

ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

ZALDY TUBIG,)	
)	INTERLOCUTORY
Employee,)	DECISION AND ORDER
Claimant,)	
)	AWCB Case No. 201400570
v.)	
)	AWCB Decision No. 23-0038
ICICLE SEAFOODS, INC.,)	
)	Filed with AWCB Anchorage, Alaska
Self Insured Employer,)	on July 6, 2023
Defendant.)	
_____)	

Icicle Seafoods, Inc.'s (Employer) June 28, 2023 petition to cancel the July 6, 2023 hearing was heard on the written record in Anchorage, Alaska, on July 6, 2023. This hearing date was selected on May 4, 2023 to address Employer's April 4, 2023 petition for a Social Security offset and to recoup its overpayment. Employer's April 24, 2023 hearing request gave rise to this hearing. Zaldy Tubig (Employee) is unrepresented and deceased. Attorney Martha Tansik represents Employer. The record closed at the hearing's conclusion on July 6, 2023.

ISSUE

Shall the July 6, 2023 hearing be cancelled?

FINDINGS OF FACT

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

- 1) On August 17, 2013, Employee reported to Employer that on August 3, 2013, he had blisters on his feet from wearing his boots continuously, which created an open foot sore that became

infected. Employee's marital status was "unknown," and number of dependents was "00." (Report of Injury, January 10, 2014.)

2) Employee was paid temporary total disability benefits from August 18, 2013 through June 29, 2014, and thereafter Employee received permanent total disability benefits. Employee's compensation rate was calculated according to his status as single with one dependent. (ICERS, Payments; Legacy Compensation Report, January 9, 2017.)

3) On September 4, 2015, the Social Security Administration found Employee became disabled on August 3, 2013 and notified him he was eligible to receive Social Security Disability benefits beginning June 2014. (Social Security Administration, Notice of Award, September 4, 2015.)

4) On April 4, 2023, Employer filed a petition for a 100 percent offset for Employee's Social Security Disability benefits and to withhold 100 percent from any future installment payments to recover a "large overpayment." (Petition, April 4, 2023.)

5) On April 24, 2023, Employer requested a hearing on its April 4, 2023 petition. (Affidavit of Readiness for Hearing, April 24, 2023.)

6) On May 4, 2023, Employee did not attend a properly noticed prehearing. The prehearing was held to schedule a date to hear Employer's April 4, 2023 petition. (Prehearing Notice, April 7, 2023; Prehearing Conference Summary, May 4, 2023.)

7) On May 23, 2023, Employee requested a prehearing be scheduled prior to the July 6, 2023 hearing and one was set for June 14, 2023. (ICERS, Communications, Phone Call, Contact: EE, May 23, 2023; Prehearing Notice, May 23, 2023.)

8) On June 13, 2023, Employee's son, Zaldy Tubig, Jr., notified the Alaska Workers' Compensation Division (Division) Employee was not well and was unable to attend the June 14, 2023 prehearing conference. (ICERS, Communications, Phone Call, June 13, 2023.)

9) On June 23, 2023, Zaldy Tubig, Jr. told the Division staff Employee had died and he would be pursuing benefits "on behalf of his father." (ICERS, Communications, Phone Call, Zaldy Tubig, Jr., June 23, 2023.)

10) On June 27, 2023, Zaldy Tubig, Jr. was advised to speak with Ms. Tansik regarding Employee's death. (ICERS, Communications, Phone Call, Zaldy Tubig, Jr., June 27, 2023.)

11) On June 28, 2023, Employer requested the July 6, 2023 hearing be continued because:

Employer / Adjuster have just become aware that Employee had died. Cause of death unknown. Until additional information occurs regarding death, unknown if

additional or future payments will ever be due. Issue before Board must stay in pending.

(Petition, June 28, 2023.)

12) On July 1, 2023, Zaldy Tubig, Jr., said he was attempting to get advice from attorney Andrew Wilson regarding whether Employee's estate is "entitled to additional benefits" and "if there is a meritorious claim, Andrew will take on the matter and assist." He also said he cannot enter an appearance until he has a Washington State court order to act as trustee for Employee's estate. Employee died intestate. Mr. Tubig acknowledged Employer is seeking, among other things, information about Employee's death's cause and location. He said, "We are delaying providing information to Ms. Tansik until Andrew can review Zaldy Sr.'s file and advise as to whether his estate is entitled to additional benefits." Mr. Tubig does not want "the matter" closed or resolved in Employer's favor prematurely. (Email from Zaldy Tubig, Jr. to Workers' Compensation Officer Rosanna Mallari, July 1, 2023.)

13) On July 3, 2023, Ms. Tansik notified Mr. Tubig that Employer's petition for a Social Security offset was moot because Employer had requested to recoup its overpayment from future housing costs, which no longer exist because Employee died. Ms. Tansik told Mr. Tubig:

The Estate's entitlement now depends on the nature of the death and whether there are valid dependents.

In order to properly and timely administer benefits in accordance with Alaska law, it is imperative that we understand what Mr. Tubig Sr. died from, when he died, and if there are any entitled beneficiaries (should death benefits be warranted). We are hearing rumors about a family that was never disclosed to the Employer or Insurer. Alaska prefers liberal discovery and I am respectfully, again, requesting information about when he died, where he died, and what he died from. My clients have legal obligations to discern if any benefits are owed related to the death and issue payments timely if the cause of death is related to the work injury.

