

**Case:** *Municipality of Anchorage and Ward North America vs. David N. Syren*, Alaska Workers' Comp. App. Comm'n Dec. No. 015 (August 3, 2006)

**Facts:** Syren argued he is entitled to attorney fees because the commission denied the employer's motion for extraordinary review (MER), the result that he had advocated. The commission decision on the MER is Dec. No. 007. The employer argued that the commission is authorized to award fees only in appeals, not MERs, because statute specifies "in an appeal." The employer also argued that because AS 23.30.145 and Alaska Rule of Appellate Procedure 508(g) limit the board and the court to awarding attorney fees on a successful claim, the claimant must succeed on the claim itself and not on a collateral issue.

**Applicable law:** AS 23.30.008(d) provides:

In an appeal, the commission shall award a successful party reasonable costs and, if the party is represented by an attorney, attorney fees that the commission determines to be fully compensatory and reasonable. However, the commission may not make an award of attorney fees against an injured worker unless the commission finds that the worker's position on appeal was frivolous or unreasonable or the appeal was taken in bad faith.

The Alaska Supreme Court has stated: Alaska Appellate Rule 508(g)(2) calls for an award of "full reasonable attorney's fees . . . to a successful claimant" in an administrative appeal. In order to recover fees under AS 23.30.145(b), which like Rule 508(g) directs a fee award to a "successful" claimant, the employee must succeed on the claim itself, and not a collateral issue. *See Adamson v. University of Alaska*, 819 P.2d 886, 895 (Alaska 1991).

**Issues:** Can commission award attorney fees for work done on an MER? If so, was the employee the successful party?

**Holding/analysis:** The commission interpreted the authority to award attorney fees "in an appeal" as extending to "appeals dismissed before they are heard and appeals requested, but not allowed[,]" such as the case when the commission denies an MER. Dec. No. 015 at 4. Because the denial terminated all proceedings before the commission, except for the fee motion, the commission could award fees. In addition, the commission noted that the Alaska Supreme Court has permitted awards that "reflect the degree of success" of the party, rather than requiring a party to succeed on an entire claim. *Id.* at 3. Third, the commission distinguished AS 23.30.145(b) that deals with board fee awards because it provides for fees for the "successful prosecution of the claim" unlike the commission statute that provides fees to a "successful party." *Id.* 3-4.

Commission concluded the employee was a successful party on the main issue because the commission denied the MER. But the employee also unsuccessfully challenged the commission's jurisdiction to grant MERs. The commission reduced the requested fees to take out the time spent on the unsuccessful jurisdiction issue; to eliminate "double-

billings," where both the attorney and a paralegal charged time for meeting with one another; and to take out services and hours billed after the commission issued its MER decision.