

ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

MANUEL D RODRIGUEZ ROACH,)	
)	
Employee,)	
Claimant,)	INTERLOCUTORY
)	DECISION AND ORDER
v.)	
)	AWCB Case No. 201508629
MANOR MANAGEMENT OF ALASKA, INC,)	
)	AWCB Decision No. 23-0045
Employer,)	
and)	Filed with AWCB Anchorage, Alaska
)	on August 17, 2023.
LIBERTY NORTHWEST INSURANCE CORP,)	
)	
Insurer,)	
Defendants.)	
)	

Manuel Rodriguez Roach's March 16, 2021 claim was scheduled for hearing on August 16, 2023 in Anchorage, Alaska, a date selected on April 11, 2023. Manuel Rodriguez Roach (Employee) appeared and represented himself. Attorney Rebecca Holdiman Miller appeared and represented Manor Management Of Alaska Inc. and Liberty Northwest Insurance Corp (Employer). Employer's August 14, 2023 petition for a continuance and petition for mediation were heard as preliminary matters, and the hearing on Employee's claim was continued. No witnesses testified. The record closed at the hearing's conclusion on August 16, 2023.

ISSUES

Employer contends the hearing should be continued because Employee was not able to secure an attorney prior to the current hearing. Employee agreed he would like to continue the case.

1) Was the decision continuing the hearing on Employee's claim correct?

Employer contends the parties should be ordered to attend a settlement conference/mediation to attempt to resolve Employee's claim. Employee did not oppose mediation.

2) Was the order to attend a settlement conference/mediation correct?

FINDINGS OF FACT

All findings in *Rodriguez Roach I* and *II* are incorporated by reference and may be repeated below. A preponderance of the evidence establishes the following facts and factual conclusions:

- 1) On May 21, 2015, Employee injured his right knee at work when he was moving a picnic table while walking on uneven ground and twisted his knee. (First Report of Injury, June 5, 2015).
- 2) On May 18, 2018, Employer's Medical Evaluator Scot Youngblood, M.D., orthopedic surgeon, examined Employee and diagnosed a work-related right knee sprain with medial and lateral meniscus tears, which he opined were medically stable. Other diagnoses, including mild right knee arthritis and obesity, were preexisting and in his view not caused or aggravated by the work injury. Dr. Youngblood said the work injury was not the substantial cause of the need for additional right knee treatment. (Youngblood report, May 18 2018).
- 3) On July 18, 2018, attending physician Mark Caylor, M.D., orthopedic surgeon, who had previously performed a post-injury arthroscopy on Employee's knee, performed a right total knee arthroplasty, commonly called a knee replacement. (Caylor report, July 18, 2018).
- 4) On April 4, 2019, Dr. Caylor said the arthroscopy on Employee's right knee resolved his symptoms, so he replaced Employee's right knee to address chronic right knee pain. Employee did not do well after the knee replacement surgery. Dr. Caylor performed a bone scan to look for prosthesis loosening "because there was micromovement in the prosthesis that's generating all this inflammation." The bone scan was negative for movement but showed synovitis, an inflammation in the knee and soft tissues; synovitis long after arthroplasty is uncommon. He said Employee may have lifelong disability because if he cannot extend his knee fully, he cannot stand on his feet very long. Dr. Caylor opined Employee was, as of April 4, 2019, probably as "good as he was going to get" but nonetheless referred him to Stephen Tower, M.D., for another opinion. (Deposition of Mark T. Caylor, M.D., April 4, 2019).
- 5) On April 8, 2019, Dr. Curran performed an SIME on Employee and opined the May 21, 2015

work injury is the substantial cause of Employee's need for medical treatment. He stated Employee is not medically stable and needs additional right knee treatment; he recommends a "sympathetic block lumbar spine." (Curran report, April 8, 2019).

6) On May 10, 2019, orthopedic surgeon Dr. Tower said Employee's primary diagnosis is complex regional pain syndrome (CRPS) related to his multiple knee operations following his work-related injury. (Tower report, May 10, 2019).