I have petitioned for the indefinite continuance, since the petition may be entirely moot depending on the answers listed above. There seems to be some kind of misconception that we are trying to get money back from your father or his estate. No one is attempting to recover money from your father, his estate, etc. There is no mechanism to request a "payback" under Alaska law. Any offset or recovery related to the Petition would reduce future owed benefits only.

While I appreciate your thoughtfulness and hesitation, I want to be clear that at no time was your father's case contentious/litigated/etc. This was a compensable claim, the question is simply whether the death was as well and/or if there are any death benefits owed. No one is attempting to short change the estate or "resolve in favor of employer prematurely." Either benefits are owed or they aren't, depending on cause of death and whether there are beneficiaries.

(Tansik Email to Zaldy Tubig, Jr., July 3, 2023.)

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;
- (2) workers' compensation cases shall be decided on their merits except where otherwise provided by statute.
.....
- (4) hearings in workers' compensation cases shall be impartial and fair to all parties and that all parties shall be afforded due process and an opportunity to be heard and for their arguments and evidence to be fairly considered.

The board may base its decision not only on direct testimony 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. . . .

AS 23.30.155. Payment of compensation.
.....

(j) If an employer has made advance payments or overpayments of compensation, the employer is entitled to be reimbursed by withholding up to 20

percent out of each unpaid installment or installments of compensation due. More than 20 percent of unpaid installments of compensation due may be withheld from an employee only on approval of the board.

AS 23.30.225. Social security . . . offsets.

. . . .

(b) When it is determined that, in accordance with 42 U.S.C. 401 - 433, periodic disability benefits are payable to an employee or the employee's dependents for an injury for which a claim has been filed under this chapter, weekly disability benefits payable under this chapter shall be offset by an amount by which the sum of (1) weekly benefits to which the employee is entitled under 42 U.S.C. 401 - 433, and (2) weekly disability benefits to which the employee would otherwise be entitled under this chapter, exceeds 80 percent of the employee's average weekly wages at the time of injury

8 AAC 45.070. Hearings. (a) Hearings will be held at the time and place fixed by notice served by the board under 8 AAC 45.060(e). A hearing may be adjourned, postponed, or continued from time to time and from place to place at the discretion of the board or its designee, and in accordance with this chapter. . . .

8 AAC 45.074. Continuances and cancellations.

. . . .

(b) Continuances or cancellations are not favored by the board and will not be routinely granted. A hearing may be continued or cancelled only for good cause and in accordance with this section. For purposes of this subsection,

(1) good cause exists only when

. . . .

(C) a party, a representative of a party, or a material witness becomes ill or dies;

. . . .

ANALYSIS

Shall the July 6, 2023 hearing be cancelled?

The Act's overall legislative intent is to ensure, among other things, fair delivery of workers' compensation benefits to entitled injured workers at a reasonable cost to the employer. Cases must generally be decided on their merits, hearings must be fair to all parties, and all parties must be afforded due process, an opportunity to be heard, and their arguments and evidence fairly considered. AS 23.30.001. Claims may be investigated, and hearings or inquiries conducted in a

way the parties’ rights may be best ascertained. AS 23.30.135(a). Continuances are not favored and are not routinely granted. Administrative regulation 8 AAC 45.074(b)(1) delineates the limited circumstances that can constitute good cause.

Employer requested a continuance under 8 AAC 45.074(b)(1)(C) upon learning Employee died. Sub-section (C) states good cause exists when “a party, a representative of a party, or a material witness becomes ill or dies.” The issue that was to be heard is whether Employer is entitled to a Social Security offset under AS 23.30.225 and overpayment recoupment under AS 23.30.155(j) from Employee’s housing allowance. Employer acknowledged the issue to be determined at hearing is moot because it requested to recover any overpayment against Employee’s future housing costs, which no longer exist because he is dead. Employee’s death resolves the issues Employer requested be decided and is good cause to cancel the July 6, 2023 hearing. 8 AAC 45.074(b)(1)(C); *Rogers & Babler*. Therefore, it will be cancelled.

CONCLUSIONS OF LAW

The July 6, 2023 hearing shall be cancelled.

ORDER

- 1) Employer’s petition to cancel the July 6, 2023 hearing is granted.
- 2) Zaldy Tubig, Jr. is encouraged to provide information to Employer regarding the cause of Employee’s death, when he died, where he died, and whether he had any dependents.
- 3) A prehearing is scheduled for July 24, 2023.

Dated in Anchorage, Alaska on July 6, 2023.

ALASKA WORKERS’ COMPENSATION BOARD

/s/
Janel Wright, Designated Chair

/s/
Sara Faulkner, Member

/s/
Bronson Frye, 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

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 accordance 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 Interlocutory Decision and Order in the matter of ZalDY Tubig, employee / claimant v. Icicle Seafoods, Inc., self insured employer / defendant; Case No. 201400570; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties by certified U.S. Mail, postage prepaid, on July 6, 2023.

/s/

Pamela Hardy, Workers' Compensation Technician