

Alaska Workers' Compensation Appeals Commission

Izaz E. Khan,
Appellant,

vs.

Adams & Associates, and Insurance
Company of the State of Pennsylvania,
Appellees.

Memorandum Decision and Order
on Motion to Waive Fees

Decision No. 019 October 4, 2006

AWCAC Appeal No. 06-018

AWCB Decision No. 06-0203

AWCB Case No. 200503126

Memorandum Decision and Order on Appellant's Motion to Waive Transcript and Filing Fees in AWCAC Appeal No. 06-018 from Alaska Workers' Compensation Board Decision No. 06-0203 by Janel Wright, Chair, Stephen Hagedorn, Member for Management, and Raymond Scott Bridges, Member for Labor.

Appearances: Izaz E. Khan, appellant pro se; Timothy McKeever, Holmes Weddle & Barcott, for appellees Adams & Associates, Insurance Company of the State of Pennsylvania.

Commissioners: Marc Stemp, John Giuchici, and Kristin Knudsen.

By: Marc Stemp, Appeals Commissioner.

The appellant Izaz Khan filed a motion for waiver of fees pursuant to 8 AAC 57.090 with a Financial Statement Affidavit form. The commission chair found the form was incomplete and ordered Kahn to supply additional information. The appellee also filed an objection. Kahn asked for a hearing to respond to the appellee's objections. The commission chair scheduled a hearing, pursuant to AS 23.30.128(c), which took place on September 5, 2006. The commission heard argument from Kahn, who appeared in person, on his motion for waiver of fees because he is indigent. The appellee's counsel, Timothy McKeever, appeared by telephone and argued that Khan's affidavit was incomplete and his credibility was suspect. Kahn was the only person who testified. He did not call other witnesses. He did not present other evidence in support of his claim that he is indigent.

Kahn testified that his only sources of income were unemployment insurance payments and food stamps. He stated he had no home. He stated he owed less than \$5,000 to his brother. He did not identify his brother. He gave no details about that loan. On his affidavit, he stated he was single (not divorced) and he had no dependent children.

On questioning by the chair and appeals commissioner Giuchici, Khan said that he had only two very short-term jobs in the past twelve months. He said that he had recently purchased the large watch he wore, so that his statement in his affidavit that he had no jewelry was true at the time it was made. He also wore a large gold ring, which he did not explain. He said he was trying to find a driving job, that he had his "CDL" (commercial driver's license), but he wanted a job that did not require lifting. He said he had a car before, but that he did not have a car now. He claimed that he "signed it over" after it was towed. It was not clear from his testimony if the car was repossessed, seized for another debt, or impounded as part of a judicial proceeding.

Khan's responses were minimal, evasive, and sometimes improbable. His general attitude demonstrated a lack of respect for the commission, the board, and the workers' compensation process. The appeals commissioners, based on Khan's demeanor when he appeared in person before them, find that Khan is not a credible witness regarding his resources, employment, and circumstances.¹

When examining whether a person is indigent,

[w]e examine first whether the appellant is working, capable of working, or has other reliable income (such as on-going payment of compensation); second, whether the appellant has incurred substantial costs associated with the workers' compensation claim that are *not* subject to payment by the opposing party if the appellant prevails; third, the amount of medical treatment debt for which the appellant is directly and personally liable (i.e., that is not covered by other insurance, including Medicare or Medicaid); and fourth, the assets and resources available to the appellant after payment of ordinary household expenses and

¹ Our finding that Khan lacks credibility is not based on the board's finding of a lack of credibility or the appellant's prior conviction for perjury.

other unavoidable debts, as detailed in the financial statement affidavit filed by the appellant.²

The commissioners find that Khan is capable of working, based on his admission that he is receiving unemployment insurance payments and he is looking for work as a driver. The injury he claims is work-related does not prevent him from doing all work. He does not claim another disability that would be a barrier to obtaining employment.

