

Alaska Workers' Compensation Appeals Commission

Trident Seafoods Corporation and
Liberty Mutual Insurance Corporation,
Petitioners,

vs.

Sami A. Saad,
Respondent.

Final Decision on Petition for Review

Decision No. 217 October 5, 2015

AWCAC Appeal No. 14-004
AWCB Decision No. 14-0027
AWCB Case No. 200708366

Final decision on petition for review of Alaska Workers' Compensation Board Final Decision and Order No. 14-0027, issued at Anchorage, Alaska, on March 3, 2014, by southcentral panel members Linda M. Cerro, Chair, Mark Talbert, Member for Labor, and Ron Nalikak, Member for Industry.

Appearances: Jeffrey D. Holloway, Holmes Weddle & Barcott, P.C., for petitioners, Trident Seafoods Corporation and Liberty Mutual Insurance Corporation; Sami A. Saad, self-represented respondent.

Commission proceedings: Appeal filed March 13, 2014, with Motion to Stay Further Board Proceedings; order denying Motion to Stay Further Board Proceedings issued March 27, 2014; briefing completed October 20, 2014; oral argument held on April 23, 2015; Memorandum Decision and Order No. 213 issued July 16, 2015; Motion to Vacate and Motion to Convert Appeal into Petition for Review filed July 27, 2015; Order on Motion to Vacate and Motion to Convert Appeal into Petition for Review issued August 14, 2015.

Commissioners: James N. Rhodes, S. T. Hagedorn, Andrew M. Hemenway, Chair.

By: Andrew M. Hemenway, Chair.

1. Introduction.

Sami A. Saad was injured in 2007 while employed by Trident Seafoods Corporation (Trident). He filed a workers' compensation claim in 2009. The claim has been the subject of protracted pre-hearing proceedings before the board. In November, 2013 Trident made an oral petition to dismiss Mr. Saad's claim on the

ground that he had not timely requested a hearing. The board denied the petition and Trident appealed. We converted that appeal to a petition for review and granted review. We now affirm the board's decision to deny Trident's petition to dismiss Mr. Saad's claim.

*2. Factual background and proceedings.*¹

On March 18, 2007, while working for Trident, Sami A. Saad reportedly began experiencing pain in his right middle finger.² He sought treatment and Trident paid compensation until October 22, 2008, when it controverted all benefits based on an employer's medical evaluation opining Mr. Saad's condition did not result from his employment.³

On January 1, 2009, Mr. Saad filed a claim for compensation for his condition, which he alleged was the result of the long hours and the level and repetitive nature of his work in Trident's fish processing plant in 2007.⁴ On February 13, 2009, Trident filed a notice controverting the claim.⁵ An initial prehearing conference was conducted on

¹ We make no factual findings. We state the facts as set forth in the four board decisions in the record: *Saad v. Trident Seafoods Corporation*, Alaska Workers' Comp. Bd. Dec. No. 10-0093 (May 21, 2010) (*Saad I*); *Saad v. Trident Seafoods Corporation*, Alaska Workers' Comp. Bd. Dec. No. 11-0067 (May 20, 2011) (*Saad II*); *Saad v. Trident Seafoods Corporation*, Alaska Workers' Comp. Bd. Dec. No. 12-0009 (January 12, 2012) (*Saad III*); and *Saad v. Trident Seafoods Corporation*, Alaska Workers' Comp. Bd. Dec. No. 14-0027 (March 3, 2014) (*Saad IV*).

² *Saad III*, p. 2 (No. 1).

³ *Id.*, p. 2 (No. 2).

⁴ *Saad IV*, p. 2 (No. 1). The board's decision states that the claim was filed on January 1, 2009. *Id.* The record indicates that the claim was initially received on January 2, 2009 (January 1, 2009, being a holiday), returned to Mr. Saad, and refiled. *See* R. 1290-1293. The claim was served on Trident's insurer, Liberty Northwest Mutual, on January 21, 2009. *Id.*

⁵ *Saad IV*, p. 2 (No. 2). The record includes a notice of controversion dated February 13, 2009, and filed with the board on July 13, 2009. R. 11. According to the prehearing conference notes of February 16 and April 9, 2010, the controversion notice dated February 13, 2009, was not actually filed with the board until July 9, 2009. R. 81, 123. The record also includes an answer to the claim, denying liability and filed February 17, 2009. R. 27-28.

