Alaska Workers' Compensation Appeals Commission

Stonebridge Hospitality Associates, LLC, Argonaut Insurance Co., and Broadspire Services, Inc., Appellants, vs. Debra K. Settje, Appellee.	Final Decision Decision No. 153 June 14, 2011 AWCAC Appeal No. 10-017 AWCB Decision No. 10-0089 AWCB Case No. 200905575

Final decision on appeal from Alaska Workers' Compensation Board Decision No. 10-0089, issued at Anchorage on May 20, 2010, by southcentral panel members William Soule, Chair, Patricia Vollendorf, Member for Labor, Janet Waldron, Member for Industry.

Appearances: Colby J. Smith, Griffin & Smith, for appellants, Stonebridge Hospitality Associates, LLC, Argonaut Insurance Co., and Broadspire Services, Inc.; Debra K. Settje, self-represented appellee.

Commission proceedings: Appeal filed June 2, 2010; briefing completed March 1, 2011; oral argument was not requested.

Commissioners: Jim Robison, S.T. Hagedorn, Laurence Keyes, Chair.

By: Laurence Keyes, Chair.

1. Introduction.

The appellee, Debra K. Settje (Settje), began working for appellant, Stonebridge Hospitality Associates, LLC (Stonebridge[1]), in December 2008. Stonebridge assigned

[1] References to "Stonebridge" in this opinion may be limited to Stonebridge alone or may extend to Stonebridge and Argonaut Insurance Co./Broadspire Services, Inc., its workers' compensation insurer/adjuster, depending on the context.

Settje duties as a housekeeper.[2] According to Settje, on or about February 15, 2009, while performing her housekeeping responsibilities, she injured her lower back when lifting or moving a mattress or mattresses. Shortly thereafter, Settje was terminated. Two months later, on April 14, 2009, she first sought medical treatment for her back.

Settje filed a claim with the Alaska Workers' Compensation Board (board) in May 2009. Following a hearing on April 13, 2010, among other things, the board concluded: 1) because Settje had not obtained a permanent partial impairment (PPI) rating, her claim for PPI benefits was not ripe;[3] and 2) any reemployment eligibility evaluation by the rehabilitation benefits administrator (RBA) would be contingent on the PPI rating.[4] Stonebridge appeals these board rulings to the commission. We vacate the board's decision on the PPI issue and remand this matter to the board to resolve it. As explained below, the outcome of the remand of the PPI issue will necessarily determine whether Settje is entitled to a reemployment eligibility evaluation by the RBA.

2. Factual background and proceedings.

Settje had suffered back pain for about three years[5] when, in early 2007, a magnetic resonance imaging (MRI) study of Settje's lumbar spine revealed a disk herniation at L4-5, a compression fracture, and degenerative disk disease at L3-4, L4-5, and L5-S1.[6] Settje had back surgery, a microdiskectomy at L4-5, on April 11, 2007.[7] In August 2007, Settje had a physical capacities evaluation (PCE) that indicated she could

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[2] Apparently, Stonebridge provides housekeeping services in connection with the operation of a Hilton Garden Inn in Anchorage. Apr. 13, 2010, Hr'g Tr. 15:24; Exc. 055-56.

[3] *Debra K. Settje v. Stonebridge Hospitality Associates, LLC, et al.,* Alaska Workers' Comp. Bd. Dec. No. 10-0089, 21 (May 20, 2010).

[4] *Settje,* Bd. Dec. No. 10-0089 at 23-24.

[5] Exc. 003 and 007.

[6] Exc. 001-02.

