

Alaska Workers' Compensation Appeals Commission

Kathleen A. Jaycox,
Appellant,

Final Decision

Decision No. 275 February 13, 2020

vs.

State of Alaska,
Appellee.

AWCAC Appeal No. 19-006
AWCB Decision No. 19-0034
AWCB Case No. 201218829

Final decision on appeal from Alaska Workers' Compensation Board Decision and Order No. 19-0034, issued at Fairbanks, Alaska, on March 8, 2019, by northern panel members Robert Vollmer, Chair, Jacob Howdeshell, Member for Labor, and Togi Letuligasenoa, Member for Industry.

Appearances: Robert M. Beconovich, Attorney at Law, for appellant, Kathleen A. Jaycox; Kevin G. Clarkson, Attorney General, and Daniel N. Cadra, Assistant Attorney General, for appellee, State of Alaska.

Commission proceedings: Appeal filed April 8, 2019; briefing completed November 4, 2019; oral argument was not requested.

Commissioners: Michael J. Notar, Amy M. Steele, Deirdre D. Ford, Chair.

By: Deirdre D. Ford, Chair.

1. Introduction.

Kathleen A. Jaycox and the State of Alaska, Department of Administration (SOA), entered into a partial settlement agreement (also known as a Partial Compromise and Release Agreement (C&R)) in June 2015, agreeing to resolve her claim for past and present disability compensation (in particular temporary total disability (TTD) benefits and withdrawal of SOA's controversion of TTD). The agreement left open SOA's right to controvert disability benefits in the future and Ms. Jaycox's right to contest any denial of compensation benefits. The Alaska Workers' Compensation Board (Board) approved this C&R on June 16, 2015.

On January 3, 2019, the parties asked the Board in Fairbanks to interpret the C&R to determine if SOA had the right, under the C&R, to controvert further disability benefits without a Board order. SOA stopped paying TTD on December 6, 2015, and controverted all benefits on December 15, 2015, based on its prior Employer's Medical Evaluation (EME) performed in July 2014.¹ The Board issued its decision on March 8, 2019, finding SOA was entitled, according to the language of the C&R, to controvert benefits without an additional Board order.² Ms. Jaycox timely filed a Petition for Review to the Alaska Workers' Compensation Appeals Commission (Commission), which *sua sponte* converted the petition to an appeal on April 12, 2019.³ The Commission now affirms the Board's decision.

2. *Factual background and proceedings.*⁴

Ms. Jaycox moved to Nome, Alaska, shortly after high school, where she continues to reside.⁵ On December 26, 2012, Ms. Jaycox reported injuring her head and spine five days earlier when she slipped off a stool while performing inventory in her capacity as a Regional Assistant Supervisor for SOA.⁶ SOA voluntarily provided benefits until August 21, 2014, when it controverted further medical benefits, other than a medication detoxification program, based on one of its medical evaluators' opinion.⁷ On September 22, 2014, SOA controverted all benefits, other than a medication

¹ Exc. 0011-0012, 0060.

² *Jaycox v. State of Alaska*, Alaska Workers' Comp. Bd. Dec. No. 19-0034 (Mar. 8, 2019) (*Jaycox I*).

³ *Jaycox v. State of Alaska*, Alaska Workers' Comp. App. Comm'n *Sua Sponte* Order, AWCAC Appeal No. 19-006 (Apr. 12, 2019) (*Jaycox II*).

⁴ 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.

⁵ *Jaycox I* at 2, No. 1; Hr'g Tr. at 8:7-20, Jan. 3, 2019; Exc. 50.

⁶ *Id.*, No. 2; R. 2373, 0017-0018.

⁷ *Id.*, No. 3; R. 2374, 0001.

detoxification program, based on a medical stability opinion from another of its medical evaluators.⁸

On April 22, 2015, Ms. Jaycox claimed benefits, contending her lumbar spine treatment had failed, she was not medically stable, suffered from debilitating, chronic pain, and was dependent on prescription drugs.⁹ SOA answered Ms. Jaycox's claim, contending Ms. Jaycox had a history of preexisting back complaints and her treatment included implantation of a spinal cord stimulator, which failed several months prior to the work injury. It also contended Ms. Jaycox used heavy doses of narcotic medication prior to the work injury and suffered from pre-existing addictive disease and chronic pain disease.¹⁰

On June 16, 2015, the parties filed a C&R, which the Board approved the same day. The C&R provided:

PARTIAL COMPROMISE AND RELEASE AGREEMENT

In order to settle certain claims and obligations under the Alaska Workers' Compensation Act

DISPUTE

The employee argues any addiction or chronic pain condition she suffers is related to her employment with the State and therefore compensable. Employee contends her work-related injuries are not yet medically stable. . . .

