

Case: *Gary L. Miller, d/b/a Miller's Market vs. State of Alaska, Division of Workers' Compensation*, Alaska Workers' Comp. App. Comm'n Dec. No. 161 (May 14, 2012)

Facts: The board concluded that Gary L. Miller, d/b/a Miller's Market (Miller), failed to insure from November 2003 to January 2009. The board imposed a civil penalty in the amount of \$129,855.00, with one-half of that amount, \$64,927.50, suspended on condition that Miller promptly pay the unsuspended portion and maintain workers' compensation insurance for the next ten years. The penalty was based on a rate of \$15 per day for each of the 8,657 uninsured employee workdays. On reconsideration, the board corrected a factual error in characterizing a liability as an asset and permitted a modified payment plan. The payment plan was intended to avoid threatening the continued viability of Miller's business. The board refused to lower the penalty amount even though Miller argued his net income was lower than originally calculated. Miller appeals.

Applicable law: AS 23.30.075 and 23.30.080(f), require workers' compensation insurance and provide for penalties for failure to insure.

The commission has held that "it is an abuse of the board's discretion to impose a penalty that (1) does not serve the purposes of the statute, (2) does not reflect consideration of appropriate factors, (3) lacks substantial evidence to support findings regarding those factors, or (4) is so excessive or minimal as to shock the conscience." *Ivan Moore v. State, Div. of Workers' Comp.*, Alaska Workers' Comp. App. Comm'n Dec. No. 092, 13 (Nov. 18, 2008).

Issue: Did the board abuse its discretion in setting the penalty amount for Miller's failure to insure?

Holding/analysis: The board did not abuse its discretion. The board considered appropriate factors, namely "1) that Miller had, prior to the timeframe at issue here, been uninsured for workers' compensation liability between May 1996 and November 2001; and 2) that Miller was, relatively soon thereafter, again uninsured for over a five-year period between November 2003 and January 2009." Dec. No. 161 at 7. The commission concluded that the board's decision on reconsideration also was within its discretion. Despite the factual error, the board did not lower the penalty amount due to the egregiousness of the case, specifically the number of uninsured employee workdays.