

Alaska Workers' Compensation Appeals Commission

Rickie D. Foreman,
Petitioner,

vs.

Northstar Construction Management and
Cincinnati Insurance Company,
Respondents.

MEMORANDUM DECISION AND ORDER ON PETITION FOR REVIEW

Decision No. 316 September 23, 2026

AWCAC Appeal No. 26-008
AWCB Decision Nos. 26-0049, 26-0055
AWCB Case No. 202406218

Memorandum Decision and Order on Petition for Review of Alaska Workers' Compensation Board Interlocutory Decision and Order No. 26-0049, issued at Fairbanks, Alaska, on July 17, 2026, by northern panel members William Soule, Chair, and Brian Zematis, Member for Labor; and Interlocutory Decision and Order on Reconsideration No. 26-0055, issued at Fairbanks, Alaska, on July 31, 2026, by northern panel members William Soule, Chair, and Brian Zematis, Member for Labor.

Appearances: Rickie D. Foreman, self-represented petitioner; Brian S. Weinstock, Law Offices of BSW, LLC, *pro hac vice*, and Krista M. Schwarting, Griffin & Smith, for respondents, Northstar Construction Management and Cincinnati Insurance Company.

Commission proceedings: Petition for review filed August 20, 2026; opposition to petition for review filed September 2, 2026.

Commissioners: Nancy Shaw, Amy M. Steele, Andrew M. Hemenway, Chair.

By: Andrew M. Hemenway, Chair.

1. Introduction.

Petitioner, Rickie D. Foreman, alleges he was injured while employed by Northstar Construction Management, which is insured by Cincinnati Insurance Company (Northstar). Mr. Foreman filed workers' compensation claims in both Alaska and Missouri.

In *Foreman I*, the Alaska Workers' Compensation Board (Board) granted Mr. Foreman's petition for an independent medical examination. In *Foreman II*, the Board dismissed Mr. Foreman's Alaska workers' compensation claim under the doctrine

of *forum non conveniens*.¹ In *Foreman III*, the Alaska Workers' Compensation Appeals Commission (Commission) vacated the Board's decision and remanded the case to the Board for further proceedings. Northstar filed a petition for review of the Commission's decision with the Alaska Supreme Court (Supreme Court).

While the Supreme Court considered whether to grant or to deny Northstar's petition for review, Mr. Foreman filed petitions with the Board asking that the Board resume proceedings relating to his case.² In *Foreman IV* the Board declined to conduct proceedings on those petitions, concluding that its jurisdiction was suspended pending the Supreme Court's order on Northstar's petition for review. The Board denied reconsideration of that ruling in *Foreman V*.

Mr. Foreman filed this petition for review of *Foreman IV* and *Foreman V*, asserting that the Board had erred in ruling that its jurisdiction had been suspended and in deeming his petition for reconsideration frivolous. After Northstar filed its response, the Supreme Court denied Northstar's petition for review of *Foreman III*.

We grant the petition in part and reverse the Board's decision in part.

2. Applicable Legal Standard.

A petition for review may be granted when the sound policy for taking appeal only from a final decision or order is outweighed because:

- (1) postponement of review until appeal may be taken from a final decision or order will result in injustice because of impairment of a legal right, or because of unnecessary delay, expense, hardship, or other related factors;
- (2) the interlocutory or other non-final board decision or order involves an

¹ There have been four Board decisions and one Commission decision issued in Mr. Foreman's workers' compensation claim: *Foreman v. Northstar Constr. Mgmt.*, Alaska Workers' Comp. Bd. Dec. No. 25-0003 (Jan. 21, 2025) (*Foreman I*); *Foreman v. Northstar Constr. Mgmt.*, Alaska Workers' Comp. Bd. Dec. No. 25-0041 (July 11, 2025) (*Foreman II*); *Foreman v. Northstar Constr. Mgmt.*, Alaska Workers' Comp. App. Comm'n Final Dec. No. 315 (May 21, 2026) (*Foreman III*); *Foreman v. Northstar Constr. Mgmt.*, Alaska Workers' Comp. Bd. Dec. No. 26-0049 (July 17, 2026) (*Foreman IV*); *Foreman v. Northstar Constr. Mgmt.*, Alaska Workers' Comp. Bd. Dec. No. 26-0055 (July 31, 2026) (*Foreman V*).

² See *Foreman IV*, p. 1.

important question of law on which there is substantial ground for difference of opinion, and an immediate review of the decision or order may materially advance the ultimate resolution of the claim;

(3) the board has so far departed from the accepted and usual course of proceedings as to call for the commission's review; or

(4) the issue is one that might otherwise evade review, and an immediate decision by the commission is needed for the guidance of the board.³

3. Issues Raised.

Mr. Foreman's petition raises two issues for our review: (1) whether the Board erred in declining to exercise jurisdiction over his petitions;⁴ and (2) whether the Board erred in deeming his petition for reconsideration to be frivolous.⁵

4. Grounds for Immediate Review.

Interlocutory review may be appropriate to avoid injustice, undue delay, or a significant departure from the accepted and usual course of proceedings. In this particular case, Mr. Foreman asks that we direct the Board to exercise jurisdiction over matters that it declined to hear because they appeared to the Board to be within the scope of a pending petition for review to the Supreme Court. Because the Supreme Court has denied the formerly-pending petition for review, the Board's reason for declining to exercise jurisdiction no longer exists, and it is at liberty to take up the petitions Mr. Foreman filed with it. There is therefore no reason under 8 AAC 57.073(1)-(3) to grant review of the issue he raises with respect to the Board's jurisdiction. There is similarly no reason to review the Board's determination that his petition for reconsideration was frivolous, as awaiting an appeal to resolve that issue will not have any adverse impacts on the case or a party.

