

ISSUE

Kinross and Placer contend Claimant did not work for them when he claims to have been injured on October 4, 2000, October 7, 2000 and October 20, 2000. Therefore, they contend any injuries he may have sustained on these dates did not arise out of and in the course of his employment with them. Kinross and Placer contend his claims against them should be denied.

Claimant initially contended his October 4, 2000, October 7, 2000 and October 20, 2000 work injuries occurred while he worked for Placer. With urging from a division staff member, he asserted his claims for these same injuries against Kinross. As the March 3, 2020 hearing progressed, Claimant agreed evidence showed he did not work for Kinross or Placer on these dates and may have mis-remembered the actual dates, which may have been in the mid to late 1990s while he worked for a different employer. After discussing this evidence, Claimant at hearing agreed to dismiss his three claims against Kinross and Placer since neither could have been his employer on any likely injury date.

Should Claimant's three claims against Kinross and Placer be dismissed?

FINDINGS OF FACT

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

- 1) On May 24, 2006, William Tewson, DC, saw Claimant for a 2006 work injury while Claimant worked for a Kinross subsidiary. Claimant said he drove a blast truck over a pothole and hit his head, causing a cervical spine injury. He did not report any prior history of head or neck injuries to this provider. (Physician's Report, May 24, 2006).
- 2) On December 1, 2006, Bryan Laycoe, M.D. and Scott Fechtel, M.D., performed an employer's medical evaluation (EME) on Claimant in his 2006 injury case against Kinross. He denied any previous injuries to his head or neck and denied significant spinal problems. Claimant described only one previous event as a "mild crash" or a "real hard landing" in an airplane with no resulting time loss. He had worked for Kinross at Fairbanks Gold for four years immediately prior to the 2006 injury and had done drilling for 12 to 13 years. The EME diagnosed only a resolved cervical sprain and mild anxiety. (EME report, December 1, 2006).

3) On July 16, 2007, in the unrelated 2006 case against Kinross, Claimant testified about his work history. He recalled that in either 2001 or 2002, Kinross hired him and he worked there for over four years. Prior to that employment, [*i.e.*, 1999-2000] Claimant worked in Washington for TransAlta Coal for about one and one-half years. According to Claimant, Placer owned TransAlta Coal, and there was a “big feud” and a contract dispute over the Donlin Creek project. Claimant was working in Washington at this time. Prior to this employment, [*i.e.*, prior to 1999] Claimant said he worked at Boart Longyear though he did not identify where this employment occurred. He identified, without giving a date, a prior right knee injury he had reported to Steve Bennis, a safety engineer at the Donlin Creek project. When asked for whom he worked at the time of that injury, Claimant said, “It was a toss-up between Placer Dome Geological Explorations and Dateline Drilling. I’m not sure.” Claimant described this injury as, “I was carrying a rod and I stepped through the snow into an old drill hole.” He initially got no medical treatment for the right knee and did not miss any work. Claimant’s right knee continued to hurt after the injury and the pain continued through the time of this deposition. When asked if he had other on-the-job injuries, claimant said, “Nothing major, I suppose.” He expressly stated he had never hurt his back or neck. No prior work injury caused any time loss; he never received medical treatment for any injury. Claimant reiterated, “I’ve never had back or any type of spinal injuries.” However, he admitted injuring his hand about 12 years earlier [*i.e.*, around 1995] and explained, “A bear came at us, over a berm at as and everybody took their eyes off what we were doing, I got my hand pinched in between a rod and a mast.” The hand injury occurred in Alaska but he never received any medical care for it. (Deposition of Billy Denny, July 16, 2007).

4) Claimant’s hand injury discussed in his 2007 deposition as having occurred about 12 years earlier [*circa* 1995] is identical to the description he gave of his alleged October 7, 2000 work injury. (Workers’ Compensation Claim, November 14, 2014; inferences drawn from the above).

5) On July 26, 2007, Dr. Laycoe examined Claimant again in the 2006 case against Kinross. His neck and right upper back pain had improved. He mentioned “some right knee pain but has never had treated with a doctor.” Claimant said he did something to it at work and had some right buttock pain related to an injury. Claimant mentioned his left eye and tonsils as “previous injuries” but did not mention any prior injuries similar to those he claims from his work in 2000. Dr. Laycoe identified no permanent partial impairment rating. (EME report, July 26, 2007).

