

ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

DANIEL LABROSSE,)	
)	INTERLOCUTORY
Petitioner,)	DECISION AND ORDER
)	
v.)	AWCB Case No. 700007935
)	
STATE OF ALASKA, WORKERS')	AWCB Decision No. 21-0058
COMPENSATION REEMPLOYMENT)	
BENEFITS ADMINISTRATOR)	Filed with AWCB Fairbanks, Alaska
)	on July 14, 2021.
Respondent.)	
)	

Petitioner Daniel LaBrosse's April 27, 2021 petition was heard on June 14, 2021, in Fairbanks, Alaska, a date selected on May 11, 2021. A May 11, 2021 hearing request gave rise to this hearing. Attorney Rene Broker appeared and represented Petitioner. Attorney Grace Lee appeared and represented Respondent Reemployment Benefits Administrator (RBA) Stacy Niwa. LaBrosse and Niwa appeared and testified. All parties, representatives and witnesses appeared via telephone. The panel found the RBA abused her discretion and orally granted LaBrosse's petition. It also issued oral orders compelling the parties to file additional evidence and continuing the hearing; this decision examines the finding and the oral orders.

ISSUES

LaBrosse contended the RBA violated due process by prematurely removing his name from its rehabilitation specialist referral list. He contended the disqualification of a specialist becomes "effective 10 days after service of the administrator's decision," and this effective date would not be triggered if "a written request for board review is filed" within the 10 days. LaBrosse contended the RBA improperly suspended him prior to the "board review."

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The RBA contended she acted within her discretion in removing LaBrosse from the list pending final board review. She contended the RBA has discretion to effectuate the reemployment benefits program at every step of the process including disqualification.

1) Did the RBA abuse her discretion when she removed LaBrosse from the rehabilitation specialist referral list and issued the proposed disqualification letter on the same date?

2) Were the oral orders seeking additional evidence and continuing the hearing correct?

FINDINGS OF FACT

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

- 1) On March 10, 2021, the RBA issued and served LaBrosse a proposed disqualification letter. On the same date, she removed him from the rehabilitation specialist referral list. (Niwa; record).
- 2) On March 31, 2021, LaBrosse filed a written request with the RBA for an opportunity to meet with her to discuss the proposed disqualification. (LaBrosse; Zane Wilson letter, March 31, 2021).
- 3) On April 20, 2021, the RBA met with attorney Wilson appearing on LaBrosse's behalf to discuss the proposed disqualification. (Record).
- 4) On April 27, 2021, LaBrosse requested immediate reinstatement to the rehabilitation specialist referral list. (Petition, April 27, 2021).
- 5) On April 30, 2021, the RBA issued and served the disqualification letter. (Niwa; record).
- 6) On May 5, 2021, LaBrosse requested Board review of the RBA's disqualification decision. (Written Request for Board Review, May 5, 2021).
- 7) On May 26, 2021, LaBrosse requested an order establishing that a rehabilitation specialist disqualification "requires fault based [on] proof that the alleged failure occurred due to actions or inactions of the specialist, not third parties." (Petition, May 26, 2021).
- 8) On May 27, 2021, the board designee denied LaBrosse's request for production of all RBA files "in any way related to any proposed or imposed actions taken by the RBA against any rehabilitation specialist [. . .] from 2017 to date[.]" LaBrosse contended he has the right to find evidence of the RBA's bias and unfair treatment towards him. (Prehearing Conference Summary, May 27, 2021).

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9) On June 1, 2021, LaBrosse appealed the board designee's May 27, 2021 denial order. (Petition, June 1, 2021).

10) At hearing on June 14, 2021, LaBrosse testified he received 60 suspension letters, other correspondence or emails from the RBA seeking information from him, received specific deadlines from the RBA to file reemployment evaluation reports and missed those deadlines. He filed eight eligibility evaluation reports late after receiving specific deadlines from the RBA; however, LaBrosse contended the majority of the suspensions were due to medical providers' and claim adjusters' failure to respond to his requests. LaBrosse said he regularly contacted medical providers and adjusters every week or every other week to obtain information needed to complete his evaluations. He also said he was instructed by the RBA not to file status reports any sooner than 60 to 90 days for reemployment plans in suspension or in dispute. (LaBrosse). Niwa testified she wrote LaBrosse about the consequences of his late filings. (Niwa).

11) The RBA assigns reemployment eligibility evaluations to reemployment specialists based on the rehabilitation specialist referral list; a specialist who is not on the list does not get new cases. Therefore, removal of a specialist's name from the referral list is tantamount to disqualification. (Experience; judgment).

PRINCIPLES OF LAW

The board may base its decision on not only 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 23.30.041. Rehabilitation and reemployment of injured workers.

...

(b) The administrator shall

(1) enforce regulations adopted by the board to implement this section

.....

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

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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 44.62.570. Scope of Review.

. . . .

(b) . . . Abuse of discretion is established if the agency has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence. . . .

