Alaska Workers' Compensation Appeals Commission

Theodore A. Bohlmann,
Appellant,

vs.

Alaska Construction and Engineering, Inc., North American Specialty Ins. Co., and Wilton Adjustment Service,
Appellees.

Final Decision and Order
Decision No. 023 December 8, 2006

AWCAC Appeal No. 06-008
AWCB Decision No. 06-0042
AWCB Case No. 200114921

Appeal from Alaska Workers' Compensation Board Decision No. 06-0042, issued February 23, 2006, by the southcentral panel at Anchorage, Krista Schwarting, Chair; Patricia A. Vollendorf, Member for Labor.

Appearances: Theodore A. Bohlmann, self-represented, appellant; Robin Gabbert, Russell, Tesche, Wagg, Cooper & Gabbert, for appellees Alaska Construction and Engineering, Inc., North American Specialty Ins. Co., (formerly Wasatch Crest Mutual Ins. Co.) and Wilton Adjustment Service.

Commissioners: John Giuchici, Philip Ulmer, and Kristin Knudsen.

By: Kristin Knudsen, Chair.

The issue raised in this appeal is whether pro se (self-representation) status is sufficient to excuse a late request for a hearing and thus avoid dismissal of a claim under AS 23.30.110(c). We hold that pro se status is not sufficient to excuse late filing when the claimant was adequately informed of the consequences of failure to file a request for hearing within two years of the date a claim is controverted. We find substantial evidence in the record as a whole supports the board's findings that Bohlmann failed to file a request for hearing on his claims for adjustment of his compensation rate. We affirm the board's decision dismissing Bohlmann's claims for a compensation rate adjustment as denied under AS 23.30.110(c).

Factual background and board proceedings.[1]

Theodore Bohlmann was a retired[2] operating engineer[3] living in the state of Washington.[4] In 2001, he came to Alaska,[5] and Alaska Construction & Engineering (AC&E) hired him to work at the rock crusher at the Eklutna materials site (quarry).[6] He was injured July 29, 2001 when he got out of his loader to relieve himself and was struck by a falling boulder.[7] Bohlmann returned to Washington.[8] He was paid temporary total disability compensation based on a rate of $168 weekly[9] and permanent partial impairment compensation of $23,010.[10]

Bohlmann had not been employed for 13 weeks when he was injured.[11] February 11, 2002, he filed a claim for a compensation rate adjustment.[12] He claimed

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[1] When summarizing the facts of record, we do not make findings of fact. AS 23.30.122, AS 23.30.128(b). Our summary provides context for our discussion of the issues on appeal. We provide citation to the record to assure the parties that we have not gone beyond the board record and the board's findings.

[2] Bohlmann Depo. 23.

[3] Bohlmann Depo. 15.

[4] Bohlmann Depo. 7.

[5] *Id*. He stayed with his daughter. Bohlmann Depo. 13.

[6] Bohlmann Depo. 25-27.

[7] Bohlmann Depo. 37-38. *Theodore A. Bohlmann v. Alaska Constr. & Engineering, Inc.,* AWCB Decision No. 06-0042, 1 (February 23, 2006).

[8] Bohlmann Depo. 40.

[9] Temporary compensation is paid through the year; the annual value of Bohlmann's compensation rate was $8,736 (52 weeks x $168).

[10] R. 000016. The rate of compensation varied with the cost of living adjustment for Washington residency, R.000013, and recoupment of overpayment established by a social security adjustment, R. 000032.

[11] The notice of injury reports Bohlmann's date of hire as June 26, 2001. R. 000001.

his compensation rate was too low because he should be paid wages at the time of injury, based on *Gilmore*[13] and former AS 23.30.220(a)(4)(B).[14] AC&E filed answers to

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[12] R. 000035-36. On July 10, 2003, he filed a second claim for a compensation rate adjustment, alleging a failure to include overtime in his wage rate. R. 000066-67.

[13] *Gilmore v. Alaska Workers' Comp. Bd.,* 882 P.2d 922 (Alaska 1994).

[14] When Bohlmann was injured, AS 23.30.220 provided in pertinent part:

> (a) Computation of compensation under this chapter shall be on the basis of an employee's spendable weekly wage at the time of injury. An employee's spendable weekly wage is the employee's gross weekly earnings minus payroll tax deductions. An employee's gross weekly earnings shall be calculated as follows:
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> (1) if at the time of injury the employee's earnings are calculated by the week, . . .;
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> (2) if at the time of injury the employee's earnings are calculated by the month, . . . ;
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> (3) if at the time of injury the employee's earnings are calculated by the year, . . . ;
>
> (4) if at the time of injury the
>
> (A) employee's earnings are calculated by the day, hour, or by the output of the employee, the employee's gross weekly earnings are the employee's earnings most favorable to the employee computed by dividing by 13 the employee's earnings, including overtime or premium pay, earned during any period of 13 consecutive calendar weeks within the 52 weeks immediately preceding the injury;
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> (B) employee has been employed for less than 13 calendar weeks immediately preceding the injury, then, notwithstanding (1) - (3) of this subsection and (A) of this paragraph, the employee's gross weekly earnings are computed by determining the amount that the employee would have earned, including overtime or premium pay, had the employee been employed by the employer for 13 calendar weeks immediately preceding the injury and dividing this sum by 13;

