

## Alaska Workers' Compensation Appeals Commission

Doyon Drilling Inc. and Alaska National  
Insurance Co.,  
Appellants,

vs.

Randy A. Whitaker,  
Appellee.

### Final Decision and Order

Decision No. 006 March 2, 2006

AWCAC Appeal No. 05-008

AWCB Decision No. 05-330

AWCB Case No. 200207685

Final Decision and Order on Motion for Stay and Motion to Dismiss Appeal of Alaska Workers' Compensation Board Order No. 05-330, Northern panel at Fairbanks, by Fred G. Brown, Chairman, and Chris Johansen, Board Member for Management.

Appearances: Richard Wagg, Russell, Tesche, Wagg, Cooper & Gabbert, for appellants Doyon Drilling Inc. and Alaska National Ins. Co.; Robert M. Beconovich, Esq., for appellee Randy A. Whitaker.

*This decision has been edited to conform to technical standards for publication.*

Commissioners: Jim Robison, Philip Ulmer, and Kristin Knudsen.

By: Kristin Knudsen, Chair.

The appellant, Doyon Drilling Inc., and its insurer, Alaska National Ins. Co., asked the commission to stay the Workers' Compensation Board's decision No. 05-330 which it issued December 14, 2005, at Fairbanks, Alaska. Randy Whitaker, the appellee, moved to dismiss the appeal, arguing that the commission did not have jurisdiction. In a Memorandum Order on December 29, 2005, the commission stayed the payment of past due benefits and attorney fees ordered by the board, but refused to stay on-going benefits, reasoning that the appellant failed to meet the standard in AS 23.30.125(c). The commission requested the parties to brief certain points, and indicated it would reconsider its decision after the additional briefing was reviewed. Briefing was complete on January 30, 2006. After much consideration and careful

review of the briefs, the commission arrived at the opinion that the board lacked jurisdiction to enter a decision on the claim for continuing temporary total disability compensation, and that therefore the commission lacks jurisdiction to consider the merits of the board's decision. We VACATE the board's December 2005 order and we REMAND the case to the board for further proceedings. We direct the board to obtain a remand from the Superior Court for proceedings before the board to determine whether the employee is entitled to temporary total disability benefits, penalties, interest and attorney fees after July 22, 2005. Having VACATED the board's order for lack of jurisdiction, and REMANDED the matter to the board without retaining jurisdiction, we DISMISS the appeal and VACATE our stay.

*Factual and procedural background.*

When Randy Whitaker injured his knee in April 2002 he had already endured three right knee surgeries, including a repair of the anterior cruciate ligament. His April 2002 knee injury resulted in more medical care, including surgery and payment of temporary disability compensation until February 27, 2003. A permanent partial impairment (PPI) rating resulted in PPI compensation paid by the employer. Whitaker later obtained additional surgical treatment for his knee, and the board heard the claim for payment of the additional surgery and temporary disability compensation in October and November 2004. The board made a finding that Whitaker had "provided clear and convincing evidence that his condition is not medically stable" and, based on this finding, concluded that "the employee is entitled to continuing TTD [temporary total disability] or TPD [temporary partial disability] benefits from February 28, 2004 forward through the period of his recovery."<sup>1</sup> This decision<sup>2</sup> was appealed to the Superior Court.<sup>3</sup>

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<sup>1</sup> *Whitaker v. Doyon Drilling, Inc., (Whitaker I)*, AWCB Dec. No. 04-0301, 6 (December 21, 2004).

<sup>2</sup> The board's decision on a petition for reconsideration affirmed the board's prior order. *Whitaker v. Doyon Drilling, Inc., (Whitaker II)*, AWCB Dec. No. 05-019 (January 24, 2005).

July 22, 2005, Doyon filed a controversy of on-going temporary total disability compensation on the basis of medical stability. Whitaker promptly filed a claim for benefits, including penalties for non-payment of compensation awarded, and Doyon filed a petition for modification of the board's order. The board heard the petition and claim on November 17, 2005. Doyon withdrew the petition to modify at the beginning of the hearing.<sup>4</sup> The board issued a decision on the claim on December 14, 2005,<sup>5</sup> which is the subject of this appeal by Doyon.

