

Alaska Workers' Compensation Appeals Commission

Ruth Hansen,
Appellant,

vs.

Mark McHoes and American Interstate
Insurance Co.,
Appellees.

Final Decision

Decision No. 056 September 24, 2007

AWCAC Appeal No. 06-032

AWCB Decision No. 06-0288

AWC Case No. 200506426

Appeal from Alaska Workers' Compensation Board Decision No. 06-0288, issued on October 24, 2006 by the southcentral panel at Anchorage, Janel Wright, Designated Chair, Patricia A. Vollendorf, Member for Labor, Robert C. Weel, Member for Industry, and Alaska Workers' Compensation Board Decision No. 06-0308 issued November 21, 2006 by the southcentral panel at Anchorage, Janel Wright, Designated Chair, Patricia A. Vollendorf, Member for Labor, Robert C. Weel, Member for Industry.

Appearances: Ruth Hansen, appellant, pro se. Michael Budzinski, Russell, Wagg, Gabbert and Budzinski, P.C., for appellees, Mark McHoes and American Interstate Insurance Co.

Commissioners: Jim Robison, Stephen T. Hagedorn, Kristin Knudsen.

This decision has been edited to conform to technical standards for publication.

By: Kristin Knudsen, Chair.

Ruth Hansen appeals the dismissal of her workers' compensation claim. She claimed she injured her neck when she fell on ice in the course of her employment as an office manager for McHoes. The board explicitly found Hansen's testimony was not credible. We are bound by the board's determination of credibility. The board found Hansen had not returned to her employment before the injury. We find that the board had sufficient evidence to support its findings of fact. The board concluded Hansen abandoned her employment and that Hansen was not in the course of employment on the day of the injury. We find the board's conclusion that Hansen was not in the course

of employment on the date of the injury is not erroneous as a matter of law, based on closely related grounds. Therefore, we affirm the board's decision.

I. Evidence presented to the board.

The parties do not dispute that Mark McHoes, who owns Coastal Electrical & Mechanical Contractors in Cordova, hired Hansen as an office manager at the end of November 2004. When that employment ended was the subject of dispute at hearing. The employer defended against the employee's claim by asserting that the injury did not occur in the course of employment because Hansen either was no longer an employee or was not employed at the work site on the day of the injury.¹

Hansen claimed she did not abandon her employment in February 2005 because she had permission to take leave from her job to go to Anchorage on personal business, McHoes paid for her plane ticket, and McHoes allowed her to stay on the company's account at a hotel in Anchorage. Hansen said McHoes gave her a check for \$500, which she cashed in Anchorage on February 8, 2005. Hansen testified in deposition she returned to Cordova after a week in Anchorage and that she worked the week of February 14-19, 2005,² although at hearing she testified she did not remember when she returned to Cordova.³ She testified she was moving binders relating to a project in Bethel from McHoes's nearby house to the office when she fell on the ice.⁴ As

¹ Hrg. Tr. 32:15-25. The board denied McHoes's request for a continuance based on Hansen's failure to attend a medical examination, but limited the issues for hearing from those listed at the preceding pre-hearing conference. Hansen advocated proceeding to hearing, stating

if the board concludes that Ms. Hansen is mistaken or false in her testimony that she was hurt at work in the course of her employment, then they won't even have to spend the money on that expense of EME . . . if Ms. Hansen does have a compensable injury, that's when [AS 23.30.]095(e) takes effect.

Hrg. Tr. 18:2-10.

² Hansen Depo. 42:11-43:13.

³ Hrg. Tr. 59:13 – 60:10.

⁴ Hansen Depo. 33:2-34:6.

corroborating evidence of her continuing employment status, she points to earnings records for February 18 – March 18, 2005,⁵ and to testimony by a Cordova taxi driver that she was driven around town on errands.⁶

An Ilanka Clinic (Cordova) medical report dated February 22, 2005, states Hansen sought treatment for neck pain due to a fall “4 days ago.”⁷ The next day, she was seen there again and referred to Anchorage’s Alaska Native Medical Center.⁸ On March 20, 2005, she completed a report of occupational injury stating she had fallen on the ice walking towards the door to the office while holding a box of paperwork.⁹ The report of injury did not include an injury date, but she filed a statement that the injury occurred on Saturday February 19, 2005,¹⁰ and she testified that was the date of the injury in hearing.¹¹ She left Cordova for medical treatment in Anchorage on February 23, 2005.¹² She did not receive a written termination letter.¹³

McHoes argued that Hansen abandoned her employment and was not working for him on February 19, 2005.¹⁴ He testified she flew to Anchorage to get eyeglasses on Friday, February 4, 2005.¹⁵ He expected her back the next day.¹⁶ He may have

⁵ R. 0452.