[7] Exc. 003-04.

work, provided there were restrictions on her lifting capacity and activities involving stooping.[8]

Settje began her employment with Stonebridge on December 18, 2008.[9] She was terminated on or about February 15, 2009.[10]

Settje was seen and evaluated by two doctors at the Central Peninsula Hospital emergency room on April 14, 2009,[11] reporting to them that she injured her back at work on February 15, 2009.[12] Settje then saw Pedro Perez, M.D., on April 22, 2009,[13] and Cynthia H. Kahn, M.D., on the following day.[14] A lumbar spine MRI was performed on April 29, 2009, which was read as showing, among other things, postsurgical and degenerative changes at L4-5.[15] Dr. Kahn saw Settje again on May 7, 2009, and she noted the recent MRI study, which diagnosed disk protrusion and facet hypertrophy at

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[8] Exc. 006-08.

[9] During the board hearing on April 13, 2010, some factual disputes arose between the parties regarding Settje's employment with Stonebridge, the materiality of which remains to be seen. For example, Settje testified that she applied for a position at the front desk. Apr. 13, 2010, Hr'g Tr. 35:22-23 and 45:13–46:1. However, she signed a form that indicated she was hired as a full-time housekeeper on December 18, 2008. Exc. 027-28. Settje maintained that, although she told her supervisors about her injury when it happened, no one from Stonebridge would give her the form (Report of Occupational Injury or Illness) on which to report her February 2009 injury to workers' compensation. Apr. 13, 2010, Hr'g Tr. 15:15-16 and 27:1-6. Stonebridge presented no witnesses to contradict Settje's version of this event. On the other hand, Stonebridge pointed out that it was not asserting any notice defenses. Apr. 13, 2010, Hr'g Tr. 23:12-18. Settje also maintained she was terminated shortly after she was injured, suggesting a link between the two. Apr. 13, 2010, Hr'g Tr. 15:22–16:8. Elsewhere, in contrast, Stonebridge asserted that there was some other kind of incident or accident that precipitated her termination. Apr. 13, 2010, Hr'g Tr. 28:9-17.

[10] Apr. 13, 2010, Hr'g Tr. 28:9-12.

[11] Exc. 029-35.

[12] Exc. 030 and 032.

[13] Exc. 047.

[14] Exc. 048-50.

[15] Exc. 051-52.

L4-5.[16] Dr. Kahn recommended a lumbar epidural steroid injection that she administered to Settje the following day.[17]

Settje filed a workers' compensation claim dated May 13, 2009. Her claim included requests for PPI benefits and a reemployment benefits eligibility evaluation.[18] Stonebridge controverted all benefits based on Settje's alleged failure to sign and return releases for medical records.[19]

The first of several prehearing conferences (PHC) was held on June 4, 2009.[20] Settje reiterated her requests for PPI benefits and a reemployment benefits eligibility evaluation.[21] With respect to PPI benefits, the board's designee for the PHC stated in the summary: "PPI – Ms. Settje indicated she understood the concept of [a] PPI rating and indicated she would like to assert the right to PPI when and if a rating became appropriate."[22]

Dr. Kahn reevaluated Settje on June 5, 2009, recommended physical therapy, and expressed her desire to see Settje again in four weeks.[23] Settje followed through with physical therapy through the end of June 2009.[24]

On July 16, 2009, Timothy R. Borman, D.O., performed an employer's medical evaluation (EME) of Settje and prepared a report.[25] Of relevance here are: 1) his diagnosis of a possible lumbar paravertebral muscle strain related to the work incident on February 14, 2009; and 2) his impressions of pre-existing lumbar spine degenerative

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16 Exc. 053-54.

17 Exc. 054, 064.

18 Exc. 055-56.

19 R. 927; Apr. 13, 2010, Hr'g Tr. 24:9-20; 25:9-13; 30:13-21.

20 R. 927-30.

21 R. 928-29.

22 R. 928.

23 Exc. 057-58.

24 R. 770-76.

25 Exc. 060-72.

disk disease and pre-existing lumbar spine facet degenerative joint disease at multiple levels.[26] However, based in part on the fact that Settje did not seek medical treatment for two months,[27] Dr. Borman was of the opinion that the work incident was not the substantial cause of any lumbar muscle strain or need for treatment,[28] and did not aggravate her pre-existing lumbar spine conditions.[29] Dr. Borman also believed Settje could return to work as a housekeeper as long as she followed the restrictions outlined in her 2007 PCE and that her current spinal condition was identical to her spinal condition before February 14, 2009.[30] Finally, when responding to a question regarding a permanent impairment rating for Settje, Dr. Borman stated: "It is my professional opinion that Ms. Settje did not suffer a work-related injury on February 14, 2009.