7) On July 15, 2019, well after Dr. Curran's evaluation, Deryk Anderson, D.O., evaluated Employee's right knee and found anterior knee pain that could be caused from a slightly oblique-cut patella. Dr. Anderson discussed potential right-knee-replacement revision surgery; Employee was going to consider it. Dr. Anderson was reluctant to do revision surgery because it may not improve Employee's range of motion. He first recommended range of motion exercises to see if this increased Employee's right knee function. (Anderson report, July 15, 2019).

8) On July 16, 2019, Heath McAnally, M.D., opined Employee's "pretty significant sleep apnea" interferes with his ability to heal and predisposes him to "severe chronic unrelenting pain." He recommended treating Employee's sleep apnea to address his chronic pain problem. If more conservative measures did not improve Employee's situation, he would consider a lumbar sympathetic block. While Dr. McAnally could not make a direct link between Employee's work injury and his sleep apnea, he said the sleep apnea needed to be treated regardless of its cause to mitigate Employee's pain from his work injury. (Deposition of Heath McAnally, July 16, 2019).

9) On August 6, 2019, Dr. Tower examined Employee's painful right knee and associated CRPS. He recommended Employee avoid additional right knee surgery because surgery tends to exacerbate CRPS. (Tower report, August 6, 2019).

10) On September 17, 2019, the parties settled Employee's claim but left future medical benefits "open," meaning not waived or settled. (Settlement Agreement, September 17, 2019).

11) On October 24, 2019, Dr. McAnally gave Employee a right lumbar sympathetic block to address his right leg CRPS. (McAnally report, October 24, 2019).

12) On October 28, 2019, Employee called Dr. McAnally's office to report "no improvement" following his right lumbar sympathetic block injection. (McAnally report, October 29, 2019).

13) On November 11, 2019, Dr. Youngblood prepared an addendum EME report. He reviewed additional records extending through September 4, 2019. Dr. Youngblood reiterated opinions

from his earlier EME report and opined Employee needed no further medical treatment to address the May 21, 2015 work injury. He disagreed with Employee's attending physicians' diagnoses, particularly CRPS and right radiculopathies, and specifically recommended against genicular nerve blocks. (Youngblood report, November 11, 2019).

14) On November 14, 2019, Employee reported to Dr. McAnally's assistant, Evan Evanson, PA-C, "severe pain" in his right lower extremity. He had recently undergone a lumbar sympathetic block with only brief relief thereafter. Employee had been to see Dr. Anderson who recommended surgical intervention for Employee's laterally deviated patella; he was interested in pursuing this but his fiancée was about to have a baby so he wanted to delay surgery. PA-C Evanson suggested a lumbar sympathetic plexus block might be appropriate given Employee's CRPS diagnosis. (Evanson report, November 14, 2019).

15) On January 15, 2020, Dr. McAnally found minimal evidence supporting CRPS but found audible and palpable crepitus in Employee's right knee with active motion. He suggested focusing "on a potential orthopedic solution" instead of on CRPS. Dr. McAnally referred Employee to Brian Haughom, M.D., orthopedic surgeon. (McAnally report, January 15, 2020).

16) On January 22, 2020, Dr. Haughom referred Employee for a right knee computerized tomography (CT). The history referenced, "Pain due to internal orthopedic prosth dev." Christopher Reed, M.D., radiologist, reported his interpretation of the CT results as follows:

TECHNIQUE: CT examination of the knee was performed without intravenous contrast to determine component rotation by the method of Berger and Rubash.

FINDINGS: A total knee arthroplasty is present with patellar resurfacing. The femoral component is 1 degrees [sic] internally rotated with respect to the epicondylar axis. This measurement falls within the normal limits for femoral component rotation. Normal is 18 +/- 2.6 degrees of internal rotation.

Thus, the tibial component demonstrates 20 degrees internal rotation. . . .
. . . .

IMPRESSION: Total knee arthroplasty. The femoral component demonstrates 1 degrees [sic] internal rotation with respect to the epicondylar axis and the tibial component shows 20 degrees internal rotation with respect to the axis of the patellar tendon. (Reed report, January 22, 2020).