⁶ Hrg. Tr. 98:1-18.

⁷ R. 0296.

⁸ R. 0292-5.

⁹ R. 0001.

¹⁰ R. 00017.

¹¹ Hrg. Tr. 58:4-8.

¹² Hansen Depo. 45:11-13.

¹³ Hrg. Tr. 42:18-43:3.

¹⁴ He also claimed the injury did not occur February 19, 2005, but that Hansen sustained other personal injuries unassociated with work.

¹⁵ Hrg. Tr. 116:18-25.

given her a company coupon for her flight.¹⁷ He talked to her a couple times after she went to Anchorage and asked her to come back, that she was needed back on the job because he was not able to put out payroll to his crew from Valdez.¹⁸ He recalled her telling him about some problems with a nephew in the first week of her absence.¹⁹ He lent her \$500, because "she was broke in Anchorage and supposedly had something going on with a nephew that was in trouble."²⁰ He testified that she promised several times to return tomorrow, around February 10 or 12, but she did not return to work.²¹ He did not deny allowing her to stay in Anchorage on the company account,²² but he testified he expected it would be an overnight (one-day) trip.²³ He submitted a copy of a hotel statement for a stay for Ruth Hansen from February 4 through February 18, 2005,²⁴ which he paid.²⁵

McHoes returned to Cordova from Valdez on Friday February 18, 2005.²⁶ After he returned, he worked at the office doing payroll and catching up on administrative

¹⁶ Hrg. Tr. 165:6-10.

¹⁷ Hrg. Tr. 117:7-11.

¹⁸ Hrg. Tr. 119:7-16.

¹⁹ Hrg. Tr. 156:5-18.

²⁰ Hrg. Tr. 132:13-23.

²¹ Hrg. Tr. 157:4-24.

²² Hrg. Tr. 117:12-17.

²³ Hrg. Tr. 165:11-12.

²⁴ Employer's Hrg. Ex. 1 (unnumbered in board record), Hrg. Tr. 117:23-118:21.

²⁵ Hrg. Tr. 117:18-20.

²⁶ Initially, McHoes thought it might have been February 20 or 21, Hrg. Tr. 150:6-7, but by looking at his air taxi records, he established he returned February 18, 2005. Hrg. Tr. 158:2-4.

tasks.²⁷ He testified he would have been in the office on February 19, 2005.²⁸ He testified he did not see Hansen that day.²⁹ He did not see her until Wednesday February 23, 2005, when she came in to the office to ask for a ride out to the airport in a company truck. McHoes said he did not recall giving Hansen a check for \$375 or \$344 or issuing one for her.³⁰ McHoes testified Hansen was permitted to write herself a draw, or her own paychecks,³¹ utilizing a signed payroll check from those he left at the office.³² He said the last work she did for him was on Friday, February 4, 2005, before she went to Anchorage, and he had no time sheets from her after that date.³³ He challenged her account of carrying boxes of binders from the house to the office by testifying he did not have boxes of records at the house, to be carried to the office, at that time and that his project records were at the office.³⁴ Hansen worked in the office, not the house.³⁵ He considered that Hansen was abandoning her employment by not returning to work.³⁶ He said he called Hansen when she was in Cordova staying at Kelly Bray's house, after his return February 18, to ask if she was coming back to work,

²⁷ Hrg. Tr. 159:19-22.

²⁸ Hrg. Tr. 164:21-23.

²⁹ Hrg. Tr. 164:24-165:2.

³⁰ Hrg. Tr. 141:4-6, 151:1-5.

³¹ Hrg. Tr. 151:6-14.

³² Hrg. Tr. 142:7-20.

³³ Hrg. Tr. 120:13-21, 122:10-22.

³⁴ Hrg. Tr. 159:1-13.

³⁵ Hrg. Tr. 116:8-9.