The commission finds that Khan reports no other costs associated with his claim. He reports no debts for medical treatment. He reports no "ordinary household expenses" such as rent and utility bills. The only debt he revealed is owed to his brother (whom he did not name) and he reports no monthly payments on that debt. Khan is able to speak, read and write English. He was able to save enough from his unemployment payments to buy a large watch in the few weeks between filing his affidavit and the hearing. He has a bank balance of \$340.00. On balance, the appeals commissioners find that Khan has sufficient resources to pay the filing fee of \$50.00, because he has no significant household expenses, he has at least \$340.00, and because he is able to secure at least temporary employment.³

The commission recognizes that the cost of a transcript will exceed \$50.00. Khan's ability to work, bank balance, and his lack of financial obligations are sufficient to allow him to pay the \$50.00 filing fee in a relatively short time. Because he has been unemployed, Khan is not likely to be able to pay the cost of a transcript without significant delay in his appeal. Therefore, the commission will waive preparation of a transcript. In place of the transcript, Khan shall provide a copy, prepared by the board, of the hearing CD to the commission. The commission will review the audio record of the hearing as part of the record on appeal.

² *Morgan v. Alaska Regional Hospital*, AWCAC Decision No. 013, 8 (June 15, 2006).

³ The commission's filing fee is set by regulation, 8 AAC 57.070(a)(3), and is half the amount permitted by statute, AS 23.30.127(d). Given that the minimum wage in Alaska is \$7.15/hour, the commission's filing fee represents less than one eight-hour day's wages at the minimum wage rate.

The appellant's request to waive a filing fee as an indigent is DENIED. The appellant shall pay a \$50.00 filing fee within 30 days of this order.

The appellant's request to waive a transcript is GRANTED. The appellant shall file a copy of the board's hearing recording (CD or tape) with the commission instead of a transcript.

Date: October 9, 2006

ALASKA WORKERS' COMPENSATION APPEALS COMMISSION

signed

Marc Stemp, Appeals Commissioner

signed

John Giuchici, Appeals Commissioner

Kristin Knudsen, Chair, concurring:

I agree with the order given by the appeals commissioners in this case. However, I refrain from making a finding that the appellant is, or is not, a credible witness because I do not think the commission needs to make a finding on credibility to reach a decision. The appellant reports fewer monthly expenses than monthly income, and a bank account balance of \$340.00, thus demonstrating by his own statements that he is able to pay the filing fee. He did not claim he is saving to obtain housing or transportation that would increase his unavoidable expenses in the near future. He states he is capable of working and looking for work. While his reported income is limited, it exceeds his reported expenses. He also has other resources sufficient to pay the \$50.00 filing fee, especially if given some time to make the payment. Although he is capable of paying the filing fee, I agree that the cost of a transcript is beyond Khan's resources and that requiring prepayment would significantly delay his appeal. For that reason, I find Khan is indigent for purposes of costs beyond the filing fee and I agree that a transcript should be waived.

signed

Kristin Knudsen, Chair

APPEAL PROCEDURES

This is a final decision of the Alaska Workers' Compensation Commission on your motion to waive filing and transcript fees. It becomes effective when filed in the office of the commission unless proceedings to reconsider it are instituted. However, **this is not a final decision on your workers' compensation appeal or your last opportunity to obtain payment of your fees from this commission.** Your appeal has not been heard by the commission. A final decision on this appeal will not be issued until after the appeal has been fully heard and considered. After a final decision on the appeal is issued, the commission may award the prevailing party costs and fees. AS 23.30.008(d). If you are successful in your appeal, the commission may order the losing party to pay you the amount of your filing fee and other costs.

Effective November 7, 2005 proceedings to appeal a final commission decision must be instituted in the Alaska Supreme Court within 30 days after this decision was filed and distributed by the commission clerk 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. However, because this decision leaves your appeal pending before the Alaska Workers' Compensation Appeals Commission, the commission has not issued its final decision on your appeal, and because the commission may award you the filing fee if you succeed on appeal, the Alaska Supreme Court might reject an appeal from this decision.

A petition for review by the Supreme Court as provided by the Alaska Rules of Appellate Procedure must be instituted in the Alaska Supreme Court within 10 days after the date this decision was filed and distributed by the commission clerk. The Supreme Court may or may not decide to hear a petition for review.

A person who wishes to appeal or petition for review of this decision by the Supreme Court may wish to seek legal advice.

If you wish to appeal to the Alaska Supreme Court, or file a petition for hearing to the 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

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).

RECONSIDERATION BY THE COMMISSION

A party may ask the 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 Memorandum Decision and Order on the motion to waive transcript and filing fees filed by Izaz E. Khan in Khan v. Adams & Associates and Insurance Company of the State of Pennsylvania; AWCAC Appeal No. 06-018; dated and filed in the office of the Alaska Workers' Compensation Appeals Commission in Anchorage, Alaska, this 4th day of October, 2006.

signed

Linda Beard, Deputy Appeals Commission Clerk