

# ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

DARYL WILLIAMS, )  
)  
Employee, and )  
)  
KEENAN POWELL, )  
) FINAL DECISION AND ORDER  
Claimant, )  
) AWCB Case No. 201403502  
v. )  
) AWCB Decision No. 19-0042  
ARCTIC TERRA, LLC, )  
) Filed with AWCB Anchorage, Alaska  
Employer, and ) on April 5, 2019  
)  
UMIALIK INSURANCE COMPANY, )  
)  
Insurer, )  
Defendants. )  
)

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Keenan Powell's (Claimant) December 3, 2018 claim was heard on April 4, 2019, in Anchorage, Alaska, a date selected on February 14, 2019. A January 4, 2019 hearing request gave rise to this hearing. Attorney Keenan Powell appeared, represented herself and testified as the only witness. Attorney Michael Budzinski appeared and represented Arctic Terra, LLC, and its insurer (Employer). The record closed at the hearing's conclusion on April 4, 2019.

## ISSUE

Claimant contends Employer failed to timely postmark her attorney fee check resulting from the parties' Compromise and Release (C&R) approved on November 1, 2018, and issued on November 2, 2018. She requests a late-paid compensation penalty, interest, additional attorney

fees and costs for obtaining the penalty and interest, and a finding Employer made an unfair or frivolous controversion.

Employer contends the C&R's plain language reflects a clear, express, written agreement among the parties that the monies payable under the approved C&R would be "due" 14 days from the date the C&R was approved. Since the parties concede Claimant's settlement check was postmarked within 14 days of the date payment was due, payment was not late and there can be no penalty, interest, additional attorney fees or a finding Employer made an unfair or frivolous controversion.

**Is Claimant entitled to a penalty for late-paid compensation, interest on the compensation, additional attorney fees or costs for obtaining the penalty and interest, or a finding Employer made an unfair or frivolous controversion?**

FINDINGS OF FACT

A preponderance of the evidences establishes the following facts and factual conclusions:

- 1) Claimant previously represented Daryl Williams (Employee) the injured worker in this case. (Entry of Appearance, October 7, 2014).
- 2) After providing uncompensated legal services to Employee, Claimant withdrew after a breakdown in the attorney-client relationship. (Notice of Withdrawal, August 14, 2018; Claimant).
- 3) On August 14, 2018, Claimant filed a lien for her remaining attorney fees and costs. (Notice of Attorney Lien, August 14, 2018).
- 4) Employee and Employer eventually agreed to settle Employee's claims. To resolve Claimant's lien, Employer contacted her and asked if she would accept \$5,000 to satisfy her attorney lien. Claimant agreed. (Keenan Powell's Hearing Brief, Exhibit 7, March 19, 2018).
- 5) On October 25, 2018, Claimant signed the C&R. The agreement states, in pertinent part:

5. COMPROMISE AND RELEASE OF CLAIMS

Based upon the foregoing disputes, the parties agree to settlement of this claim as follows:

A. Consideration

. . . In addition, the employer and carrier agree to pay attorney's fees and costs in the amount of \$5,000.00 as set out in section 5 E of this agreement. . . . .

E. Attorney's Fees and Costs

The employer and carrier agree to pay attorney's fees and costs in the amount of \$5,000.00 [FIVE THOUSAND AND 00/100 DOLLARS] directly to attorney Keenan Powell in settlement of her attorney lien dated 08/14/18 and in settlement of all claims for attorney's fees and costs that could be asserted by the employee and/or attorney Powell for legal services related to the claims and benefits waived by the employee through this agreement. Attorney Powell accepts such funds and complete satisfaction of her lien claim. Except as provided herein, each party shall bear its own costs in connection with this claim.

6. ALLOCATION OF BENEFITS; SECOND INJURY FUND

The settlement amount is allocated as follows:

Medical benefits	\$85,000.00
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This allocation of the settlement proceeds is provided for reporting purposes and for the purpose of calculating payment to the Second Injury Fund. . . . .