*Analysis of the question of jurisdiction.*

We begin with the proposition that this agency can have jurisdiction to determine the merits of an appeal from a board decision only if the board's decision was entered based on the proper exercise of the board's jurisdiction. Administrative review by this agency of the board's decision cannot cure an original jurisdictional defect. We will not add another level of administrative review to an unstable structure founded on boggy jurisdictional ground. Therefore, we first consider whether the board had jurisdiction to enter the decision and order of December 14, 2005.

In our Memorandum of December 29, 2005,<sup>6</sup> we asked the parties to brief certain questions, including: "Did the Board have jurisdiction or statutory authority to consider evidence of medical stability on November 17, 2005?" We are persuaded that in this case the board did *not* have jurisdiction to consider evidence, or the issue of medical stability, without remand from the Superior Court, on November 17, 2005.

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<sup>3</sup> *Doyon Drilling, Inc., v. Whitaker*, 3 AN 05-4632. A stay of the board's December 21, 2004 order was denied by the Superior Court, (Wolverton, J., February 7, 2005) and a petition for review to the Supreme Court, was also denied, *Doyon Drilling, Inc., v. Whitaker*, Supreme Court No. S11826, by Order entered by the Clerk of the Appellate Courts March 25, 2006.

<sup>4</sup> Hrg. Tr. 102.

<sup>5</sup> *Whitaker v. Doyon Drilling, Inc., (Whitaker III)*, AWCB Dec. No. 05-330 (December 14, 2005).

<sup>6</sup> *Doyon Drilling, Inc., v. Whitaker*, Alaska WC App. Com'n Mem. at 8 (December 29, 2005).

That being the case, the board did not have jurisdiction to enter an order extending the period of its December 2004 order, and concluding the employee was entitled to continuing temporary total disability compensation, without making findings of fact to support its conclusion that the employee was entitled to continuing temporary total disability compensation.

The board's December 2004 order directed the employer to pay temporary disability "in accord with this decision."<sup>7</sup> The decision states the employee is entitled to temporary benefits from "February 28, 2004 forward through the period of his recovery."<sup>8</sup> The board did not expressly retain jurisdiction in its order to determine future disputes regarding payment of the temporary benefits it directed the employer to pay, or to determine when the employee's period of recovery was at an end.<sup>9</sup> The question is, then, did the board implicitly retain jurisdiction, or have a statutory basis for jurisdiction, to determine whether the employee's temporary benefits were no longer payable?

Doyon argues that a separate basis exists for the board to exercise jurisdiction over the employee's claim. AS 23.30.185 prohibits the payment of temporary disability compensation for any period after the date of medical stability.<sup>10</sup> Coupled with this

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<sup>7</sup> *Whitaker I* at 8.

<sup>8</sup> *Whitaker I* at 6.

<sup>9</sup> The board expressly retained jurisdiction to decide other potential disputes, including the compensation rate, disputes as to wages, or periods Whitaker may have worked, *Whitaker I* at 6, and in the paragraph awarding attorney fees and costs, *id.* at 8. However, the board failed to express any retention of jurisdiction to determine medical stability, which it must have expected would occur at some point in the future.

