

# Alaska Workers' Compensation Appeals Commission

Edward Seiler,  
Appellant,

vs.

F.R. Bell and Assoc. and Alaska  
National Insurance Co.,  
Appellees.

## Final Decision

Decision No. 077      May 22, 2008

AWCAC Appeal No. 07-010

AWCB Decision No. 07-0041

AWCB Case No. 200509695

Appeal from Alaska Workers' Compensation Board Decision No. 07-0041, issued at Anchorage on March 1, 2007, by south-central panel members Krista M. Schwarting, Chair, John Abshire, Member for Labor, and Linda Hutchings, Member for Industry.

Appearances: Richard N. Sutliff, for appellant Edward Seiler. Michael A. Budzinski and Michelle M. Meshke, Russell Wagg Gabbert and Budzinski, for appellee Alaska National Insurance Co. Appellee F.R. Bell and Assoc. did not participate in the appeal.

Commission proceedings: Oral argument on appeal presented March 11, 2008.

Commissioners: David W. Richards, Stephen Hagedorn, Kristin Knudsen, Chair.

*This decision has been edited to conform to technical standards for publication.*

By: Stephen Hagedorn, Appeals Commissioner.

### *1. Introduction.*

Edward Seiler appeals the board's decision denying his claim for medical expenses of a "medevac" flight from Prudhoe Bay to Providence Alaska Medical Center in Anchorage. The board concluded that there must be an injury and a link between the employment and the injury for a medical transportation expense to be covered by AS 23.30.095(a). The board found Seiler had no work-related injury. The board had substantial evidence to support its findings that Seiler's medevac flight was not the result of an injury as defined in AS 23.30.395(24). Therefore, the board's decision is affirmed.

## *2. Factual background.*

Seiler, a land surveyor for F.R. Bell, experienced chest pain while working on the North Slope in June 2005.<sup>1</sup> The dull chest pain began before Seiler left for his two-week shift on the North Slope.<sup>2</sup> Seiler initially attributed the pain to gastroesophageal reflux disease (“GERD”), a condition for which he had previously been treated.<sup>3</sup> But when the relatively insignificant pains did not subside after his arrival at Prudhoe Bay,<sup>4</sup> he decided to report to the British Petroleum medical facility for evaluation.<sup>5</sup> As a condition of his employment, he was required to report to the clinic for any injury or illness, no matter how small.<sup>6</sup> He testified, “I figured, you know, if it just happened to be my blood pressure, or maybe it was something heart-related, maybe I should check into it.”<sup>7</sup>

A physician’s assistant evaluated him and recommended that he be “medevacked” (flown by medical evacuation charter flight) to Anchorage to rule out heart-related problems.<sup>8</sup> Although Seiler protested the use of a medevac flight and stated that he preferred to take the regular charter flight back to Anchorage, he reluctantly agreed to the medevac.<sup>9</sup> He testified, “[W]ith all their machines and everything, they pretty much had me subdued into thinking that I really had a problem.

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<sup>1</sup> R. 0006.

<sup>2</sup> Tr. 27:11-19.

<sup>3</sup> Tr. 27:22-28:15.

<sup>4</sup> Tr. 29:19-22, 30:1-2 (describing the pains as “I noticed they were there, but it wasn’t like they were totally ruining my day. ... I noticed them and I did not notice them.”).

<sup>5</sup> Tr. 20:14-24.

<sup>6</sup> Tr. 19:10-20:9.

<sup>7</sup> Tr. 30:25-31:2.

<sup>8</sup> Tr. 21:13-22:21; Tr. 35:18-36:1-2.

<sup>9</sup> Tr. 22:10-21.