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[26] Exc. 068. There is a one-day discrepancy in the records with respect to the date on which Settje was injured, February 14, or February 15, 2009. *Cf.* Exc. 030, 032, and 068. We do not view this discrepancy as significant.

[27] Dr. Borman commented:

> Ms. Settje, by history, suffered increasing low back pain on February 14, 2009, and on February 15, 2009, while working. This *could* be consistent with a lumbar paravertebral muscular strain.
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> In the emergency room on April 14, 2009, Dr. Magen identified exquisitely tender L3, L4, and L5 areas, mostly on the right paraspinal muscular area. This *would* be consistent with an acute lumbar muscular strain.
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> However, it seems peculiar to me that Ms. Settje did not seek formal treatment for her back discomfort associated with the February 14, 2009, work event until she was seen in the emergency room on April 14, 2009. For this reason, I have my doubts about the validity of the lumbar muscular strain of February 14, 2009. If this strain had caused such severe pain, I am at a loss to understand why she did not seek care for essentially two months following the February 14, 2009, work event. Exc. 069 (italics added).

[28] Exc. 069.

[29] Exc. 070.

[30] *Id.*

Therefore, assignment of any impairment regarding a February 14, 2009, work event is not applicable."[31]

Another PHC was held on July 29, 2009.[32] The summary, like those for each PHC, indicated that Settje's claim included PPI benefits and a reemployment benefits eligibility evaluation.[33] It also reflected that the dispute between the parties over Settje providing releases, the basis for Stonebridge's initial controversion, had been resolved.[34] That same day, Stonebridge issued a Controversion Notice in which it controverted specific benefits including PPI benefits and retraining, based on Dr. Borman's EME report.[35]

In January 2010, Settje was evaluated by Paul M. Puziss, M.D. and Ronald N. Turco, M.D., in connection with a second independent medical evaluation (SIME).[36] They issued reports.[37] Dr. Puziss concluded that the work injury was the substantial cause of Settje's disability and need for medical treatment; however, it was a temporary aggravation of her pre-existing degenerative spine condition.[38] He believed that this temporary aggravation objectively resolved by September 1, 2009, and that Settje had returned to baseline.[39] When asked for a PPI rating, Dr. Puziss was of the opinion that she had not sustained any permanent impairment from the work injury.[40] From his

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31 Exc. 071.

32 Exc. 073-75.

33 R. 934, 939, 948, 958-59.

34 Exc. 073.

35 Exc. 076.

36 Of relevance to the PPI issue, the board's SIME form, *see* 8 AAC 45.092(g)(1)(A), indicated that on May 7, 2009, Dr. Kahn had checked the "Undetermined" box in response to the question whether Settje's injury would result in permanent impairment. R. 500.

37 Exc. 085-104.

38 Exc. 093.

39 *Id.*

40 Exc. 094.

perspective, Dr. Turco concluded that Settje's "difficulties have not been caused by any work-related issues."[41]

At a PHC on March 22, 2010, Stonebridge agreed to pay certain benefits.[42] However, the summary indicated that PPI and reemployment benefits were still in dispute between the parties.[43] In terms of the former, it states: "PPI – there apparently is no rating but [Settje] believes there should be."[44]

Settje's claim went to hearing before the board on April 13, 2010. She did not present any medical evidence relative to a PPI rating.

3. Standard of review.

Pursuant to the provisions of AS 23.30.128(b), the commission is to uphold the board's findings of fact if they are supported by substantial evidence in light of the record as a whole. "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[45] "The question whether the quantum of evidence is substantial enough to support a conclusion in the contemplation of a reasonable mind is a question of law"[46] and therefore independently reviewed by the commission.[47] The commission exercises its independent judgment in reviewing questions of law.[48] Whether the doctrine of ripeness applies is a legal question.[49]

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41 Exc. 103.

