

# ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

NATASHA D. ZANOSKO, )  
)  
Employee, )  
Claimant, ) INTERLOCUTORY  
) DECISION AND ORDER  
v. )  
) AWCB Cases No. 202303318M,  
SOUTHCENTRAL FOUNDATION, ) 202123178J, 202218135J  
)  
Employer, ) AWCB Decision No. 23-0050  
and )  
) Filed with AWCB Anchorage, Alaska  
ALASKA NATIONAL INSURANCE, ) on September 8, 2023  
)  
Insurer, )  
Defendants. )  
)

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Southcentral Foundation's (Employer) August 9, 2023 petition to "consolidate claims," was heard on the written record in Anchorage, Alaska, on August 16, 2023, a date selected on July 11, 2023. A June 29, 2023 hearing request gave rise to this hearing. Natasha D. Zanosko (Employee) is self-represented. Attorney Michelle Meshke represents Employer. The record closed when the panel met to deliberate on September 7, 2023.

## ISSUE

Employer contends Employee's three separate claims for three separate alleged COVID-19 exposures should be "consolidated" to expedite case handling. It seeks an associated order.

Employee did not provide briefing for this hearing. Employer contends she refused to stipulate to "consolidating" her third case with the two previously "consolidated" matters.

**Should Employee's claims in cases 202303318, 202123178, and 202218135 be joined?**

FINDINGS OF FACT

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

- 1) On August 4, 2021, the Division of Workers' Compensation (Division) in case 202123178 created an agency file for Employee with an April 1, 2021 injury date. Employee claimed a positive COVID-19 test and related symptoms, which she attributes to her work with Employer. She contended her symptoms continued even after subsequent negative testing. (First Report of Injury, August 4, 2021).
- 2) On August 6, 2021, a "change" report in case 202123178 stated November 9, 2020, was the correct injury date. (First Report of Injury, August 6, 2021).
- 3) On October 11 2022, Employee filed a claim seeking various benefits in case 202123178 for her alleged November 9, 2020 COVID-19 exposure. (Claim for Workers' Compensation Benefits, October 11, 2020).
- 4) On December 7, 2022, Employee filed a separate claim seeking benefits for COVID-19 exposure, which she attributed to her work with Employer on May 27, 2022. (Claim for Workers' Compensation Benefits, undated).
- 5) On December 12, 2022, the Division created an agency file in case 202218135 for Employee with a May 27, 2022 injury date. She claimed COVID-19 symptoms with a positive home test, which she attributed to her work with Employer. (First Report of Injury, December 12, 2022).
- 6) On March 10, 2023, the Division created an agency file in case 202303318 for Employee with a December 24, 2022 injury date. She claimed a positive COVID-19 test and related symptoms, which she again attributed to her work with Employer. (First Report of Injury, March 10, 2023).
- 7) On April 25, 2023, Employee filed a separate claim in case 202303318 seeking various benefits for multiple symptoms she attributed to alleged COVID-19 exposure while working for Employer. (Claim for Workers' Compensation Benefits, April 23, 2023).
- 8) On May 31, 2023, a "change" report in case 202303318 showed the correct injury date as December 27, 2022. (First Report of Injury, May 31, 2023).
- 9) On March 31, 2023, Employer in case 202303318 requested an order "consolidating" Employee's December 24, 2022 claim with her existing master claim in case 202123178M, which

already included her November 9, 2020 (202123178) and May 27, 2022 (202218135) claims for alleged COVID-19 infections at work. (Petition, March 31, 2023).

10) On July 11, 2023, the parties appeared telephonically at a prehearing conference, but there was no indication they discussed Employer’s March 31, 2023 “Petition to Join” other than to schedule a written record hearing on the petition for August 16, 2023. (Prehearing Conference Summary, July 11, 2023).

11) On July 14, 2023, at 10:35 AM Employee spoke with Division staff, who recorded:

EE unsure on whether or not she wants to join cases w/202123178M and asked what I would do. Told EE that I cannot influence her on a decision but she can always communicate w/ER attny to weigh pros & cons, which EE said she will most likely reach out to ER attny to confirm she would like to join. (Agency file: Judicial; Communications; Phone Call tabs, July 14, 2023).

12) On July 14, 2023, at 10:43 AM Employee emailed Meshke and among other things stated:

. . . also as far as combining the cases for this upcoming [SIME] everything is controverted anyhow and none of my medical has been paid on any of these cases[;] so I think I’m okay with combining them and going to hearing to get these bills paid and penalties paid[.] [It’s] been 3 years since this nightmare [began] and bills are piling up so this needs to be resolved. (Employee email, July 14, 2023).

13) Based on Employee’s July 14, 2023 teleconference with Division staff and her same-dated Email to Meshke, it appears Employee does not object to combining and adjudicating her three cases together. (Inferences drawn from the above).

### 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 . . . to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to . . . employers. . . .

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 23.30.135. 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 45.040. Parties.** . . .

(c) Any person who may have a right to relief in respect to or arising out of the same transaction or series of transactions should be joined as a party.

(d) Any person against whom a right to relief may exist should be joined as a party.  
. . . .

