

Alaska Workers' Compensation Appeals Commission

Marianne E. Burke, mother of Abigail E. Caudle (deceased),
Appellant,

vs.

Raven Electric, Inc. and Liberty Mutual Insurance Company,
Appellees.

Final Decision

Decision No. 215 August 18, 2015

AWCAC Appeal No. 14-022
AWCB Decision No. 14-0112
AWCB Case No. 201108827

Final decision on appeal from Alaska Workers' Compensation Board Final Decision and Order No. 14-0112, issued at Anchorage, Alaska, on August 15, 2014, by southcentral panel members Matthew Slodowy, Chair, Pamela Cline, Member for Labor, and Amy Steele, Member for Industry.

Appearances: Marianne E. Burke, self-represented appellant; Constance E. Livsey, Burr, Pease & Kurtz, P.C., for appellees, Raven Electric, Inc. and Liberty Mutual Insurance Company.

Commission proceedings: Appeal filed September 15, 2014; briefing completed April 6, 2015; oral argument held on May 21, 2015.

Commissioners: James N. Rhodes, Philip E. Ulmer, Andrew M. Hemenway, Chair.

By: Andrew M. Hemenway, Chair.

1. Introduction.

This case concerns the tragic death of a young apprentice electrician, Abigail E. Caudle. Ms. Caudle, 26, was working for Raven Electric, Inc. (Raven), when she touched a live wire and was electrocuted on June 20, 2011. Marianne Burke, Ms. Caudle's mother, filed a claim for workers' compensation benefits, which the board denied.

Because death benefits for a parent under the Alaska Workers' Compensation Act are available only if the parent was a dependent of the deceased worker, and Marianne

Burke was not a dependent of Ms. Caudle at the time of her death, we affirm the board's decision.

*2. Factual background and proceedings.*¹

Abigail Caudle moved to Anchorage with her family in 1996, when she was eleven years old.² After working for several years in the electrical department at Home Depot, in the fall of 2010 Ms. Caudle went to work for Raven Electric as an apprentice electrician.³ At that time, she had no formal electrical training or construction experience.⁴

By June 20, 2011, Ms. Caudle had completed the first year apprentice training module and had accumulated 1465.5 hours of work in Raven's shop, and 194 hours of work in the field.⁵ That day, she was assigned to assist a journeyman electrician in relocating overhead electrical lights as part of an office remodel project.⁶ After a long day, Ms. Caudle was working on an overhead junction box while standing on a stepladder.⁷ She inadvertently touched a live wire and was electrocuted.⁸

Raven accepted liability under the Alaska Workers Compensation Act and paid a \$10,000 death benefit on Ms. Caudle's behalf.⁹ Subsequently, Marianne Burke,

¹ We make no factual findings. We state the facts as found by the board, with the addition of background information for context, gleaned from documents submitted by Ms. Burke and included in the excerpt of record filed by Raven.

² Exc. 010.

³ Exc. 137.

⁴ Exc. 137, 144.

⁵ Exc. 137-138, 144.

⁶ Exc. 170-171.

⁷ Exc. 171-172.

⁸ *Marianne E. Burke v. Raven Electric, Inc.*, Alaska Workers' Comp. Bd. Dec. No. 14-0112, p. 1 (No. 1) (August 15, 2014). See R. 1.

⁹ *Id.*, p. 3 (Nos. 1, 2) (August 15, 2014).

Ms. Caudle's mother, filed a claim for additional benefits under the Act,¹⁰ not as a representative of her daughter's estate, but as her mother.¹¹

Raven controverted the claim on the ground that AS 23.30.215 provides for payment of death benefits to a deceased employee's mother only if the mother was dependent upon the deceased at the time of injury, and Ms. Burke was not dependent on Ms. Caudle.¹²

Prior to hearing, Raven sought to obtain Ms. Burke's and Ms. Caudle's federal tax returns for 2010 and 2011, which it deemed relevant to whether Ms. Burke was dependent on her daughter.¹³ Ms. Burke filed a petition for a protective order to prevent disclosure of the tax returns.¹⁴ She also filed notice of her intent to rely on a variety of documents relating to the workplace injury, including fire and police department reports, an autopsy report, and a report and related records detailing the results of an investigation and enforcement action taken by the Alaska Department of Labor, Labor Standards & Safety Division, Occupational Safety and Health.¹⁵

At a prehearing conference, Ms. Burke's motion for a protective order was denied and she was directed to provide the releases requested by Raven.¹⁶ Raven subsequently filed a petition to exclude the materials that Ms. Burke had indicated she intended to rely on at the hearing.¹⁷ Eventually, Raven filed a petition seeking dismissal of Ms. Burke's claim for failure to comply with the discovery order or in the alternative,

¹⁰ *Burke*, Bd. Dec. No. 14-0112, p. 3 (No. 3).