42 R. 958.

43 R. 959.

44 *Id*.

45 *Pietro v. Unocal Corp.*, 233 P.3d 604, 610 (Alaska 2010) (quoting *Grove v. Alaska Constr. & Erectors,* 948 P.2d 454, 456 (Alaska 1997) (internal quotation marks omitted)).

46 *McGahuey v. Whitestone Logging, Inc.*, Alaska Workers' Comp. App. Comm'n Dec. No. 054, 6 (Aug. 28, 2007) (citing *Land & Marine Rental Co. v. Rawls*, 686 P.2d 1187, 1188-89 (Alaska 1984)).

47 AS 23.30.128(b).

48 *Id*.

49 *State v. American Civil Liberties Union of Alaska*, 204 P.3d 364, 368 n.11 (Alaska 2009) (*ACLUA*) (citing *Jacob v. State, Dep't of Health & Soc. Servs., Office of Children's Servs.,* 177 P.3d 1181, 1184 (Alaska 2008)).

4. Discussion.

a. Applicable law.

Under AS 23.30.120(a)(1), benefits sought by an injured worker are presumed to be compensable.[50] To attach the presumption of compensability, an employee must first establish a "preliminary link" between his or her injury and the employment.[51] Under old law, if the employee establishes the link, in the past, the presumption may be overcome when the employer presents substantial evidence that the injury was not work-related.[52] If the board finds that the employer's evidence is sufficient, then the presumption of compensability drops out and the employee must prove his or her case by a preponderance of the evidence.[53] This means that the employee must "induce a belief" in the minds of the board members that the facts being asserted are probably true.[54]

However, the Alaska Workers' Compensation Act, AS 23.30.001 — .395, as amended in 2005, applies to Settje's claim because the incident giving rise to it occurred in 2009. Elsewhere,[55] in accordance with the 2005 amendments to AS 23.30.010, including the division of this section into subsections (a) and (b), we concluded that, to be compensable, subsection (a) requires employment to be, "in

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[50] *See, e.g., Meek v. Unocal Corp.*, 914 P.2d 1276, 1279 (Alaska 1996).

[51] *See, e.g., Tolbert v. Alascom, Inc.,* 973 P.2d 603, 610 (Alaska 1999).

[52] *Tolbert*, 973 P.2d at 611 (explaining that to rebut the presumption "an employer must present substantial evidence that either '(1) provides an alternative explanation which, if accepted, would *exclude* work-related factors as a substantial cause of the disability; or (2) directly eliminates *any reasonable possibility* that employment was a factor in causing the disability.'") (italics in original, footnote omitted); *Miller v. ITT Arctic Servs.*, 577 P.2d 1044, 1046 (Alaska 1978).

[53] *Miller*, 577 P.2d at 1046.

[54] *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964).

[55] *See Uresco Constr. Materials, Inc. v. Porteleki*, Alaska Workers' Comp. App. Comm'n Dec. No. 152 (May 11, 2011).

relation to other causes," "the substantial cause of the disability or . . . need for medical treatment."[56]

In another recent case, the commission decided that the amended version of the statute, AS 23.30.010(a), modified the last two steps of the presumption analysis.[57] Under the new, statutory causation standard, the employer can rebut the presumption, the second step in the analysis, "by a demonstration of substantial evidence that the death or disability or the need for medical treatment did not arise out of and in the course of the employment."[58] To do so, "the board must evaluate the relative contribution of different causes of the disability or death or the need for medical treatment."[59] We held: "[I]f the employer can present substantial evidence that demonstrates that a cause other than employment played a greater role in causing the [need for medical treatment], etc., the presumption is rebutted."[60] In terms of the third step in the presumption analysis, we concluded:

> [T]he two elements of the third step in the presumption analysis under former law, that the presumption drops out and the employee must prove the claim by a preponderance of the evidence, should be engrafted on the third step of the analysis under AS 23.30.010(a). . . . If the employer rebuts the presumption, it drops out, and the employee must prove, by a preponderance of the evidence, that in relation to other causes, employment was the substantial cause of the disability, need for medical treatment, etc. Should the employee meet this burden, compensation or benefits are payable.[61]

As the ensuing discussion demonstrates, Settje's claim for PPI benefits is subject to adjudication by the board on remand, in accordance with the foregoing presumption

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56 AS 23.30.010(a).

57 *See Runstrom v. Alaska Native Medical Center,* Alaska Workers' Comp. App. Comm'n Dec. No. 150, 6 (Mar. 25, 2011).

58 AS 23.30.010(a).

59 *Id.*

60 *Runstrom*, App. Comm'n Dec. No. 150 at 7.

61 *Id.* at 8.

of compensability analysis. The board's decision in that respect on remand will determine whether a reemployment eligibility evaluation by the RBA is necessary.

b. Settje's claim for PPI benefits was ripe for adjudication.

Even though the board mentioned that it reserved *jurisdiction* to adjudicate Settje's claim for PPI benefits,[62] it appears to us that its reluctance to rule on that part of her claim was actually founded on its conclusion that it was not *ripe* for adjudication. In this regard, the board held:

> The [legal] issue whether [Settje] is actually entitled to PPI benefits is not *ripe* for decision because the law allows [Settje] to obtain a PPI rating from her attending physician or from a physician to whom she is referred by her attending physician if her physician does not perform PPI ratings.[63]

The doctrine of ripeness pertains to whether there is an actual controversy between parties.[64] "[R]ipeness asks whether there yet is any need for the court to act."[65] As the Alaska Supreme Court recently stated:

> The concept of ripeness can be explained in both abstract and practical formulations. The abstract formulation is that ripeness depends on "whether . . . there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant [court action]." On a more practical level, our ripeness analysis fundamentally "balances the need for decision against the risks of decision." We examine "the fitness of the issues for judicial decision" and "the hardship to the parties of withholding court consideration."[66]

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[62] "Accordingly, jurisdiction over the question whether [Settje] is entitled to PPI benefits is reserved until such time as [Settje's] physician provides a PPI rating or refers [Settje] to a physician for that purpose." *Settje,* Bd. Dec. No. 10-0089 at 21.

[63] *Id.* (italics added).

[64] *Brause v. State, Dep't of Health & Soc. Servs.,* 21 P.3d 357, 358 (Alaska 2001).

[65] *Brause,* 21 P.3d at 358 n.6 (quoting 13A Charles Alan Wright, et al., *Federal Practice and Procedure* § 3532.1, at 101 (Supp.2000)).

[66] *ACLUA,* 204 P.3d at 369 (footnotes omitted).

First, analyzing this matter in terms of the abstract formulation of ripeness, leading up to the April 13, 2010, hearing, the parties clearly identified PPI benefits[67] as being at issue. Several PHC summaries reflected that Settje claimed PPI benefits and Stonebridge controverted them. Their legal interests were adverse. Setting aside whether Settje could, applying the aforementioned presumption of compensability analysis, prove her claim for PPI benefits, there was a substantial and immediate controversy between Settje and Stonebridge in this respect.

Second, we must consider, from a practical standpoint, whether Settje's claim for PPI benefits was ripe for adjudication at the April 13, 2010, hearing. We do so by examining the fitness of the PPI issue for decision by the board and the hardship to the parties of the board withholding consideration of that issue.