The State contends the employee's work injury resulted in a sprained back that is medically stable and does not require any additional treatment. The State contends the employee had a preexisting addictive disease and chronic pain disease and those conditions are not substantially related to her employment. For these reasons, the State contends it is not responsible for the payment of additional temporary total disability benefits, medical or transportation benefits although the State was willing to pay for the employee to attend a detoxification program. . . .

COMPROMISE

In order to resolve all past and present disputes between parties with respect to compensation for disability . . . the State agrees to recommend

⁸ *Jaycox I* at 2, No. 3; R. 0003.

⁹ *Id.*, No. 4; Exc. 0017-0018.

¹⁰ *Id.*; R. 0023-0026.

temporary total disability benefits from September 16, 2014, through the effective date of this agreement. This Compromise & Release agreement is intended to function as a withdrawal of the State's prior controversion of disability benefits. *However, this agreement is not intended to preclude the State from controverting disability benefits in the future* if it is permitted to do so by the Workers' Compensation Act.

The State is not withdrawing its prior controversion with respect to medical benefits related to the treatment of the employee's physical back/spine complaints. However, the State continues to be willing to pay medical benefits related to the employee's participation in a detoxification program. The State's position has been and continues to be that the employee's physical condition is medically stable and that if she does not participate in the detoxification program within a reasonable period of time[,] her addictive disease and chronic pain disease will also be medically stable. This agreement shall not preclude the State from maintaining the position described in this paragraph.

The employee agrees to release her claims for past disability benefits through the effective date of this agreement, including compensation for past temporary total disability *The employee recognizes the State may in the future deny payment of disability benefits and she is not waiving her right to contest any such future denial.* The employee also agrees to release her claims for penalties and interest, including her claim for an unfair and frivolous controversion, with respect to benefits due before the effective date of this agreement. The employee is not waiving her right to assert claims for penalties or interest for benefits not timely paid after the effective date of this agreement.

The employee is not waiving her rights, if any, to past or future medical and transportation benefits under the Alaska Workers' Compensation Act. The Employer is not waiving its right to contest those claims although it will agree to pay medical benefits related to the investigation of and participation in a reasonable detoxification program of up to six weeks. The State reserves the right to review a proposed detoxification program to determine whether it is reasonable under the Workers' Compensation Act. If the employee elects to participate in a reasonable detoxification program, reasonably consistent with the recommendations of [Employer's medical evaluator], the State agrees to pay medical benefits related to that program. This agreement is not intended to waive the employer's right to controvert benefits for a detoxification program that is not reasonable and necessary to aid the employee in the process of recovery. The State reserves the right to review any requested medical benefit, including a proposed detoxification program, within the time permitted by the Workers' Compensation Act and will pay or controvert the requested benefit within the time permitted by the Act.

....
The parties agree that by entering into this agreement and making the payments described above, the State, its adjuster, and agents make no admission of liability to the employee for any condition or the injury to her back/spine, addictive disease or chronic pain disease.

RELEASE

It is the intent of this agreement to compromise all disability benefits which might be due to the employee as of the effective date of this agreement . . . as well as all past claims for penalties, unfair and frivolous controversion, and interest. To this end and for such purpose, the parties agree that upon payment of the funds described above, this Partial Compromise and Release shall be enforceable and shall forever discharge the liability of the State of Alaska to the employee . . . which could be due or might be due pursuant to the terms and provisions of the Alaska Workers' Compensation Act to the extent described herein. . . . This agreement functions as a withdrawal of the State's prior controversion of disability benefits but *does not preclude the State from controverting disability benefits in the future.* The employee is not waiving her right to contest any such future denial.

....

AGREEMENT AS TO BOARD ORDER

The parties agree . . . that this agreement shall be enforceable the same as an order or award of the Alaska Workers' Compensation board Pursuant to AS 23.30.012, this agreement shall be enforceable the same as an order or award of the Alaska Workers' Compensation Board and shall discharge the liability of the State of Alaska in this matter, to the extent described above, for the claims and benefits as described herein, notwithstanding the provisions of AS 23.30.130 . . .¹¹ (Emphasis added.)