July 9, 2009, at which the parties stipulated to an independent medical examination by a board-selected physician (SIME).⁶ The SIME was scheduled for January 5, 2010.⁷ On that date, Mr. Saad was in the United Arab Emirates (UAE) seeking medical care and failed to attend the SIME.⁸ The SIME was rescheduled for April 24, 2010.⁹ On March 31, 2010, Trident filed a petition to stay the SIME until Mr. Saad provided medical records from his treatment in UAE.¹⁰

On April 13, 2010, having been that informed Mr. Saad would again be out of the country for treatment by a new physician, the board's designee rescheduled the SIME to May 29, 2010.¹¹ On May 7, 2010, Trident notified the board that the medical records from the provider Mr. Saad had consulted in January 2010 in the UAE had been produced, but those from the provider he consulted in April 2010 had not been produced.¹² At a May 12, 2010, hearing on Trident's petition to stay the SIME, Trident modified its request that the SIME be postponed or cancelled, and requested only that the SIME physician be instructed not to complete his report until he had obtained the medical records from the April 2010 treatment.¹³ The board granted Trident's modified petition, and the SIME remained scheduled for May 29, 2010.¹⁴ Mr. Saad failed to attend the May 29, 2010, SIME,¹⁵ and the SIME was rescheduled again, to December 11, 2010.¹⁶

⁶ *Saad I*, p. 2 (No. 2); *Saad IV*, pp. 2-3 (No. 3). *See* AS 23.30.095(k).

⁷ *Saad IV*, p. 3 (No. 6).

⁸ *Saad IV*, p. 3 (No.6); *Saad I*, p. 2 (No. 3).

⁹ *Saad IV*, p. 3 (No. 6); *Saad I*, p. 3 (No. 5).

¹⁰ *Saad I*, p. 3 (No. 6); *Saad III*, p. 3 (No. 13).

¹¹ *Saad IV*, p. 3 (No. 6); *Saad I*, p. 4 (Nos. 8-9).

¹² *Saad I*, p. 6 (No. 16).

¹³ *Saad IV*, p. 4 (No. 8); *Saad I*, p. 6 (Nos. 18-19).

¹⁴ *Saad IV*, p. 4 (No.8).

¹⁵ *Saad IV*, p. 4 (No. 9).

¹⁶ *Saad IV*, p. 4 (No. 10).

On December 11, 2010, Mr. Saad attended the rescheduled SIME, conducted by John J. Lipon, D.O., orthopedic surgeon.¹⁷ Dr. Lipon diagnosed bilateral fibrous nodule or ganglion cysts on the middle fingers of Mr. Saad's right and left hands, proximately caused by his work activities for Trident.¹⁸ Dr. Lipon recommended surgical removal of the ganglion from Mr. Saad's right hand and a cortisone injection for the subsiding ganglion in his left hand, and he opined that Mr. Saad would reach medical stability four weeks post-surgery.¹⁹

A prehearing conference attended by both parties was conducted on January 25, 2011.²⁰ Trident began the conference by stating that based on Dr. Lipon's report it was willing to pay for surgery on Mr. Saad's right hand, a cortisone injection in the left hand, and four weeks of temporary total disability and would consider additional temporary total disability compensation and a permanent partial impairment rating upon medical stability.²¹ Mr. Saad expressed his dissatisfaction with the progress of his case and the manner in which it had been processed by the board.²² The designee scheduled a hearing on Mr. Saad's claim for June 16, 2011.²³

On March 7, 2011, Trident filed a petition to continue the June 16, 2011, hearing.²⁴ On May 6, 2011, Trident served Mr. Saad with updated releases for medical, employment, and other records.²⁵ On May 18, 2011, the board conducted a hearing on Trident's petition to continue the scheduled June 16, 2011, hearing.²⁶ Mr. Saad did not

¹⁷ *Saad IV*, p. 4 (No. 10).