³⁶ Hrg. Tr. 139:11-17.

but Hansen said she fell and hurt her neck.³⁷ McHoes testified Hansen did not work for him from February 19 through the day she left Cordova, February 23, 2005.³⁸

II. The board's decisions.

In its first decision, the board, citing a number of board decisions, reasoned that the presumption of coverage at AS 23.30.120(a)(1) extends to the existence of an employment relationship.³⁹ The board held that Hansen's testimony was sufficient to raise the presumption.⁴⁰ However, McHoes's testimony, the board found, rebutted the presumption by establishing that he believed she had abandoned her employment and was not at his office or home on February 19, 2005.⁴¹ Accordingly, the board held Hansen was required to prove her claim by a preponderance of the evidence.⁴²

The board explicitly found that Hansen's testimony was not credible based on "many inconsistencies in the employee's testimony" and the contradictory documentary evidence.⁴³ The board found that Hansen's failure to return to Cordova indicated she no longer wanted to be bound by her employment contract, and that it was reasonable for McHoes to believe she had abandoned her job.⁴⁴

The board also explicitly found Hansen's testimony that she was working for the employer on February 19, 2005 by moving boxes to be "disingenuous." The board chose to believe McHoes's testimony that he did not see Hansen on his property on

³⁷ Hrg. Tr. 161:15-5.

³⁸ Hrg. Tr. 128:4-10.

³⁹ *Ruth M. Hansen v. Mark McHoes*, Alaska Workers' Comp. Bd. Dec. No. 06-0288, 19 (October 24, 2006).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* at 21.

⁴⁴ *Id.* at 22.

February 19, 2005. The board relied on his testimony that he did not tell Hansen to move boxes of binders from his house to the office.⁴⁵

The board concluded that Hansen was not an employee at the time of her injury.⁴⁶ The board also concluded the injury did not occur in the course of employment.⁴⁷ Because the injury did not occur in the course of employment, the board dismissed Hansen's claim.⁴⁸

On reconsideration, Hansen sought to persuade the board that the issuance of a "draw" check on February 18, 2005, brought Hansen back into employment status because it was part of her duties for the employer.⁴⁹ The board declined to accept this argument. It found that Hansen "issued the check to herself without authorization from the employer."⁵⁰ It found that Hansen did not present new evidence or argument that persuaded them to alter the decision issued October 24, 2006.⁵¹ Therefore, the board declined to reconsider. This appeal followed.

III. Our standard of review.

AS 23.30.128(b) and AS 23.30.122, read together, set out the standard of review the commission applies when it reviews board decisions. The board's findings regarding credibility of a witness before the board are binding upon the commission.⁵² The board's findings of fact will be upheld by the commission if supported by substantial

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.* at 23.

⁴⁹ *Ruth M. Hansen v. Mark McHoes*, Alaska Workers' Comp. Bd. Dec. No. 06-0308 at 6 (November 21, 2006).

⁵⁰ Dec. No. 06-0308 at 9.

⁵¹ *Id.*

⁵² AS 23.30.128(b).

evidence in light of the whole record.⁵³ On questions of law or procedure, not already addressed by the courts or the legislature, the commission is required to exercise its independent judgment.⁵⁴

IV. The board's evaluation of the credibility of conflicting witnesses that appear before the board is binding on the commission.

Hansen's argument on appeal is that the board erred because the board's finding that she did not return to Anchorage before February 18, 2005 is contrary to the evidence. The decision not to believe her, she argues, rests on the proof of this fact. She claims that she flew to Cordova on February 14, 2005,⁵⁵ so her testimony that she was working for McHoes is credible. She argues McHoes's testimony was inconsistent. She says that McHoes presented no witnesses, but she had witnesses to support her and statements by other persons to support her account of events, but McHoes did not. Therefore, the commission should overturn the board's decision.

Hansen's challenge to the board's decision asks us to reverse the credibility findings of the board because she has evidence that she came back to Cordova before February 19, 2005. The relevant question is not just whether she came back to Cordova, but whether she came back to work when instructed to do so by her employer and was at work on February 19, 2005.

The board's conclusion that Hansen abandoned her employment was based in part on the employee's manifestation of intent to abandon her job "when after a one week unexcused absence from her job, she assured the employer she would return to

⁵³ AS 23.30.128(b).