¹¹ *See id.*, p. 5 (No. 16).

¹² *Marianne E. Burke v. Raven Electric, Inc.*, Alaska Workers' Comp. Bd. Dec. No. 14-0029, p. 4 (Nos. 4, 5) (Mar. 7, 2014).

¹³ *See id.*, pp. 4-5 (No. 7).

¹⁴ *Id.*, p. 5 (No. 8).

¹⁵ *Id.*, pp. 5-6 (No. 9).

¹⁶ *Id.*, p. 7 (No. 11).

¹⁷ *Id.*, p. 7 (No. 12); *Burke*, Bd. Dec. No. 14-0112, p. 3 (No. 4).

to compel her to comply with the order.¹⁸ On March 7, 2014, the board granted the petition to exclude the materials Ms. Caudle had intended to rely on, but denied the petition to dismiss her claim.¹⁹

The board heard the matter on July 30, 2014. Ms. Burke's prehearing brief made these arguments regarding why benefits should be paid:

- Raven's alleged negligence in connection with Abigail's death should entitle her mother to benefits.
- Awarding her mother benefits in this case will deter future negligence from this and similar employers.
- OSHA citations against Raven support awarding her mother benefits.
- Dependency in a workers' compensation case cannot be measured solely in financial terms.²⁰

Prior to the hearing, Ms. Burke filed a packet of evidence upon which she intended to rely, including evidence considered and excluded in the board's March 7, 2015, decision.²¹ Raven objected to admission of the evidence, and its objection was sustained, with the exception of one item.²²

Nowhere in the supporting pleadings, petitions, testimony, or briefs did Ms. Burke state she was financially dependent on Abigail at the time of her death,²³ and the board found that she was not financially dependent upon Abigail when she died.²⁴

3. Standard of review.

The board's findings regarding the weight to be accorded to witnesses' testimony, including medical testimony and reports, is conclusive, even if the evidence

¹⁸ *Burke*, Bd. Dec. No. 14-0029, p. 7 (#14); *Burke*, Bd. Dec. No. 14-0112, p. 4 (No. 5).

¹⁹ *Burke*, Bd. Dec. No. 14-0029.

²⁰ *Burke*, Bd. Dec. No. 14-0029, p. 9 (No. 20).

²¹ *Burke*, Bd. Dec. No. 14-0112, pp. 4-5 (Nos. 9-10).

²² *Id.*, p. 5 (No. 11).

²³ *Id.* (No. 12).

²⁴ *Id.* (No. 13).

is conflicting or susceptible to contrary conclusions.²⁵ We must uphold the board's factual findings if they are supported by substantial evidence in light of the whole record.²⁶

On questions of law, we do not defer to the board's conclusions. We exercise our independent judgment.²⁷

4. Discussion.

The Alaska Workers' Compensation Board has authority to award compensation under the Alaska Workers' Compensation Act, and nothing more. Death benefits available under the Act are limited to those specified in AS 23.30.215(a)(1)-(5). Subsections (a)(1)-(3) and (5) provide specified benefits for spouses and children. The only death benefits available to a parent under the Act are those specified in AS 23.30.215(a)(4), which provides for an award of a death benefit, in the absence of a surviving spouse or child, "for the support of father, mother, grandchildren, brothers, and sisters, if dependent upon the deceased at the time of injury[.]" The board found that Ms. Burke was not dependent on Ms. Caudle at the time of her death, and concluded that she was therefore ineligible for a death benefit under the Alaska Workers' Compensation Act.

Ms. Burke has asserted that since her daughter's death she has been unable to work, and that she will in the future be deprived of her daughter's support when she is older and unable to care for or support herself. But Ms. Burke has never claimed that she was financially dependent on her daughter at the time of her death,²⁸ and she has not contested the board's finding that she was not. Her argument on appeal is that,

²⁵ AS 23.30.122.

²⁶ AS 23.30.128(b).

²⁷ AS 23.30.128(b).