On December 15, 2015, SOA controverted all benefits based on its prior medical evaluations and stopped paying TTD benefits to Ms. Jaycox. Ms. Jaycox subsequently filed two additional claims seeking benefits.¹²

SOA controverted benefits on December 15, 2015, because, although it was willing to pay for a detoxification program as set forth in the partial C&R agreement, it asserted

¹¹ *Jaycox I* at 3-5, No. 5; Exc. 0031-0044.

¹² *Id.* at 5, No. 6; R. 0009, 0047-0048, 0059.

Ms. Jaycox did not seek admission to such a program. Therefore, according to one of its medical evaluators, Ms. Jaycox was medically stable.¹³

Ms. Jaycox testified there is no formal detoxification program available in Nome, Alaska, and, at the time of SOA's December 15, 2015, controversion, she had young children at home and her former husband travelled quite a bit, so it was nearly impossible for her to leave Nome and attend a formal detoxification program elsewhere. She subsequently participated in an informal drug-weaning program with the assistance of a pharmacist in Nome, and she successfully completed that program in November of 2016. Since then, she asserted, she has since been free from narcotic pain medications.¹⁴

Ms. Jaycox contends SOA unilaterally stopped making payments to her without first petitioning for, and obtaining, a board order, "contrary to the law." She cites language from the agreement that provides, "this agreement shall be enforceable the same as an order or award of the Alaska Workers' Compensation Board," and *Underwater Construction, Inc. v. Shirley*, 884 P.2d 150, 161 (Alaska 1994) in support of her position.¹⁵

The Board found that workers' compensation settlement agreements routinely provide for the withdrawal of controversies in order to accomplish a particular purpose.¹⁶ The Board further found that workers' compensation settlement agreements routinely provide for leaving controversies in place.¹⁷

3. Standard of review.

The Board's findings of fact shall be upheld by the Commission on review if the Board's findings are supported by substantial evidence in light of the record as a whole.¹⁸ Substantial evidence is relevant evidence that a reasonable mind might accept as

¹³ *Jaycox I* at 5, No. 7; R. 188-202.

¹⁴ *Id.*, No. 8; Hr'g Tr. at 12:12 – 14:8.

¹⁵ *Id.*, No. 9; R. 0059, 0183-0185.

¹⁶ *Id.* at 6, No. 10.

¹⁷ *Id.*, No. 11.

¹⁸ AS 23.30.128(b).

adequate to support a conclusion.¹⁹ "The question of whether the quantum of evidence is substantial enough to support a conclusion in the contemplation of a reasonable mind is a question of law."²⁰ The weight given to witnesses' testimony, including medical testimony and reports, is the Board's decision to make and is, thus, conclusive. This is true even if the evidence is conflicting or susceptible to contrary conclusions.²¹ On questions of law and procedure, the Commission does not defer to the Board's conclusions, but rather exercises its independent judgment.²² However, the Board's conclusions with regard to credibility are binding on the Commission, since the Board has the sole power to determine credibility of witnesses.²³

Furthermore, the Commission's decision is based on the record before the Board, the briefs of the parties, and oral argument, if made, before the Commission. The Commission does not accept or review new evidence.²⁴

4. Discussion.

Ms. Jaycox contends that since the C&R she signed on June 5, 2015, was approved by the Board, SOA was required to seek a Board order before SOA could cease payment of TTD. SOA contends the terms of the C&R are plain and unambiguous and, pursuant to those terms, SOA retained the right to controvert TTD and medical benefits. SOA further asserts Ms. Jaycox retains the right to seek a hearing before the Board on the controverted TTD benefits.

Settlements of workers' compensation claims are governed and controlled by the Alaska Workers' Compensation Act (Act). The Act, at AS 23.30.012, provides in full:

¹⁹ See, e.g., *Norcon, Inc. v. Alaska Workers' Comp. Bd.*, 880 P.2d 1051, 1054 (Alaska 1994).

²⁰ *McGahuey v. Whitestone Logging, Inc.*, Alaska Workers' Comp. App. Comm'n Dec. No. 054 at 6 (Aug. 28, 2007) (citing *Land & Marine Rental Co. v. Rawls*, 686 P. 2d 1187, 1188-1189 (Alaska 1984)).

²¹ AS 23.30.122.

²² AS 23.30.128(b).

²³ AS 23.30.122; AS 23.30.128(b).

²⁴ AS 23.30.128(a).

