

Case: *Oumar P. Bah vs. Trident Seafoods Corp. and Liberty Northwest Insurance Corp.*, Alaska Workers' Comp. App. Comm'n Dec. No. 073 (February 27, 2008)

Facts: Bah filed a report of injury for his lower back and hands after working for two weeks as a seafood processor for the employer. He sought treatment from Dr. Parsons, who ordered a brief course of physical therapy, and released him to return to work with restrictions. Dr. Parsons referred him to Dr. Stephenson who indicated that Bah's injuries were resolving and he should complete the exercises ordered by Dr. Parsons. Bah also saw Dr. Whitfield a few months later. Dr. Whitfield found that Bah was medically stable but could not return to his former employment because he was not fit for heavy labor even before he experienced the pain in his lower back and hands. The employer did not conduct an employer medical evaluation (EME). Bah sought a second Independent medical evaluation (SIME). The board concluded it could not order an SIME because there was no qualifying medical dispute under AS 23.30.095(k) and no significant gap in the medical evidence under AS 23.30.110(g). Bah appeals.

Applicable law: AS 23.30.095(k) provides in relevant part:

In the event of a medical dispute regarding determinations of causation, medical stability, ability to enter a reemployment plan, degree of impairment, functional capacity, the amount and efficacy of the continuance of or necessity of treatment, or compensability between the employee's attending physician and the employer's independent medical evaluation, the board may require that a second independent medical evaluation be conducted[.]

AS 23.30.110(g) states in part that “[a]n injured employee claiming or entitled to compensation shall submit to the physical examination by a duly qualified physician which the board may require.”

“Under AS 23.30.110(g), the board has discretion to order an SIME when there is a significant gap in the medical or scientific evidence and an opinion by an independent medical examiner or other scientific examination will help the board in resolving the issue before it.” Dec. No. 073 at 5.

Issue: Did the board err in denying the employee an SIME under either AS 23.30.095(k) or AS 23.30.110(g)?

Holding/analysis: Board properly denied an SIME under subsection .095(k) because there was no medical dispute between the employee's and employer's physicians. The employer did not even conduct an EME and the employee's doctors were largely in agreement.

The board did not err in not ordering an SIME under subsection .110(g) because that section requires a significant gap in the medical evidence. The board found that the record was “very clear” regarding the employee's impairment and causation. The commission concluded that substantial evidence supported this finding because the employee's doctors were largely in agreement about the nature of Bah's injuries. “Ordering an SIME is not proper if it serves no purpose to the board by advancing its

understanding of the medical evidence or by filling in gaps in the medical evidence, where that gap in the evidence, or lack of understanding of the medical evidence, prevents the board from ascertaining the rights of the parties in the dispute before the board." Dec. No. 073 at 5.

The commission noted that under either subsection, the purpose of an SIME is to assist the board, not the employee or the employer. An employee who disagrees with his attending doctor may try to change doctors by following the procedure in AS 23.30.095(a).