<sup>10</sup> AS 23.30.185 provides:

In case of disability total in character but temporary in quality, 80 percent of the injured employee's spendable weekly wages shall be paid to the employee during the continuance of the disability. Temporary total disability benefits may not be paid for any period of disability occurring after the date of medical stability.

prohibition is a presumption that medical stability is reached if the injured employee's condition [from the effects of the compensable injury] is not objectively, measurably improved for a period 45 days.<sup>11</sup> This presumption may be rebutted by "clear and convincing evidence."<sup>12</sup>

Doyon argues that AS 23.30.185 bars the payment of temporary total disability compensation once the presumption of medical stability is raised, and the board's refusal to consider the evidence of medical stability<sup>13</sup> was a refusal to engage in

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<sup>11</sup> AS 23.30.395(27) defines medical stability in these terms:

"medical stability" means the date after which further objectively measurable improvement from the effects of the compensable injury is not reasonably expected to result from additional medical care or treatment, notwithstanding the possible need for additional medical care or the possibility of improvement or deterioration resulting from the passage of time; medical stability shall be presumed in the absence of objectively measurable improvement for a period of 45 days; this presumption may be rebutted by clear and convincing evidence;

<sup>12</sup> *Id.*

<sup>13</sup> As Doyon argues in its supplemental brief, the board observed the employer had produced evidence to support a controversion, *Whitaker III* at 2, but then, without considering the impact of the statutory presumption, determined it could not modify awarded benefits and refused to consider the evidence. Evidence to support a controversion is "sufficient evidence in support of the controversion that, if the claimant does not introduce evidence in opposition to the controversion, the Board would find that the claimant is not entitled to benefits." *Harp v. ARCO Alaska, Inc.*, 831 P.2d 352, 358, (Alaska 1992), citing *Kerley v. Workmen's Comp. App. Bd.*, 4 Cal.3d 223, 93 Cal.Rptr. 192, 197, 481 P.2d 200, 205 (1971). Or, as the Supreme Court later described the same quantum of evidence, "sufficient evidence to warrant a Board decision that [injured worker] is not entitled to benefits." *Id.* at 359. The Supreme Court requires only "some evidence," to raise the presumption contained in AS 23.30.120(a) that the employee's claim is covered by the workers' compensation statutes, *Resler v. Universal Services, Inc.*, 778 P.2d 1146, 1148 (Alaska 1989), that is, something less than evidence sufficient to support a *prima facie* case. Without suggesting that the same or a different quantum of evidence is needed to raise the presumption of medical stability, evidence which is sufficient to support a controversion

reasoned decision-making on Whitaker's claim for compensation after July 17, 2005.<sup>14</sup> Thus, the board could properly exercise jurisdiction to determine whether the employee was medically stable after July 17, 2005, the date Doyon ceased paying based on its controversion, because AS 23.30.185 makes all payment of temporary total disability compensation subject to a statutory condition that can occur at any time.<sup>15</sup> The board's award of temporary total disability compensation was conditional, Doyon argues, and therefore the board has both implied jurisdiction to determine that the terminating condition occurred and a statutory basis to determine the claim for future compensation.

Whitaker argues that the board could not alter the terms of its 2004 decision, but that it must "enforce" it by ordering the employer to continue to pay temporary benefits and penalties, based entirely on the earlier order. Essentially, Whitaker argues, the board could not take up the issue of medical stability because it had ordered that the employer pay temporary benefits "continuing" and that order was now on appeal to the Superior Court. Any variation would be an improper modification of the board's order. Whitaker rejects the concept of a statutory "condition" on temporary disability

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is sufficient, if it establishes the "absence of objectively measurable improvement for a period of 45 days," or a *prima facie* case of medical stability under AS 23.30.395(27), to raise a presumption that the employee is medically stable and that temporary total disability compensation may not be paid.

<sup>14</sup> AS 23.30.110(a) authorizes the board to "hear and determine all questions in respect of the claim." AS 23.30.110(d) states that the "claimant and the employer may each present evidence in respect to the claim." The withdrawal of the motion for modification did not bar the employer from presenting evidence "in respect to the claim" for benefits after July 17, 2005, before the board.

