

Case: *Izaz E. Khan vs. Adams & Associates, Insurance Company of the State of Pennsylvania*, Alaska Workers' Comp. App. Comm'n Dec. No. 025 (January 10, 2007)

Facts: This was a motion for reconsideration of Dec. No. 019 that decided that Khan was not indigent for the purposes of waiving the \$50 filing fee. Khan provided more detailed information about his circumstances than in the previous hearing. He was unemployed and having difficulty obtaining employment as a driver because of a record of DUI or getting a job in other positions because of back and knee problems that restricted his abilities to stand and lift. He was currently homeless.

Applicable law: AS 23.30.128(f) providing in part that: "Reconsideration may be granted if, in reaching the decision, the commission (1) overlooked, misapplied, or failed to consider a statute, regulation, court or administrative decision, or legal principle directly controlling; (2) overlooked or misconceived a material fact; (3) misconceived a material question in the case; or (4) applied law in the ruling that has subsequently changed."

AS 23.30.128(c) provides that the commission may receive evidence on applications for "waiver of fees by indigent appellants[.]"

When examining whether a person is indigent,

[w]e examine first whether the appellant is working, capable of working, or has other reliable income (such as on-going payment of compensation); second, whether the appellant has incurred substantial costs associated with the workers' compensation claim that are *not* subject to payment by the opposing party if the appellant prevails; third, the amount of medical treatment debt for which the appellant is directly and personally liable (i.e., that is not covered by other insurance, including Medicare or Medicaid); and fourth, the assets and resources available to the appellant after payment of ordinary household expenses and other unavoidable debts, as detailed in the financial statement affidavit filed by the appellant. *Morgan v. Alaska Regional Hospital*, Alaska Workers' Comp. App. Comm'n Dec. No. 013, 8-9 (June 15, 2006).

Issue: Should commission reconsider its decision denying waiver of the filing fee?

Holding/analysis: The commission explicitly stated that it was not making a finding of credibility (in its previous Dec. No. 019 it had concluded that Khan was not credible). The commission decided to reverse its decision on the basis of changed circumstances and waive the \$50 filing fee. Commission found that Khan was indigent based on the above facts that were unchallenged by the employer.

Note: Dec. No. 057 dismissed Khan's appeal for lack of prosecution; Dec. No. 019 was earlier decision denying waiver of filing fee but agreeing to not require a transcript.