Alaska Workers' Compensation Appeals Commission

Chenega Lodging d/b/a Hotel Clarion and NovaPro Risk Solutions, Appellants, vs. Ana F. Sosa de Rosario, Appellee.	Final Decision Decision No. 160 February 15, 2012 AWCAC Appeal No. 11-003 AWCB Decision No. 11-0035 AWCB Case No. 200710397

Atencion Sra. Sosa de Rosario: Usted necesita obtener una persona que habla ingles y español para traducir este documento.

Final decision on appeal from Alaska Workers' Compensation Board Decision and Order No. 11-0035, issued at Anchorage on April 5, 2011, by southcentral panel members Laura Hutto de Mander, Chair, David Robinson, Member for Labor, and Janet Waldron, Member for Industry.

Appearances: Colby J. Smith, Griffin & Smith, for appellants, Chenega Lodging d/b/a Hotel Clarion and NovaPro Risk Solutions; Ana F. Sosa de Rosario, self-represented appellee.

Commission proceedings: Appeal filed April 13, 2011, with Expedited Motion for Stay, memorandum and attached Exhibits 1-6; Appellee's Opposition to Motion for Stay by Self-Represented Litigant filed April 22, 2011; hearing on motion for stay held May 11, 2011; order granting motion for stay issued June 14, 2011; briefing completed November 10, 2011; oral argument held on December 29, 2011.

Commissioners: David W. Richards, S. T. Hagedorn, Laurence Keyes, Chair.

By: Laurence Keyes, Chair.

1. Introduction.

The appellee, Ana F. Sosa de Rosario (Sosa de Rosario), began working as a housekeeper for appellant, Chenega Lodging d/b/a Hotel Clarion (Clarion), in

February 2000.[1] According to Sosa de Rosario, on June 28, 2007, while performing housekeeping duties in one of the guest rooms, she injured her lower back when she fell after tripping over an object in the vicinity of the bed. She sought medical treatment later that day.[2]

Sosa de Rosario filed a claim with the Alaska Workers' Compensation Board (board) on July 24, 2008. Following a hearing which began June 9, 2010, and continued for a second day on September 30, 2010, among its rulings, the board decided: 1) Sosa de Rosario had suffered a compensable injury entitling her to benefits, including medical costs, temporary total disability (TTD), temporary partial disability (TPD), permanent partial impairment (PPI), and interest on late-paid TPD benefits; and 2) because Sosa de Rosario had not obtained a PPI rating, her claim for PPI benefits would be heard and decided after another hearing to be convened sometime in the future.[3] Clarion filed an appeal of these rulings with the Alaska Workers' Compensation Appeals Commission (commission). We reverse.

2. Factual background and proceedings.

Sosa de Rosario was treated in the emergency room (ER) at Providence Medical Center the day she allegedly fell, June 28, 2007, complaining of right hip pain that had been bothering her for a month.[4] The ER record indicated that no injury was reported.[5] There was evidence that Sosa de Rosario also had low back pain that pre-existed the work incident.[6] In the ER, Dr. Susan Dietz administered a morphine injection and

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[1] *See Ana Sosa de Rosario v. Chenega Lodging d/b/a Hotel Clarion and NovaPro Risk Solutions,* Alaska Workers' Comp. Bd. Dec. No. 11-0035, 3 (April 5, 2011). Because Sosa de Rosario's first language is Spanish, an interpreter was needed for the board proceedings. *See Sosa de Rosario,* Bd. Dec. No. 11-0035 at 1.

[2] *See Sosa de Rosario,* Bd. Dec. No. 11-0035 at 4.

[3] *See id.* at 23.

[4] *See* Appellants' Exc. 015-16.

[5] *See id.* at 015.

[6] *See id.* at 001, 009, and 012.

released Sosa de Rosario to return to work on July 2, 2007.[7] Clarion began paying TTD benefits on July 2, 2007.[8] After seeing Dr. Bret Thompson on July 6 and July 12, 2007, he released Sosa de Rosario to work as of July 23, 2007.[9] That day, she resumed working in a light duty capacity in the laundry and continued to do so until April 21, 2008.[10] Clarion paid Sosa de Rosario during that timeframe.[11]