<sup>15</sup> The board relied on *Underwater Constr., Inc., v. Shirley*, 884 P.2d 156 (Alaska 1994), to find it was without jurisdiction to modify its 2004 decision. Doyon points out that the award in that case was for permanent disability compensation, which is not made under AS 23.30.185. The distinction is, as the Supreme Court noted, significant because temporary total disability payments "end with medical stability while PTD benefits do not." *Id.* at 159. In other words, an order for payment of temporary total disability compensation implies that the payment period will end with medical stability.

compensation, and argues that the board can terminate or modify awarded compensation only upon remand by the Superior Court. Since Doyon failed to obtain a remand, the board was without power to modify the December 2004 order. The board's decision that he is entitled to continuing temporary total disability compensation is therefore consistent with the absence of jurisdiction.

The board was clearly uncertain of its jurisdiction. Chairman Brown questioned whether the board should be proceeding to consider the employee's claim: "The only question [before the board] is what happens after 7/17/05, and I don't know the answer, honestly, as to whether we should be considering this or not. I honestly don't know for sure, but I do know for certain that at some point we should be."<sup>16</sup> It resolved that question by determining, correctly, that it did not have jurisdiction to modify the award that was the subject of an appeal. However, the board failed to recognize that it could not simply order the employer to continue paying temporary total disability compensation based on its earlier findings in the appealed order once the employer produced sufficient evidence to raise a presumption of medical stability and a claim for those benefits was before it.

Whitaker is correct that *Fischback & Moore of Alaska, Inc., v. Lynn*<sup>17</sup> requires the board to yield jurisdiction to the court when the board's order is appealed:

It is the general rule that when an order of an administrative agency is appealed to a court, the agency's power and authority in relation to the matter is suspended as to questions raised by the appeal. The rule is based on common sense. If a court has appellate jurisdiction over a decision of an administrative body, it would not be consistent with the full exercise of that jurisdiction to permit the administrative body also to exercise jurisdiction which would conflict with that exercised by the court. The court's jurisdiction over the subject matter of an appeal must be

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<sup>16</sup> Hrg Tr. 132.

<sup>17</sup> 407 P.2d 174 (Alaska 1965).

complete and not subject to being interfered with or frustrated by concurrent action by the administrative body.<sup>18</sup>

However, in *Fischback* the Supreme Court did not stop at the proposition that an appeal suspends the board's jurisdiction over the matter. It went on to state that the board could exercise concurrent jurisdiction when the exercise of such jurisdiction would not "conflict with the proper exercise of the court's jurisdiction. If there would be no conflict, then there would be no obstacle to the administrative agency exercising a continuing jurisdiction *that may be conferred upon it by law.*"<sup>19</sup> The question is whether the determination of whether the employee is entitled to continuing temporary disability compensation would conflict with the proper exercise of the court's jurisdiction. In the particular facts of this case, we conclude that it would.

Whitaker argues that because in his claim he sought penalties for "unilateral" controversion of compensation,<sup>20</sup> attorney fees and interest, as well as compensation, his claim is merely an enforcement action. We disagree. Whitaker did not seek a default order under AS 23.30.170(a), nor did the board issue a default order under AS 23.30.170. Whitaker filed a claim for compensation, alleging he was still temporarily totally disabled. Because Whitaker chose to file a claim instead of a request for a default order, Doyon may submit evidence in respect of the claim, and the board was obliged to hear the claim. Whitaker is not entitled to "additional compensation," commonly called a penalty, for a frivolous controversion of the claim unless he prevails on the claim for the underlying temporary total disability compensation under AS 23.30.185. In order to make findings and award benefits on the claim, the board

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<sup>18</sup> 407 P.2d at 176.

<sup>19</sup> *Id.* (emphasis added).

<sup>20</sup> A controversion is not required to be issued as a result of mutual agreement; a controversion is always "unilateral," since it is issued by one party, the employer, as an expression of one party's position, and is designed to inform the employee of the reason for the employer's position denying benefits and the employee's right to contest the denial. AS 23.30.155(a).

must have jurisdiction over the merits of the claim for temporary total disability compensation.

