

Case: *Richard Louie vs. B.P. Exploration (Alaska), Inc. and ACE USA, Alaska Workers' Comp. App. Comm'n Dec. No. 180 (April 8, 2013)*

Facts: In January 2000, Richard Louie (Louie) suffered a stroke while working for B.P. Exploration (Alaska), Inc. (B.P.) as a geophysicist. The stroke resulted in his permanent and total disability. In 2004, Louie and B.P. signed a partial compromise and release (C&R), resolving disputes related to physical, occupational, and speech therapy after March 1, 2004. The agreement also acknowledged that Louie was not expected to return to work. In October 2011, Louie sought a compensation rate adjustment. B.P. conceded at hearing that had Louie not been injured, he would have remained employed and his annual earnings would have continued to rise, and that those increased earnings would have entitled him to the maximum compensation rate, had he been injured in any succeeding year.

The board denied the adjustment, concluding that the version of AS 23.30.175(a) in effect at the time that Louie was injured applied and resulted in the maximum rate of \$700 per week. The board observed that when calculating compensation rates, the Alaska Supreme Court has consistently applied the law in effect at the time of injury, even though subsequent amendments to AS 23.30.220 increased the rates. Louie would get a higher compensation rate only if the amended .175(a) "date of injury" meant the date of "disability due to injury," assuming that Louie's disability started after AS 23.30.175(a) was amended (six months after his date of injury). Louie appeals.

Applicable law: At the time Louie was injured, AS 23.30.180(a) provided, "In case of total disability adjudged to be permanent 80 percent of the injured employee's spendable weekly wages shall be paid to the employee during the continuance of the total disability."

AS 23.30.220(a) provided:

(a) Computation of compensation under this chapter shall be on the basis of an employee's spendable weekly wage at the time of injury. An employee's spendable weekly wage is the employee's gross weekly earnings minus payroll tax deductions. An employee's gross weekly earnings shall be calculated as follows:

....

(3) if at the time of injury the employee's earnings are calculated by the year, the employee's gross weekly earnings are the yearly earnings divided by 52;

....

(10) if an employee is entitled to compensation under AS 23.30.180 and the board determines that calculation of the employee's gross weekly earnings under (1) – (7) of this subsection does not fairly reflect the employee's earnings during the period of disability, the board shall determine gross weekly earnings by considering the nature of the employee's work, work history, and resulting disability, but

compensation calculated under this paragraph may not exceed the employee's gross weekly earnings at the time of injury.

AS 23.30.175(a) provided that "The weekly rate of compensation for disability or death may not exceed \$700[.]"

Effective July 1, 2000, this statute was amended to read in relevant part: "The weekly rate of compensation for disability or death may not exceed the maximum compensation rate. . . . In this subsection, "maximum compensation rate" means 120 percent of the average weekly wage, calculated under (d) of this section, applicable on the date of injury of the employee."

Effective July 1, 2000, AS 23.30.175(d) provides that "By December 1 of each year, the commissioner shall determine the average weekly wage in this state by dividing the average annual wage in this state for the preceding calendar year by 52."

Issue: Is Louie's compensation rate (1) the maximum of \$700, the version of AS 23.30.175(a) in effect at the time of his injury, or (2) the applicable maximum in a given year provided for in the version of subsection .175(a) in effect at the time the C&R was executed in 2004, when Louie arguably was "disabled due to injury"?

Holding/analysis: The commission concluded that no matter which subsection of .220(a) is used to calculate Louie's gross weekly earnings, he would still be subject to the maximum compensation rate in .175(a). Moreover, the maximum rate of \$700 applies to Louie's injury because he was injured before July 1, 2000, and maximum compensation rate increases have never been applied retroactively. This analysis mooted the argument that the commission should construe "the date of injury" in the amended AS 23.30.175(a) as the date of "disability due to injury." The commission observed that "[t]he harsh reality is, given Louie's actual or predicted income levels, there is a huge disparity between Louie's compensation rate, no matter which version of AS 23.30.175(a) is applied, and whatever his income was or might be." Dec. No. 180 at 12.

Note: The Alaska Supreme Court affirmed the commission's decision, *Louie v. BP Exploration (Alaska), Inc.*, Op. No. 6914 (June 13, 2014).