

ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

WHITNEY J. MOORE,)	
)	
Employee,)	
Claimant,)	
)	INTERLOCUTORY
v.)	DECISION AND ORDER
)	
TRIDENT SEAFOODS CORPORATION,)	AWCB Case No. 202005200
)	
Employer,)	AWCB Decision No. 22-0041
and)	
)	Filed with AWCB Anchorage, Alaska
EVEREST NATIONAL INSURANCE,)	on June 10, 2022
)	
Insurer,)	
Defendants.)	
)	

Whitney Moore's (Employee) March 3, 2022 petition to consolidate three claims was heard on June 9, 2022 in Anchorage, Alaska, a date selected on April 21, 2022. An April 7, 2022 hearing request gave rise to this hearing. Attorney Robert Bredesen represented Employee. Attorney Jeffrey Holloway represented Trident Seafoods Corporation and its insurer (Employer). There were no witnesses. The record closed at the hearing's conclusion on June 9, 2022.

ISSUE

Employee contends her three claims for workers' compensation benefits are similar if not identical and should be judicially combined for adjudication. She contends consolidation would streamline discovery and provide a simpler remedy.

Employer contends the three claims are not similar or closely related. It contends Employee failed to provide evidence showing they were, and her petition should be denied.

Should Employee's three claims be consolidated?

FINDINGS OF FACT

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

- 1) On November 16, 2021, Employee claimed temporary total disability (TTD), temporary partial disability (TPD), permanent total disability (PTD), permanent partial impairment (PPI) benefits, medical and related transportation benefits, an unfair or frivolous controversion, a penalty and interest. She contended multiple panic attacks and acute stress occurred at work on March 16, 2020. Employee stated she experienced heart racing, shortness of breath, and shaking and crying after meeting with coworkers. She also contended her claim was unfairly and frivolously controverted because her physician informed her “this” was “100% work-related,” and no disability was paid from March 17, 2020, through October 2021. Neither the claim nor the attached medical record expressly describe what specific event or events allegedly caused Employee's symptoms. (Claim for Workers' Compensation Benefits, November 15, 2021).
- 2) On February 3, 2022, Employee made a request for the same benefits as in her November 15, 2021 claim, cited a January 25, 2021 injury date and stated:

COVID 19 while in Akutan, AK -- plant was shut down due to over 100 employees in contact with COVID 19 in a remote location. All Akutan employees in Company Housing.

Employee said she filed this claim to obtain unpaid disability benefits and said she was air-lifted off the island because she had high-risk medical conditions and no medical benefits had been paid. (Claim for Workers' Compensation Benefits, February 2, 2022).

- 3) On February 3, 2022, Employee made a second request for the same benefits as in her November 15, 2021 claim, cited a February 1, 2021 injury date and stated she had “ongoing illness with COVID 19” and ongoing “medical issues due to COVID and complications.” She stated she filed her claim to obtain disability and medical benefits that remained unpaid. (Claim for Workers' Compensation Benefits, February 2, 2022).

4) On March 3, 2022, Employee sought an order to “add” her two 2021 injury claims to her 2020 claim. She stated, “My ongoing disability and need for treatment arises from my entire employment with the employer, including all incidents, conditions and activities within the scope of employment.” She attached her two, 2022 claims for her 2021 injuries and some medical records to her request. (Petition, February 28, 2022).

5) On March 18, 2022, Employer opposed Employee’s petition to “join” or “consolidate” her claims on grounds she had failed to produce any “documentary or medical link” between her “two injuries.” (Opposition to Petition to Join (Sic), March 18, 2022).

6) On April 12, 2022, Employee testified she applied for disability insurance through a private company but was denied because they do not provide coverage “for any mental health benefits.” She further stated, describing her March 16, 2020 event:

So I had a -- I had severe debilitating panic attacks. I had about 16 of them. What I can say is when I came back it’s -- it’s in the middle of an extremely intense season. It’s called A season. And there was just so much happening between COVID and a lot of people, you know, at work kind of being like, “my goodness.” And “what’s going on in the world.”

....

So that kind of put me on edge. And I never felt that way before. I -- I don’t normally have meetings and, like, I just felt very, you know, shaky when I was having this meeting. There was probably about six people there I want to say. I don’t even remember now. And then to hear that there’s all this Corona Virus stuff happening, all this COVID.

....

No just via email. Like I said, it was COVID time, and I had talked to my family about what was going on. I talked to fellow co-workers about their medical stuff that day, about feeling like, “I don’t feel like I can get my surgery.” And I mean it’s a very -- it’s life-threatening surgery that my coworker had to have.

And just hearing, kind of how things were going at home and just in the world it was just very overwhelming. Because you’re already so isolated being up there. . . . I wanted to be with my family at that moment because it just wasn’t -- like COVID had just become this huge surge beginning in March, you know, is when they started to really talk about it and how it’s affecting the world and thing[s] shutting down and being up there, we had no idea what was going on. . . .

As for her January 25, 2021 injury, Employee said she began having panic attacks again in January 2021, when she found out there was someone at work that had contracted COVID-19.

She contracted COVID-19 in January after the workplace had been COVID-19 free for a whole year. “COVID got into Akutan, and I wasn’t able to leave. Before I -- before I got COVID they said that no one could leave. So there was -- basically we were all trapped in Akutan and could contract it.” (Videoconference Deposition of Whitney Moore, April 12, 2022).