¹⁸ *Saad IV*, p. 4 (No. 11).

¹⁹ *Id.*

²⁰ *Saad IV*, pp. 4-5 (No. 12).

²¹ *Id.*

²² *Id.*

²³ *Saad IV*, pp. 4-5 (No. 12); *Saad III*, pp. 6-7 (No. 23).

²⁴ *Saad IV*, p. 5 (No. 14).

²⁵ *Saad III*, p. 8 (No. 30).

²⁶ *Saad II*. See *Saad III*, p. 9 (No. 31).

oppose Trident's petition, and the board granted a continuance.²⁷ The board's decision advised the parties:

[B]ecause the continuance here is granted upon Employer's request, the restrictions otherwise imposed by AS 23.30.110(h) do not apply in this case. However, the parties are reminded that a party seeking a hearing after a continuance has been granted must file another affidavit of readiness in accordance with 8 AAC 45.070(b).^[28]

On August 25, 2011, Trident filed a petition to dismiss Mr. Saad's claims for failure to return the updated releases.²⁹ The board conducted a hearing on the petition to dismiss on December 7, 2011.³⁰ Following the hearing, Mr. Saad executed the releases and the board issued a decision denying the petition.³¹ The decision enumerated a number of actions taken by Mr. Saad that had significantly delayed the proceedings, and warned him that if he occasioned further delays a petition to dismiss his claim could be granted.³²

After the board's decision denying Trident's petition to dismiss, the matter was dormant until November 21, 2013, when at Mr. Saad's request a prehearing conference was convened.³³ The board's designee noted that no petitions were outstanding and asked if the matter should be set for hearing.³⁴ Trident objected that Mr. Saad had not filed an affidavit of readiness for hearing and that the time to do so had expired.³⁵ Trident made an oral petition to dismiss on that basis, and asked that a hearing be scheduled on that issue.³⁶ A hearing on that issue was set for February 12, 2014, and

²⁷ *Saad II*.

²⁸ *Id.* at 7.

²⁹ *Saad III*, p. 10 (No. 36).

³⁰ *Id.*, p. 1.

³¹ *Saad III*; see *Saad IV*, p. 7 (No. 22).

³² *Saad III*, pp. 18-19.

³³ See *Saad IV*, p. 9 (Nos. 30-31).

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

was conducted as scheduled, after which the board issued a decision denying the motion to dismiss and directing that the matter be scheduled for a hearing on the merits.³⁷

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 is conflicting or susceptible to contrary conclusions.³⁸ We must uphold the board's factual findings if they are supported by substantial evidence in light of the whole record.³⁹

On questions of law, we do not defer to the board's conclusions. We exercise our independent judgment.⁴⁰

4. Discussion.

At issue in this case is the interpretation and application of AS 23.30.110(c) and (h). The first and last sentences of AS 23.30.110(c) state:⁴¹

Before a hearing is scheduled, the party seeking a hearing shall file a request for a hearing together with an affidavit stating that the party has completed necessary discovery, obtained necessary evidence, and is prepared for the hearing. . . . If the employer controverts a claim on a board-prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied.

AS 23.30.110(h) states:

The filing of a hearing request under (c) of this section suspends the running of the two-year time period specified in (c) of this section. However, if the employee subsequently requests a continuance of the

³⁷ *Saad IV.*

³⁸ AS 23.30.122.

³⁹ AS 23.30.128(b).

⁴⁰ AS 23.30.128(b).

⁴¹ Between these beginning and ending sentences, AS 23.30.110(c) sets out the procedure for considering a hearing request, scheduling the hearing, and issuing a decision. Those portions of the statute have no bearing on the issues raised in this case.

hearing and the request is approved by the board, the granting of the continuance renders the request for the hearing inoperative, and the two-year time period specified in (c) of this section continues to run again from the date of the board's notice to the employee of the board's granting of the continuance and of its effect. If the employee fails to again request a hearing before the conclusion of the two-year time period in (c) of this section, the claim is denied.