The order appealed to the court requires the employer to pay temporary disability compensation to Whitaker from February 28, 2004 “forward through the period of his recovery.” In other words, the awarded compensation clearly contemplated a future point of cessation. A determination of medical stability necessarily terminates the period of temporary disability and puts an end to payment of temporary total disability compensation – in that sense it coincides with the end of the “period of recovery.” If Doyon produced evidence that raised a presumption that Whitaker is medically stable, and Whitaker failed to produce clear and convincing evidence to rebut Doyon’s evidence, the effect of an un rebutted presumption is to establish Whitaker is medically stable, and thus bar continuing payment of temporary total disability compensation.<sup>21</sup>

In this case, once a claim was filed, an un rebutted presumption would require a modification of the order appealed to the superior court, as well as rejection of the claim. The board failed to precisely define the “period of his recovery.” Since the board failed to retain jurisdiction to determine *disputes* over when the period of recovery ended or, more correctly, when the temporary total disability compensation period ends, the board did not have jurisdiction to modify the appealed order and award benefits to the claimant. However, this is not the end of the inquiry.

Doyon presented evidence “to support a controversion,” i.e., that would be sufficient to raise the presumption that the employee is medically stable.<sup>22</sup> Unless

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<sup>21</sup> Again, we do not say that the presumption was not rebutted in this case; that is a determination for the board.

<sup>22</sup> As the Supreme Court has said, whether a quantum of evidence constitutes sufficient evidence to attach or rebut a presumption is a legal issue, *Fireman’s Fund Am. Ins. Co. v. Gomes*, 544 P.2d 1013, 1015 & n. 6 (Alaska 1976), which does not involve assessing the credibility of the evidence presented. *Resler v. Universal Services, Inc.*, 778 P.2d 1146, 1148-1149 (1989). Credibility is not weighed until after a presumption is overcome, and drops out, or, the presumption bubble bursts. *Veco Inc. v. Wolfer*, 693 P.2d 865, 869-870 & n. 6 (Alaska 1985). Here, the

Whitaker produced “clear and convincing evidence” that he was not medically stable, AS 23.30.185 prohibits the board from ordering Doyon to pay the temporary total disability compensation Whitaker claimed. The board made no findings that the employee produced such evidence in this case,<sup>23</sup> but the board concluded the employee was entitled to continuing temporary disability compensation. Directing the employer to continue to make payment in the face of a clear statutory bar to payment is a refusal to enforce the statute as the legislature wrote it; directing payment of compensation without making adequate findings of fact to support a conclusion that the employee is entitled to them is an error of law.<sup>24</sup>

We recognize that in this situation the board was caught between the court's jurisdiction and the legislature's prohibition; however, the board had the means to resolve this dilemma. The board is a party to the appeal.<sup>25</sup> As a party, the board may apply to the Superior Court for a remand to resolve the dispute regarding the date of medical stability and entitlement to on-going benefits; or to determine on what date, in the board's phrase, the “period of recovery” had closed. The board could have directed the parties to jointly obtain the remand order from the Superior Court and refrained from issuing a final decision on the claim until the matter was remanded to it. However, once the employer produced sufficient evidence to support a controversion of temporary total disability compensation on the grounds that the employee was

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employer clearly produced sufficient evidence in Dr. Keane's report of his June 30, 2005 examination of the employee, and in his testimony in the November 2005 hearing, that if not rebutted, would support a finding that the employee was medically stable and that is sufficient to attach the presumption in AS 23.30.395(27). Determining the credibility of a witness is the sole province of the board, AS 23.30.128(b), so we do not determine the credibility or persuasiveness of Dr. Keane's testimony.

<sup>23</sup> We do not determine if such was presented. The board did not determine if the employee had, or had not, presented clear and convincing evidence that he was not medically stable.

<sup>24</sup> *Stephens v. ITT/Felec Servs.*, 915 P.2d 620, 627 (Alaska 1996); *Bolieu v. Our Lady of Compassion Care Ctr.*, 983 P.2d 1270, 1275 (Alaska 1999).