9. AGREEMENT AS BOARD ORDER

Pursuant to AS 23.30.012, this agreement shall be enforceable the same as an order or award of the Alaska Workers' Compensation Board and shall discharge the liability of the employer and carrier in this matter for the claims and benefits as described herein, notwithstanding the provisions of AS 23.30.130, AS 23.30.160, and AS 23.30.245.

To the extent that there may be any discrepancies or conflicts between this Compromise and Release Agreement and the Compromise and Release Agreement Summary, this agreement shall govern the rights and obligations of the parties. The proceeds payable pursuant to this agreement shall be due 14 days from the date this agreement is approved by the board.

The board approved the C&R on November 1, 2018, and served the approved agreement on the parties on November 2, 2018. (C&R, November 1, 2018).

- 6) Twenty-eight days from November 1, 2018, is November 29, 2018. (Official notice).
- 7) Twenty-eight days from November 2, 2018, is November 30, 2018. (*Id.*).
- 8) On November 26, 2018, Employer postmarked a \$5,000 settlement check to Claimant at her proper address. (Keenan Powell's Hearing Brief, Exhibit 4, page 1 and 5, page 1, March 19, 2018).

9) On December 3, 2018, Claimant requested a penalty for late-paid compensation, interest, attorney fees and costs and a finding Employer made an unfair or frivolous controversion. (Claim for Workers' Compensation Benefits, December 3, 2018).

10) At hearing on April 4, 2019, Claimant stipulated that if Employer's "due date" calculations are correct, Employer timely postmarked her settlement check. (Claimant).

11) Claimant contends she agreed to accept \$5,000 to release her attorney fee lien. While she acknowledges the C&R extends the due date by 14 days, she contends this extension applies only to funds payable to Employee, and the extension is not applicable to attorney fees. Claimant contends the C&R's "proceeds payable" language on page six does not include attorney fees. She contends there was no negotiation about extending the time Employer had to pay her attorney fees but acknowledges, "I didn't read the boilerplate." Claimant reviewed the document only to ensure she was getting the correct settlement amount. She contends the C&R defines "proceeds" on page 6 in the "Allocation" section. By contrast, Claimant contends attorney fees are not referred to as "proceeds" on page 5. Further, she contends had she read all the "boilerplate," the language extending the due date would still not apply to her attorney fees. Claimant provided nine specific contentions why her position is correct. She further contends written "imprecision is no excuse" and any ambiguities in the C&R must be construed against the party composing it. (Claimant).

12) By contrast, Employer contends this matter is resolved through simple C&R interpretation. It contends all nine bases offered to support Claimant's case are distinguishable for various reasons. Most notably, Employer contends parties have a right to settle cases and enter into agreements that do not necessarily comport with the law's procedural or substantive requirements. For example, Employer contends parties to a settlement could agree to pay an injured worker temporary total disability benefits for a period after the date physicians agree the worker reached medical stability, even though the statute prohibits paying temporary total disability benefits after medical stability is reached. Consequently, it contends the parties here agreed all monies payable under the C&R would be "due" 14 days after the date the board approved and issued the settlement agreement. Employer further contends, pursuant to statute, payments were late only if they were not paid within 14 days after the agreed-upon "due date." Since Employer paid Claimant's settlement funds within 28 days from the date the board approved and served the C&R, it contends it timely paid Claimant's fees. Employer contends since payment was timely, Claimant is not

entitled to a late-compensation-payment penalty, interest, additional attorney fees or costs, or a finding Employer made an unfair or frivolous controversion. (Employer’s hearing arguments).

PRINCIPLES OF LAW

**AS 23.30.012. Agreements in regard to claims.** (a) At any time after death, or after 30 days subsequent to the date of the injury, the employer and the employee or the beneficiary or beneficiaries, as the case may be, have the right to reach an agreement in regard to a claim for injury or death under this chapter, but a memorandum of the agreement in a form prescribed by the director shall be filed with the division. Otherwise, the agreement is void for any purpose. Except as provided in (b) of this section, an agreement filed with the division discharges the liability of the employer for the compensation, notwithstanding the provisions of AS 23.30.130, 23.30.160, and 23.30.245, and is enforceable as a compensation order. . . .

**AS 23.30.145. Attorney fees.** (a) Fees for legal services rendered in respect to a claim are not valid unless approved by the board. . . .