In the commission's view, Settje's PPI claim was ready to be decided. On May 7, 2009, Dr. Kahn indicated that it was undetermined whether Settje's injury would result in permanent impairment.[68] About a month later, at the first PHC on June 4, 2009, Settje said she understood that she needed a rating to obtain PPI benefits.[69] The following month, Dr. Borman, in his EME report, found Settje had not suffered a work-

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[67] AS 23.30.190, the statute that provides for PPI benefits, states in pertinent part:

> (a) In case of impairment partial in character but permanent in quality, and not resulting in permanent total disability, the compensation is $177,000 multiplied by the employee's percentage of permanent impairment of the whole person. The percentage of permanent impairment of the whole person is the percentage of impairment to the particular body part, system, or function converted to the percentage of impairment to the whole person as provided under (b) of this section. . . .
>
> (b) All determinations of the existence and degree of permanent impairment shall be made strictly and solely under the whole person determination as set out in the American Medical Association Guides to the Evaluation of Permanent Impairment[.] . . .

[68] R. 500.

[69] R. 928.

related injury.[70] In his SIME report dated January 25, 2010, Dr. Puziss concluded that Settje had not sustained any permanent impairment from the work injury.[71] At the last PHC on March 22, 2010, even though PPI benefits were a central issue, Settje acknowledged that she had no rating.[72]

We now turn to examining the hardship to the parties of the board withholding consideration. In *ACLUA,* the supreme court pointed out that, because the parties' claims were presented in a hypothetical setting, they faced little hardship if their claims were not resolved.[73] In contrast, here, the setting for Settje's claims and Stonebridge's defenses was not hypothetical. The board's decision that the PPI issue was not ripe represents a hardship to Stonebridge.[74] Its potential exposure to liability for PPI and reemployment benefits continues, and has resulted in Stonebridge's need to incur additional attorney fees and costs pursuing this appeal of the board's decision, in which it postponed adjudication of the PPI claim.

Balancing the need for decision against the risks, the commission concludes that Settje's claim for PPI benefits was ripe for adjudication. The PPI issue was acknowledged by the parties prior to and contested by them at hearing, but for Settje's failure to present evidence of a rating. A decision on that issue was needed, in the sense that phrase was being used by the supreme court in *ALCUA*.[75] If the board did not make a decision, the issue would remain unresolved. On the other hand, there

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[70] Exc. 071.

[71] Exc. 094. SIMEs are intended to obtain a third opinion where a dispute exists between the claimant's treating medical provider and the employer's medical evaluator. *See* AS 23.30.095(k).

[72] R. 959.

[73] *ALCUA,* 204 P.3d at 369-371.

[74] The board's decision did not result in hardship to Settje. If anything, it benefitted her, as it would give her a second opportunity to prove her PPI claim.

[75] *ALCUA* involved a constitutional challenge to the amendment of a state statute, AS 11.71.060(a), which criminalized the possession of small amounts of marijuana. The court concluded that a decision was not needed because such activity was criminal under federal law. *ALCUA*, 204 P.3d at 369-371.

were no risks in deciding the PPI issue, again, as we understand the use of that phrase in *ALCUA*.[76] The board was not deciding a hypothetical claim.

Finally, we note that in another case in which the claimant had not obtained a rating,[77] the supreme court did not consider ripeness to be an issue. And in terms of the statute, AS 23.30.190, the underlying premise of any PPI claim, including Settje's, is that the employee has an impairment that is partial in character, but permanent in quality. Stated simply, a PPI rating is necessary to obtaining an award of PPI benefits. When it applied the doctrine of ripeness to Settje's PPI claim, the board was effectively relieving the failure on her part to prove, by a preponderance of the evidence, that she was permanently, partially impaired. Fundamentally, we disagree with the board that the statute "allows" Settje to obtain a PPI rating.[78] We view the statute as requiring Settje to obtain a rating, if she wanted an award of PPI benefits and was dissatisfied with Stonebridge's evidence in that respect.

c. To qualify for reemployment benefits, Settje would have to demonstrate permanent partial impairment to some degree.