<sup>25</sup> Alaska Rule of Appellate Procedure 602(h).

medically stable, the board erred by ignoring the legislative directive of AS 23.30.185 and the terms of its own order.

The board did not make findings regarding the evidence presented in the employee's claim because the employer failed to obtain a remand from the Superior Court allowing the board to consider the evidence in the context of support for a petition for modification that the employer had withdrawn.<sup>26</sup> The case cited by the board for this proposition<sup>27</sup> concerned an order for payment of permanent total disability compensation, which by its terms did not incorporate foreseeable change. We are not persuaded that *Underwater Constr. Inc. v. Shirley* was correctly applied in this case, where the order of temporary disability under AS 23.30.185 stated it would be paid until the end of the period of recovery. The legislature clearly meant that temporary total disability compensation may not be paid when the employee is medically stable and the board's order clearly meant that payments cease at the end of the period of recovery.

We agree that an employer does not have authority to modify permanent total disability compensation payments made pursuant to an award without obtaining board approval. It does not follow that the employer may not comply with a temporary total disability compensation award's terms and then controvert further compensation having completed the payment due under the award. The statute on which the court's reasoning in *Shirley* is based provides that the "board may upon its own initiative at any time in a case in which payments are being made with or without an award, *where right to compensation is controverted*, or where payments of compensation have been . . . terminated . . . hold the hearings, and take the further action which it considers will

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<sup>26</sup> The board also has the power to modify its awards without the request of a party, AS 23.30.130(a). Initiation of such modification is committed to the board's discretion.

<sup>27</sup> *Underwater Constr., Inc., v. Shirley*, 884 P.2d 156, 161 (Alaska 1994).

properly protect the rights of all parties.”<sup>28</sup> The statute does not bar controversion of additional compensation payments, if the controversion follows the term of the award.

More importantly, the board's decision disregards the fact that it had only the employee's claim for benefits before it – not the employer's motion to modify the December 2004 order. On the facts of this case, for the same reason it had no jurisdiction to consider an *employer* request for modification without prior remand, the board had no jurisdiction to consider an *employee* claim for benefits after July 17, 2005, that is, to extend the period of recovery.

In this case, the board did not suspend consideration of the claim and obtain a remand from the Superior Court to the board so the board could decide the employee's claim for benefits. The “terms of an award” of temporary total disability compensation is that it is *temporary*, and has a foreseeable end. The board's application of *Shirley* in *this* case prevents the board from making a determination on the evidence in the employee's claim. The effect of the board's application of *Shirley* may result in a windfall to the employee (if the employee is medically stable) because the board did not obtain a remand to consider the claim. The employer's failure to obtain a remand would prevent the board from acting on the employer's petition to modify, if it were the only matter before the board.<sup>29</sup> However, the employer was not required to obtain a remand so the board might decide the employee's claim.

In December 2004, the board ordered payment of temporary benefits for a described period, but failed to retain jurisdiction to determine any dispute as to the end point of the period. Yet, even after Doyon withdrew the petition to modify, the board concluded that because Doyon had failed to obtain a remand from the Superior Court, the employee was “entitled” to continuing payment of temporary disability compensation – that is, that the employee was not medically stable and his claim for

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<sup>28</sup> AS 23.30.155(h).

<sup>29</sup> We note that Doyon, if the evidence does not support Doyon's interpretation of the board's order, (that the period of recovery was at end on July 17, 2005), risks an assessment of additional compensation under AS 23.30.155(f).

benefits after July 17, 2005 was compensable. We do not consider this to be the “clear and convincing evidence” the legislature had in mind. We do not say whether such evidence does or does not exist in the record; we simply conclude that the board was required to consider the evidence presented before determining that the employee was not medically stable and awarding the claimed benefits. In order to award benefits on the employee’s disputed claim, it was necessary for the board to obtain a remand from the Superior Court. Because there was no remand from the Superior Court, we believe the ensuing jurisdictional chaos requires that we refrain from any consideration of the merits of the claim. For this case to reach an ultimate conclusion after a hearing that is fair to all parties, this commission must act to set this case on a sound jurisdictional footing. We believe we can only do so by vacating the board’s December 2005 order and directing it to properly establish its jurisdiction.