A magnetic resonance imaging of the lumbar spine that was read on August 21, 2007, revealed a focal disc herniation at L5-S1.[12] Dr. Elizabeth Roberts, who examined Sosa de Rosario on September 4, 2007, referred her to an orthopedist, Dr. James Eule.[13] Instead, she saw Dr. John H. Schwartz, an internist,[14] who had treated her prior to the work incident,[15] and asked for a referral to physical therapy.[16] Sosa de Rosario began physical therapy with Mary Sorich on October 2, 2007.[17] On seeing Sosa de Rosario again on November 28, 2007, Dr. Schwartz thought she would benefit from a laminectomy or discectomy.[18]

Dr. Charles N. Brooks, an orthopedist, performed an employer's medical evaluation (EME) of Sosa de Rosario on December 7, 2007. He diagnosed degenerative disc disease and degenerative arthritis of the lumbar spine due to genetics and aging, facet hypertrophy L5-S1 due to degenerative arthritis, disc bulges at L3-L4 and L4-L5

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7 *See* Appellants' Exc. 015-16.

8 *See Sosa de Rosario,* Bd. Dec. No. 11-0035 at 22.

9 *See* Appellants' Exc. 019-27. Dr. Thompson also saw Sosa de Rosario on August 8, 2007. *See id.* at 028-30.

10 *See Sosa de Rosario,* Bd. Dec. No. 11-0035 at 22.

11 *See id.*

12 *See* Appellants' Exc. 031-33.

13 *See id.* at 034-36.

14 *See* September 30, 2010, Hr'g Tr. 96:19 – 97:8.

15 *See* Appellants' Exc. 001 and 004-05.

16 *See id.* at 038.

17 *See id.* at 040.

18 *See id.* at 047.

due to degenerative disc disease, right posterolateral disc extrusion at L5-S1 with onset in early May 2007, and right lateral recess and foraminal stenosis L5-S1.[19] Dr. Brooks concluded that Sosa de Rosario had not suffered an injury to her back on June 28, 2007, because the focus of her visit to the ER that day was her complaints of chronic pain radiating from her low back to her buttocks and groin, and he believed that the mechanism of injury was implausible.[20] Dr. Brooks thought Sosa de Rosario was medically stable and did not require further treatment.[21] As a result of this report, Clarion controverted all benefits on January 31, 2008.[22]

On December 11, 2007, prior to issuance of the controversion, Sosa de Rosario was evaluated by Jane Sonnenburg, a physician's assistant (PA) in Dr. Eule's office. PA Sonnenburg recommended an epidural steroid injection.[23] Sosa de Rosario was released from physical therapy on December 12, 2007.[24] The epidural steroid injection was administered by Dr. Larry A. Levine on December 18, 2007.[25] After seeing Sosa de Rosario again on January 8, 2008, PA Sonnenburg responded to an inquiry from Clarion that she agreed with the opinions expressed by Dr. Brooks in his EME report.[26] After seeing Sosa de Rosario on January 9, 2008, Dr. Schwartz limited her to light duty work indefinitely.[27] Subsequently, on April 22, 2008, Dr. Schwartz referred Sosa de Rosario to Dr. Eule again to consider surgical removal of the herniated disc. He also thought that she "was too disabled to return to work."[28]

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19 *See* Appellants' Exc. 057.

20 *See id.* at 058-59.

21 *See id.* at 060-61.

22 *See Sosa de Rosario,* Bd. Dec. No. 11-0035 at 6.

23 *See* Appellants' Exc. 063-64.

24 *See Sosa de Rosario,* Bd. Dec. No. 11-0035 at 7.

25 *See* Appellants' Exc. 065-74.

26 *See id.* at 075.

27 *See id.* at 079-80.

28 Appellants' Exc. 082.

On July 18, 2009, a second independent medical evaluation (SIME) was conducted by Dr. John J. Lipon, an orthopedic surgeon.[29] In his report, Dr. Lipon stated his opinion that Sosa de Rosario suffered from degenerative changes to her lumbar spine which were pre-existing.[30] In his view, the herniated disc was "probably due to degenerative disc disease and possibly to occupational and/or non-work-related activities[.]"[31] He concluded that: 1) she was not injured at work on June 28, 2007; 2) employment was not the substantial cause of her lumbar condition; and 3) employment was not the substantial cause of any aggravation of her lumbar condition.[32] Dr. Schwartz authored a letter dated October 27, 2009, that stated Sosa de Rosario suffered from "symptomatic, disabling right lower back and extremity discomfort…resulting in loss of work and chronic pain" and that the June 28, 2007, "injury at work is in large part responsible for her persistent disability."[33]

A prehearing conference (PHC) was held on May 11, 2010.[34] The hearing on the merits of the claim began on June 9, 2010, and was completed after a second day on September 30, 2010.[35]

3. Standard of review.

The board has the exclusive power to determine the credibility of a witness.[36] The board's findings regarding the credibility of the testimony of a witness are binding on the commission.[37] Pursuant to the provisions of AS 23.30.128(b), the commission is to uphold the board's findings of fact if they are supported by substantial evidence in light of the record as a whole. "Substantial evidence is such relevant evidence as a

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29 *See* Appellants' Exc. 086.