⁵⁴ AS 23.30.128(b).

⁵⁵ Hansen, who is representing herself, produced in her excerpt a web-email and attachment that she states is a copy of a reservation for her ticket on an ERA flight to Cordova on February 14, 2007. This evidence was not presented to the board. The commission may only review the record made before the board, AS 23.30.128(a), so new evidence may not be considered by the commission.

work the next day, but did not return for an additional week.”⁵⁶ Hansen did not clearly contradict McHoes’s testimony that in the first week of her absence he talked to her by telephone, that she promised to return to work the next day, but that she did not do so. Instead, Hansen’s testimony is that her absence for “five to six days” was planned and excused.⁵⁷ She testified she returned to Cordova February 12 or 13,⁵⁸ that she worked for McHoes that entire week,⁵⁹ and that “even the day I fell, I worked all day.”⁶⁰ Her testimony was that the first day she did not work was the day she went to the Ilanka Clinic, but she worked at least a full day and part of another, after the fall but before she went to the Clinic.⁶¹

However, the board’s conclusion that Hansen abandoned her employment did not rest entirely on the evidence that Hansen did not return to Cordova before February 18, 2005.⁶² The record includes McHoes’s testimony that the last time she worked for him was on February 4, 2005, McHoes’s testimony that she did not report to work “the next day” as promised, and McHoes’s testimony that he did not see her in his office until February 23, 2005, although he had returned to Cordova on February 18, 2005. Most importantly, Hansen testified she worked “all day” the day that she was injured, Saturday, February 19, and that she worked Monday and Tuesday. Yet McHoes did not see her until Wednesday February 23, 2005, and Hansen did not testify that she saw McHoes at the office on February 19, 2005. Even if Hansen had demonstrated that she flew to Cordova on February 14, 2005, and McHoes knew why she was in Anchorage

⁵⁶ *Ruth F. Hansen*, Alaska Workers’ Comp. Bd. Dec. No. 06-0288 at 22.

⁵⁷ Hansen Depo. 41:12-17.

⁵⁸ Hansen Depo. 43:6.

⁵⁹ Hansen Depo. 43:11-13.

⁶⁰ Hansen Depo. 44:8.

⁶¹ Hansen Depo. 43:23-44:7.

⁶² Hrg. Ex. 1, a hotel reservation for February 4-18, 2005 signed by Ruth Hansen, contradicts Hansen’s testimony that she only planned to be gone 5 to 6 days.

and permitted her to remain, the board could still believe McHoes's testimony that she did not return to work when she said she would, that she did not do any work after February 4, that he did not see her when he was in the office on February 19, 2005, and, when he telephoned her at Kelly Bray's house to ask when she was coming into the office, she told him she fell and hurt her neck.

In short, the board's choice to believe McHoes instead of Hansen was based on its assessment of which witness testifying to the board was more credible. Hansen's assertion that the documentary evidence supports her testimony in part is not sufficient to overturn the board's determination; other documentary evidence contradicts her testimony. McHoes's testimony has contradictions, but many are sorted out as he found documents to establish dates. Hansen had two witnesses, but their testimony is not particularly helpful in corroborating her story. Neither witness places Hansen at work in the office between February 10 and February 19; neither witness observed her working in the office on February 19; neither witness observed her carrying boxes from the house to the office. Hansen submitted no record of work she did in that disputed week, such as bills paid or invoices received, a business log, letters written and mailed, or the like. On the most directly relevant points, Hansen's testimony conflicted with her employer's testimony. The board chose not to believe her, and to believe her employer.

When testimony on an important point conflicts directly, as it does in this case, the board must necessarily rely on evidence that is contradicted. However, the fact that there is contrary evidence is not enough to overturn the board's findings if the evidence the board relied on is sufficient to permit a reasonable mind to reach the same conclusion. The board's conclusion need not be the *only* conclusion a reasonable mind could reach, nor even the evidence the *best* evidence available. Viewing the record objectively, we cannot say that McHoes's testimony is not evidence on which a reasonable mind might rely to reach a conclusion that Hansen was not at work on February 19. Put another way, McHoes's testimony is not so clearly to the contrary to the record of evidence that reasonable minds must, without differing, reach another conclusion than the board did. We conclude the board's decision to rely on McHoes's

testimony may not be set aside, and the board's determination that Hansen was not a credible witness is binding upon the commission.