7) At hearing on June 9, 2022, Employee contended her three claims were all related to mental stress for which she sought mental health benefits. She contended 8 AAC 45.050(b)(5) best applied to this situation and, applying the requisite factual findings therein, contended the injuries or issues in her three cases were not only “similar or closely related,” but “identical.” Employee further contended “consolidating” the three claims and cases into one would make procuring evidence easier and accord a simpler remedy. She contended ongoing mental stress including concerns about possible COVID-19 in a remote site caused a “mental-mental” injury, while later contracting COVID-19 gave her a “physical-mental” injury. Given these accusations, Employee requested an order consolidating her three claims into one. (Record).

8) Employer contended COVID-19 could not have been a causation factor on March 16, 2020, because there were no reported cases in Akutan at that time. Moreover, it contended Employee failed to present medical evidence showing a relationship between her COVID-19 infection and her alleged mental stress injuries. Employer contended Employee makes no claim for physical consequences related to COVID-19 and failed to produce medical evidence showing COVID-19 affected her stress level. It contended having three alleged injuries with Employer does not automatically require the cases to be consolidated. Given these arguments, Employer contended the request to consolidate the claims should be denied. (Record).

9) Based on the evidence in the agency file and the parties’ briefing and oral arguments at hearing, Employee is seeking the same benefits in each of her three claims, the parties in each claim are the same, the injuries or issues in the three cases are “similar or closely related,” if not identical, and hearing all three cases together would provide a speedier remedy. (Experience; judgment; and inferences from the above).

PRINCIPLES OF LAW

AS 23.30.001. Legislative intent. 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 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. . . .

8 AAC 45.050. Pleadings. (a) A person may start a proceeding before the board by filing a written claim or petition.

(b) Claims and petitions.

(5) A separate claim must be filed for each injury for which benefits are claimed, regardless of whether the employer is the same in each case. If a single incident injures two or more employees, regardless of whether the employers are the same, two or more cases may be consolidated for the purpose of taking evidence. A party may ask for consolidation by filing a petition for consolidation and asking in writing for a prehearing, or a designee may raise the issue at a prehearing. To consolidate cases, at the prehearing the designee must

- (A) determine the injuries or issues in the cases are similar or closely related;
- (B) determine that hearing both cases together would provide a speedier remedy; and
- (C) state on the prehearing summary that the cases are consolidated, and state which case number is the master case number.

ANALYSIS

Should Employee’s three claims be consolidated?

The administrative regulations are not entirely clear, and no one regulation directly addresses the question presented. But the “consolidation” regulation 8 AAC 45.050(5) appears to apply better

than any other provision. That regulation requires a claim be filed for each injury for which benefits are claimed. Employee filed three claims in three separate cases. 8 AAC 45.050(5). Employee's first claim for a March 16, 2020 stress injury with Employer makes no direct reference to COVID-19. However, Employee's deposition testimony cited above expressly elaborates on Employee's contention that fear of COVID-19 and concerns about being in a remote worksite with minimal medical care and rumors about flight restrictions and highway closures in the lower 48, among other things, caused her to have panic attacks and mental distress. This decision does not decide the causation issue but notes the allegations and contentions raised in Employee's first claim as explained in her deposition testimony.

Likewise, Employee's two February 2, 2022 claims for a January 25, 2021 and a February 1, 2021 injury expressly focused on Employee's own COVID-19 illness and alleged complications arising from it. Neither claim expressly mentions mental stress. Again, Employee's deposition testimony elaborated on her contentions that COVID-19 caused a permanent change in her emotional and behavioral status. This decision does not decide any causation issues, but Employee's deposition testimony made it clear she is claiming benefits arising from an alleged COVID-19 exposure in her subsequent two claims and her claims are primarily for mental health issues caused by stress.

All three claims seek benefits related to either mental stress and related mental health injuries caused by alleged work-related experiences, including but not limited to COVID-19 fears, or to a physical COVID-19 illness, which she alleges caused mental stress and related mental health problems. Employee contends she has a "mental-mental" and a "physical-mental" basis for her claims. Thus, the injuries or issues in these three cases are "similar or closely related" if not identical because all three claim mental health injuries. Hearing all three cases and related claims together would provide a speedier remedy by making discovery simpler and having medical evaluations and reports apply to all three claims. 8 AAC 45.050(5)(A), (B). Moreover, contrary to Employer's contentions, it is not clear how consolidating these three cases would not provide a speedier remedy, and thus be a more "reasonable cost" to Employer. AS 23.30.001(1). For these reasons, Employee's March 3, 2022 petition to consolidate cases 202005200, 202101070, and 202101381 will be granted.

CONCLUSION OF LAW

Employee's three claims should be consolidated.

ORDER

- 1) Employee's March 3, 2022 petition to consolidate is granted.
- 2) Cases 202005200, 202101070 and 202101381 are consolidated.
- 3) Case 202005200 is the master case for all purposes.

Dated in Anchorage, Alaska on June 10, 2022.

ALASKA WORKERS' COMPENSATION BOARD

/s/
William Soule, Designated Chair

/s/
Sara Faulkner, Member

/s/
Nancy Shaw, Member

PETITION FOR REVIEW

A party may seek review of an interlocutory or other non-final Board decision and order by filing a petition for review with the Alaska Workers' Compensation Appeals Commission. Unless a petition for reconsideration of a Board decision or order is timely filed with the board under AS 44.62.540, a petition for review must be filed with the commission within 15 days after service of the board's decision and order. If a petition for reconsideration is timely filed with the board, a petition for review must be filed within 15 days after the board serves the reconsideration decision, or within 15 days from date the petition for reconsideration is considered denied absent Board action, whichever is earlier.

RECONSIDERATION

A party may ask the board to reconsider this decision by filing a petition for reconsideration under AS 44.62.540 and in accordance 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

