

Case: *Mario Velderrain vs. State of Alaska, Division of Workers' Compensation*, Alaska Workers' Comp. App. Comm'n Dec. No. 065 (November 29, 2007)

Facts: Employer was penalized for failing to provide workers' compensation insurance to Hot Tamale Restaurant workers, and for violating Board's stop-work order until such insurance was obtained. The board decision was issued on July 11, 2007. The board ordered investigator to arrange a payment schedule to submit for the board's consideration within 30 days of the decision, and retained jurisdiction over that issue. The investigator worked on a plan with the employer but the employer did not sign off on the proposed plan, instead filing an appeal on August 27, 2007.

The employer argued that his appeal was not filed late because no payment plan was approved and that, "because he appeals the fine as disproportionately severe, the payment plan is a required part of the appealed board decision because it affects the severity of the fine and its impact on his business." Dec. No. 065 at 3. He also argued that he had good cause for filing late.

Applicable law: Test for determining whether a board decision is final is "essentially a practical one." *Hope Community Res. v. Rodriguez*, Alaska Workers' Comp. App. Comm'n Dec. No. 041, 6-7 (May 16, 2007). *Rodriguez* quoted the Alaska Supreme Court's statement on judgments generally:

The basic thrust of the finality requirement is that the judgment must be one which disposes of the entire case, . . . one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment Further the reviewing court should look to the substance and effect, rather than form, of the rendering court's judgment, and focus primarily on the operational or 'decretal' language therein. *Ostman v. State, Commercial Fisheries Entry Comm'n*, 678 P.2d 1323, 1327 (Alaska 1984) (citations omitted).

Issues: Was the board's decision final, or if not, when will it be final such that an appeal must be filed within 30 days? Was the employer's appeal untimely? If so, did the employer show good cause for filing late?

Holding/analysis: The board decision was not final the day it was issued, July 11, 2007:

Although the board determined the total penalty, the board suspended the penalty payment and retained jurisdiction to approve a payment schedule for the fine. This is not a strictly ministerial act because it requires the exercise of board discretion, including a weighing of evidence regarding the ability of the appellant to make the payments. The payment schedule necessarily impacts the appellant's rights, both as to his specific rights under the schedule and whether the penalty, as scheduled to be paid, was unreasonably onerous. Thus, the appellant might have appealed the board's order within 30 days, and sought a stay of the board's approval of the penalty payment schedule, or joined a later appeal

of the approval of the penalty payment schedule to the first appeal. We agree that this is the preferred process. However, because the appellant challenges the penalty as "onerous and out of proportion to the offense," the appellant also might have waited to appeal until the board had exercised its discretion and approved the payment schedule. Dec. 065 at 9-10 (footnote omitted).

The commission concluded that the board's order became final on August 10, 2007, because the 30 days specified in the board's decision to file a payment plan had passed and the parties had not complied with the order to file the plan nor requested an extension of time from the board. Thus, Velderrain's appeal filed on August 27, 2007, was timely.

Note: Dec. No. 083 decided the merits of this appeal.