6) On September 24, 2007, Richard Cobden, M.D., examined Claimant for the 2006 head and neck injury with Kinross. Claimant's complaints included pain in his neck, shoulders, hand and right hip. He expressly stated he had no prior head or neck injury. Claimant also denied a prior right hip injury but had pain complaints in the hip nonetheless. (Cobden report, September 24, 2007).

7) On October 26, 2007, Dr. Cobden examined Claimant again. On this occasion Claimant said "in 1995 he stepped into a drill hole while working for the Platteville Geology Exploration Company and he had another injury at Donlin Creek a year later and stopped working until June 1996." In 2007, Claimant had an attorney in Fairbanks assisting him with his 2006 Kinross injury. (Cobden report, October 26, 2007).

8) Claimant's 1995 drill-hole incident discussed in Dr. Cobden's 2007 report sounds like the description he gave of his alleged October 20, 2000 work injury. (Workers' Compensation Claim, November 14, 2014; inferences drawn from the above).

9) On February 28, 2014, Daniel Morgenstern, ARNP, evaluated Claimant for lumbar and right knee pain. The right knee x-ray was completely negative but Claimant said his knee hurt all the time. ARNP Morgenstern found Claimant had "some communication deficits I believe from his mental health," and wanted to look at prior records. Claimant said 20 years earlier [*circa* 1994] he had injured his low back and right knee on the job; he had not taken pain relievers and said he lived with pain. Claimant's earlier records, were significant for "schizophrenia but patient denies this." Rather, Claimant said he had "psychosis," would not be more specific but admitted seeing Cascade Mental Health on a regular basis. (Morgenstern report, February 28, 2014).

10) Claimant's description to ARNP Morgenstern on February 28, 2014, about his right knee and low back injury 20 years earlier sounds like his alleged October 20, 2000 work injury. (Workers' Compensation Claim, November 14, 2014; inferences drawn from the above).

11) On March 31, 2014, Scott Slattery, M.D., wrote ARNP Morgenstern to explain Claimant's examination. Claimant complained to Dr. Slattery about back and radiating lower extremity symptoms and said his right knee had been bothering him for 18 years [*circa* 1996] since an on-the-job injury "where he was carrying a fairly heavy weight and stepped in an old drill hole through the snow and twisted his knee." (Slattery report, March 31, 2014).

12) Claimant's description to Dr. Slattery on March 31, 2014, also sounds like his alleged October 20, 2020 work injury. (Workers' Compensation Claim, November 14, 2014; inferences drawn from the above).

13) On November 17, 2014, Claimant filed a claim against Placer on which he did not specifically identify the benefits he sought in block 24. Generally, Claimant stated as the reason for filing his claim “pay of all benefits.” His claim stated that on October 4, 2000, while he was working as a driller, an operator reversed rotation and he was hit in the head after which he was “pronounced dead by lead driller.” Claimant says he turned the injury in to a federal safety engineer, Steve Bennis. He claims to have injured his head and was “mentally physically screwed.” (Workers’ Compensation Claim, November 14, 2014).

14) On November 17, 2014, Claimant filed another claim against Placer again without checking any blocks identifying the requested benefits. This claim stated that on October 7, 2000, while working as a driller he was loading drill rod on a rig when a bear came over a berm toward his crew and Claimant’s left hand got pinched between a rod and the mast. He contended he could not use his left hand because it froze and turned black. Claimant again said he turned the injury in to Steve Bennis. Generally, he again stated as the reason for filing this claim “pay of all benefits.” (Workers’ Compensation Claim, November 14, 2014).

15) On November 14, 2014, Claimant filed his third claim against Placer alleging an October 20, 2000 injury, again while working as a driller. He stated while carrying a 300 pound, 10 foot long drill rod on his shoulder, Claimant stepped through the snow into a drill hole and injured his right shoulder, knee, hip, pelvis and back. Claimant alleged nerve damage and generally requested “pay of all benefits” without specifically identifying any particular benefits in block 24. (Workers’ Compensation Claim, November 14, 2014).

16) On March 19, 2015, Placer answered and controverted separately Claimant’s three claims. Placer’s answers denied all benefits because Claimant did not file an injury report or medical records showing an injury occurred. Placer controverted all benefits because no benefits were identified, no medical records documented the alleged injuries and the claims were time-barred. (Answers; Controversion Notices, March 19, 2015).