17) On February 4, 2020, Dr. Haughom reviewed the CT scan with Employee and said it showed "the tibial component internally rotated 20 degrees." He could "likely improve" Employee's

knee “with a revision of his right total knee arthroplasty.” Employee wanted to proceed with the surgery “pending workers’ compensation approval.” (Haughom report, February 4, 2020).

18) On May 1, 2020, Lisa Ballehr, D.O., radiologist, at Dr. Youngblood’s referral reviewed Employee’s January 22, 2020 right knee CT images. Her findings included:

Osseous: Tricomponent total knee arthroplasties in place. Prosthetic components are well-seated and normally aligned. No periprosthetic bone erosion, loosening and no findings of periprosthetic fracture. Joint spacers in place.

General: Small joint effusion. No soft tissue mass or significant fluid collection about the knee. The visualized muscles are normal in density and caliber.

Impression:

- a. Tricomponent total knee arthroplasty in place with no significant postoperative complicating features.
- b. Small joint effusion.

Key points: Original report is not provided for correlation. (Ballehr report, May 1, 2020).

19) On July 1, 2020, *Rodriguez-Roach I* raised concerns about gaps in the medical evidence, a new medical dispute since Dr. Curran’s initial SIME report, and the panel’s lack of understanding of disparate readings from two physicians looking at the same CT scans. *Rodriguez-Roach I* gave the parties an opportunity to brief the issue, not raised prior to the last hearing, whether a supplemental SIME should be ordered so Dr. Curran can review the medical records and answer questions applicable to *Rodriguez-Roach I*’s concerns. The parties had until July 8, 2020, to file optional, supplemental briefing on this issue. (*Rodriguez-Roach I*).

20) On July 9, 2020, *Rodriguez-Roach II* ordered the parties to submit medical records, and questions to Dr. Curran for a supplemental SIME. (*Rodriguez-Roach II*).

21) On November 22, 2020, Dr. Curran opined Employee’s right patella deviation was work related; however, Dr. Curran did not agree right knee surgery was appropriate at this time. He believed a pain management regimen and a neurological workup would clarify whether surgery would be beneficial. He recommended pain management as a future medical course of action and believed Employee reached medical stability on February 4, 2020. (Curran report, November 22, 2020).

22) On March 16, 2021, Employee filed a claim for TTD, PPI, medical costs, transportation costs, interest, attorney fees and costs. He stated a consequential injury related to his July 18, 2018 knee surgery was a distinct and compensable injury. (Workers' Compensation Claim, March 16, 2021).

23) On April 8, 2021, Employer denied Employee's claim under the basis of a superseding or intervening event. Employer denies Employee is entitled to TTD or PPI based on the compromise and release Employee signed on September 16, 2019. Employer denies any medical costs that were not reasonable, necessary, or related to the May 21, 2015 work injury. (Controversion Notice, April 8, 2021).

24) On July 12, 2021, the parties stipulated to cancel a hearing scheduled for July 14, 2021. They agreed to hold Employee's affidavit of readiness for hearing in abeyance as well as Employer's controversions. Employer agreed to hold Employee harmless on the Medicaid lien, any unpaid bills related to Employee's right knee, and Employer would work on obtaining Medicare Set-Aside (MSA) information. Employer agreed to pay Employee's attorney's fees and costs through the date of the stipulation. (Stipulation of the Parties, July 12, 2021).

25) On March 6, 2023, Employee requested a hearing on his March 16, 2021 claim. (Affidavit of Readiness for Hearing, March 6, 2023).

26) On March 16, 2023, Employer opposed Employee's affidavit of readiness asserting on going discovery disputes. Employer contended Employee recently provided new releases for medical records that Employer must obtain and review prior to hearing. (Affidavit of Opposition, March 16, 2023).

27) On April 11, 2023, the designee set a hearing date for August 16, 2023 on Employee's claim. Employer maintained its opposition and noted the parties were discussing settlement options. (Prehearing Conference Summary, April 11, 2023).