²⁸ See AS 23.30.215(c) ("All questions of dependency shall be determined as of the time of the injury, or death.").

notwithstanding a lack of financial dependency at the time her daughter died, an award of benefits should nevertheless be made.²⁹

There are three primary reasons why an award of benefits should be made, according to Ms. Burke. First, she asserts, the absence of a financial award devalues the life of a loved one, depriving their family of a sense of justice. Second, she argues, the absence of a financial consequence to the employer removes an incentive to keep the workplace and work practices safe. Third, Ms. Burke argues, to deny any compensation to the family is counter to the fundamental constitutional promises of equal protection under the law and due process of law, in that it treats a person without financial dependents unfairly as compared with others,³⁰ and denies their estate the right to sue the employer for damages resulting from the employer's negligence.³¹

These policy arguments must be directed to the legislature, as they no doubt will in connection with currently pending legislation introduced following Ms. Caudle's death.³² However, we do not have the authority to rule on the constitutional issues that Ms. Burke raises,³³ and we are constrained to apply the law as it is currently

²⁹ Ms. Burke briefly asserts that Raven may be held liable under the Defective Machinery Act, AS 23.23.010-.040. The Alaska Supreme Court has ruled to the contrary. *See Gordon v. Burgess Construction Company*, 425 P.2d 602 (Alaska 1967). In any event, a claim against the employer that is not based on the Alaska Workers' Compensation Act must be addressed to the courts rather than to the Alaska Workers' Compensation Board.

³⁰ We note that the Alaska Supreme Court has previously rejected similar arguments. *See Taylor v. Southeast-Harrison Western Corporation*, 694 P.2d 1160 (Alaska 1985).

³¹ Ms. Caudle's estate retained the right, of course, to sue any third parties other than the employer, if their actions contributed to her death. Any such claims would be outside the purview of the board and this commission.

³² *See* HB 114 (29th Legislature), Sponsor Statement. These documents are available at http://www.legis.state.ak.us/basis/get_bill.asp?session=29&bill=HB114.

³³ *See, e.g., Harris v. Millennium Hotel*, at 5-6, Alaska Workers' Comp. App. Comm'n Dec. No. 183 (June 28, 2013), *vacated, Harris v. Millennium Hotel*, 330 P.3d 330 (Alaska 2015). The Alaska Supreme Court does have the authority to rule on constitutional issues and can, as it did in *Harris*, address them on appeal from our decision.

written. AS 23.30.215(a)(4) provides a benefit for “support” of a “dependent.” These words signify financial dependence.³⁴ Because Ms. Burke has never suggested that she was financially dependent on her daughter, we must affirm the board’s decision.

5. *Conclusion.*

The board’s decision is AFFIRMED.

Date: August 18, 2015 ALASKA WORKERS’ COMPENSATION APPEALS COMMISSION



Signed

James N. Rhodes, Appeals Commissioner

Signed

Philip E. Ulmer, Appeals Commissioner

Signed

Andrew M. Hemenway, Chair

APPEAL PROCEDURES

This is a final decision. AS 23.30.128(e). It may be appealed to the Alaska Supreme Court. AS 23.30.129(a). If a party seeks review of this decision by the Alaska Supreme Court, a notice of appeal to the supreme court must be filed no later than 30 days after the date shown in the commission’s notice of distribution (the box below).

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

A party may ask the commission to reconsider this decision by filing a motion for reconsideration in accordance with AS 23.30.128(f) and 8 AAC 57.230. The motion for

³⁴ See, e.g., *Burgess Construction Co. v. Lindley*, 504 P.2d 1023 (Alaska 1972) (former spouse eligible for benefits because financial support owed under divorce decree); *Employers Liability Assurance Corporation v. Dull*, 416 P.2d 821, 823 (substantial evidence supports board’s finding stepchild was dependent of stepfather, where stepchild lived with mother and stepfather at time of death).

reconsideration must be filed with the commission no later than 30 days after the date shown in the commission's notice of distribution (the box below).

I certify that, with the exception of changes made in formatting for publication, this is a full and correct copy of Final Decision No. 215, issued in the matter of *Marianne E. Burke, mother of Abigail E. Caudle (deceased) vs. Raven Electric, Inc. and Liberty Mutual Insurance Company*, AWCAC Appeal No. 14-022, and distributed by the office of the Alaska Workers' Compensation Appeals Commission in Anchorage, Alaska, on August 18, 2015.

Date: October 8, 2015



Signed

K. Morrison, Appeals Commission Clerk