V. There is sufficient evidence of record to support a determination that Hansen was not injured in the course of employment.

We turn now to the board's decision that Hansen's injury did not occur in the course of her employment. We note that there is no challenge to the board's application of the presumption analysis or its application of the burdens of producing evidence and persuasion. Hansen argues that because she had permission for her trip to Anchorage, and because she returned to Cordova and worked the week prior to her injury, she did not abandon her job. In effect, she argues that McHoes did not produce sufficient evidence to overcome the presumption that she was in her employment when injured. She also argues she was an employee until McHoes advertised for her replacement because he did not terminate her employment. Therefore, she was still an employee when she was injured on Saturday, February 19, 2005. McHoes argues that the board properly concluded that Hansen had abandoned her employment.

Workers' compensation is a part of every contract of hire in this state⁶³ and the right to compensation for a work injury flows from the existence of that contract. In this case, there was no dispute that an employment contract existed between Hansen and McHoes.⁶⁴ The question presented to the board by the employer's defense was whether Hansen fatally breached her contract of hire before February 19, 2005. If she breached the contract, was the breach sufficient to constitute abandonment, or was it merely cause for termination on which the employer failed to act? The defense that the injury did not occur in the course of employment because no employment relationship

⁶³ AS 23.30.020.

⁶⁴ For this reason, *Alaska Pulp Corp. v. United Paperworkers Int'l Union*, 791 P.2d 1008, 1011 (Alaska 1990) (holding that the presumption in AS 23.30.120(a)(1) does not apply to aid one employer in establishing an employment relationship with another, contrary to that asserted by the employee), is not particularly helpful in determining the burdens of production and proof.

existed is not an affirmative defense,⁶⁵ so the board did not err in requiring the employee to prove, once the presumption dropped out, the continuing existence of the employment relationship as an essential element of her claim that her injury arose out of and in the course of the employment.

The board concluded Hansen abandoned her employment. We agree that McHoes's testimony, and the record of the hotel stay in Anchorage, is substantial evidence in light of the whole record to support a finding that Hansen materially breached the employment contract.⁶⁶ We agree that evidence of an unjustified failure to report to work when reasonably instructed to do so supports a finding of an external act manifesting intent to abandon the employment.⁶⁷ However, because the board's decision may be upheld on another theory, we do not need to decide whether there

⁶⁵ An affirmative defense "can generally be defined as new matter not set forth in the complaint which constitutes a defense; or new matter which, assuming the complaint to be true, is a defense to it." *Rollins v. Leibold*, 512 P.2d 937, 940 (Alaska 1973). An employment relationship is asserted when the injured claimant files a claim against the employer for workers' compensation; denial of that relationship by the purported employer is not an affirmative defense. *Bowman v. Blair*, 889 P.2d 1069, 1071 n. 2 (Alaska 1995). On the other hand, an assertion that the employer is a federal agency not subject to state jurisdiction is an affirmative defense. The employer bears the burden of proof of an affirmative defense asserted by the employer. *Anchorage Roofing Co., Inc., v. Gonzales*, 507 P.2d 501, 504 (Alaska 1973).

⁶⁶ An employee's willful refusal to obey the reasonable instructions of the employer is grounds for discharge. *Helmuth v. Univ. of Alaska Fairbanks*, 908 P.2d 1017, 1021 (Alaska 1995), citing *Cent. Alaska Broad. v. Bracale*, 637 P.2d 711, 713 (Alaska 1981) ("[W]hen an order given is reasonable and consistent with the contract, the failure to obey it is always a material breach as a matter of law.").

⁶⁷ An employee's refusal to obey a reasonable order "strikes at the very heart of the contractual relationship existing between an employer and his employee." *Cent. Alaska Broad.*, 637 P.2d at 713; see also *Reilly v. Polychrome Corp.*, 872 F. Supp. 1265, 1268 (SD NY 1995) (upholding discharge for unexcused failure to report to work for three days). Hansen does not challenge the reasonableness of McHoes's order that she return to work, just whether or not she obeyed it.

was substantial evidence in light of the whole record that Hansen intended to abandon her employment.⁶⁸

Our examination of the board's decision reveals that the board used three related theories to conclude that Hansen was not in her employment when she fell: first, that Hansen was not at work February 19, 2005 because she previously