(a) At any time after death, or after 30 days subsequent to the date of the injury, the employer and the employee or the beneficiary or beneficiaries, as the case may be, have the right to reach an agreement in regard to a claim for injury or death under this chapter, but a memorandum of the agreement in a form prescribed by the director shall be filed with the division. Otherwise, the agreement is void for any purpose. Except as provided in (b) of this section, an agreement filed with the division discharges the liability of the employer for the compensation, notwithstanding the provisions of AS 23.30.130, 23.30.160, and 23.30.245, and is enforceable as a compensation order.

(b) The agreement shall be reviewed by a panel of the board if the claimant or beneficiary is not represented by an attorney licensed to practice in this state, the beneficiary is a minor or incompetent, or the claimant is waiving future medical benefits. If approved by the board, the agreement is enforceable the same as an order or award of the board and discharges the liability of the employer for the compensation notwithstanding the provisions of AS 23.30.130, 23.30.160, and 23.30.245. The agreement shall be approved by the board only when the terms conform to the provisions of this chapter, and, if it involves or is likely to involve permanent disability, the board may require an impartial medical examination and a hearing in order to determine whether or not to approve the agreement. A lump-sum settlement may be approved when it appears to be to the best interest of the employee or beneficiary or beneficiaries.

This statute states that AS 23.30.130, which deals with modifications to awards made by the Board, does not apply to settlements, even those approved by the Board. AS 23.30.160 discusses an assignment of a claim, and AS 23.30.245 governs an agreement by an employee to pay a portion of the premium paid by an employer to procure workers' compensation insurance. Neither of these two statutes are at issue here. The Board recognized that a C&R approved by the Board is not subject to the provisions of AS 23.30.130, which means the provisions of the C&R cannot be modified by the Board.

The Alaska Supreme Court (Court) has held that the language in a C&R is interpreted solely by looking at the terms of the agreement, utilizing the principles for

construing the meaning of a contract.²⁵ In *Williams*, the Court stated, "A compromise and release 'is interpreted in the same manner as any other contract.'"²⁶ The only restriction is that the parties must "specifically state claims that are not settled."²⁷ In *Cameron*, the Court stated, "the plain language of the C&R signed by [the employee] consistently limits its scope" to rights under the Act.²⁸

The language of the Jaycox C&R, in several places, evidences an intent to leave open the right of SOA to controvert ongoing TTD and Ms. Jaycox's right to contest any controversy. The C&R states:

This Compromise & Release agreement is intended to function as a withdrawal of the State's prior controversion of disability benefits. *However, this agreement is not intended to preclude the State from controverting disability benefits in the future* if it is permitted to do so by the Workers' Compensation Act.

This language specifically leaves open the issue of payment of future TTD and indicates payment of future TTD was not settled by the C&R. Further on in the C&R, the agreement again states:

This agreement functions as a withdrawal of the State's prior controversion of disability benefits but *does not preclude the State from controverting disability benefits in the future*. The employee is not waiving her right to contest any such future denial.

In *Harris v. M-K Rivers*, the employer had accepted a condition (diabetes) as compensable and the Court held that the employer could not later contest compensability of the diabetes without a Board order.²⁹ However, the Court then added that since the employer

²⁵ See, *Cameron v. Beard*, 864 P.2d 538, 545 (Alaska 1993)(citing *Schmidt v. Lashley*, 627 P.2d 201, 204 n. 7 (Alaska 1981); *Williams v. Abood*, 53 P.3d 134, 144 (Alaska 2002).

²⁶ *Williams*, 53 P.3d at 144.

²⁷ *Id.*

²⁸ *Cameron*, 864 P.2d at 545-546.

²⁹ *Harris v. M-K Rivers*, 325 P.3d 510, 522 (Alaska 2014) (*Harris*).

reserved the right to controvert the reasonableness or necessity of proposed treatment, the employer did not need a Board order to do so.³⁰

The Court has said that a C&R is a contract and subject to interpretation just as any other contract. Review of that interpretation is a legal issue.³¹ In reviewing contract language the primary goal is to give effect to the parties' reasonable expectations.³²

The Board approved the C&R which contains several pertinent statements. First, the agreement stated TTD would be paid through the date of the signed agreement. Upon Board approval this statement should be interpreted as a Board order for payment of TTD to be made through the date of the C&R. Had SOA desired to stop payment prior to the date of the C&R it would have needed Board approval. The next statement of import here is the provision as follows:

This Compromise and Release agreement is intended to function as a withdrawal of the State's prior controversion of disability benefits. *However, this agreement is not intended to preclude the State from controverting disability benefits in the future if it is permitted to do so by the Workers' Compensation Act.*

This statement, by its plain language, reserved to SOA the right to controvert unilaterally TTD based on medical evidence. The only caveat was that the controversion had to be in accord with the provisions of the Act. Under *Harp*, an employer may controvert benefits when it has medical evidence that an individual is no longer entitled to the controverted benefits.³³ SOA relied on its EME's opinion that Ms. Jaycox was medically stable in 2014.³⁴

The Act at 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

³⁰ *Harris*, 325 P.3d 510, 522.