28) On May 26, 2023, Employee's attorney withdrew from the case. (Notice of Withdrawal, May 26, 2023).

29) On June 6, 2023, Employer filed a petition to enforce the agreed upon settlement terms memorialized in the September 16, 2019 compromise and release agreement and July 13, 2021 Board approved stipulation. (Petition, June 6, 2023).

30) On July 18, 2023, Employee advised his attorney withdrew from the case. Employee

declined to continue the hearing set for August 16, 2023. Employer requested its June 6, 2023 petition to enforce the settlement agreement be added to the issues for hearing. The issues set for hearing were (1) Employee's medical and indemnity benefits, (2) Employee's need and compensability of medical treatment, and (3) Employer's petition to enforce the settlement agreement. (Prehearing Conference Summary, July 18, 2023).

31) On August 14, 2023, Employer filed a petition to continue the August 16, 2023 hearing and to request mediation. Employer contended good cause existed for a continuance under 8 AAC 45.074(b)(1)(D) based on Employee's representations he would secure counsel prior to hearing but has not done so. Employer requested an order directing the parties to mediation to resolve the disputed issues citing previous board decisions *Lindeke v. Anchorage Christian School*, AWCBC Dec. No. 11-0040 and *Ellison v. Fairbanks Gold Mining*, AWCBC Dec. No. 13-0026. (Petition, August 14, 2023).

32) Neither party filed briefs prior to hearing. (Observations).

33) At hearing Employee testified his attorney recently withdrew from his case and he was actively looking to retain an attorney. Employee affirmed he thought he might be able to retain an attorney prior hearing but was unsuccessful. He believed that continuing the hearing would be in his best interest. He raised concerns about a lack of communication with his former attorney that made him unaware the Employer was actively trying to resolve his case. Employee joined Employer's petition to continue and agreed mediation seemed like a beneficial course of action for him prior to a merits hearing. (Employee's Hearing Argument, August 16, 2023).

34) Employer's attorney at hearing noted she filed the petition for continuance based on the representations made by Employee at the previous prehearing conference that he was seeking an attorney. When an entry of appearance for a new attorney did not arrive in the days prior to hearing Employer requested the hearing be continued to allow Employee to retain counsel. Employer added this case has gone through two rounds of settlement prior to the current hearing and the remaining issues could be resolved as part of a Medicare Set-Aside, which Employer has completed. Employer believed going to mediation will provide Employee with additional information and knowledge he currently lacks and enable him to make an informed decision to resolve his case. Employer also noted she filed her petitions prior to hearing to notify the Board there were preliminary issues that needed to be addressed and explain why briefs had not been

filed. (Employer’s Hearing Argument, August 16, 2023).

35) The parties stipulated Employee’s March 6, 2023 affidavit of readiness remains effective, Employee has met his AS 23.30.110(c) deadline, and his hearing request will be held in abeyance pending mediation. (Observations).

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 .

...

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).

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.

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 45.074. 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

....

(N) the board determines that despite a party's due diligence, irreparable harm may result from a failure to grant the requested continuance or cancellation under this section

The issue of board-ordered mediation was first addressed in *Lindeke v. Anchorage Grace Christian School*, AWCB Decision No. 11-0400 (April 18, 2011). *Lindeke* noted there was no specific statutory or regulatory provision requiring parties to submit to mediation, but the Alaska Workers' Compensation Act contained broad authority for resolving disputes. The Act requires "process and procedure" to be as "summary and simple as possible," and is to be interpreted to ensure the "quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost" to Employer. That goal and intent had not been met in *Lindeke* as the case had languished or "gone nowhere" for over six years. *Lindeke* noted that mediation is relatively quick, usually taking only one business day, very efficient because it normally resolves the entire case with very little Division resources, and fair because both parties must agree to a mediated settlement. Also, costs to the employer for a mediated settlement are likely to be significantly less than continued litigation. Consequently, *Lindeke* ordered the parties to mediate, but advised they were not required, or forced, to actually resolve this case through mediation.