30 *See id.* at 109.

31 Appellants' Exc. 109.

32 *See* Appellants' Exc. 112.

33 *Sosa de Rosario,* Bd. Dec. No. 11-0035 at 7.

34 *See id.* at 2, n.2.

35 *See id.* at 1.

36 *See* AS 23.30.122.

37 *See* AS 23.30.128(b).

reasonable mind might accept as adequate to support a conclusion."[38] "The question whether the quantum of evidence is substantial enough to support a conclusion in the contemplation of a reasonable mind is a question of law"[39] and therefore independently reviewed by the commission.[40] The commission exercises its independent judgment in reviewing questions of law.[41]

4. Discussion.

a. Applicable law.

The Alaska Workers' Compensation Act, AS 23.30.001 — .395 was amended in 2005. Among the amendments, AS 23.30.010 was divided into subsections (a) and (b). In relevant part, AS 23.30.010(a) reads:

> [C]ompensation or benefits are payable . . . for disability . . . or the need for medical treatment of an employee if the disability . . . or the employee's need for medical treatment arose out of and in the course of the employment. To establish a presumption under AS 23.30.120(a)(1) that the disability . . . or the need for medical treatment arose out of and in the course of the employment, the employee must establish a causal link between the employment and the disability . . . or the need for medical treatment. A presumption may be rebutted by a demonstration of substantial evidence that the . . . disability or the need for medical treatment did not arise out of and in the course of the employment. When determining whether or not the . . . disability or need for medical treatment arose out of and in the course of the employment, the board must evaluate the relative contribution of different causes of the disability . . . or the need for medical treatment. Compensation or benefits under this chapter are payable for the disability . . . or the need for medical treatment if, in relation to other causes, the employment is the substantial cause of the disability . . . or need for medical treatment.

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[38] *Pietro v. Unocal Corp.*, 233 P.3d 604, 610 (Alaska 2010) (quoting *Grove v. Alaska Constr. & Erectors,* 948 P.2d 454, 456 (Alaska 1997) (internal quotation marks omitted)).

[39] *McGahuey v. Whitestone Logging, Inc.*, Alaska Workers' Comp. App. Comm'n Dec. No. 054, 6 (Aug. 28, 2007) (citing *Land & Marine Rental Co. v. Rawls*, 686 P.2d 1187, 1188-89 (Alaska 1984)).

[40] AS 23.30.128(b).

[41] *Id*.

AS 23.30.010(a) restates decisional law in terms of the showing required of an employee to attach the presumption of compensability under AS 23.30.120(a)(1). The employee must establish a causal link between employment and the need for medical treatment, etc.[42] However, the commission has previously concluded that AS 23.30.010(a) modified both A) the second step in the three-step compensability analysis, the evidence required of an employer to rebut the presumption, and B) the third step in the analysis, the showing required of an employee to obtain compensation if the presumption is successfully rebutted.[43]

In *Runstrom*, the commission discussed at length its reasons for holding that AS 23.30.010(a) altered the compensability analysis.[44] Initially, we noted that in determining whether the claim for benefits arose out of employment, the statute requires the board to evaluate the relative contribution of different causes of the disability or need for medical treatment. Compensation or benefits are payable if employment is *the substantial cause*, in relation to other causes, of the disability or need for medical treatment.[45]

As for the second step in the analysis, under subsection .010(a), in order to rebut the presumption, that is, demonstrate that the disability, need for medical treatment, etc., did *not* arise out of employment, the employer must present substantial evidence that a cause other than employment was the substantial cause, in relation to other causes, of the disability, etc.[46] Accordingly, in *Runstrom*, we held that "if the employer can present substantial evidence that demonstrates that a cause other than

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[42] *See, e.g., Tolbert v. Alascom, Inc.,* 973 P.2d 603, 610 (Alaska 1999).

[43] *See Runstrom v. Alaska Native Medical Center,* Alaska Workers' Comp. App. Comm'n Dec. No. 150, 6 (Mar. 25, 2011).