⁶⁸ The board cited as evidence of intent to abandon employment the same act the board found was the external manifestation of abandonment, rather than explicitly finding the employee had a subjective intent to abandon her employment. The board found that "any reasonable person . . . would not believe she still had a job." *Ruth F. Hansen*, Dec. No. 06-0288 at 22. Use of a "reasonable person" standard suggests that the board did not examine the employee's subjective intent. *See Brooks Range Exploration Co., Inc., v. Gordon*, 46 P.3d 942, 946 n. 11 (Alaska 2002) (reviewing definition of abandonment of real or personal property). On the other hand, constructive resignation by an employee may not require an inquiry into subjective intent, if constructive resignation is treated as the obverse of constructive discharge. *Charles v. Interior Reg'l Hous. Auth.*, 55 P.3d 57, 62 (Alaska 2002) (holding an employer may commit either an objective or subjective breach the covenant of good faith and fair dealing implied in all at-will employment contracts; objective breach occurs when employer fails to act in a manner which a reasonable person would regard as fair). An objective standard parallels application of the rule in workers' compensation law that a deviation from the course of employment is established if the extent of the employee's departure is so great that an intent to abandon the job temporarily may be inferred or done so unusually and unreasonably that the deviation cannot be considered incident to the employment. *See Estate of Fry*, 620 N.W.2d 449, 454 (Wisc. 2000); 1 Larson's Workers' Compensation Law § 17.06[1] at 17-35 (2007). Constructive resignation, as recognized in California, applies a reasonable employer standard. *Goggin v. Calif. State Pers. Bd.*, 156 Cal. App. 3d 96, 105 (Cal. App. 2d Dist. 1984) ("the issue here is whether Goggin's employers could have reasonably believed he had abandoned his job."), *disapproved in part on other grounds, Coleman v. Dep't of Pers. Admin.*, 52 Cal. 3d 1102, 1123 (1991), (requiring public employer to notify employee it is invoking constructive discharge under AWOL statute and provide informal hearing if employee challenges factual basis for discharge); *but, c.f., Barrett v. Weyerhaeuser Co. Severance Pay Plan*, 700 P.2d 630, 638 (Wash. App. 1985) ("voluntary resignation occurs when an employee abandons the employment because of a desire to leave, including such desire motivated by dissatisfaction"). We do not find it necessary to pursue the question of whether Hanson's actions should be analyzed as "abandonment" analogous to abandoning property or a contract, *Shade v. State*, 509 A.2d 664, 668 (Md. 1985), or as "constructive resignation" because we find the board's decision may be affirmed on closely related grounds raised to the board and supported by the board's findings of fact.

abandoned her employment; second, that Hansen was not at work Saturday, February 19, 2005 because she was not seen by McHoes, who was at the office that day; third, even if she were at the premises, her account of falling while carrying the boxes of binders to the office on Saturday is disingenuous, and contradicted by McHoes's more credible testimony that the task was unnecessary and unrequested, leading to the inference that the box carrying did not occur. Hansen challenges only one theory: that she was not in the course of employment on February 19 *because* she had abandoned her employment before then. However, even if the board's "abandonment of employment" theory was not supported by sufficient evidence of intent to abandon the employment, we may affirm the board's decision if one of the other related theories is supported by substantial evidence in light of the whole record.

If there is substantial evidence in light of the whole record that Hansen was not present at work for McHoes when she fell on February 19, 2005, it does not matter if Hansen was still employed by McHoes before or afterwards. The relevant questions are "Was she at work that day? If so, did she fall moving boxes from the house to the office?" We find there is sufficient evidence to support the board's conclusion that Hansen was not acting in the course of her employment at the time of the injury because she was not at work on February 19, 2005.

McHoes testified he was at the office, catching up on administrative duties, but he did not see her there or at his home. Hansen said she worked *all day* the day she was injured – not that she worked a few hours so that she and McHoes might have missed each other. Hansen believes her testimony she worked on February 19, 2005 was corroborated by Donaldson's testimony that his driver Kenny Jack told Donaldson he (Jack) drove Hansen around town on February 19. Setting aside issues of hearsay, Donaldson also testified Jack told him Hansen fell getting out of the cab and that Jack did not say where he drove her – Donaldson assumed Hansen was doing errands for McHoes. There is no evidence how long Hansen's errands took in a small town like Cordova. Hansen's testimony that she worked all day February 19, directly conflicts with McHoes's testimony that he worked the same day and did not see her or hear from her. The board gave more weight to McHoes's testimony.

