the very beginning that nerve damage from my original injury caused by leg to give out thus causing the left knee injury.

On the original dismissal letter page 2 item 3, Dr. John Gibson performed a [micro discectomy] at the L3-4 level. He states that there were epidural adhesions present binding down the nerve root.

I have been living with this nerve damage for 30 years. My history is backed up by years of facts, by every doctor and specialist I have seen, my story has never changed. . . . (Petition, March 12, 2018).

- 4) Employer has not filed a response to Employee’s petition as of the date of the hearing. (Record).

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.

...

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 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.

ANALYSIS

Should *Davis III* be reconsidered?

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Davis III issued on February 27, 2018 and it granted Employer's petition to dismiss Employee's claim for benefits for his left knee. Employee timely requested reconsideration of *Davis III* reiterating his positions at hearing that his claim should not be dismissed for failing to request a hearing because he made a mistake and Employer delayed in asserting AS 23.30.110(c) as a defense. Employee also noted errata corrected a typographical error made in *Davis III*. However, Employee offered no new evidence or argument. Employee's March 12, 2018 petition will be denied and *Davis III* will not be reconsidered.

CONCLUSION OF LAW

Davis III will not be reconsidered.

ORDER

Employee's March 12, 2018 petition for reconsideration is denied.

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Dated in Juneau, Alaska on March 28, 2018.

ALASKA WORKERS' COMPENSATION BOARD

 /s/
Kathryn Setzer, Designated Chair

 /s/
Charles Collins, Member

 /s/
Bradley Austin, 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.

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CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Final Decision and Order in the matter of GARY R DAVIS, employee / claimant; v. WRANGELL FOREST PRODUCTS, employer; WAUSAU UNDERWRITERS INSURANCE COMPANY, insurer / defendants; Case No. 198803834; dated and filed in the Alaska Workers' Compensation Board's office in Juneau, Alaska, and served on the parties by First-Class U.S. Mail, postage prepaid, on March 28, 2018.

/s/

Dani Byers, Technician