The board also imposed penalties (without stating which statute was the basis for penalty) on the employer for failing to obtain a remand from the court. Since a Superior Court remand was necessary because the board failed to retain jurisdiction to deal with a dispute as to the occurrence of an event that was clearly foreseeable when it issued the order, this action appears to elevate form over substance. Considerable delay and expense, both for the employer and the employee, could have been avoided if the board crafted its order in a better fashion.

*Conclusion and order.*

We conclude that the board lacked jurisdiction to make a determination that the employee is entitled to temporary total disability compensation after July 17, 2005. We therefore VACATE the board’s December 14, 2005 order and REMAND this case to the board with directions to apply to the Superior Court for a remand from the Superior Court for the purpose of considering the evidence of medical stability presented at the November 17, 2005 hearing. Upon obtaining a remand, the board will be able to determine on the basis of the evidence whether Whitaker presented a quantum of evidence that would be clear and convincing, if believed, that he is not medically stable so that his period of recovery did not end July 17, 2005. If the employee presented evidence, that if believed would be clear and convincing, the board may weigh the

evidence and assess its credibility and persuasiveness, and determine whether the period of recovery ended, or should be extended. The board may then return jurisdiction of the case, with any modification of its order, to the Superior Court. Because we believe the merits of this matter (i.e., the entitlement to the compensation awarded in the board's December 2004 order) are within the jurisdiction of the Superior Court, we do not retain jurisdiction and DISMISS the appeal to the commission.<sup>30</sup> The stay issued by the commission is VACATED and the supersedeas bond will be returned to the appellant.

Date: March 2, 2006

ALASKA WORKERS' COMPENSATION APPEALS COMMISSION



*Signed*

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Jim Robison, Appeals Commissioner

*Signed*

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Philip Ulmer, Appeals Commissioner

*Signed*

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Kristin Knudsen, Chair

#### APPEAL PROCEDURES

This is a final decision. It becomes effective when filed in the office of the Alaska Workers' Compensation Appeals Commission unless proceedings to appeal it are instituted. Effective November 7, 2005, proceedings to appeal must be instituted in the Alaska Supreme Court within 30 days of the filing of this decision and be brought by a party in interest against the commission and all other parties to the proceedings before the commission, as provided by the Alaska Rules of Appellate Procedure. AS 23.30.129.

If a request for reconsideration of this final decision is timely filed with the commission, any proceedings to appeal must be instituted within 30 days after the reconsideration decision is mailed to the parties, or, if the commission does not issue an order for reconsideration, within 60 days after the date this decision is mailed to the parties, whichever is earlier. AS 23.30.128(f).

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<sup>30</sup> § 80 ch 10 FSSLA 2005 saved the jurisdiction of the Superior Court over appeals pending in the Superior Court.

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 Alaska Workers' Compensation Appeals Commission to reconsider this decision by filing a motion for reconsideration in accordance with 8 AAC 57.230. The motion requesting reconsideration must be filed with the commission within 30 days after delivery or mailing of this decision.

CERTIFICATION

I hereby certify that the foregoing is a full, true and correct copy of the Final Decision and the Order in the matter of Doyon Drilling v. Whitaker; Appeal No. 05-008; dated and filed in the office of the Alaska Workers' Compensation Appeals Commission in Anchorage, Alaska, this 2nd day of March, 2006.

Signed  
C.J. Paramore, Clerk of the Appeals Commission

I certify that a copy of the foregoing Final Decision in AWCAC Appeal No. 05-008 was mailed on <u>3/2/06</u> to Beconovich, Wagg, the AWCB Appeals Clerk and the Director of the Workers' Compensation Division at their addresses of record.	
<u>Signed</u> C.J. Paramore Clerk of the Appeals Commission	<u>3/2/06</u> Date