

Case: *Mary I. Thoeni vs. Consumer Electronic Services and Alaska National Insurance Co.*, Alaska Workers' Comp. App. Comm'n Dec. No. 039 (April 30, 2007)

Facts: Employee appealed and both parties filed a variety of motions with commission, including ones dealing with transcription and transcription costs. Employer argued that the employee must complete her appeal in the superior court, because the case had been remanded to the board for further proceedings and the superior court retained jurisdiction. (After superior court remand, some of the issues were appealed to the Alaska Supreme Court, which issued a decision, 151 P.3d 1249 (Alaska 2007), at the same time the board took up the other issues on remand.) Employer also argued that the record was "so voluminous and complex, and the issues so closely intertwined, that it makes sense for the Court, already familiar with Thoeni's case, to handle all issues on appeal." Dec. No. 039 at 5. Employee conceded that some of her points on appeal concerned the remanded appeal, but most were not the subject of the original appeal to the superior court, and, therefore, the commission had jurisdiction of an appeal on these points.

Applicable law: As the Alaska Supreme Court stated in its decision in this case, a superior court decision remanding a matter to an administrative agency is not a final, appealable order, *Thoeni v. Consumer Elec. Serv.*, 151 P.3d 1249, 1253 (Alaska 2007) (other citations omitted). The court had sole and exclusive jurisdiction over the issues raised on appeal once an appeal was taken until a final order is issued, *Fischback & Moore of Alaska, Inc. v. Lynn*, 407 P.2d 174, 176 (Alaska 1965), overruled in other part by *City and Borough of Juneau v. Thibodeau*, 595 P.2d 626, 629 (Alaska 1979). Unless the Superior Court remands for a strictly "ministerial" act, the superior court's decision is not final. *Municipality of Anchorage, Police and Fire Retirement Bd. v. Coffey*, 893 P.2d 722, 725 n.6 (Alaska 1995). Based on these decisions, the commission concluded that the Superior Court implicitly retains jurisdiction to examine the results of the board proceedings on remand and to enter a final appealable order.

The legislature intended that the superior court's jurisdiction over pending appeals be saved to the superior court upon the effective date of the bill creating the commission. *Adepoju v. Fred Meyer Stores, Inc.*, Alaska Workers' Comp. App. Comm'n Dec. No. 010 (May 11, 2006); section 80, ch. 10 FSSLA 2005.

Issue: Does commission have jurisdiction to hear the appeal, where some of the issues raised concerned an earlier appeal that the superior court remanded?

Holding/analysis: Commission concludes that superior court has jurisdiction over at least some of the issues, so it deferred to that court's judgment about the scope of its jurisdiction, and commission would hear whatever part of the appeal, if any, that the superior court did not take up. (The commission "may not delineate the Court's jurisdiction over issues in a mixed decision on remand" because it has "no authority to give direction to the Superior Court." Dec. No. 039 at 9 n.29).

Commission concluded superior court had jurisdiction over some of the issues:

Judge Christen did not enter a final judgment, so two discrete issues remained within the Superior Court's jurisdiction even after an appeal was taken to the Supreme Court. We believe that the Superior Court implicitly retained jurisdiction of the appeal because the Court's decision did not make a final disposition of the parties' rights in the first appeal, and these issues were not fully disposed of in the Supreme Court's decision. Judge Christen's remand order was not ministerial because it required the board to exercise the board's statutory power to make findings of fact related to whether payments had been made and related to whether Thoeni refused to sign releases, so forfeiting benefits. The Superior Court necessarily retains jurisdiction of these issues because it had yet to enter a final order in the appeal filed by Thoeni, who is now seeking to appeal the board's decision on the Court's remand to the commission. Dec. No. 039 at 6-7 (footnotes omitted).