The RBA's decision must be upheld absent "an abuse of discretion on the part of the administrator." Several definitions of "abuse of discretion" appear in Alaska law although none appears in the Act. The Alaska Supreme Court stated abuse of discretion consists of "issuing a decision which is arbitrary, capricious, manifestly unreasonable, or which stems from an improper motive." *Sheehan v. University of Alaska*, 700 P.2d 1295, 1297 (Alaska 1985). An agency's failure to properly apply the controlling law may also be considered an abuse of discretion. *Manthey v. Collier*, 367 P.2d 884, 889 (Alaska 1962).

8 AAC 45.420. Rehabilitation specialist application. (a) To be added to the administrator's rehabilitation specialists' list under. . . .

(b) Names will be added to the geographical listing in order of the receipt date of the completed application. . . .

8 AAC 45.440. Removal of rehabilitation specialists.

. . . .

(e) Before disqualifying a rehabilitation specialist, the administrator shall notify the rehabilitation specialist in writing, served either personally or by certified mail, of the proposed disqualification. A rehabilitation specialist who has been notified of a proposed disqualification may, no more than 30 days after receipt of the notice, file a written request with the administrator for an opportunity to meet with the administrator to discuss the proposed disqualification.

(f) The administrator shall issue a written decision within 30 days after a meeting requested under (e) of this section. If no meeting is requested, the administrator shall issue a written decision within 45 days after the written notice of proposed disqualification was served under (e) of this section.

. . . .

(h) The administrator's decision must be served upon the rehabilitation specialist or the rehabilitation specialist's representative, either personally or by certified

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mail. . . . A disqualification decision is effective 10 days after the date of the decision unless a written request for board review is filed with the board and is served in accordance with (i) of this section no more than 10 days after service of the administrator's decision.

(i) A disqualified rehabilitation specialist, an employee, or an employer, may request board review of the administrator's decision. . . .

ANALYSIS

1) Did the RBA abused her discretion when she removed LaBrosse from the rehabilitation specialist referral list and issued the proposed disqualification letter on the same date?

On March 10, 2021, the RBA notified LaBrosse in writing of the proposed disqualification; on the same date, she also removed his name from the rehabilitation specialist referral list. On March 31, 2021, LaBrosse timely requested an opportunity to meet with the RBA, and on April 20, 2021, the parties met to discuss the proposed disqualification. 8 AAC 45.440(e). On April 30, 2021, the RBA issued a written disqualification decision. 8 AAC 45.440(f). On May 5, 2021, LaBrosse requested board review of the April 30, 2021 RBA's decision. 8 AAC 45.440(h); (i).

The question is whether the RBA had authority to remove LaBrosse's name from the referral list on the same date she served the proposed disqualification letter. The RBA contended she acted within her discretion in removing LaBrosse from the list pending final board review. She contended the RBA has discretion to effectuate the reemployment benefits program and make reasoned decisions at every step of the process including disqualification. The RBA contended "the removal is not yet final, but it is effective pending board review." This is incorrect.

The RBA assigns reemployment eligibility evaluations to reemployment specialists based on the referral list; no other source exists. 8 AAC 45.420. Thus, a specialist who is not on the list does not get any assignment, and this is tantamount to disqualification. *Rogers & Babler*. Yet, 8 AAC 45.440(h) expressly states the RBA's disqualification decision does not become effective pending "board review." LaBrosse timely requested "board review." Thus, the RBA abused her discretion by failing to follow the controlling regulation and disqualifying LaBrosse; her decision to

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arbitrarily remove his name from the referral list must not be upheld. AS 23.30.041(b)(1); *Collier*; *Sheehan*. The RBA will be ordered to immediately reinstate LaBrosse to the referral list.

2) Were the oral orders seeking additional evidence and continuing the hearing correct?

All correspondence between LaBrosse and the RBA would assist the panel to decide whether LaBrosse should be removed from the referral list. Thus, the oral orders seeking additional evidence and continuing the hearing were correct. AS 23.30.135.

CONCLUSIONS OF LAW

- 1) The RBA abused her discretion when she removed LaBrosse from the rehabilitation specialist referral list and issued the proposed disqualification letter on the same date.
- 2) The oral orders seeking additional evidence and continuing the hearing were correct.

ORDERS

- 1) LaBrosse's April 27, 2021 petition is granted. The RBA is ordered to immediately reinstate LaBrosse to the reemployment specialist referral list.
- 2) The RBA is ordered to file all correspondence received from and sent to LaBrosse, including suspension letters and deadline notices.
- 3) LaBrosse is ordered to file all correspondence he sent to the RBA explaining his reasons for missing deadlines.

Dated in Fairbanks, Alaska on July 14, 2021.

ALASKA WORKERS' COMPENSATION BOARD

_____/s/
Jung M. Yeo, Designated Chair

_____/s/
Sara Lafebvre, Member

_____/s/
Lake Williams, Member

