

**Case:** *Doyon Drilling, Inc. and Alaska National Insurance Co. vs. Randy A. Whitaker*, Alaska Workers' Comp. App. Comm'n Dec. No. 008 (April 14, 2006)

**Facts:** In Dec No. 006, the commission vacated a board order because the board lacked jurisdiction to direct payment of future controverted temporary benefits without considering the evidence and without first obtaining a remand from the Superior Court to consider the evidence. The employee sought attorney fees as the successful party before the commission because it had argued that the commission had no jurisdiction. (The employee also argued that the board order was proper because it was merely enforcing its prior order that was on appeal to the Superior Court.) The employer opposed the motion for attorney fees claiming that it was the successful party since the commission had accepted its argument that the board's order was improper without considering the evidence that the employee was now medically stable.

**Statute:** AS 23.30.008(d) providing that the commission

shall award a successful party reasonable costs and, if the party is represented by an attorney, attorney fees that the commission determines to be fully compensatory and reasonable. However, the commission may not make an award of attorney fees against an injured worker unless the commission finds that the worker's position on appeal was frivolous or unreasonable or the appeal was taken in bad faith.

Commission "focus[es] on the success of the appellant and appellee on the issues presented to the commission," *Doyon* at 4, rather than on what the employee lost or gained in compensation before the board as a result of the commission decision.

**Issue:** Is the employee entitled to attorney fees as the successful party on appeal?

**Holding/analysis:** The commission awarded 80 percent of the requested fees to the employee based on the employee's partial success. Employee was partially successful because commission accepted argument that appeal to the Superior Court meant that the commission and board lacked jurisdiction. But commission rejected employee's argument that the board order was proper because it was merely enforcing the order that had been appealed. Employer was partially successful because commission accepted its argument that board needed to at least consider the evidence that it presented. However, the commission could not award partial fees to employer because worker's position on appeal was not frivolous or unreasonable, an issue which the employer conceded by not requesting fees.

**Note:** Comm'n Dec. No. 001 deals with a motion for a stay in this case.