

Case: *Wasser & Winters Company, Inc. and Alaska National Insurance Company vs. Scott E. Linke*, Alaska Workers' Comp. App. Comm'n Dec. No. 105 (April 28, 2009)

Facts: The employer filed an appeal of a board decision that barred the employer's medical examiner from conducting additional diagnostic testing. The examiner was permitted to interview the employee and review medical records but the board decided that additional testing would be harmful to the employee. Meanwhile, a hearing on the merits of the claim before the board was scheduled for May 5, 2009. The employer sought a continuance; the board designee denied the continuance but directed that the continuance request would be heard as a preliminary matter at the beginning of the May 5, 2009, hearing. The employer then asked the commission to stay the proceedings before the board, arguing that the outcome of the appeal was likely to affect the outcome of the board's decision.

Applicable law: AS 23.30.008(a) states the commission is the "exclusive and final authority for the hearing and determination of all questions of law and fact arising" in an appeal under the Alaska Workers' Compensation Act, except those questions appealed to the Alaska Supreme Court.

Issues: Does the commission have the authority to stay the board proceedings? Should the commission stay the proceedings based on jurisdictional or adjudicative economy considerations?

Holding/analysis: The commission rejected staying the board proceedings based on an argument that allowing the hearing to go forward would not interfere with its jurisdiction in the appeal. Although the commission agreed that it had the authority to stay the board proceedings if they would interfere with its jurisdiction, it concluded the employer's rights in the appeal would not be affected by allowing the board hearing to go forward. The issues listed for hearing were temporary total disability, permanent partial impairment, medical costs, transportation, reemployment benefits, compensation rate adjustment, and attorney fees and costs. The commission decided that the listed issues did not suggest that the board would decide a legal issue that infringes on the subject matter of the appeal or revisit factual findings that it made in the appealed decision.

The commission rejected staying the board proceedings based on arguments about adjudicative economy. The employer argued that the board might have to rehear the merits of the claim if the commission permitted its examiner to do further testing and that changed the examiner's opinion. "[T]he commission's authority to enforce its jurisdiction does not extend to staying board action to avoid waste of the board's and the parties' resources. Such considerations are for the board to weigh when it exercises its discretion on the petition to continue the hearing." Dec. No. 105 at 6.

Lastly, the commission noted that the employer was not unreasonably foreclosed from seeking a continuance from the board such that it might be appropriate for the commission to intervene. "Appellants made no showing that they requested the petition be heard by the board before May 5, 2009, that a hearing time was available,

and that the officer refused to set the petition for hearing before May 5, 2009." *Id.* at 7.

Note: The parties settled this appeal after the order denying a stay was issued. *Wasser & Winters Co., Inc. v. Linke*, Alaska Workers' Comp. App. Comm'n Dec. No. 138 (Sept. 7, 2010) deals with an appeal of a December 23, 2009, board decision addressing a compensation rate adjustment.