

Alaska Workers' Compensation Appeals Commission

Pedro A. Erpelo, Jr.,
Appellant,

vs.

Trident Seafoods and Liberty Insurance
Corporation,
Appellees.

Final Decision

Decision No. 220 December 14, 2015

AWCAC Appeal No. 14-021
AWCB Decision No. 14-0106
AWCB Case No. 201102068

Final decision on appeal from Alaska Workers' Compensation Board Final Decision and Order No. 14-0106, issued at Anchorage, Alaska, on August 4, 2014, by southcentral panel members William Soule, Chair, and Pam Cline, Member for Labor.

Appearances: Pedro A. Erpelo, Jr., self-represented appellant; Jeffrey D. Holloway, Holmes Weddle & Barcott, PC, for appellees, Trident Seafoods and Liberty Insurance Corporation.

Commission proceedings: Appeal filed September 2, 2014; briefing completed August 31, 2015; oral argument was not requested.

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

By: Andrew M. Hemenway, Chair.

1. Introduction.

Pedro A. Erpelo, Jr. injured his right hand while working for Trident Seafoods (Trident). He filed a claim for temporary total disability benefits and permanent partial impairment benefits. The matter was set for hearing. Trident objected to taking up the issue of future medical benefits at the hearing, and the board declined to do so. Following the hearing, the board issued a decision granting Mr. Erpelo permanent partial impairment benefits. Mr. Erpelo appeals, asserting that the board erred in declining to take up the issue of future medical benefits. We affirm the board's decision.

2. *Factual background and proceedings.*¹

Pedro Erpelo was employed by Trident as a seafood processor.² On February 22, 2011, Mr. Erpelo's hand was crushed in machinery, injuring his right wrist.³ Trident accepted liability for the injury and paid temporary total disability benefits through January 27, 2013.⁴ Mr. Erpelo was seen on March 15, 2011, by Dr. George C. Alber, who diagnosed a right distal fracture and right wrist carpal tunnel syndrome⁵ secondary to the fracture.⁶ The fracture was placed in a cast, which was removed on April 4, 2011.⁷ Dr. Alber performed carpal tunnel surgery on August 3, 2011.⁸

On October 10, 2011, Dr. Alber noted an impression of de Quervain's tenosynovitis, related to the work injury.⁹ On December 7, 2011, Dr. Alber performed surgery to alleviate the de Quervain's tenosynovitis.¹⁰ On August 6, 2012, Mr. Erpelo was seen by Dr. John A. Cristini, who recommended an MRI to rule out a triangular fibrocartilage complex (TFCC) tear.¹¹ The radiologist reported that the MRI showed such a tear.¹² Dr. Cristini referred Mr. Erpelo to Dr. John M. Bednar.¹³ Dr. Bednar, after obtaining an

¹ We make no factual findings. We state the facts as found by the board, adding context by citation to the record with respect to matters that do not appear to be in dispute.

² *Pedro Erpelo v. Trident Seafoods*, Alaska Workers' Comp. Bd. Dec. No. 14-0106 at 3 (No. 1) (Aug. 4, 2014). *See* R. 1, 27.

³ *Erpelo*, Bd. Dec. No. 14-0106 at 3 (No. 1). Mr. Erpelo described the circumstances of his injury in a statement submitted to the board. *See* R. 65.

⁴ *Erpelo*, Bd. Dec. No. 14-0106 at 3 (No. 2). *See* R. 3-4, 23-24, 32.

⁵ *See* R. 8; 697-698.

⁶ *See* R. 758.

⁷ *See* R. 700-701.

⁸ *See* R. 736-737.

⁹ *See* R. 763.

¹⁰ *See* R. 778-779.

¹¹ *See* R. 11, 926-928.

¹² *See* R. 931.