. . . [Y]ou look at these guys to be the experts and if they got something that they know, then what are you gonna say?"<sup>10</sup>

Seiler was taken by ambulance to Deadhorse, put on a medevac flight to Anchorage and taken by another ambulance to Providence hospital for treatment.<sup>11</sup> Diagnostic tests determined that Seiler had not suffered a heart attack and his doctors concluded that GERD likely caused his chest discomfort.<sup>12</sup> Seiler's medevac flight, ambulance and emergency room bills totaled \$23,823.<sup>13</sup>

### *3. Proceedings before the board.*

Before the board, Seiler conceded that his chest pain was caused by his pre-existing GERD and that the pain was unrelated to his employment. However, his employer argued that the workers' compensation insurer should be liable for travel and medical expenses to determine whether a condition is compensable, especially because the incident occurred at a remote site.<sup>14</sup> The insurer argued that because the chest pains were indisputably not work-related, it was not liable for the medical expenses.<sup>15</sup>

The board found there was no link between the employment and the injury and as a result, no liability for the employer or the insurer for Seiler's expenses under the Workers' Compensation Act.<sup>16</sup> Seiler appeals.

### *4. Our standard of review.*

The board's findings of fact "shall be upheld by the commission if supported by substantial evidence in light of the whole record."<sup>17</sup> Because the commission makes its decision based on the record before the board, the briefs, and oral argument, no new

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<sup>10</sup> Tr. 23:20-25.

<sup>11</sup> Tr. 24:3-6, 17-21.

<sup>12</sup> R. 217-18; Tr. 36:8-11.

<sup>13</sup> Tr. 25:21-26:13.

<sup>14</sup> *Edward A. Seiler v. F.R. Bell & Assoc., Inc., and Alaska Nat'l Ins. Co.*, Alaska Workers' Comp. Bd. Dec. No. 07-0041, 4 (March 1, 2007).

<sup>15</sup> *Id.* at 3.

<sup>16</sup> *Id.* at 4.

<sup>17</sup> AS 23.30.128(b).

evidence may be presented to the commission.<sup>18</sup> The commission is required to exercise its independent judgment on questions of law and procedure.<sup>19</sup>

### 5. Discussion.

AS 23.30.095(a) requires the employer to “furnish medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus for the period which the nature of the injury or the process of recovery requires . . .” AS 23.30.395(24) defines “injury” in relevant part as “accidental injury or death arising out of and in the course of employment . . .”<sup>20</sup> AS 23.30.095(2) defines “arising out of and in the course of employment” as including “employer-required or supplied travel to and from a remote job site; activities performed at the direction or under the control of the employer; and employer-sanctioned activities at employer-provided facilities . . .”

Seiler argues that the medical costs incurred to exclude the possibility of a work-related injury on a remote site are compensable.<sup>21</sup> The key to his argument is that he sought medical help because he was concerned that he was suffering from heart problems and that he followed his employer directives in reporting to the medical clinic and agreeing to the medevac flight.

However, the remote site doctrine does not expand workers’ compensation so far. The board distinguished Seiler’s case from *Doyon Universal Services v. Allen*.<sup>22</sup> In *Doyon*, the employee suffered from a small bowel obstruction after eating Brussels sprouts at the employer’s remote site. The Supreme Court applied the remote site doctrine, which attaches when a remote job site limits an employee’s activity choices

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<sup>18</sup> AS 23.30.128(a).

<sup>19</sup> AS 23.30.128(b).

<sup>20</sup> This definition was in AS 23.30.395(17) before the section was renumbered in 2005 to alphabetize the defined terms. The parties do not argue, and the board did not find, that the GERD was an “occupational disease or infection that arises naturally out of the employment or that naturally or unavoidable results from an accidental injury.” AS 23.30.395(24).

<sup>21</sup> Appellant’s Appeal Br. 5.