³ 8 AAC 57.073.

⁴ See Petition, p. 4-5 (Nos. 1, 2, 4). Mr. Foreman argues the Board erred in this regard because (a) it based its ruling on precedents not cited by the parties; and (b) (i) the SIME issue and (ii) the issue as to the validity of a controversion are collateral to (independent of) the *forum non conveniens* issue raised in his petition for review to the Supreme Court. *Id.*

⁵ Pet., p. 5 (No. 3).

However, the question whether the Board may exercise its jurisdiction over matters that are within the scope of a pending petition for review to either the Commission or to the Supreme Court is one that might otherwise evade review, and on which an immediate decision by the Commission is needed to provide guidance to the Board.

5. Discussion.

In *Lynn*,⁶ the Supreme Court ruled that when an agency's jurisdiction over matters pending before it would conflict with the appellate court's jurisdiction over a pending appeal, the agency may not take action on those matters. *Lynn* did not involve a petition for review, but the Board concluded that the rule it established should apply equally in the context of a petition for review because the court could, if it granted the petition, overrule the agency with respect to the issues raised in the petition.⁷

Divesting the Board of jurisdiction to consider matters within the scope of a pending petition for review can be extremely disruptive to the timely adjudication of claims. In civil litigation, upon the filing of a petition for review the superior court may continue proceedings without regard to the pending petition for review unless either the superior court or the Supreme Court issues a stay order.⁸ Similarly, when a party files a petition for review of a Commission decision with the Supreme Court, proceedings before the Board are not stayed unless the Commission, or the Supreme Court, so orders.⁹ In view of these rules, it would be anomalous to conclude that proceedings before the Board with respect to the issues raised in a petition for review to the Commission are automatically stayed upon the filing of the petition. Parties may ask the Board or the Commission to stay proceedings before the Board with respect to the

⁶ *Foreman IV*, p. 7-8, *Fischback & Moore of Alaska, Inc. v. Lynn*, 407 P.2d 174 (Alaska 1965).

⁷ *See Foreman IV*, at 7-8.

⁸ *See* Appellate Rule 405(b).

⁹ *See* Appellate Rule 401.1.

matters raised in the petition,¹⁰ but absent a stay Board proceedings relating to those matters are unaffected unless and until the Commission grants the petition.

To the extent that the rule established in *Lynn* is considered to divest an agency of jurisdiction over matters within the scope of a pending appeal of a final agency order, we note that unlike a notice of appeal, which vests jurisdiction in the appellate body over all issues pertaining to the decision appealed, a petition for review does not in itself vest jurisdiction in the appellate body over the matters raised in the petition. The filing of the petition vests in the appellate body the discretion to exercise jurisdiction over those matters. Only if the appellate body grants the petition does it obtain jurisdiction to decide them.

6. Order.

IT IS HEREBY ORDERED:

1. For the reasons stated above, the petition for review is GRANTED in part and DENIED in part.
2. The Board's decision to decline jurisdiction is REVERSED.
3. This matter is remanded to the Board. We do not retain jurisdiction.

Date: September 23, 2026 ALASKA WORKERS' COMPENSATION APPEALS COMMISSION



Signed

Nancy Shaw, Appeals Commissioner

Signed

Amy M. Steele, Appeals Commissioner

Signed

Andrew M. Hemenway, Chair

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*

¹⁰ *See generally, Wasser & Winters Co., Inc. v Linke*, Alaska Workers' Comp. App. Comm'n Dec. No. 105 (Apr. 28, 2009).

AS 23.30.129(a) and Appellate Rules 401 – 403. If you believe grounds for review exist under Appellate Rule 402, you should file your petition for review not later than 10 days after the date shown in the Certificate of Distribution below.

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

The Alaska Supreme Court ruled in *Warnke-Green vs. Pro West Contractors, LLC*, 440 P.3d 283 (Alaska 2019), that "AS 23.30.128(f) does not prohibit the Commission from reconsidering orders other than the final decisions described in AS 23.30.128(e) because the authority to reconsider is necessarily incident to the Commission's express authority to 'issue other orders as appropriate.'"

A party may ask the Commission to reconsider this order by filing a motion for reconsideration not later than 10 days after the date shown in the Certificate of Distribution below. If a request for reconsideration of this order is filed on time with the Commission, any proceedings to file a petition for review with the Alaska Supreme Court must be instituted not later than 10 days after the date shown in the Certificate of Distribution of the reconsideration decision.

I certify that, with the exception of changes made in formatting for publication, this is a full and correct copy of Memorandum Decision and Order on Petition for Review – Decision No. 316 issued in the matter of *Rickie D. Foreman v. Northstar Construction Management and Cincinnati Insurance Company*, AWCAC Appeal No. 26-008, and distributed by the Alaska Workers' Compensation Appeals Commission in Anchorage, Alaska, on September 23, 2026.

Date: October 7, 2026



Signed

K. Morrison, Appeals Commission Clerk