AS 23.30.220(a)(4) was effectively repealed by § 57 ch 10 FSSLA 2005.

his claims denying applicability of *Gilmore* and entitlement to an adjustment under the February 11, 2002 claim,[15] and similarly denying entitlement to an adjustment under the July 10, 2003 claim.[16] AC&E also formally controverted the claim for a rate adjustment after the second claim was filed.[17] When Bohlmann sought to amend his claim in a pre-hearing conference on July 20, 2005 to include a compensation rate increase, AC&E's counsel objected on the grounds that the claims were time-barred under AS 23.30.110(c).[18] Bohlmann filed an affidavit of readiness for hearing on August 31, 2005, that did not list the February 2002 and July 10, 2003 claims for a wage rate adjustment.[19] At a pre-hearing conference on September 16, 2005, Bohlmann and employer's attorney agreed to a hearing on whether Bohlmann's compensation rate adjustment claims of July 10, 2003 and February 11, 2002 were time-barred under AS 23.30.110(c).[20]

At the hearing, AC&E argued that Bohlmann was actively involved in his workers' compensation case, as he had filed eight claims, six requests for production, a number of protective order requests and he was repeatedly informed of the time-bar in AS 23.30.110(c).[21] AC&E argued that the two years from the date of controversion of

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[15] Filed March 12, 2002. R. 000039-40.

[16] Filed August 7, 2003. R. 000068-69.

[17] The controversion dated August 6, 2003, was filed August 7, 2003 in the Anchorage office of the Board. R. 000014. 8 AAC 45.050(c) requires that answers to claims be filed within 20 days of service of a claim, but neither 8 AAC 45.050(c) nor AS 23.30.155(d) include a time limit for filing a controversion that is triggered by filing a claim. Bohlmann did not raise before the board or this commission whether the August 7, 2003 controversion was late or should only apply to his second claim; therefore, we do not address the issue in this decision.

[18] R. 000727.

[19] R. 000125.

[20] R. 000746.

[21] Tr. 7.

the claim for a compensation rate adjustment expired on August 6, 2005; Bohlmann did not file a request for hearing until August 31, 2005.[22] Even then, the request for hearing did not list the two claims that concerned his claim for an adjustment of his compensation rate.[23] There was no reason to permit equitable relief, and the claims were denied by operation of law.[24]

AC&E presented testimony by Joireen Cohen, a workers' compensation officer, that she provided Bohlmann with a copy of the (board) regulations and the form for an affidavit of readiness to proceed.[25] She testified that she recalled telling him that she would not decide the merits of his claim and that he would have to request a hearing by filing an affidavit of readiness to proceed.[26] She also recalled that Mr. Bohlmann on another occasion said he would be filing an affidavit of readiness to proceed.[27]

Bohlmann presented a written hearing brief, in which he argued that the board had a duty to advise him when and how to file his request for hearing and failed to do so.[28] He argued that if the board staff correctly assisted him, he would not have missed the date. He also argued that he did not include the compensation rate adjustment claims on the request for hearing form because he thought the controversion of those

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22 Tr. 7.

23 Tr. 7.

24 Tr. 8, 23-24.

25 Tr. 11-13.

26 Tr. 15.

27 Tr. 14.

28 R. 000122.

claims had been "lifted."[29] He argued the same points in the hearing,[30] but added that he believed his attorney was not competent.[31]

The board found that Bohlmann filed claims raising the compensation rate issue on February 5, 2002 and July 10, 2003, and that AC&E controverted the second claim on a board-prescribed form on August 6, 2003.[32] The board found that Bohlmann had until August 6, 2005 to request a hearing under AS 23.30.110(c).[33] The board found Bohlmann did not file a request for hearing until August 31, 2005.[34] The board explicitly found that Bohlmann was "consistently and correctly informed by the Board of the consequences if he filed [sic] to timely file an ARH."[35] The board concluded that Bohlmann's claims for compensation rate adjustment were barred.[36]

Arguments presented to the commission.

Bohlmann argues that the employer has not been prejudiced by his delay in filing a late request for hearing and the board has equitable powers it should have exercised to allow his case to go forward. He offers the following reasons why the board should have granted equitable relief: (1) the workers' compensation staff did not "try to the highest standards to help me pursue my claims" and is therefore responsible for the

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29 R. 000121-22.

30 Tr. 24.

31 Tr. 8, 25.

32 *Theodore Bohlmann v. Alaska Constr. & Engineering, Inc.,* AWCB Dec. No. 06-0042, 3 (February 23, 2006); R. 000855. The board used the abbreviation "WCC" for Workers' Compensation Claim, the title of the form adopted by the board for use in filing a claim. *See* 8 AAC 45.050(b)(1). The filing date was August 7, 2003. R. 000014.

