

Case: *Emmet Hearon vs. Westaff USA, Inc. and Travelers Insurance Company*, Alaska Workers' Comp. App. Comm'n Dec. No. 107 (May 6, 2009)

Facts: This decision deals with a motion to accept a late-filed appeal. The board's final decision was issued December 16, 2008, but not mailed until the next day, December 17, 2008, as shown on a copy of the envelope postmarked on that date. Emmet Hearon's (Hearon) notice of appeal and motion to accept a late-filed appeal was received and filed in the commission office on Tuesday, January 20, 2009. Hearon explained the one-day delay was a result of a Chinook storm on January 15 or 16 that caused interruptions in bus service and school closures, and prevented him from leaving his home due to a slick driveway and roads. He stated that he made it to the post office on January 17, 2009.

The employer conceded that it suffered no prejudice and the delay was short, but argued that Hearon has a long-established pattern of not filing on time or correctly and that he should not be allowed to continue to ignore the statutes and regulations.

Applicable law: AS 23.30.127(a) provides in pertinent part, "A party in interest may appeal a compensation order issued by the board to the commission within 30 days after the compensation order is filed with the office of the board under AS 23.30.110."

AS 23.30.128(c) permits the commission to take evidence and determine the credibility of evidence offered in considering whether to accept a late-filed appeal.

The commission excuses late filing of an appeal when good cause is presented for the delay. The commission looks to whether the appellant presented evidence of circumstances that justify equitable relief: if the delay was due to a circumstance outside the appellant's control, or the appellant was prevented from filing on time, if the appellant made a good faith attempt to file on time, the length of the delay, and the prejudice to the opposing party. *Olekszyk v. Smyth Moving Service, Inc.*, Alaska Workers' Comp. App. Comm'n Dec. No. 079, 4 (May 28, 2008); *Augustyniak v. Carr Gottstein Foods*, Alaska Workers' Comp. App. Comm'n Dec. No. 064, 12 (November 28, 2007); *Gauthier v. State, Division of Workers' Compensation*, Alaska Workers' Comp. App. Comm'n Dec. No. 052, 5 (August 24, 2007); *Berean v. Coleman Brothers Timber Cutting, Inc.*, Alaska Workers' Comp. App. Comm'n Dec. No. 051, 5 (August 2, 2007).

Issue: Does Hearon have good cause for the commission to accept his late-filed appeal?

Holding/analysis: The commission concluded that Hearon's delay was minimal since it was filed on the first working day after it was due. The commission decided that the appeal was due 30 days after both the filing *and* the mailing of the board decision, or 30 days after December 17, 2008, which would have made the appeal due on January 16, 2009. The employer and insurer conceded there was no prejudice to them. Hearon's excuse "correctly focuses on why he was *prevented* from filing an appeal on time by something outside his control[,]" the Chinook storm. Dec. No. 107 at 7. "The commission therefore excuses the one-day late filing of appellant's appeal based on his statement that he was unable to leave his home due to the storm's effects until Saturday, January 17, 2009." *Id.* at 8.