[44] *See id.* at 5-8.

[45] *See id.* at 5. *See also Uresco Constr. Materials, Inc. v. Porteleki*, Alaska Workers' Comp. App. Comm'n Dec. No. 152 (May 11, 2011).

[46] Stated another way, an employer can also rebut the presumption with substantial evidence that employment was *not* the substantial cause, in relation to other causes, of the disability, etc.

employment played a greater role in causing the [disability, need for medical treatment, etc.], the presumption is rebutted."[47]

In terms of the third step in the analysis, subsection .010(a) does not specify what showing is required of the employee in order to be awarded compensation, once the presumption is successfully rebutted. However, under established decisional law, an employee has the burden to prove the compensability of his or her claim by a preponderance of the evidence.[48] In order to satisfy this burden, the employee must induce a belief in the trier of fact, here, the board, that the asserted facts are probably true.[49] To be upheld, the board's findings in this regard must be supported by substantial evidence in light of the whole record.[50] With the foregoing legal authority as guidance, in *Runstrom*, we concluded:

> [T]wo elements of the third step in the presumption analysis under former law, that the presumption drops out and the employee must prove the claim by a preponderance of the evidence, should be engrafted on the third step of the analysis under AS 23.30.010(a). . . . If the employer rebuts the presumption, it drops out, and the employee must prove, by a preponderance of the evidence, that in relation to other causes, employment was the substantial cause of the disability, need for medical treatment, etc. Should the employee meet this burden, compensation or benefits are payable.[51]

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[47] *See Runstrom,* App. Comm'n Dec. No. 150 at 7. Under old law, if the employee established the causal link, the presumption could be rebutted by the employer with a presentation of substantial evidence that either (1) provided an alternative explanation which, if accepted, would exclude work-related factors as a substantial cause of the disability; or (2) directly eliminated any reasonable possibility that employment was a factor in causing the disability. *See, e.g., Tolbert,* 973 P.2d at 611.

[48] *See, e.g., Gillispie v. B & B Foodland,* 881 P.2d 1106, 1111 (Alaska 1994); *Louisiana Pacific Corp. v. Koons*, 816 P.2d 1379, 1381 (Alaska 1991).

[49] *See Bradbury v. Chugach Elec. Ass'n,* 71 P.3d 901, 906 (Alaska 2003).

[50] *See Gillispie,* 881 P.2d at 1111.

[51] *See Runstrom,* App. Comm'n Dec. No. 150 at 8.

b. Is the board's conclusion that employment was the substantial cause of the disability and need for medical treatment supported by substantial evidence in light of the whole record?

The commission must decide, as a matter of law, whether the board's conclusion that employment was the substantial cause of Sosa de Rosario's disability and need for medical treatment is supported by substantial evidence in light of the whole record.[52] It goes without saying that a work-related incident or condition is necessary for a claimant to be entitled to workers' compensation benefits. Sosa de Rosario provided evidence of a causal link between employment and her lumbar condition that was sufficient to attach the presumption of compensability to her claim. If not from other evidence, certainly Dr. Schwartz's opinion that her injury was work-related provided that link.[53] In contrast, there was evidence presented that Sosa de Rosario was not injured on June 28, 2007, and that her lumbar condition was caused by degenerative factors.[54] The opinions of the EME physician, Dr. Brooks, and the SIME physician, Dr. Lipon, were to that effect. Their opinions constituted substantial evidence that employment was not the substantial cause of Sosa de Rosario's injury, disability, need for medical treatment, etc. The evidence was adequate to rebut the presumption of compensability.[55]

We now turn to the question whether there was substantial evidence in the record as a whole to support the board's conclusion that employment was the

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[52] We also infer from this conclusion by the board that it determined Sosa de Rosario proved her claim by a preponderance of the evidence.

[53] *See Sosa de Rosario,* Bd. Dec. No. 11-0035 at 7.

[54] *See* Appellants' Exc. 057-59, 109 and 112.