Board-ordered mediation was again addressed in *Ellison v. Fairbanks Gold Mining Co.*, AWCB Decision No. 13-0026 (March 15, 2013). *Ellison* had been ongoing for over seven years without resolution, and, relying on *Lindeke*, mediation was ordered. *Ellison* noted that employers were equally entitled to a reasonable-cost resolution as employees were to medical and indemnity benefits.

Board ordered mediation was also addressed in *Freelong v. Chugach Alaska Services, Inc.*, AWCB Decision No. 14-0140 (October 20, 2014). *Freelong* had been ongoing for over six years, and there had been four board decisions, including a decision on the merits that was on appeal to the Appeals Commission. Noting that significantly more litigation would be required before a final decision was reached by the board or Commission, the parties were ordered to attempt mediation.

ANALYSIS

1) Was the decision continuing the hearing on Employee's claim correct?

Hearings will be held at the time and place fixed by notice served and continuances may only be granted in accordance with the Act. 8 AAC 45.070(a). Continuances are not favored will not be routinely granted. 8 AAC 45.074(b). "Good cause" is required to grant a continuance and the applicable regulation provides situations that constitute good cause. 8 AAC 45.074(b)(1). One of the possible showings of good cause in 8 AAC 45.074(b)(1) must apply. Under (N), a continuance can be granted when irreparable harm may result despite a party's due diligence. Employee requested a hearing, then subsequently Employer filed a petition to continue the hearing; hearing continuances are not favored and are not routinely granted. 8 AAC 45.074(b).

Employee testified his attorney withdrew from the case after requesting a hearing . Employee wanted an attorney to assist in his case and had previously noted at a prehearing conference he was without an attorney but would be searching to secure one prior to the current hearing. Employer contended the case was close to a resolution and a continuance would be in Employee's best interest if he sought additional advice from an attorney so he could better understand his prior settlement agreements and their effect on a possible case resolution. If Employee were to proceed to a complicated merits hearing without an attorney, it is likely irreparable harm may occur. The hearing was properly continued to allow Employee to retain an attorney if he chooses to proceed with mediation or a merits hearing.

2) Was the order to attend a settlement conference/mediation correct?

Employee was injured in 2015, his case resolved in 2019 with a settlement agreement that allowed for future medical costs to remain open. The parties reached a stipulation in 2021 that agreed Employer was responsible for certain medical costs. Employer said a revised settlement agreement had been drafted and sent to Employee. Employee testified he was unaware of recent settlement negotiations due to communication issues with his former attorney. Employer advised attending mediation will be beneficial for both parties, agreed Employee met his AS 23.30.110(c) deadline, and to to hold Employee's affidavit of readiness for hearing in abeyance if mediation were

unsuccessful. The order directing the parties to attempt a mediated resolution of this case was correct.

The parties are advised they are not being required or forced to actually resolve the case, but only to make a good faith attempt to settle the case's remaining issues. If the parties are not able to successfully mediate the claim, either party has the right to seek further board action.

CONCLUSIONS OF LAW

- 1) The decision continuing the hearing on Employee's claim was correct.
- 2) The order to attend a settlement conference/mediation was correct.

ORDER

- 1) Employer's August 14, 2023 petition for continuance is granted.
- 2) Employer's August 14, 2023 petition for settlement conference/mediation is granted.
- 3) Employee's March 6, 2023 Affidavit of Readiness remains effective and will be held in abeyance.
- 4) Jurisdiction is reserved to resolve any remaining disputes.

Dated in Anchorage, Alaska on August 17, 2023.

ALASKA WORKERS' COMPENSATION BOARD

_____/s/
Kyle Reding, Designated Chair

_____/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 MANUEL D. RODRIGUEZ ROACH, employee / claimant v. MANOR MANAGEMENT OF ALASKA, INC, employer; LIBERTY NORTHWEST INSURANCE CORP, insurer / defendants; Case No. 201508629; 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 August 17, 2023.

/s/
Rachel Story, Office Assistant