<sup>22</sup> 999 P.2d 764, 766-67 (Alaska 2000).

and that limitation plays a causal role in bringing about the employee's injury.<sup>23</sup> Because the only food available in *Doyon* was at the employer-provided cafeteria, the Court concluded that the employee's eating of the Brussels sprouts "was an activity choice made as a result of limited activities at the remote site."<sup>24</sup> Additionally, the Court found substantial evidence to support the board finding that eating the Brussels sprouts was a substantial factor in causing the employee's injury.<sup>25</sup> This evidence included a post-operative report that found undigested Brussels sprouts in the employee's bowel obstruction and medical experts' opinions that the sprouts precipitated and hastened the employee's need for surgery.<sup>26</sup>

Seiler's claim is distinguishable from *Doyon*. It is not enough that reporting to the clinic at the remote site – the activity that triggered the medical transport – be "sanctioned" by the employer. Instead, the sanctioned activity must cause some "injury" within the meaning of the Workers' Compensation Act. Here, the board had substantial evidence to find that Seiler suffered no work-related injury to his person as a result of going to the clinic. He experienced chest pains that began before he reported to work. Moreover, he conceded the pains were related to his pre-existing and non-work-related GERD.<sup>27</sup> Even if Seiler had been suffering from a heart attack, he

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<sup>23</sup> *Id.* at 769 n.22.

<sup>24</sup> *Id.* (internal quotations omitted).

<sup>25</sup> *Id.* at 770-71.

<sup>26</sup> *Id.*

<sup>27</sup> Seiler does not argue and there is no evidence that his treatment at the British Petroleum clinic accelerated or worsened his symptoms, even temporarily, or combined with his pre-existing condition to cause a disability, such that he required the medevac flight. This might be the case, for example, if Seiler's blood pressure rose dangerously because of anxiety over the medical treatment. If this were the case, Seiler would have an argument that he suffered a work-related injury. *See, e.g., Bradbury v. Chugach Elec. Ass'n*, 71 P.3d 901 (Alaska 2003) (Employee's widower argued that work activities caused trauma to employee's abdomen, leading to the fatal rupture of a pre-existing hydatid cyst in her liver, but the Court concluded the board had substantial evidence to support its finding that the rupture was spontaneous and not work-related); *Doyon*, 999 P.2d at 770-71; *Thornton v. Alaska Workmen's Comp. Bd.*, 411 P.2d 209, 210 (Alaska 1966). *Compare Kelly v. State, Dep't of Corrections*,

would have to establish a link between that injury and his work in order for the injury, and resultant treatment expenses, to be compensable.<sup>28</sup> In Seiler's case, the board properly concluded that there was no injury that would trigger compensability.

Seiler cites to three board decisions<sup>29</sup> as authority for his claim, but they are not relevant to his situation. The Workers' Compensation Act presumes that a claim for workers' compensation is covered.<sup>30</sup> Applying the compensability presumption is a three-step process:

First, the employee must establish a link between his injury and his employment. . . . Next, we ask whether the employer rebutted the presumption with substantial evidence. . . . Finally, after an employer rebuts the presumption that injuries are work-related, an employee can only prevail if his or her claim is proven by a preponderance of the evidence.<sup>31</sup>

In each of the decisions that Seiler cites, the board found that some injury occurred that was related to the employee's work and applied this analysis to the claim for medical treatment procedures.<sup>32</sup> Seiler has not made the showing necessary for this

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Alaska Workers' Comp. App. Comm. Dec. No. 049 (July 13, 2007) (Employee suffered physical illness symptoms of chest pain, tachycardia, and elevated blood pressure related to emotional stress in his employment).

<sup>28</sup> *Norcon v. Alaska Workers' Comp. Bd.*, 880 P.2d 1051, 1055-56 (Alaska 1994) (holding that the board lacked substantial evidence to conclude that fatal heart attack at employer's remote site was work-related, even though employee's widow argued work-related fatigue contributed to the attack).

<sup>29</sup> *Short v. Kenai Peninsula Borough*, Alaska Workers' Comp. Bd. Dec. No. 98-0252 (Oct. 2, 1998) (S. Constantino); *Amaya v. Our Lady of Compassion Care*, Alaska Workers' Comp. Bd. Dec. No. 98-0046 (March 11, 1998) (D. Jacquot); *Phillips v. Municipality of Anchorage*, Alaska Workers' Comp. Bd. Dec. No. 97-0197 (Oct. 2, 1997) (P. Huna).

