

Case: *Abdul K. Adepoju vs. Fred Meyer Stores, Inc.*, Alaska Workers' Comp. App. Comm'n Dec. No. 010 (May 11, 2006)

Facts: Employee filed an appeal of a board decision with the Superior Court on August 5, 2005. The employer moved to transfer the appeal to the Appeals Commission, the employee did not respond to the employer's transfer motion, and the court ordered the appeal transferred to the commission on January 4, 2006.

Statutes/regulations: Before November 7, 2005, AS 23.30.125 provided that a "compensation order may be suspended or set aside . . . through injunction proceedings in the superior court brought by a party in interest against the board," AS 23.30.125(c), and that "proceedings for suspending, setting aside, or enforcing a compensation order . . . may not be instituted except as provided in this section and AS 23.30.170." AS 23.30.125(e). The Administrative Procedure Act, AS 44.62.010 – 44.62.560 – 570, provided specific grounds for judicial review of all administrative decisions and the scope of that review, applicable to the decisions of the board, AS 44.62.330(12). Upon adoption of the Appellate Rules in 1973, the *procedure* for appeal to the superior court outlined in AS 23.30.125(c) was superseded, as the Rules of Appellate Procedure "supersede all other procedural methods specified in Alaska statutes for appeal from administrative agencies to the courts of Alaska." Alaska R. App. P. 607, formerly R. App. P. 45(i).

Section 41, ch. 10, FSSLA 2005 enacted AS 23.30.129, effective November 7, 2005, provided that appeals from board decisions would be decided by a three member panel of the commission, and that final decisions of the commission are appealed to the Alaska Supreme Court consistent with AS 22.05.010(b). The legislature also provided that "litigation . . . and other proceedings pending under a law amended or repealed by this Act or in connection with functions transferred by this Act continue in effect and may be continued and completed" § 80(a), ch. 10 FSSLA 2005.

Issue: Does the commission have jurisdiction to take the appeal?

Holding/analysis: No, the commission determined that the legislature reserved jurisdiction to the courts in cases of appeals filed before November 7, 2005, the effective date of the statute creating the commission. The commission declined jurisdiction, suspended consideration of the appeal for 60 days and directed the employee to ask the Superior Court to vacate the order transferring the appeal.