The board found that Mr. Saad filed his claim on January 1, 2009, and that Trident controverted the claim on February 13, 2011.⁴² Based on those findings, Mr. Saad had until February 13, 2011, to request a hearing.⁴³ The board found that he made an oral request for a hearing at a prehearing conference on January 25, 2011, within the two year time limit.⁴⁴ Trident asserts that dismissal of a claim under AS 23.30.110(c) is mandatory when a hearing is not timely requested unless the failure to make a timely request is legally excused.⁴⁵ It argues that in this case, no legal excuse exists,⁴⁶ and that the board erred in finding that Mr. Saad requested a hearing at the January 25, 2011, prehearing conference,⁴⁷ and in concluding that the granting of a continuance of the scheduled June 16, 2011, hearing did not render Mr. Saad's January 25, 2011 request inoperative.⁴⁸

a. Substantial Evidence Supports the Board's Finding.

Trident asserts that there is not substantial evidence in the record to support the board's finding that Mr. Saad made an oral request for a hearing at the January 25,

⁴² See *supra*, notes 4, 5.

⁴³ The time for filing a request for a hearing does not begin to run until a controversion is filed after a claim has been filed. See *Jonathan v. Doyon Drilling, Inc., J.V.*, 890 P.2d 1121 (Alaska 1995).

⁴⁴ *Saad IV*, p. 5 (Nos. 12, 13).

⁴⁵ Brief, pp. 10-12. See *Tonoian v. Pinkerton Security*, pp. 11-15, Alaska Workers' Comp. App. Comm'n Dec. No. 29 (January 30, 2007) (addressing lack of mental capacity or incompetence, lack of notice, and equitable estoppel; not addressing waiver).

⁴⁶ Brief, pp. 12-13.

⁴⁷ Brief, pp. 13-16.

⁴⁸ Brief, pp. 16-18.

2011, prehearing conference.⁴⁹ It points out that Mr. Saad did not testify that he had made an oral request for a hearing, but rather insisted that he had “preserved his claim through the filing of paperwork.”⁵⁰ Trident observes that there is no reference to an oral request for a hearing in the prehearing conference summary,⁵¹ and it argues that the board violated due process of law by making this finding absent any prior notice that the existence of an oral request was at issue.⁵²

Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”⁵³ Circumstantial evidence may be sufficient to support a factual finding, and thus the absence of any direct evidence that Mr. Saad made an oral request for a hearing at the January 25, 2011, prehearing conference does not mean that the board’s finding lacks substantial evidence.

There is circumstantial evidence that Mr. Saad made an oral request for a hearing at the prehearing conference on January 25, 2011. The prehearing conference occurred shortly after the SIME physician issued a report concluding that Mr. Saad had compensable injuries to both hands. The board designee’s notes make it clear that Mr. Saad was “quite upset that his case has not been adjudicated more quickly”, and state that after a lengthy period of time in which Mr. Saad protested about the manner in which his claim had been handled, the designee “[u]ltimately was able to schedule a hearing on Mr. Saad’s claim.”⁵⁴ In context, it is reasonable to infer that if Mr. Saad did not expressly ask that a hearing be scheduled, that was the clear implication of his comments. Mr. Saad’s testimony at the hearing, which Trident characterizes as stating that he had filed a written request for a hearing, is too vague and indefinite to have substantial probative weight and in any event does not preclude that he made an oral

⁴⁹ Brief, p. 13.

⁵⁰ *Id.*

⁵¹ *Id.*, pp. 13-14.

⁵² *Id.*, pp. 15-16.

⁵³ *See, e.g., Grove v. Alaska Constr. & Erectors*, 948 P.2d 454, 456 (Alaska 1997).

⁵⁴ Exc. 114-115.

request as well.⁵⁵ We conclude that a reasonable mind might accept the circumstantial evidence as sufficient to support the board's finding that Mr. Saad made an oral request (express or implied) for a hearing.⁵⁶

b. An Oral Request May Be Sufficient.