17) On March 31, 2015, Claimant and counsel for Placer reviewed the issues from all three claims. The board’s designee pointed out that Claimant had not requested any specific benefits in his three claims against Placer. The designee provided along with the conference summary the pamphlet “Workers’ Compensation and You” and directed Claimant to the division’s website to review this document and encouraged him to call a technician at division offices if he had questions

regarding his claims; the designee also directed Claimant to an attorney list to obtain a free lawyer. The designee included a summary of the discussions at the prehearing conference:

Discussions:

.....

Mr. Denny stated his employer at the time of all three injuries was Kinross.

Claimant said he had been unable to work since 2006 and was getting Social Security “but not disability.” Placer’s attorney asked Claimant if he was working for Kinross on the Donlin Creek project when he was injured; he confirmed this was true and stated, “Placer Dome Exploration was not his employer.” (Prehearing Conference Summary, March 31, 2015).

18) On May 4, 2015, Claimant and Placer’s attorney reviewed the cases’ status. Placer contended the wrong insurance company had been named on the claims and identified the correct insurer. The board designee said he had researched the issue and believed Kinross had purchased another entity doing business as Fairbanks Gold Mining or Fort Knox Mining in 1999 or 2000 and they were insured by yet a different insurer. The designee determined he would send copies of the prehearing conference summary to the newly identified insurer and local adjuster and schedule a new conference. (Prehearing Conference Summary, May 4, 2015).

19) At some point, the three claims against Placer were served on Kinross and Claimant verbally amended his claims to include Kinross as a defendant. Kinross’ counsel never received any new claims directly naming Kinross. (Kinross hearing arguments, March 3, 2020).

20) On June 18, 2015, Claimant, Placer’s lawyer and, for the first time, Kinross’ attorney conferenced to discuss the three claims. The prehearing conference summary did not list any new claims filed specifically against Kinross nor did it identify Kinross’ answers or controversion notices in the summary’s “pleadings” section. Claimant said he previously had an attorney assisting him in claims arising from his October 4, 2000 injury. Identity of Claimant’s employer on the alleged injury dates was still unclear. Claimant stated:

EE stated he was not paid during the approximate 8 months he was working on the Donlin Creek project. EE may want to address his options with the Wage & Hour Division of the Department of Labor. . . . (Prehearing Conference Summary, June 18, 2015).

21) On February 1, 2017, Christy Caple, PA-C, examined Claimant for right hip and knee pain. He claimed an industrial injury in 2000, while working in Alaska, to his entire right side. He recalled carrying a 10 foot, 300 pound drill bit on his shoulder and stepped into a snow-covered drill hole; he suffered significant injuries, which had not been treated to date. Claimant reported suffering psychoses and spending time “in a mental institution.” Dr. Slattery at this clinic had seen him approximately two years earlier and found a medial meniscus tear in his right knee; he was going to perform an arthroscopy but Claimant was hospitalized for a colon perforation. He now wanted to proceed with right knee surgery. PA-C Caple was going to evaluate his right shoulder and hip complaints separately. Right hip x-rays disclosed no abnormalities but the left hip had an old, small avulsion fracture. The clinic intended to proceed with the right knee surgery and would see Claimant “separately for the other issues that he is complaining of, all related to this industrial injury; however, the injury is still under investigation and this will be billed under his private insurance under Medicare.” (Caple report, February 1, 2017).

22) Claimant’s injury description to PA-C Caple on February 1, 2017, sounds like the injury he described to Dr. Slattery on March 31, 2014, which he said at that time had been bothering him for 18 years [*i.e.*, since 1996]. (Inferences drawn from the above).

23) On May 28, 2019, Kinross requested an order dismissing his claims against it because the related injuries did not arise out of and in the course of employment for Kinross or any subsidiary and they were barred and denied under AS 23.30.100, 105 and 110(c) due to late reporting, filing and hearing requests. (Petition, May 29, 2019).

24) On June 17, 2019, Placer also sought an order dismissing his claims against it. (Counter Petition to Dismiss and Limited Opposition to Petition for Dismissal by Placer Dome Explanation and Liberty Mutual, June 17, 2019).

25) On August 12, 2019, a Social Security query showed Kinross and Placer did not report any earnings paid to Claimant in the year 2000. (Social Security query documents, August 12, 2019).

