

Case: *S&W Radiator Shop and Alaska National Insurance Co. vs. Louise Flynn*, Alaska Workers' Comp. App. Comm'n Dec. No. 016 (August 4, 2006)

Facts: Flynn reported she had carpal tunnel syndrome in both her wrists as a result of her work as a radiator mechanic in December 1994. The employer made payments of disability compensation and provided medical benefits without an award. Flynn was surgically treated for carpal tunnel syndrome and de Quervain's stenosing tenosynovitis before she was diagnosed with degenerative arthritis in both wrists. In December 1998, her left wrist was surgically fused due to the arthritis; a plate and screws were implanted to fix the fusion. In March 2002, the same procedure was done on her right wrist. The plate and screws were removed from the right wrist in April 2003. After that, a medical dispute arose over whether the arthritis was related to her work injury. Flynn's doctor believed there was a "causal relationship regarding her work activity and the severity of her symptoms." The employer's doctor stated that the degenerative arthritis in her wrists was probably not caused by the S&W employment. The SIME doctor opined that, "All surgical treatments and other treatments after the de Quervain's releases are unrelated to her work activities." He also noted that one of the screws in the left wrist plate appeared to have loosened, so there should be "consideration" of removal of the left wrist plate and screws. The issue before the board was then limited to whether any further benefits were due to Flynn as a result of the 1994 injury. The employer argued no further medical benefits were due; Flynn asked for removal of the screws and plate in her left wrist. She argued that she did not need to prove the future surgery was work-related; because the employer paid for the 1998 surgery, it should be required to pay to remove the plate and screws from that surgery. The board apparently agreed with Flynn and decided her claim for surgery was compensable.

Applicable law: Presumption of compensability, AS 23.30.120(a), and related case law on how presumption operates.

Equitable estoppel, "assertion of a position by word or conduct, reasonable reliance thereon by another party, and resulting prejudice." *Wausau Ins. Companies v. Van Biene*, 847 P.2d 584, 588 (Alaska 1993). In addition, "one key element of estoppel is communication of a position, it follows that neglect to insist upon a right only results in an estoppel . . . when the neglect is such that it would convey a message to a reasonable person that the neglectful party would not in the future pursue the legal right in question." *Van Biene*, 847 P. 2d at 589.

Payment of medical expenses is not an admission of liability; employer may later contest further liability for medical treatment. *Childs v. Copper Valley Elec. Ass'n* 860 P.2d 1184, 1190 (Alaska 1993).

Issues: Did the board properly apply the law in analyzing the employee's claim for surgery? Does substantial evidence in the record support the board's factual findings?

Holding/analysis: The board failed to apply the presumption. The board made no explicit finding that the employee had attached the presumption; the board also did not state whether the employer had overcome the presumption with the reports of its

examiner and the SIME examiner. Lastly, if the presumption had attached and been rebutted, the board did weigh the conflicting evidence and make findings regarding the persuasiveness of the respective doctors' opinions. This was error.

The board also did not provide an explanation and sufficient findings of fact to support application of equitable estoppel; the board made no findings that would support any of elements of equitable estoppel. For example, on the first element, although it found that the employee reasonably relied on the advice of her treating physician to obtain the left wrist fusion in 1998, for estoppel to apply, the board needed to make findings that Flynn reasonably relied on a representation by S&W. Moreover substantial evidence did not support the board's finding that had Flynn not complied with the 1998 surgery, her benefits could have been suspended. S&W would have had to produce evidence to support a controversion for noncompliance or risk penalties, and the board would have ultimately decided merits of that contention, and it was unclear whether any of that would have occurred had Flynn decided not to have the surgery.

Lastly, the board erred by accepting Flynn's argument that payment for the 1998 surgery meant the employer must accept liability for the surgery to remove the screws and plate, per *Childs*, 860 P.2d at 1190. Commission discussed policy considerations for why workers' compensation operates this way.

The commission vacated the board's decision and remanded for further findings.

Note: Dec. No. 005 addresses the employer's motion for a stay of payments.