[55] Under old law, it was always possible for an employer to rebut the presumption of compensability by presenting expert opinion evidence that the employee's work was not *a substantial cause* of the disability, etc. *See, e.g., Stephens v. ITT/Felec Services,* 915 P.2d 620, 624 (Alaska 1996). We conclude that, under AS 23.30.010(a), an employer may rebut the presumption of compensability by presenting expert opinion evidence that the employee's work was not *the substantial cause* of the disability, etc.

substantial cause of Sosa de Rosario's disability and need for medical treatment.[56] The evidence that it was consisted primarily of the opinions of Dr. Schwartz, that Sosa de Rosario suffered from "symptomatic, disabling right lower back and extremity discomfort…resulting in loss of work and chronic pain" and that the June 28, 2007, "injury at work is in large part responsible for her persistent disability."[57] Elsewhere, the board noted that Dr. Schwartz "repeatedly stated [Sosa de Rosario's] injury is work related."[58] However, when objectively viewed, this evidence falls short of the statutory standard that employment must be the substantial cause, in relation to other causes, of the injury and resultant disability. As a matter of semantics, to say that the injury was *work-related*, or was *in large part* responsible for her disability, does not *necessarily* mean that employment was *the substantial cause*. On the other hand, as previously discussed, the expert opinions of Drs. Brooks and Lipon were that Sosa de Rosario did not suffer a work-related injury and that degenerative factors were the substantial cause of her lumbar condition.[59]

In arriving at its conclusion, the board discounted the evidence provided by Drs. Brooks and Lipon, primarily on the grounds that they do not speak Spanish. The implication is that they did not understand what the origin of Sosa de Rosario's lumbar condition was, due to the language barrier. Instead, the board preferred the evidence provided by Dr. Schwartz because he speaks Spanish and his opinions were expressed with conviction.[60] In assessing what impact the language issue played, we note that an

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[56] On this, the central issue in this appeal, Sosa de Rosario's credibility is not particularly helpful in resolving it. Even though the board found her credible in her assertion she was injured in the course of her employment, medical opinions are far more probative of the medical issue whether employment was the substantial cause of Sosa de Rosario's disability.

[57] *Sosa de Rosario,* Bd. Dec. No. 11-0035 at 7.

[58] *Id.* at 19.

[59] *See* Appellants' Exc. 057-59, 109 and 112.

[60] *See Sosa de Rosario,* Bd. Dec. No. 11-0035 at 19-20.

interpreter was present at both the EME and SIME.[61] Moreover, we believe the medical evidence is the most important consideration, and it is not affected by any language barrier. An accurate diagnosis of the cause of Sosa de Rosario's lumbar condition essentially requires the interpretation of orthopedic medical data. Because both Drs. Brooks and Lipon are orthopedic specialists, they are better-qualified than Dr. Schwartz, an internist, to render *orthopedic* medical opinions. They have more expertise in this area. Their reports constituted the more specific, the more probative, and the more persuasive evidence, on the issue of whether employment was the substantial cause of Sosa de Rosario's low back condition.

Furthermore, it appears that the board may have misapplied certain legal standards in the process of analyzing the evidence. It faulted Dr. Brooks' report for his failure to "exclude occupational activities as a possible cause" of the herniated disc at L5-S1.[62] In terms of rebutting the presumption of compensability, Dr. Brooks no longer needed "to exclude work-related factors as a substantial cause[.]"[63] Also, his failure to exclude work-related factors as *a possible* or *a substantial* cause of Sosa de Rosario's lumbar condition is of limited use in deciding the question whether employment was *the substantial cause* of her disability, etc.

In the commission's view, the quantum of evidence was not substantial enough to support the board's conclusion that employment was the substantial cause of Sosa de Rosario's disability and need for medical treatment. The record as a whole, in particular, the expert medical opinions provided by Drs. Brooks and Lipon, supports the opposite conclusion. Based on the same evidence and analysis, we conclude that Sosa de Rosario failed to satisfy her burden of proof by a preponderance of the evidence.

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61 *See* Appellants' Exc. 49 and 107.

62 *Sosa de Rosario,* Bd. Dec. No. 11-0035 at 20.

63 *Tolbert,* 973 P.2d at 611. *See* discussion at 7-8, *supra*.

c. Did the board err in allowing Sosa de Rosario an opportunity to obtain a PPI rating and present that evidence at another hearing?