McHoes's testimony is substantial evidence, in light of the whole record, on which reasonable minds might rely to establish that Hansen was not at work on February 19, 2005. The board found that McHoes's testimony on this point was credible, and Hansen's testimony was not credible; it also found her claim of moving boxes was "disingenuous."⁶⁹ Having rejected Hansen's testimony that she was at work all day at the office and house, moving record boxes, and running errands for McHoes the Saturday she was injured, the board could find that Hansen failed to establish by a preponderance of the evidence that she was at work that Saturday and "engaged in employer-sanctioned activity at the time of her February 19, 2005 injury."⁷⁰ We conclude the board did not err as a matter of law in dismissing Hansen's claim because she failed to persuade the board that her injury occurred in the course of employment.

VI. Conclusion.

For the reasons set out above, we AFFIRM the board's dismissal of Hansen's claim for workers' compensation for an injury on February 19, 2005 in Alaska Workers' Comp. Bd. Dec. No. 06-0288.

Date: 24 Sept 2007 ALASKA WORKERS' COMPENSATION APPEALS COMMISSION



Signed

Stephen T. Hagedorn, Appeals Commissioner

Signed

Jim Robison, Appeals Commissioner

Signed

Kristin Knudsen, Chair

⁶⁹ There are other conflicts in witness testimony: Hansen testified she worked at least one full day and a half-day *after* her injury. McHoes says she responded to his telephone inquiry about when she would be back at work with the information that her neck hurt, implying that she would not come to work because she was hurt. Hansen tried to establish that she must have come into the office Monday, February 21, 2005 to have printed a check or enter her draw, but McHoes testified that he did not recall giving it to her.

⁷⁰ *Ruth F. Hansen*, Alaska Workers' Comp. Bd. Dec. No. 06-0288 at 22.

APPEAL PROCEDURES

This is a final decision on this appeal. The appeals commission affirmed (approved) the board's decision dismissing Ruth Hansen's workers' compensation claim. The appeals commission's decision ends all administrative proceedings in this workers' compensation claim. It becomes effective when filed in the office of the appeals commission unless proceedings to reconsider it or to appeal to the Alaska Supreme Court are instituted.

Proceedings to appeal this decision must be instituted in the Alaska Supreme Court within 30 days of the date this final decision is filed and be brought by a party-in-interest against the commission and all other parties to the proceedings before the commission, as provided by the Alaska Rules of Appellate Procedure. AS 23.30.129. To see the date this decision is filed, look at the clerk's Certification below.

A request for commission reconsideration must be filed within 30 days of the date of service of the decision. If a request for reconsideration of this final decision is timely filed with the commission, any proceedings to appeal, if appeal is available, must be instituted within 30 days after the reconsideration decision is mailed to the parties, or, if the commission does not issue an order for reconsideration, within 60 days after the date this decision is mailed to the parties, whichever is earlier. AS 23.30.128(f).

If you wish to appeal this decision 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 appeals commission to reconsider this decision by filing a motion for reconsideration in accordance with 8 AAC 57.230. The motion requesting reconsideration must be filed with the appeals commission within 30 days after delivery or mailing of this decision.

CERTIFICATION

I hereby certify that the foregoing is a full, true, and correct copy of the final Decision and Order on Appeal in the matter of *Ruth Hansen v. Mark McHoes and American Interstate Insurance Co.*, Appeal No. 06-032; dated and filed in the office of the Alaska Worker's Compensation Appeals Commission in Anchorage, Alaska, this 24th day of September, 2007.

Signed
L. Beard, Deputy Appeals Commission Clerk

<u>Certificate of Service</u>	
I certify that a copy of this Final Decision in AWCAC Appeal No. 06-032 was mailed on <u>9/24/07</u> to Hansen (certified) & Budzinski at their addresses of record and faxed to Budzinski, Director WCD, & AWCB Appeals Clerk.	
<u>Signed</u>	<u>9/24/07</u>
L. Beard, Deputy Clerk	Date