26) On February 10, 2020, Caroline Wild, Director, Global Pension & Benefits for Kinross, stated Kinross is the parent company of Fairbanks Gold-Mining, Inc., which operates the Fort Knox mine near Fairbanks, Alaska. Wild researched Kinross’ and Fairbanks Gold’s records and public information and stated neither Kinross nor Fairbanks Gold has ever operated the Donlin Creek gold project. In the year 2000, Placer operated the Donlin Creek gold project; at no time has Kinross or Fairbanks Gold been related to Placer. Placer has never been a subsidiary or parent

company of Kinross or Fairbanks Gold. Furthermore, Wild averred that corporate records show Claimant was not a Kinross or Fairbanks Gold employee in 2000. Claimant worked for Fairbanks Gold from July 29, 2002 to October 25, 2006. Further, Wild stated corporate records show neither Kinross nor Fairbanks Gold ever employed anyone named Steve Bennis, Mark Cash or Richard Moses, men who Claimant said were working with him when he was injured in 2000. She testified Kinross' president in 2000 was not Richard Moses as Claimant stated and Moses has never been its president; Kinross' president in 2000 was Robert Buchan. (Affidavit of Caroline E. S. Wild, February 10, 2020).

27) At hearing on March 3, 2020, Kinross and Claimant stipulated to allow the board to decide Placer's petition to dismiss along Kinross' petition even though only Kinross' petition was listed on the controlling prehearing conference summary as an issue for hearing. After careful questioning from the chair, Claimant asserted his mental health diagnoses did not prevent him from adequately understanding the proceedings and representing himself at hearing. He did not have a guardian or conservator, had never been appointed one and did not need assistance in his ordinary day-to-day living activities and currently took no psychotropic medications; he admitted some issues with numbers and dates. Claimant is articulate and intelligent and expressed himself freely and cogently at hearing. (Record; judgment and inferences drawn from the above).

28) At hearing, Kinross relied on Social Security Administration records and Wild's affidavit as evidence Claimant could not have been injured in 2000 while working for Kinross because he never worked for Kinross or its subsidiaries that year. When the hearing began, Claimant was adamant in his belief Kinross owned and operated Donlin Creek Mine when he was injured there. He similarly believed his injuries occurred in October 2000, but admitted he was not sure when the injuries occurred and he could be incorrect about the dates. The evidence at hearing showed Calista Corporation owned the Donlin Creek land and mineral rights; Claimant had never heard of this corporation but did not dispute the evidence provided showing Kinross' position on this issue was correct. Claimant was surprised to learn Kinross had nothing to do with the Donlin Creek project given what he had been told by a person whom he believed was Kinross' Vice President. Claimant testified Placer was not his employer when he had the three injuries in question. He also maintained his view that, as a legal matter, whomever owned the Donlin Creek property and mineral rights was responsible for his injuries that occurred there. By the time the hearing was over, Claimant conceded the three injuries for which he filed claims probably occurred in the mid

to late 1990s, he had named the wrong employers on his three claims and consented to the dismissal of all three claims against Kinross and Placer. (Record).

PRINCIPLES OF LAW

The board may base its decision not only on direct testimony and other tangible evidence, but also on its “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).

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 . . . 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 . . . orally in the course of a hearing. . . .

(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. . . .

ANALYSIS

Should Claimant’s three claims against Kinross and Placer be dismissed?

The purpose of the March 3, 2020 hearing was not to decide when Claimant was injured, who his employer was at that time or to decide his claims on their merits. Its primary purpose was to determine if Kinross or Placer employed Claimant on October 4, 2000, October 7, 2000 or October 20, 2000, the dates listed on his claims against Kinross and Placer. Over the course of the hearing, the evidence demonstrated Claimant was not employed by either Kinross or Placer in the year 2000, when Claimant initially thought his injuries had occurred. Social Security Administration records and other evidence demonstrated he did not work for either employer in 2000.

Furthermore, medical records referenced Claimant's reports to physicians describing injuries occurring much earlier than 2000, which bore a striking resemblance to the ones he initially believed happened in 2000. Further, after learning Kinross and Placer were distinct, unrelated companies and that Kinross never owned or operated Donlin Creek Mine, Claimant acknowledged he mis-remembered the injury dates and they probably occurred in the mid-to late 1990s. Social Security Administration records showed he did not work for Kinross or Placer during those years either. Consequently, Claimant stipulated Kinross and Placer could not have been his employers when he had three injuries in question, regardless of the actual injury dates. 8 AAC 45.050(f). Apart from his stipulation to dismiss his claims against Kinross and Placer, the evidence adduced at hearing supports this result. *Rogers & Babler*. Claimant's November 14, 2014 claims against Kinross, subsequently amended to assert the same claims against Placer, will be dismissed.