¹³ *See* R. 938.

electrodiagnostic report¹⁴ prescribed a sugar tong splint¹⁵ and physical therapy, which was provided through mid-January, 2013.¹⁶

Dr. George P. Nanos conducted an employer's medical evaluation on January 12, 2013.¹⁷ He diagnosed a right distal fracture and right carpal tunnel syndrome, both work-related, and right de Quervain's tenosynovitis, right wrist radial sensory nerve neuritis, ulnar sided wrist pain (possible TFCC tear), right distal radioulnar joint instability (resolved), and right ring finger retinacular cyst, all non-work-related.¹⁸ Dr. Nanos reported that Mr. Erpelo's condition was medically stable and that in his opinion no further curative medical treatment was required for Mr. Erpelo's work injury (*i.e.*, fracture and carpal tunnel syndrome).¹⁹ He did not rule out continued medical treatment for the de Quervain's tenosynovitis, neuritis, and ulnar sided wrist pain.²⁰ He provided a permanent partial impairment rating of 1%.²¹ Based on Dr. Nanos' report, Trident controverted further disability compensation, an impairment rating greater than 1%, and on-going medical treatment.²²

¹⁴ See R. 945-946.

¹⁵ See R. 957, 959-965.

¹⁶ See R. 966-1003.

¹⁷ *Erpelo*, Bd. Dec. No. 14-0106 at 3 (No. 3). See R. 6-22.

¹⁸ *Erpelo*, Bd. Dec. No. 14-0106 at 3 (No. 3). See R. 18. Dr. Nanos' report identifies the neuritis as "likely secondary to operative treatment of de Quervain tenosynovitis[.]" *Id.* The report did not identify a likely cause for the other non-work-related (in his opinion) conditions. See R. 18-19. The report states, "I cannot relate his other diagnoses to his injury." R. 20.

¹⁹ *Erpelo*, Bd. Dec. No. 14-0106 at 3 (No. 3).

²⁰ R. 20.

²¹ *Erpelo*, Bd. Dec. No. 14-0106 at 3 (No. 3).

²² *Erpelo*, Bd. Dec. No. 14-0106 at 3 (No. 5). See R. 5.

On February 25, 2013, Mr. Erpelo filed a claim seeking additional temporary total disability benefits and an increased permanent partial impairment rating.²³ He filed an affidavit of readiness for hearing on May 3, 2013.²⁴ His treating physician, Dr. Bednar, provided a permanent partial impairment rating of 10%.²⁵ On April 2, 2014, Dr. David W. Gaw conducted a second independent medical evaluation based on disputes regarding causation, medical stability, degree of impairment, functional capacity, and medical treatment.²⁶

Dr. Gaw diagnosed a right distal fracture (healed), post-operative carpal tunnel syndrome, de Quervain's disorder, TFCC tear, and associated mild wrist motion loss.²⁷ He offered the opinion that Mr. Erpelo's work injury "was the substantial cause of Mr. Erpelo's condition and resulted in the treatment which he has undergone[.]"²⁸ He provided a permanent partial impairment rating of 7%.²⁹ Dr. Gaw offered the opinion that no further medical treatment was required.³⁰

The board's designee conducted a prehearing conference on May 8, 2014. The prehearing conference summary issued on May 9, 2014, scheduled a hearing for July 30, 2014, limited to the determination of the rating for permanent partial impairment.³¹ That same date, another prehearing conference was scheduled for June 26, 2014.³² On May

²³ *Erpelo*, Bd. Dec. No. 14-0106 at 4 (No. 6). *See* R. 27-28. Mr. Erpelo also requested transportation benefits, which were resolved. *See Erpelo*, Bd. Dec. No. 14-0106 at 4 (Nos. 6, 9).

²⁴ *Erpelo*, Bd. Dec. No. 14-0106 at 4 (No. 7).

²⁵ *Erpelo*, Bd. Dec. No. 14-0106 at 4 (No. 10). *See* R. 647.

²⁶ *Erpelo*, Bd. Dec. No. 14-0106 at 5 (No. 15). *See* R. 625, 672.3-672.8 (medical disputes).

²⁷ *Erpelo*, Bd. Dec. No. 14-0106 at 5 (No. 15). *See* R. 614.

²⁸ *See* R. 618.

²⁹ *Erpelo*, Bd. Dec. No. 14-0106 at 5-6 (No. 15). *See* R. 617.

³⁰ *See* R. 619.

³¹ *Erpelo*, Bd. Dec. No. 14-0106 at 6 (No. 16). *See* R. 1078-1079.

³² R. 1077.