PPI was identified in the May 11, 2010, PHC summary[64] as an issue to be addressed at the hearing on June 9, 2010, and September 30, 2010. Only Clarion presented evidence with respect to that issue, the opinions of the EME physician, Dr. Brooks, and the SIME physician, Dr. Lipon. Neither considered her to be permanently impaired and gave her no rating.[65] In the absence of any evidence to the contrary, the board should have denied Sosa de Rosario's claim for PPI. Yet the board ruled that she could obtain a PPI rating and it would make an award at yet another hearing.[66]

In another appeal to the commission, we observed: "[I]n terms of the statute, AS 23.30.190, the underlying premise of any PPI claim . . . is that the employee has an impairment that is partial in character, but permanent in quality. Stated simply, a PPI rating is necessary to obtaining an award of PPI benefits."[67] By ruling that Sosa de Rosario could obtain a PPI rating at a later date, "the board was effectively relieving the failure on her part to prove . . . that she was permanently, partially impaired."[68] The board erred in ruling as it did. The appropriate remedy in these circumstances, as the Alaska Supreme Court has noted,[69] would be for Sosa de Rosario to seek a modification of the board's denial of her PPI claim, pursuant to the provisions of AS 23.30.130(a).

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64 *See Sosa de Rosario,* Bd. Dec. No. 11-0035 at 2, n.2.

65 *See* Appellants' Exc. 060 and 113.

66 *See Sosa de Rosario,* Bd. Dec. No. 11-0035 at 23.

67 *Stonebridge Hospitality Associates, LLC v. Settje,* Alaska Workers' Comp. App. Comm'n Dec. No. 153, 13 (June 14, 2011).

68 *Id.*

69 *See Griffiths v. Andy's Body & Frame, Inc.,* 165 P.3d 619 (Alaska 2007).

5. Conclusion.

We REVERSE the board's rulings 1) that the record as a whole supported the conclusion that employment was the substantial cause of Sosa de Rosario's disability, etc., and 2) that Sosa de Rosario can present evidence of a PPI rating at another hearing. Accordingly, we REVERSE the board's award of benefits in its decision.

Date: *15 February 2012* ALASKA WORKERS' COMPENSATION APPEALS COMMISSION

Signed
David W. Richards, Appeals Commissioner

Signed
S. T. Hagedorn, Appeals Commissioner

Signed
Laurence Keyes, Chair

APPEAL PROCEDURES

This is a final decision on the merits of this appeal. The appeals commission reverses the board. The commission's decision becomes effective when distributed (mailed) unless proceedings to reconsider it or to appeal to the Alaska Supreme Court are instituted (started).[70] To see the date it is distributed, look at the box below. It becomes final on the 31st day after the decision is distributed.

Proceedings to appeal this decision must be instituted (started) in the Alaska Supreme Court no later than 30 days after the date this final decision is distributed[71] and be

[70] A party has 30 days after the service or distribution of a final decision of the commission to file an appeal to the supreme court. If the commission's decision was served by mail only to a party, then three days are added to the 30 days, pursuant to Rule of Appellate Procedure 502(c), which states:

> **Additional Time After Service or Distribution by Mail.** Whenever a party has the right or is required to act within a prescribed number of days after the service or distribution of a document, and the document is served or distributed by mail, three calendar days shall be added to the prescribed period. However, no additional time shall be added if a court order specifies a particular calendar date by which an act must occur.

[71] *See* n.70, *supra*.

brought by a party-in-interest against all other parties to the proceedings before the commission, as provided by the Alaska Rules of Appellate Procedure. *See* AS 23.30.129(a). The appeals commission and the workers' compensation board are not parties.

You may wish to consider consulting with legal counsel before filing an appeal. If you wish to appeal to the Alaska Supreme Court, you should contact the Alaska Appellate Courts *immediately*:

Clerk of the Appellate Courts
303 K Street
Anchorage, AK 99501-2084
Telephone: 907-264-0612

RECONSIDERATION

This is a decision issued under AS 23.30.128(e). A party may ask the commission to reconsider this Final Decision by filing a motion for reconsideration in accordance with 8 AAC 57.230. The motion for reconsideration must be filed with the commission within 30 days of this decision being distributed or mailed. If a request for reconsideration of this final decision is filed on time with the commission, any proceedings to appeal must be instituted within 30 days after the reconsideration decision is distributed to the parties, or, if the commission does not issue an order for reconsideration, within 60 days after the date this decision is mailed to the parties, whichever is earlier. AS 23.30.128(f).

I certify that, with the exception of changes made in the correction of the decision no. in the footer of the decision, this is a full and correct copy of the Final Decision No. 160 issued in the matter of *Chenega Lodging d/b/a Hotel Clarion v. Sosa de Rosario,* AWCAC Appeal No. 11-003, and distributed by the office of the Alaska Workers' Compensation Appeals Commission in Anchorage, Alaska, on February 15, 2012.

Date: *February 21, 2012*

Signed

B. Ward, Appeals Commission Clerk