<sup>30</sup> Alaska Statute 23.30.120(a)(1).

<sup>31</sup> *Bradbury*, 71 P.3d at 905-06 (citations omitted).

<sup>32</sup> *Short*, Bd. Dec. No. 98-0252 at 17-18, 21 (finding tests and treatments that ruled out an uncontested work-related pesticide exposure as a cause of employee's subsequent symptoms compensable); *Amaya*, Bd. Dec. No. 98-0046 at 5-6 (employer failed to rebut compensability presumption raised by physician opinion that condition warranting tests may be related to reported work injuries); *Phillips*, Bd. Dec. No. 97-

presumption to attach to his claim. Because Seiler has not shown a link between his employment and his GERD, these decisions are not persuasive on review of his appeal.

*6. Conclusion.*

Substantial evidence supports the board's finding that no "injury" occurred as it is defined in AS 23.30.395(24). The uncontested fact is that Seiler suffered from GERD that did not arise out of or in the course of his employment. All the parties agreed that Seiler's illness was not a work-related condition. Seiler's presence at a remote site made no difference in determining that his claim was not compensable. The board properly concluded there must be work-related injury or illness to trigger compensability of medical expenses. Therefore, the board's decision is AFFIRMED.

Date: May 22, 2008 ALASKA WORKERS' COMPENSATION APPEALS COMMISSION



*Signed*

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Stephen T. Hagedorn, Appeals Commissioner

*Signed*

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David W. Richards, Appeals Commissioner

*Signed*

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Kristin Knudsen, Chair

APPEAL PROCEDURES

This is a final decision on this appeal. The appeals commission affirmed (approved) the board's decision denying Edward Seiler's workers' compensation claim. The appeals commission's decision ends all administrative proceedings in this claim. It becomes effective when filed in the office of the appeals commission unless proceedings to reconsider it or to appeal to the Alaska Supreme Court are instituted.

Proceedings to appeal this decision must be instituted in the Alaska Supreme Court within 30 days of the date this final decision is distributed (mailed) and be brought by a party-in-interest against the commission and all other parties to the proceedings before the commission, as provided by the Alaska Rules of Appellate Procedure. AS 23.30.129. To see the date this decision is distributed look at the clerk's Certification in the box below.

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0197 at 4 (employer failed to rebut presumption raised by physician statement that tests were for treatment of reported work injury).

A request for commission reconsideration must be filed within 30 days of the date of distribution of the decision. If a request for reconsideration of this final decision is timely filed with the commission, any proceedings to appeal, if appeal is available, must be instituted within 30 days after the reconsideration decision is mailed 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).

If you wish to appeal this decision 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

A party may ask the appeals commission to reconsider this decision by filing a motion for reconsideration in accordance with 8 AAC 57.230. The motion requesting reconsideration must be filed with the appeals commission within 30 days after delivery or mailing of this decision.

#### CERTIFICATION

I hereby certify that the foregoing is a full, true, and correct copy of Alaska Workers' Compensation Appeals Commission Final Decision No. 077 issued in the matter of *Edward A. Seiler v. F.R. Bell and Assoc. and Alaska National Insurance Co.*, Appeal No.07-010; dated and filed in the office of the Alaska Worker's Compensation Appeals Commission in Anchorage, Alaska, this 22nd day of May, 2008.

Signed

L. Beard, Appeals Commission Clerk

Certificate of Distribution

I certify that a copy of this Final Decision in AWCAC Appeal No. 07-010 was mailed on 5/22/08 to Meshke, Budzinski & Sutliff at their addresses of record and faxed to Meshke, Budzinski & Sutliff, Director WCD, & AWCB Appeals Clerk.

Signed 5/22/08  
J. Ramsey, Deputy Clerk Date