³¹ *Weiner v. Burr, Pease & Kurtz, P.C.*, 221 P.3d 1, 5 (Alaska 2009).

³² *Reeder v. Municipality of Anchorage*, Alaska Workers' Comp. Appeals Com. Dec. No. 116 (Sept. 28 2009) at 16.

³³ *Harp v. ARCO Alaska, Inc.*, 831 P.2d 352 (Alaska 1992).

³⁴ R. 0009-0010.

disability benefits may not be paid for any period of disability occurring after the date of medical stability.

The Act defines medical stability in AS 23.30.395 as follows:

(28) "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[.]

Pursuant to AS 23.30.185 and AS 23.30.395(28), if Ms. Jaycox did not show any "objectively measurable improvement for a period of 45 days," she was presumed to be medically stable and no longer entitled to TTD. AS 23.30.185 states TTD "may not be paid for any period of disability occurring after the date of medical stability." This presumption of medical stability may be overcome with "clear and convincing evidence." Thus, the reasonable expectation of Ms. Jaycox is that she would no longer be entitled to TTD if she was not in a rehabilitation program and her condition had not changed for over 45 days.

SOA, relying on the plain language in the C&R that it could controvert TTD any time after the signing of the C&R, is bolstered by statutory language that if her condition had not changed in 45 days she was to be medically stable and not entitled to additional TTD. Whether Ms. Jaycox was, in fact, medically stable when SOA controverted is an issue for a hearing on the merits of her claim. She will need to present clear and convincing evidence she continued to be not medically stable and entitled to TTD.

A provision in the C&R again states:

The employee agrees to release her claims for past disability benefits through the effective date of this agreement, including compensation for past temporary total disability *The employee recognizes the State may in the future deny payment of disability benefits and she is not waiving her right to contest any such future denial.* The employee also agrees to release her claims for penalties and interest, including her claim for an unfair and frivolous controversion, with respect to benefits due before the effective date of this agreement. The employee is not waiving her right to

assert claims for penalties or interest for benefits not timely paid after the effective date of this agreement.

Again, by its plain language, the C&R states an understanding that SOA could controvert payment of future TTD, i.e. at any time after the signing of the C&R, and she could contest the controversion. Importantly, Ms. Jaycox was represented by competent legal counsel at the time she signed the C&R who would have, or should have, explained to her that payment of future TTD was not settled by the agreement and that SOA retained the right to controvert payment at any time in the future.

The language of the C&R specifically preserved the right of SOA to controvert TTD benefits in the future. Ms. Jaycox retained the right to contest any future controversion. Since the C&R did not settle her right to future TTD, SOA did not need to petition the Board when it controverted further TTD benefits. The issue of whether Ms. Jaycox is or was entitled to additional TTD benefits is a matter to be resolved at a hearing. The Board's decision is affirmed.

5. Conclusion.

The Board's decision is AFFIRMED.

Date: 13 February 2020 Alaska Workers' Compensation Appeals Commission



Signed

Michael J. Notar, Appeals Commissioner

Signed

Amy M. Steele, Appeals Commissioner

Signed

Deirdre D. Ford, 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 Alaska 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). If a request for reconsideration of this final decision is filed on time with the Commission, any proceedings to appeal must be instituted no later than 30 days after the reconsideration decision is distributed to the parties, or, no later than 60 days after the date this final decision was distributed in the absence of any action on the reconsideration request, whichever date is earlier. AS 23.30.128(f).

I certify that, with the exception of changes made in formatting for publication, this is a full and correct copy of Final Decision No. 275, issued in the matter of *Kathleen A. Jaycox v. State of Alaska*, AWCAC Appeal No. 19-006, and distributed by the office of the Alaska Workers' Compensation Appeals Commission in Anchorage, Alaska, on February 13, 2020.

Date: February 19, 2020



Signed

K. Morrison, Appeals Commission Clerk