16, 2014, Mr. Erpelo wrote to the designee and asked that medical benefits be added as an issue at the scheduled July 30, 2014, hearing.³³ Mr. Erpelo did not serve a copy of the letter on Trident.³⁴ Following the June 26, 2014, prehearing conference, the designee issued a prehearing conference summary repeating the prior summary's statement, "The only issue is the degree of permanent partial impairment[,]” immediately followed by the statement, "*Future medical treatment is added as an issue for the 7/30/2014 hearing.*"³⁵ Trident objected that Mr. Erpelo had not filed a claim for medical benefits, and that he had not notified Trident in advance of the June 26, 2014, prehearing conference that he wished to have that issue added to the scheduled July 30, 2014, hearing.³⁶ Trident asserted (1) that to add the issue of medical benefits would violate its "constitutional due process rights to notice and opportunity to be heard" and (2) that absent a claim for medical benefits that issue "cannot be added to a hearing that is less than a month away."³⁷

At the July 30, 2014, hearing Trident objected to considering the issue of future medical treatment, based on the absence of a claim for medical benefits and the lack of notice of Mr. Erpelo's May 16, 2014, request to add that issue.³⁸ The board sustained Trident's objection and declined to add that issue, on the ground that Mr. Erpelo had not presented evidence to support a claim for medical benefits, or of outstanding bills for past medical treatment.³⁹

The board concluded that Dr. Gaw had properly calculated Mr. Erpelo's impairment in accordance with the American Medical Association's Guides, and that Dr. Bednar had

³³ R. 1080.1-1080.2. *See Erpelo*, Bd. Dec. No. 14-0106 at 6 (No. 17).

³⁴ *See Erpelo*, Bd. Dec. No. 14-0106 at 6 (No. 17).

³⁵ *Erpelo*, Bd. Dec. No. 14-0106 at 6 (No. 17); *See* R. 1082 (italic in original).

³⁶ *Erpelo*, Bd. Dec. No. 14-0106 at 7 (No. 19). *See* R. 1086.1-1086.2

³⁷ *Erpelo*, Bd. Dec. No. 14-0106 at 7 (No. 19).

³⁸ *Erpelo*, Bd. Dec. No. 14-0106 at 8 (No. 25). *See* Hr'g Tr. 19:10-20:15, July 30, 2014.

³⁹ *See Erpelo*, Bd. Dec. No. 14-0106 at 8 (No. 27); Hr'g Tr. 27:5-12, 29:7-11.

not. Accordingly, it awarded a permanent partial impairment benefit based on Dr. Gaw's rating of a 7% impairment.

3. Issues on Appeal.

Mr. Erpelo's notice of appeal asserts that he has chronic swelling, pain, and other symptoms caused by his work injury. It states:

I may not fully understand the medical terms used by my doctors, but I do understand and feel my body and the pain I am experiencing. I know for a fact that my present condition warrants future medical care.

His brief on appeal concludes:

. . . I am still experiencing chronic pain in my right dominant wrist. My doctor, Dr. John Bednar, wrote in his evaluation dated March 4, 2013 that my ongoing wrist pain and weakness are due to my chronic wrist injury with expected traumatic arthritis; and, due to my TFC injury. . . . I, therefore ask Alaska Workers' Compensation Appeals Commission to reverse and remand the decision made by Alaska Workers' Compensation Board sustaining [Trident's] objection to . . . adding future medical care as an issue for the July 30, 2014 hearing.

In our view, the sole issue Mr. Erpelo has raised for our consideration is whether the board erred by not considering his eligibility for medical benefits at the July 30, 2014, hearing.⁴⁰

4. Standard of Review.

To the extent not controlled by statute or regulation, the board exercises its discretion in the conduct of hearings.⁴¹ The board may, based upon unusual and extenuating circumstances, limit the issues at hearing beyond those identified in the

⁴⁰ Mr. Erpelo's brief disputes the board's finding that he was medically stable. However, he does not assert that he should not have been awarded a permanent partial impairment rating, or that Dr. Gaw's rating is not supported by substantial evidence. His objection appears to be that a finding of medical stability is an implicit rejection of his assertion that his condition requires medical treatment. It is not.

⁴¹ See AS 23.30.135(a) ("In...conducting a hearing the board is not bound . . . by technical or formal rules of procedure, except as provided by this chapter. The board may . . . conduct its hearing in the manner by which it may best ascertain the rights of the parties.").

prehearing conference summary.⁴² We will review the board's determination to limit the issues at hearing for abuse of discretion.