Trident argues that even if there was an oral request for a hearing, "it is significantly questionable whether any such oral request for a hearing is even valid under Alaska law."⁵⁷ To permit a party to make an effective oral request for a hearing would be contrary to the requirement that requests be accompanied by an affidavit of readiness, Trident argues.⁵⁸

Trident's assertion that an oral request for a hearing cannot be deemed sufficient to toll the running of the statute of limitations is based on the requirement in AS 23.30.110(c) that a request be accompanied by an affidavit of readiness.⁵⁹ Since an affidavit is a sworn, written document, Trident argues, the request must be, at the least, sworn.⁶⁰ But since the filing of an affidavit may itself be dispensed with,⁶¹ the existence of that requirement can scarcely be taken to preclude an oral request.

The supreme court has previously concluded that where strict compliance is required, an oral affirmation is insufficient to satisfy a filing requirement.⁶² In *Kim*, the supreme court stated that "strict compliance with the affidavit requirement is

⁵⁵ See Hr'g Tr. 63, February 12, 2014.

⁵⁶ We note that Trident did not request reconsideration or an opportunity to submit additional evidence (such as testimony by its former attorney, who was present at the prehearing conference). See AS 23.30.130(a); 8 AAC 45.150(d). Accordingly, we deem its due process argument waived.

⁵⁷ Brief, p. 14.

⁵⁸ *Id.*, p. 15.

⁵⁹ *Id.* ("The reason for the statutory requirement to file a hearing request is . . . because the filing of a hearing request . . . must be accompanied by an affidavit [of readiness.]).

⁶⁰ *Id.*

⁶¹ *Kim v. Alyeska Seafoods, Inc.*, 197 P.3d 193 (Alaska 2008).

⁶² *Silides v. Thomas*, 559 P.2d 80, 88 (Alaska 1977).

unnecessary because [AS 23.30].110(c) is directory, not mandatory.”⁶³ The court also stated that substantial compliance does not mean “that a claimant can simply ignore the statutory deadline and fail to file anything.”⁶⁴ However, the issue before the court in *Kim* was not whether an oral request could be deemed substantial compliance with the requirement to file a request, but rather whether the request, in whatever form, needed to be accompanied by an affidavit of readiness.⁶⁵ Moreover, the court also observed that even in the absence of proper documentation, the board has independent authority to order a hearing.⁶⁶ Lastly, according to the board, to permit an employee to make an oral request for a hearing in the course of a prehearing conference comports with “customary board practice” and “ensures that process and procedure under the Act is as simple and summary as possible.”⁶⁷ For these reasons, we do not preclude the possibility that an oral request for a hearing, made to the board’s designee during the course of a formal prehearing conference, may be deemed substantial compliance with AS 23.30.110(c).

c. A Request Is Excused When A Hearing Is Timely Scheduled.

It is undisputed that at a prehearing conference attended by both parties on January 25, 2011, within the two-year period for requesting a hearing, the board’s designee scheduled a hearing on Mr. Saad’s claim. Trident contends that Mr. Saad’s claim must be dismissed because the hearing was scheduled by the board’s designee, rather than at the request of Mr. Saad.

⁶³ *Kim v. Alyeska Seafoods, Inc.*, 197 P.3d 193, 198 (Alaska 2008).

⁶⁴ *Id.*

⁶⁵ We have not previously decided whether *Kim* permits substantial compliance with the requirement to request a hearing, or only with the requirement to file an affidavit of readiness for hearing. *See Providence Health Systems v. Hessel*, at 11, note 47, Alaska Workers’ Comp. App. Comm’n Dec. No. 131 (March 24, 2010).

⁶⁶ *Kim v. Alyeska Seafoods, Inc.*, 197 P.3d 193, 199 note 29 (Alaska 2008).

⁶⁷ *Saad IV*, at 17. *See* AS 23.30.005(h) (“Process and procedure under this chapter shall be as summary and simple as possible.”); 8 AAC 45.065(e) (“The board or designee may set a hearing date at the time of the prehearing.”).

This argument exalts form over substance.⁶⁸ The purpose of AS 23.30.110(c) is not to compel claimants to file hearing requests. It is to provide for the timely progress of claims through the workers' compensation process.⁶⁹ 8 AAC 45.070(b) states:

(b) Except as provided in this section and 8 AAC 45.074(c), a hearing will not be scheduled unless a claim or petition has been filed, and an affidavit of readiness for hearing has been filed. . . .

. . .

