

**Case:** *Arsenia V. Morgan vs. Alaska Regional Hospital and Broadspire/Arctic Adjusters*, Alaska Workers' Comp. App. Comm'n Dec. No. 035 (February 28, 2007)

**Facts:** Morgan appealed from a board decision denying (1) a claim for reemployment benefits because she failed to appeal the eligibility denial on time; (2) three claims for compensation and medical benefits because she failed to request a hearing on time; and, (3) a claim for medical benefits and compensation for a 2001 foot injury because the board found the claimed benefits were not related to the reported injury. The cross-appeal challenged the timeliness of the appeal. On the reemployment benefits, the employee received a letter denying benefits and explaining how to appeal per 8 AAC 45.530(a), which included an appeal form. The employee requested another eligibility evaluation almost two months later. She was sent a letter advising her she needed to file an appeal and stating that no action would be taken on the second request. She did not seek review until almost three years later. The three compensation claims for arm and shoulder injuries were filed October 15, 2001, controverted for the first time on April 5, 2002, and amended April 17, 2002, and January 31, 2005 (these amendments apparently related back to the date of her original filing). Morgan also filed a claim for a 2001 foot injury on January 31, 2005, which was controverted February 23, 2005. Morgan filed a request for a hearing on the three shoulder and arm injuries and the 2001 foot injury on February 18, 2005.

**Applicable law:** AS 23.30.041(d) provides that within 10 days after the administrator's decision on reemployment benefits, "either party may seek review of the decision by requesting a hearing under AS 23.30.110."

AS 23.30.110(c) states: "If the employer controverts a claim on a board-prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied."

AS 23.30.120(a), presumption of compensability and related case law. The Commission distinguished *Morgan* facts from *Hoth v. Valley Construction*, 671 P.2d 871 (Alaska 1983).

**Issues:** Does substantial evidence support the board's decision to dismiss her reemployment benefits appeal as untimely? Does substantial evidence support the board's decision to dismiss compensation claims as untimely for a failure to request a hearing within two years of controversion? Does substantial evidence support the board's denial of medical benefits and compensation for the foot injury?

**Holding/analysis:** The commission found substantial evidence in the record to support the board's decision, and therefore affirmed the board's denial of Morgan's claims. On the reemployment benefits, Morgan had 10 days to seek review and substantial evidence supported that she did not file on time. The board did not error in not considering her second request as a late-filed appeal, given her level of education and work experience. The commission also noted that, on the merits, Morgan would not have been entitled to reemployment benefits because, even assuming, as she argued, that her injuries prevented her from completing her nursing degree, reemployment benefits are provided only when a worker cannot return to the

occupation *at the time of injury*, not when a worker is precluded from entering into a particular occupation. Additionally, AS 23.30.041(e) and (f) permit doctors to make predictions that involve some risk of error about the employee's future impairment; doctors need not wait until treatment is complete or medical stability is reached as Morgan argued they should.

On the three compensation claims, the commission found Morgan conceded she filed late and admitted she had notice of the time bar. Morgan failed to establish a legal excuse to avoid the time-bar. Morgan argued she filed late because of stress over family worries and because she was trying to settle. Although the board decision did not review equitable relief, the commission concluded that was not error because Morgan's arguments and evidence did not require it to do so. Most of her family issues occurred after April 4, 2004, (the deadline to request a hearing was either April 4, 2003, or July 11, 2004, *see* Dec. No. 035 n.72; Morgan filed her request in 2005). There was no evidence that Morgan was mentally incapacitated because she sought and worked administrative jobs, began classes toward a degree and volunteered at a legal office during the relevant time period. There was also no evidence supporting a board grant of equitable relief due to misrepresentation by an opponent or the board. On the settlement issue, Morgan received a letter on February 4, 2004, from the hospital's attorney expressing doubt that the claim would be settled. Morgan did nothing further to settle the claim from then until the deadline to request a hearing expired. Also, Morgan testified a workers' compensation officer told her she needed to request a hearing if she thought she was entitled to more benefits; Morgan replied that she didn't want a hearing, she wanted to go back to nursing school; and the officer then said "I can't help you." This exchange did not support any kind of a misrepresentation by the board.

Lastly, substantial evidence supported Morgan's foot injury was not compensable. The board relied on Dr. Stinson's reports that the employee stated her foot pain occurred after a February 2004 auto accident as well as the absence of medical treatment between the date the work-related foot injury occurred in September 2001, and the date of the auto accident. The commission also noted that foot was struck by a bed pump motor on the top in 2001 but the pain reported in 2004 was on the bottom of her foot. Moreover, Morgan reported no foot pain to a doctor whom she saw the day after the pump motor struck it and no foot pain a week after that.

The commission concluded Morgan waived her claim of error based on board member misconduct because she did not object to the dozing during the board hearing. In addition, she asserted in her points of appeal that a member was dozing but did not explain what evidence this member missed nor did she argue the point in her appeal brief. During oral argument, she characterized the incident as one in which the board member closed his eyes indicating a lack of respect for her.

The commission decided employer's procedural objections to the commission hearing the appeal were moot since it decided the appeal in favor of the employer.

**Note:** App. Comm'n Dec. No. 013 considered Morgan's request for waiver of transcript costs due to indigency.