

Case: *Michelle A. Buchinsky vs. The Arc of Anchorage and Seabright Insurance Company*, Alaska Workers' Comp. App. Comm'n Dec. No. 189 (December 2, 2013)

Facts: Michele Buchinsky (Buchinsky) was injured when a filing cabinet drawer struck her knees on December 20, 2007. She filed a claim in April 2008, indicating that she injured her knees in the first incident and that in a similar incident with the filing cabinet on December 26, 2007, she injured her left shoulder as well as her knees.

Medical evidence indicated that Buchinsky had multicompartmental osteoarthritis in both knees prior to the work incidents, and she was being treated for knee pain in 2007 before the work incidents. She also complained of neck and left shoulder pain in 2007, and cervical magnetic resonance imaging in September 2007 showed multilevel spondylitic changes with spinal and foraminal stenosis.

Buchinsky saw Dr. Culbert a day after the second work incident and he took her off work until the end of December 2007. On January 24, 2008, Buchinsky went to the emergency room with pain in her right knee. She reported that a file cabinet had fallen on her knee twice in December, but it had "seemed to heal." She reported the pain began the day before, but did not recall a specific incident that may have caused it. X-rays revealed a possible tibial plateau fracture and moderate degenerative joint disease of her knee. Buchinsky was placed on crutches and given a prescription. Buchinsky saw other providers as well in early 2008.

On June 27, 2008, Buchinsky saw John Ballard, M.D., for an employer's medical evaluation (EME). Dr. Ballard diagnosed bilateral osteoarthritis of the knees, multi-level degenerative disc disease of the cervical spine, with stenosis at multiple levels and disc protrusions at C6-7 and C7-T1, and chronic low back and left leg pain. He also diagnosed bilateral knee contusions from the December 2007 work incidents. Dr. Ballard's opinion was that the work incidents were the substantial cause of the contusions, but none of the other conditions. Based on this report, The Arc of Anchorage controverted Buchinsky's claim.

On July 18, 2008, Dr. Eule stated that he would assume the injury in December 2007 would be "a substantial factor in her current [neck] condition and need for surgery" because Buchinsky "has never experienced any problems previously and never received any treatment for any neck problem in the past." Dr. Eule restricted his comments to Buchinsky's cervical spine.

On July 8, 2011, Buchinsky saw Edward Tapper, M.D., for a second independent medical evaluation. Dr. Tapper diagnosed cervical and lumbar multilevel degenerative disc disease and spinal stenosis and three-compartment osteoarthritis in both knees. In Dr. Tapper's opinion, Buchinsky's earlier motor vehicle accidents, not the work incidents, were the cause of the degenerative disc disease, spinal stenosis, and arthritis in her knees.

After a hearing, the board decided that Buchinsky's work injuries were not the substantial cause of her disability and need for treatment. Buchinsky appeals.

Applicable law: The commission is to uphold the board's findings of fact if they are supported by substantial evidence in light of the whole record. AS 23.30.128(b). Substantial evidence is such relevant evidence which a reasonable mind might accept as adequate to support a conclusion. *E.g., Norcon, Inc. v. Alaska Workers' Compensation Bd.*, 880 P.2d 1051, 1054 (Alaska 1994).

The board has the sole authority to assign weight to the evidence, and determine credibility of witnesses. AS 23.30.122.

AS 23.30.010 provides in relevant part:

When determining whether or not the . . . disability or need for medical treatment arose out of and in the course of the employment, the board must evaluate the relative contribution of different causes to the disability . . . or the need for medical treatment. Compensation or benefits under this chapter are payable for the disability . . . or the need for medical treatment if, in relation to other causes, the employment is the substantial cause of the disability . . . or need for medical treatment.

Issue: Does substantial evidence support the board's decision denying compensability?

Holding/analysis: The commission concluded that the board relied on substantial evidence. "The commission cannot reevaluate the evidence but considers only whether the board's conclusions are based on substantial evidence[.]" Dec. No. 189 at 9-10. Drs. Ballard and Tapper's opinions constituted substantial evidence, given their review of the medical record and examinations of Buchinsky. "The board discredited Dr. Eule's letter because his opinion on the work-relatedness of her neck condition was based on an erroneous belief that she had no prior treatment for neck problems." Dec. No. 189 at 9.

The commission rejected Buchinsky's argument that her active lifestyle prior to the work incidents, as contrasted with her present disability, establishes that the work incidents caused her current disability and need for medical treatment. "When the key controversy centers on the *medical evidence* of causes of the employee's conditions, timing alone is not enough to satisfy this burden and establish causation of the disabling condition." *Abonce v. Yardarm Knot Fisheries*, Alaska Workers' Comp. App. Comm'n Dec. No. 111, 13 (June 17, 2009) (citation omitted).

(The parties did not dispute that the board properly applied the AS 23.30.120(a)(1) presumption of compensability and properly concluded that it dropped out.)