5. Discussion.

The board declined to consider the issue of medical benefits at the July 30, 2014, hearing because Mr. Erpelo was not prepared to present evidence to support a request for medical treatment at that time. Mr. Erpelo's objection, it appears, is that the board ought to have considered whether some form of medical treatment was necessary and reasonable, based on the evidence in the record at the time of the hearing. In Mr. Erpelo's view, as articulated in his brief, the evidence in the record at the time of the hearing was sufficient to establish that at the time of the hearing he had a need for medical treatment for his wrist, or, at the least, that he was more likely than not to require medical treatment in the future.

The prehearing conference summary governs the issues at hearing unless the board determines that unusual or extenuating circumstances dictate otherwise.⁴³ We have explained that the need for prior notice generally precludes adding issues at hearing that were not identified in the prehearing summary.⁴⁴ But limiting the issues beyond those identified in the prehearing summary raises no such concern. In this case, the issue of medical benefits was not identified at the prehearing conference on May 8, 2014, as an issue to be heard on July 30, 2014. Indeed, to the contrary, according to the prehearing conference summary Mr. Erpelo disclaimed the need to address that issue at the hearing.⁴⁵ On May 9, 2014, the board's designee scheduled a subsequent prehearing conference for June 26, 2014.⁴⁶ A week later, Mr. Erpelo wrote to the designee and

⁴² See 8 AAC 45.070(g).

⁴³ See 8 AAC 45.070(g).

⁴⁴ See *Lynden Transport, Inc. v. Mauget*, Alaska Workers' Comp. App. Comm'n Dec. No. 154 at 9-10 (June 17, 2011); *Alcan Electrical and Engineering v. Redi Electric, Inc.*, Alaska Workers' Comp. App. Comm'n Dec. No. 112 at 10 (July 1, 2009).

⁴⁵ See R. 1079 ("[Mr. Erpelo] said that he had been paid [all medical benefits due]; the only issue was PPI.").

⁴⁶ R. 1077.

asked that medical benefits be added as an issue for hearing. He did not serve a copy of the letter on Trident, as required by 8 AAC 45.065(d). Following the June 26, 2014, prehearing conference, the designee issued a prehearing conference summary indicating that medical benefits would be an issue at the hearing. Trident promptly objected, in essence on the ground that the issue of medical benefits had not previously been raised and it was not prepared to address that issue. The board's decision in effect sustained Trident's objection on substantially that ground, albeit focusing on Mr. Erpelo's lack of preparation rather than on Trident's. The basis for the board's ruling was that absent a claim for benefits or adequate preparation by either party, that issue was not ripe for hearing.

We see no abuse of discretion in the board's determination. Although the board did not specifically identify an unusual and extenuating circumstance, it is apparent that the board deemed Mr. Erpelo's lack of preparedness to be a circumstance that, given Trident's objection to proceeding to hearing on the issue of medical benefits, was sufficient to warrant limiting the issues at hearing to those identified in the May 8, 2014, prehearing conference summary. Nothing in the board's decision precluded an award of medical benefits. The board informed Mr. Erpelo of his right to file a claim for additional medical benefits, and, according to Trident, following the hearing Mr. Erpelo did so.⁴⁷ We see no basis for interfering with the board's determination of the appropriate course of proceedings with respect to medical benefits.

⁴⁷ Appellee's Brief, p. 12. Mr. Erpelo did not file a reply brief or otherwise dispute Trident's assertion.

6. Conclusion.

The board did not abuse its discretion in declining to address medical benefits at the July 30, 2014, hearing. Its decision is therefore AFFIRMED.

Date: December 14, 2015 ALASKA WORKERS' COMPENSATION APPEALS COMMISSION



Signed

James N. Rhodes, Appeals Commissioner

Signed

S. T. Hagedorn, 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 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. 220 issued in the matter of *Pedro A. Erpelo, Jr., v. Trident Seafoods and Liberty Insurance Corporation*, AWCAC Appeal No. 14-021, and distributed by the Alaska Workers' Compensation Appeals Commission in Anchorage, Alaska, on December 14, 2015.

Date: May 11, 2026



Signed

K. Morrison, Appeals Commission Clerk