**8 AAC 45.050. Pleadings. . . . .**

(f) **Stipulations.** (1) If a claim or petition has been filed and the parties agree that there is no dispute as to any material fact and agree to the dismissal of the claim or petition, or to the dismissal of a party, a stipulation of facts signed by all parties may be filed, consenting to the immediate filing of an order based upon the stipulation of facts.

(2) Stipulations between the parties may be made at any time in writing before the close of the record, or may be made orally in the course of a hearing or a prehearing.

(3) Stipulations of fact or to procedures are binding upon the parties to the stipulation and have the effect of an order unless the board, for good cause, relieves a party from the terms of the stipulation. A stipulation waiving an employee’s right to benefits under the Act is not binding unless the stipulation is submitted in the form of an agreed settlement, conforms to AS 23.30.012 and 8 AAC 45.160, and is approved by the board.

ANALYSIS

**Is Claimant entitled to a penalty for late-paid compensation, interest on the compensation, additional attorney fees or costs for obtaining the penalty and interest, or a finding Employer made an unfair or frivolous controversion?**

Parties to claims have “the right” to reach an agreement in regard to a claim for injury. However, a settlement memorandum in proper form must be filed and approved. Otherwise, the agreement is void for any purpose. AS 23.30.012. Attorney fees payable to an injured worker’s attorney or former attorney must also be approved. AS 23.30.145. Parties have a right to stipulate at any time in writing. Settlement agreements include serial stipulations intended to resolve a case without further litigation. 8 AAC 45.050(f)(3). Written factual or procedural stipulations are binding upon the parties to the stipulation and are effective orders unless the parties are relieved for good cause from the stipulation’s terms. 8 AAC 45.050(f)(2), (3).

Claimant conceded she did not read the C&R’s “boilerplate” language extending the payment “due date.” Had she read it, Claimant may have disagreed with the extension and may have negotiated with Employer or insisted it change the language to reflect the law, which makes benefits payable pursuant to a C&R “due” when the agreement is approved and served on the parties. However, she did not read it and there was no negotiation. Claimant signed the C&R agreement “as is,” thus approving its plain language. By signing the agreement, she agreed the “proceeds” payable under the agreement were “due” 14 days after the agreement was approved. “Proceeds” and its synonyms “money,” funds,” and any other descriptive term for what Employer was to pay the parties to the settlement, are not legal terms and simply refer to money Employer was going to pay upon C&R approval. The agreement was “approved” on November 1, 2018, and mailed to the parties on November 2, 2018. To avoid a penalty, Employer had to postmark Claimant’s check “within 14 days after it [became] due.” AS 23.30.155(f). Even using the approval date rather than the date the settlement agreement was served on the parties, Employer had to postmark its settlement check to Claimant by November 29, 2018, to avoid a penalty (November 1, 2018 + 14 + 14 = November 29, 2018). Claimant agreed if Employer’s due date calculations are correct, it timely mailed her attorney fee check to her correct address on November 26, 2018.

Given these legal and factual underpinnings, Employer timely mailed Claimant's settlement check to her at her correct address on November 26, 2018. Consequently, her claim for a late-payment penalty will be denied. Because the check was not mailed late, Claimant is not entitled to interest, additional attorney fees or costs, or a finding Employer made an unfair or frivolous controversion.

CONCLUSION OF LAW

Claimant is not entitled to a penalty for late-paid compensation, interest on the compensation, additional attorney fees or costs for obtaining the penalty and interest, or a finding of an unfair or frivolous controversion.

ORDER

Claimant's December 3, 2018 claim is denied.

Dated in Anchorage, Alaska on April 5, 2019.

ALASKA WORKERS' COMPENSATION BOARD

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/s/  
William Soule, Designated Chair

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/s/  
Robert C. Weel, Member

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/s/  
Justin Mack, 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.



CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Final Decision and Order in the matter of Daryl Williams, Employee/ Keenan Powell, Claimant v. Arctic Terra, LLC, Employer; Umialik Insurance Company, insurer / defendants; Case No. 201403502; 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 5, 2019.

/s/

Charlotte Corriveau, Office Assistant