

Case: *Gabriele I. Walsh vs. Robert D. Mauer, DDS, and Liberty Northwest Insurance Co.*, Alaska Workers' Comp. App. Comm'n Dec. No. 044 (June 5, 2007)

Facts: Employee appealed board's denial of medical and temporary total disability (TTD) benefits after July 27, 2004, (the commission decision references two different dates) and for permanent partial impairment (PPI) benefits. The central dispute concerned compensability or work-relatedness – whether Walsh's longstanding back problems had been permanently aggravated by a March 2004 work injury, as she argued, or whether her worsened condition was primarily a result of an April 2004 car accident. The board applied presumption of compensability, concluded that employer had rebutted it and then decided employee had not proved her case by a preponderance of the evidence. The board found employee was not credible because she had consistently attributed her worsened back pain to the car accident during the six months after the work injury. Employee argued it was error for the board to discount opinion of a doctor, Dr. Corkill, which supported her position.

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

The employment must be a substantial factor in bringing about the disability per the former AS 23.30.010 (amended in 2005), as interpreted in case law, *e.g.*, *Doyon Universal Services v. Allen*, 999 P.2d 764, 770 (Alaska 2000). (The new AS 23.30.010(a) has changed this test for injuries occurring on or after Nov. 7, 2005, *City of Seward v. Hansen*, Alaska Workers' Comp. App. Comm'n Dec. No. 146 (January 11, 2011)).

Issues: Did the board properly apply presumption of compensability? Does substantial evidence support the board's decision that work injury was not a substantial factor in employee's need for medical, TTD and PPI benefits?

Holding/analysis: The commission concluded the presumption was properly applied and that substantial evidence supported the board's decision. The commission accepted the board's finding on employee's credibility as it was required to do so under AS 23.30.128(b). The commission observed that the board may give less weight to a doctor's opinion when that opinion is based on an incomplete patient history. *See Gillispie v. B & B Foodland*, 881 P.2d 1106, 1111 (Alaska 1994). Dr. Corkill's report failed to summarize the employee's medical records, leaving the board uncertain whether the doctor had reviewed and considered her past medical history, his report did not reduce the PPI rating for the employee's prior back problems, and, in the board's view, did not provide a sufficient explanation of the causal relationship between the work injury and the employee's current disability to support the doctor's conclusion that the work injury was a substantial factor in that disability. Moreover, substantial evidence in the record supported the board's conclusions: (1) Dr. Valentz's records that had contemporaneous file notes indicating an increase in the employee's symptoms as a result of the car accident and (2) Dr. Rosenbaum's July 26, 2004, report that the employee suffered a lumbar strain that had resolved as a result of the work injury, and had no permanent impairment as a result of the work injury.

Finally, the commission concluded that the board's failure to address employee's argument that the work injury combined with her pre-existing condition and the car accident to bring about her disability was harmless error. Board addressed the ultimate question at issue, which was whether the claimant proved her work injury was a substantial factor in bringing about her disability. In addition, little evidence in the record supported her combination theory. In a single paragraph in Dr. Rosenbaum's deposition, he conceded that the work injury made the employee more susceptible to further injury in a car accident than someone who had back injuries further in the past. But he did not testify that the employee was further injured in the car accident because of the work injury than what her pre-existing condition alone would have done and that this additional injury was a factor in her continuing disability. Instead, he concluded the employee's ongoing symptoms were the result of the progression of her pre-existing back condition rather than the March 2004 work injury.