(3) If the board or designee determines a hearing should be scheduled even though a party has not filed an affidavit of readiness for hearing, the board or designee will give notice of the hearing. . . .

This regulation provides express authority for the board or designee to schedule a hearing absent a request by a claimant.⁷⁰ To require that a claimant file a request for a hearing that has already been scheduled in order to avoid dismissal of the claim under AS 23.30.110(c) would be inimical with the view that the defense afforded by AS 23.30.110(c) is disfavored.⁷¹ AS 23.30.110(c) establishes the process by which parties request and oppose the scheduling of a hearing; it says nothing about the process to be followed when the board or its designee schedules a hearing absent a request by either party, as is expressly permitted by 8 AAC 45.070(b)(3). To require a claimant to file a request for a hearing after the board has scheduled a hearing, without being informed by the board that notwithstanding the scheduled hearing a request for a

⁶⁸ See *Kim v. Alyeska Seafoods, Inc.*, 197 P.3d 193, 199 (failure to treat motion for continuance as constructive request for a hearing "seems to place form over substance (especially when the motion was discussed at the pre-hearing conference).").

⁶⁹ See, e.g., *Providence Health System v. Hessel*, p. 12, Alaska Workers' Comp. App. Comm'n Dec. No. 131 (March 24, 2010).

⁷⁰ See also, AS 23.30.155(h); *Bailey v. Texas Instruments, Inc.*, 111 P.3d 321, 325 note 10 (Alaska 2005) ("Subsection .155(h) at most gives the board discretion to act sua sponte in setting a claim for hearing without a request.").

⁷¹ See *Tipton v. ARCO Alaska, Inc.*, 922 P.2d 910, 912-913 (Alaska 1996).

hearing must still be filed, could be seen as contrary to the board's obligation to provide appropriate information regarding AS 23.30.100(c) to claimants.⁷²

Regardless of whether Mr. Saad made an oral request for a hearing at the January 25, 2011, prehearing conference, and regardless of whether an oral request would be sufficient, the lack of a request is immaterial if Mr. Saad is legally excused from the requirement to make such a request.⁷³ We hold that when, at a prehearing conference attended by both parties within two years of the date a claim was controverted, the board schedules a hearing on that claim and the employee does not object, the employee is excused from the requirement to file a request for a hearing.

d. Mr. Saad Did Not Request A Continuance.

Trident's final argument is that, even if the board correctly ruled that Mr. Saad requested a hearing at the January 25, 2011, prehearing conference, under AS 23.30.110(h) he was required to file another request after the board granted a continuance.⁷⁴ AS 23.30.110(h) states:

The filing of a hearing request under (c) of this section suspends the running of the two-year time period specified in (c) of this section. However, if the employee [emphasis added] subsequently requests a continuance of the hearing and the request is approved by the board, the granting of the continuance renders the request for hearing inoperative, and the two-year time period specified in (c) of this section continues to run again from the date of the board's notice to the employee of the board's granting of the continuance and of its effect. If the employee fails to again request a hearing before the conclusion of the two-year period in (c) of this section, the claim is denied.

⁷² See *Bohlmann v. Alaska Construction & Engineering, Inc.*, 205 P.3d 316, 319-320 (Alaska 2009). In *Bohlmann*, the court held that the board had the obligation to correct an employer's erroneous assertion that the time for making a request had already expired, but did not address the full extent of the board's duty to provide information regarding AS 23.30.110(c).

⁷³ See, e.g., *Omar v. Unisea, Inc.*, at 7-8, Alaska Workers' Comp. App. Comm'n Dec. No. 53 August 27, 2007); *Tonoian v. Pinkerton Security*, p. 11, Alaska Workers' Comp. App. Comm'n Dec. No. 29 (January 30, 2007).

⁷⁴ Brief, pp. 16-18.