AS 23.30.041(f)(4) provides that "[a]n employee is not eligible for reemployment benefits if . . . at the time of medical stability, no permanent impairment is identified or expected." The supreme court has applied this provision to deny reemployment benefits.[79] If, on remand, the board decides that Settje's PPI rating is 0%, that is, no permanent impairment is identified, she would not be eligible for reemployment benefits. If she is not eligible for reemployment benefits, then there is no point in the RBA conducting a reemployment eligibility evaluation.

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[76] The court was referring to the risks associated with deciding hypothetical cases. *ALCUA*, 204 P.3d at 370.

[77] *See Griffiths v. Andy's Body & Frame, Inc.,* 165 P.3d 619 (Alaska 2007).

[78] *Settje,* Bd. Dec. No. 10-0089 at 21.

[79] *Rydwell v. Anchorage School District,* 864 P.2d 526, 529 (Alaska 1993), in which the court applied this subsection as previously numbered, AS 23.30.041(f)(3).

5. Conclusion.

We VACATE the board's decision that Settje's claim for PPI benefits was not ripe for adjudication and REMAND this matter to the board so that it may adjudicate that claim, based on the record at the hearing on April 13, 2010, and applying the presumption of compensability analysis, as set forth above, to the evidence presented at that hearing. Whether Settje is entitled to a reemployment eligibility evaluation by the RBA is contingent on whether the board, on remand, awards Settje PPI benefits.

Date: *14 June 2011* ALASKA WORKERS' COMPENSATION APPEALS COMMISSION

Signed
Jim Robison, Appeals Commissioner

Signed
S.T. Hagedorn, Appeals Commissioner

Signed
Laurence Keyes, Chair

APPEAL PROCEDURES

This is a final decision on the merits of this appeal from the board's Decision No. 10-0089. The commission vacated the board's decision and remanded (returned) the case to the board. The commission's decision becomes effective when distributed unless proceedings to reconsider it or to appeal to the Alaska Supreme Court are instituted (started).[80] To see the date it is distributed, look at the box below. It becomes final on the 31st day after the decision is distributed.

[80] A party has 30 days after the service or distribution of a final decision of the commission to file an appeal to the supreme court. If the commission's decision was served by mail only to a party, then three days are added to the 30 days, pursuant to Rule of Appellate Procedure 502(c), which states:

> **Additional Time After Service or Distribution by Mail.** Whenever a party has the right or is required to act within a prescribed number of days after the service or distribution of a document, and the document is served or distributed by mail, three calendar days shall be added to the prescribed period. However,

(footnote continued)

Proceedings to appeal this decision must be instituted (started) in the Alaska Supreme Court no later than 30 days after the date this final decision is distributed[81] and be brought by a party-in-interest against all other parties to the proceedings before the commission, as provided by the Alaska Rules of Appellate Procedure. *See* AS 23.30.129(a). The appeals commission and the workers' compensation board are not parties.

You may wish to consider consulting with legal counsel before filing an appeal. If you wish to appeal 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

This is a decision issued under AS 23.30.128(e). A party may ask the commission to reconsider this Final Decision by filing a motion for reconsideration in accordance with 8 AAC 57.230. The motion for reconsideration must be filed with the commission no later than 30 days after the day this decision is distributed to the parties. If a request for reconsideration of this final decision is filed on time with the commission, any proceedings to appeal must be instituted no later than 30 days after the reconsideration decision is distributed[82] to the parties, or, no later than 60 days after the date this final decision was distributed in the absence of any action on the reconsideration request, whichever date is earlier. AS 23.30.128(f).

I certify that with the exception of the correction of a typographical error this is a full and correct copy of the Final Decision No. 153 issued in the matter of *Stonebridge Hospitality Associates, LLC v. Settje,* AWCAC Appeal No. 10-017, dated and filed in the office of the Alaska Workers' Compensation Appeals Commission in Anchorage, Alaska, on June 14, 2011.

Date: *June 21, 2011*

Signed

B. Ward, Commission Clerk

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no additional time shall be added if a court order specifies a particular calendar date by which an act must occur.

81 *See* n.80, *supra*.

82 *Id*.