Case: *North Slope Borough vs. Melvin Wood and State of Alaska, Second Injury Fund*, Alaska Workers' Comp. App. Comm'n Dec. No. 059 (October 12, 2007)

Facts: The Second Injury Fund (SIF) moved for reconsideration of the commission decision. The commission considered two issues, whether the commission (1) misconceived a material fact respecting its calculation of time, and (2) overlooked a controlling legal principle in the doctrine of invited error and the effect of the stipulation regarding SIF administrator Monagle's hearing testimony. The SIF argued that the North Slope Borough's (Borough) stipulation effectively conceded that certain medical records provided notice of a possible claim against the SIF and thus, the board's failure to identify the date on which the employer knew the combined effects of the preexisting condition and the work-related injury produced a greater disability than the injury alone was harmless error.

Applicable law: Invited error doctrine is "a procedural rule based on Evidence Rule 103," that "bars a party from appealing an erroneous evidence ruling if the error was 'invited' by that same party in the trial below, that is, that an appellant may not complain of an error that was the appellant's own fault." Dec. 059 at 2-3.

Issues: Did the commission miscalculate when the 100 weeks prior to December 31, 2002, began? Does invited error doctrine apply? Did the stipulation render as harmless error the board's failure to identify the start of the filing period?

Holding/analysis: The commission concluded that it did miscalculate when 100 weeks prior to December 31, 2002 began on page 10 of Dec. No. 048. The correct date was January 30, 2001. Dec. No. 059 at 2.

On the invited error doctrine, the commission concluded that it does not apply to conclusions of law, which is what the board made when it decided that the Borough's filing with the SIF was untimely. The doctrine applies only to evidentiary rulings. Second, the commission concluded that the Borough did not "invite" the error.

> [T]here was no erroneous ruling because the hearing officer ruled on the first objection correctly, that the question to Mr. Monagle from the Second Injury Fund's attorney, 'has the North Slope Borough filed a timely Second Injury Fund claim,' 'called for a conclusion of law.' After that ruling, the Second Injury Fund's attorney, Richard Postma, argued that Mr. Monagle could testify that 'certain documents . . . would they have alerted him, as the Second Injury Fund administrator, of a possible Second Injury Fund claim.' This is a different question than 'has the North Slope Borough filed a timely claim?' Mr. Tesche, the Borough's attorney, objected on relevance grounds, pointing out that the board had to decide the question, not based on Mr. Monagle's opinion of the sufficiency of the documents. The hearing officer did not rule on the relevancy challenge. The 'invited error doctrine' does not apply in this case, as the appeal does not rest on the challenge to an erroneous ruling requested by the appellant. *Id.* at 3-4.

On the stipulation:

> The stipulation proposed by the hearing officer was that '[Mr. Monagle] would say that he would have thought it had triggered.' . . . The hearing officer's stipulation is simply a restatement of the Fund's argument as an opinion. . . . The stipulation was not, as the Second Injury Fund suggests, evidence on which the board could rely to support a finding of fact that the employer knew or should have known before January 30, 2001, that the combined effects of the pre-existing condition and the injury produced a substantially greater disability than the injury alone. *Id.* at 6.

Finally, the commission concluded that it could not make findings of fact in support of the board's decision because "the legislature has assigned to the board the role of weighing the evidence and deciding facts." *Id.* at 7. The commission must remand "if the board fails to make adequate findings of fact to reach a conclusion, and if reasonable minds could differ as to the evidence in the record[.]" *Id*.

Note: See Dec. No. 048 (July 13, 2007), the first decision in this case, for more elaboration on the law and the facts.