As is evident, AS 23.30.110(h) reinstates the running of the two-year time limit only when the employee requests a continuance and that request is granted. In this case, Trident, not Mr. Saad, filed a petition for a continuance, and the board granted Trident's petition. Trident argues that although Trident filed the petition for a continuance, Mr. Saad joined in asking for a continuance when the petition was heard by the board.⁷⁵

Mr. Saad did not object to Trident's request for a continuance, because he had reasons himself for wanting a delay in the hearing date.⁷⁶ This is not the same as making a request for a continuance: it explains why he agreed to the employer's request, but it does not necessarily make that request his own for purposes of AS 23.30.110(h). The board might have, in its discretion, deemed Mr. Saad to have joined in Trident's request for purposes of AS 23.30.110(h), but it did not: to the contrary, it expressly stated that the continuance was granted at Trident's request.⁷⁷ It did not abuse its discretion in that characterization. Moreover, rather than informing Mr. Saad that the two-year time limit had again begun to run, as it would have pursuant to AS 23.30.110(h) if he had requested the continuance, the board's decision informed him that because the continuance was at Trident's request, "the restrictions otherwise imposed by AS 23.30.110(h) do not apply."⁷⁸ Plainly, to impose a two-year time limit in the face of that statement would be directly contrary to the board's obligation to provide adequate information regarding AS 23.30.110(c) to *pro se* litigants.⁷⁹

⁷⁵ Brief, p. 18.

⁷⁶ *See Saad II*, p. 3 (No. 13); Hr'g Tr., pp. 15-16, 23-24, May 18, 2011.

⁷⁷ *Saad II*, p. 7 ("the continuance here is granted upon Employer's request").

⁷⁸ *Id.*

⁷⁹ *See Bohlmann v. Alaska Construction and Engineering*, 205 P.3d 316 (Alaska 2009).

5. Conclusion

The board's decision is AFFIRMED.

Date: October 5, 2015 ALASKA WORKERS' COMPENSATION APPEALS COMMISSION



Signed

James N. Rhodes, Appeals Commissioner

Signed

S. T. Hagedorn, Appeals Commissioner

Signed

Andrew M. Hemenway, Chair

This is not a final commission decision or order on the merits of an appeal from a final board decision or order on a claim. This is a non-final order of the commission on the merits of a petition for review of a non-final board decision. The effect of this order is to allow the board to proceed toward a hearing on the merits of the employee's workers' compensation claim. The petitioner may still appeal a final board decision when it is reached on the claim.

This order becomes effective when distributed (mailed) unless proceedings to seek supreme court review are instituted (started).⁸⁰ For the date of distribution, see the box below.

PETITION FOR REVIEW

A party may file a petition for review of this order with the Alaska Supreme Court as provided by the Alaska Rules of Appellate Procedure (Appellate Rules). See AS 23.30.129(a) and Appellate Rules 401 – 403. If you believe grounds for review exist

⁸⁰ A party has 10 days after the distribution of a non-final decision or order of the commission to petition for review to the Alaska Supreme Court. If this non-final decision or order was distributed by mail only to a party, then three days are added to the 10 days, pursuant to Rule of Appellate Procedure 502(c), which states:

Additional Time After Service or Distribution by Mail.

Whenever a party has the right or is required to act within a prescribed number of days after the service or distribution of a document, and the document is served or distributed by mail, three calendar days shall be added to the prescribed period. However, no additional time shall be added if a court order specifies a particular calendar date by which an act must occur.

under Appellate Rule 402, you should file your petition for review within 10 days after the date of this order's⁸¹ distribution.⁸²

You may wish to consider consulting with legal counsel before filing a petition for review. If you wish to petition for review 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

More information is available on the Alaska Court System's website:

<http://www.courts.alaska.gov/>

RECONSIDERATION

This is a not a final decision issued under AS 23.30.128(e). It is not an appealable decision, so reconsideration is not available.

I certify that, with the exception of changes made in formatting for publication, this is a full and correct copy of Final Decision on Petition for Review No. 217, issued in the matter of *Trident Seafoods Corporation and Liberty Mutual Insurance Corporation vs. Sami A. Saad*, AWCAC Appeal No. 14-004, and distributed by the office of the Alaska Workers' Compensation Appeals Commission in Anchorage, Alaska, on October 5, 2015.

Date: October 8, 2015



Signed

K. Morrison, Appeals Commission Clerk

⁸¹ See Appellate Rule 403.

⁸² See n. 80, *supra*.