Claimant is encouraged to obtain an attorney if he intends to pursue additional claims against different employers for the three events identified in his November 14, 2014 claims. He should do additional research and obtain statements or affidavits from witnesses, and employment records from employers for which he worked beginning in approximately 1995 through 2000. He has the right to file additional claims against different employers but is cautioned to obtain more accurate information concerning injury dates and his employers. Claimant may ask the State of Alaska, Department of Labor & Workforce Development for assistance in discovering employment and payroll records. If, as he maintains, the responsible employer never paid him any wages, Claimant will need to obtain other evidence confirming his work for the correct employer, including but not limited to statements from eye-witnesses.

He should also obtain any and all medical records he believes address injuries he sustained when (1) a drill operator reversed rotation and Claimant was hit in the head, (2) a bear came over a berm resulting in Claimant's left hand getting pinched between a rod and a mast and (3) Claimant injured his right shoulder, knee, hip and back while carrying a heavy drill rod on the job and stepped through snow into an old drill hole. The only thing Claimant was certain about at hearing and in his depositions was that these three events happened while he was working at Donlin Creek Mine. Accordingly, Claimant should, without further delay, begin discovering for whom he worked prior to 2000 at Donlin Creek and should obtain witnesses and other evidence to corroborate his

accounts of his three work injuries to identify the appropriate employer. Once he has done so, Claimant can file appropriate claims against the correct employer.

Claimant will also need to specify the benefits he seeks in any claim he may file for these injuries. This will help him focus on the benefits he wants and will assist the appropriate defendant in preparing its answer and defenses. He should check the appropriate boxes for the specific benefits he seeks. Ultimately, if his future claims go to a hearing on their merits, Claimant will have to identify with specificity the dates for which he seeks any temporary partial, temporary total and permanent total disability; he will need to establish a beginning date and an end date for each disability benefit claimed. It will be Claimant's responsibility at any future hearing to file a proper witness list, arrange in advance for witnesses to testify voluntarily or obtain subpoenas for any witnesses well in advance of a scheduled hearing. This is his responsibility and he should not rely on any other party to arrange or call witnesses favorable to Claimant's positions. *Rogers & Babler*.

He can expect any newly identified Employer to mount the same affirmative defenses against his new claims as did Kinross and Placer. That is, Claimant will need to demonstrate either the correct employer knew he was injured on the three separate occasions described above, or he provided a written injury report to his supervisor within 30 days; he will also need to show why he did not file a claim against the correct employer until he actually files such a claim. Lastly, once Claimant files a new claim against the correct employer, if that employer controverts the claim, which is likely given how old this case is, Claimant must understand that he will have two years from the date the correct employer controverts his claims to either ask for a hearing on his claims or ask for more time to request a hearing if he cannot state that she is ready for a hearing or his claims may be dismissed. He will likely not be ready for hearing unless and until he obtains all the evidence set forth above. *Rogers & Babler*.

CONCLUSION OF LAW

Claimant's three claims against Kinross and Placer will be dismissed.

ORDER

- 1) Pursuant to the evidence adduced at hearing and the parties' stipulation, the defendants' petitions to dismiss are granted and Claimant's November 14, 2014 claims against Kinross, as amended and asserted against Placer, are dismissed.
- 2) Claimant is encouraged to seek legal advice, perform additional discovery, obtain assistance from technicians at the division's offices and pursue additional claims as he sees fit against his correct employer as soon as possible.

Dated in Anchorage, Alaska on March 4, 2020.

ALASKA WORKERS' COMPENSATION BOARD

_____/s/
William Soule, Designated Chair

_____/s/
Sara Faulkner, 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 Bill Denny, claimant v. Kinross Gold USA, Inc. and its insurer Alaska Insurance Guaranty Association and Placer Dome Exploration, and its insurer Liberty Mutual; defendants; Case Nos. 201504380M, 201504381J and 201504382J; 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, CRRR to Claimant, Michael Budzinski and Rebecca Holdiman-Miller on March 4, 2020.

_____/s/
Nenita Farmer, Office Assistant