(f) Proceedings to join a person are begun by

- (1) a party filing with the board a petition to join the person and serving a copy of the petition, in accordance with 8 AAC 45.060, on the person to be joined and the other parties; or
  - (2) the board or designee serving a notice to join on all parties and the person to be joined.
- . . . .

(j) In determining whether to join a person, the board or designee will consider

- (1) whether a timely objection was filed in accordance with (h) of this section;
- (2) whether the person's presence is necessary for complete relief and due process among the parties;
- (3) whether the person's absence may affect the person's ability to protect an interest, or subject a party to a substantial risk of incurring inconsistent obligations;
- (4) whether a claim or petition was filed against the person by the employee; and
- (5) if a claim was not filed as described in (4) of this subsection, whether a defense to a claim, if filed by the employee, would bar the claim.

(k) If claims are joined together, the board or designee will notify the parties which case number is the master case number. After claims have been joined together,

- (1) a pleading or documentary evidence filed by a party must list the master case number first and then all the other case numbers;
- (2) a compensation report, controversion notice, or a notice under AS 23.30.205(f) must list only the case number assigned to the particular injury with the employer filing the report or notice;
- (3) documentary evidence filed for one of the joined cases will be filed in the master case and the evidence will be considered as part of the record in each of the joined cases; and

(4) the original of the board's decision and order will be filed in the master case file, and a copy of the decision and order will be filed in each of the joined case files. . . .

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

(b) For claims and petitions under this subsection,  
. . . .

(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 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

ANALYSIS

**Should Employee's claims in cases 202303318, 202123178, and 202218135 be joined?**

Employer's March 31, 2023 petition seeks "consolidation" of Employee's claims in cases 202303318, 202123178, and 202218135 under 8 AAC 45.050(b)(5). It contends all three claims arise from alleged COVID-19 exposures Employee attributes to her work with Employer. The regulation upon which Employer relies is the consolidation regulation. However, that regulation appears to only apply when "a single incident injures two or more employees." In such cases, cases may be consolidated "for the purpose of taking evidence." This generally refers to, for example, a mass-casualty event where common witnesses to an accident may have to be deposed numerous times in each injured person's case. Consolidation in such cases minimizes the need for multiple depositions.

Here, there is only one injured claimant, and she has three alleged injury dates for the same malady, COVID-19, from her same employer in all three cases. Therefore, although neither regulation is a perfect fit, 8 AAC 45.040(c), (d), and (f), which deals with "joinder," fits better in this instance. Employee has filed three claims -- one in each case. She potentially has a "right to relief" arising out of each incident. 8 AAC 45.040(c). Employer is a party against whom a "right to relief" may exist. 8 AAC 45.040(d). The point in Employer's petition is to get these three claims in three

separate cases combined so they can be adjudicated more efficiently and predictably. This goal is in keeping with the legislative mandate. AS 23.30.001(1); 8 AAC 45.040(f).

Applying the five factors from 8 AAC 45.040(j) to this case: (1) Employee did not timely object to Employer's petition; in fact, she notified the Division and Meshke that she did not object; (2) both parties are necessary for complete relief and due process among the parties; otherwise, the parties will engage in piecemeal litigation; (3) either party's absence may subject a party to a substantial risk of incurring inconsistent obligations; it is possible three separate panels may come to three different conclusions in each case; (4) Employee filed a claim against Employer in each instance; and (5) since she filed a claim as described in (4) this last subsection is irrelevant.

Employee did not file a brief for this written-record hearing. However, her July 14, 2023 discussion with Division staff and her same-dated email to Meshke demonstrate she does not oppose combining her cases and claims together to expedite resolution. *Rogers & Babler*. Therefore, Employer's March 31, 2023 petition to consolidate claims will be treated as a petition to join them judicially, and based upon the above analysis it will be granted to best ascertain the rights of all parties. AS 23.30.135(a).

Hereafter, 202303318M will be the master case number. Henceforth, a pleading or documentary evidence filed by a party must list master case number 202303318M first followed by 202123178J and 202218135J. However, a Compensation Report, Controversion Notice, or Second Injury Fund notice must list only the case number assigned to the particular injury. Documentary evidence filed for one of these three joined cases will be filed in the master case and the evidence will be considered part of the record in each joined case as well. Similarly, any Decision and Order will be filed in the master case file and a copy will be placed in each joined file. 8 AAC 45.040(k).

#### CONCLUSION OF LAW

Employee's claims in cases 202303318, 202123178, and 202218135 will be joined.

ORDER

- 1) Employer's March 31, 2023 petition to consolidate is treated as a petition to join.
- 2) Employer's March 31, 2023 petition to join is granted.
- 3) Hereafter, 202303318M is the master case number.
- 4) The parties are directed to file subsequent documents as directed in this Decision and Order.

Dated in Anchorage, Alaska on September 8, 2023.

ALASKA WORKERS' COMPENSATION BOARD

\_\_\_\_\_/s/  
William Soule, Designated Chair

\_\_\_\_\_/s/  
Robert C. Weel, 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 Natasha D. Zanosko, employee / claimant v. Southcentral Foundation, employer; Alaska National Insurance Co., insurer / defendants; Cases Nos. 202303318M, 202123178J and 202218135J; 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 September 8, 2023.

  /s/    
Rachel Story, Office Assistant I