33 *Id.*

34 *Id.*

35 *Theodore Bohlmann,* AWCB Dec. No. 06-0042 at 4; R. 000856.

36 *Id.*

delay;[37] (2) he is a self-represented litigant who should not be held to the same standards as attorney-represented litigants;[38] (3) he was told he had to file a request for hearing to avoid *possible* dismissal, not that dismissal was certain;[39] (4) since he requested an SIME[40] in 2003, and one was not ordered until September 2005, AS 23.30.110(c) was "tolled" for almost two years;[41] (5) his affidavit of readiness for hearing of August 2005 was "coerced" because he believed it needed to be filed at that time;[42] and, (6) his attorney failed to file an amended claim as promised that would have preserved his claim.[43]

AC&E argues that AS 23.30.110(c) is unambiguously mandatory and the board has no discretion to relieve the employee from the single obligation to file a request for hearing.[44] Bohlmann was put on notice in several ways that he needed to request a hearing within two years of controversion of his claim or his claim would be dismissed. Because the only narrow "tolling" mechanism recognized by the board[45] did not apply in

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[37] Appellant's Br. 3-4.

[38] Appellant's Br. 7.

[39] Appellant's Reply Br. 2.

[40] "SIME" refers to a Second Independent Medical Examination, the common term for an independent examination by a board-appointed medical examiner under AS 23.30.095(k).

[41] Appellant's Reply Br. 2-3.

[42] *Id.* at 2. Bohlmann suggests that he was not ready to have his case heard, his affidavit was coerced because he was required to submit an affidavit stating he was ready to go to hearing by the deadline to preserve his right to a hearing. We find this argument to be without merit. The statute requires that a request for hearing be filed within two years; the board's regulations make specific provision to accommodate hearing date adjustment at 8 AAC 45.070(e) and 8 AAC 45.074.

[43] Appellant's Br. 2.

[44] Appellee's Br. 4-5.

[45] *Aune v. Eastwind, Inc.,* AWCB Decision No. 01-0259 (December 19, 2001).

Bohlmann's case, the board properly dismissed Bohlmann's claims for a compensation rate adjustment.[46]

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.[47] The board's findings of fact will be upheld by the commission if supported by substantial evidence in light of the whole record.[48] On questions of law or procedure, the commission is required to exercise its independent judgment.[49]

In this case, the material facts are largely undisputed. Bohlmann filed claims for a compensation rate adjustment in February 2002 and July 2003. The employer filed a formal controversion of compensation rate adjustment on August 7, 2003. Bohlmann's first request for a hearing (affidavit of readiness for a hearing) was filed August 31, 2005, more than two years after the date the controversion was filed. These findings by the board are supported by substantial evidence in the record as a whole. Indeed, Bohlmann concedes his request for a hearing on his compensation rate adjustment claims is late, but he argues the delay should be excused for a variety of reasons, chiefly related to his status as a self-represented litigant. Whether or not the board erred by not excusing Bohlmann is a question of law, so we apply our independent judgment to the board's application of the law.

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[46] Appellee's Br. 6-7.

[47] AS 23.30.128(b).

[48] AS 23.30.128(b).

[49] AS 23.30.128(b). On those occasions that we must exercise our independent judgment to discern a rule not previously addressed by the Alaska Supreme Court or the Alaska State Legislature, we adopt the "rule of law that is most persuasive in light of precedent, reason, and policy," *Guin v. Ha,* 591 P.2d 1281, 1284 n. 6 (Alaska 1979), drawing upon the commission's expertise in the workers' compensation field.

Bohlmann is not excused from compliance with the requirement to file a request for hearing within two years of formal controversion.

Bohlmann argues that because he was self-represented, the board should excuse him from the consequences of failing to file a request for hearing.[50] He argues that because he was self-represented, he was owed a duty by division staff to pursue his claim on his behalf. He relied on the division staff and board for direction. Thus, if he misunderstood language describing the consequences of failure to file a request for hearing, the risk of misunderstanding should not fall upon him. He argues that he was the victim of inattentive or incompetent counsel. Finally, he argues that simply because he is self-represented he should not be held to the same standards as an attorney. We disagree for the following reasons.

A. Division adjudication staff must inform unrepresented claimants, but the duty of impartiality requires that they not pursue a claim for an unrepresented claimant.

The division adjudication staff members are not claimant "case workers" who pursue a claim for injured claimants or help them to qualify for benefits. In *Richard v. Fireman's Fund Ins. Co.*,[51] the Supreme Court emphasized the obligation of the board to assist self-represented litigants by instructing them how to pursue their claims and to inform them of the important facts that bear upon their claims.[52]

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[50] Bohlmann also argues that his request for an SIME "tolled" the time-bar in AS 23.30.110(c) under *Aune,* but he did not raise this argument before the board -- the body required to make the findings of fact on which equitable relief must rest. Therefore, this argument may not be raised for the first time on appeal to the commission. Even if a board order for an SIME tolls the time-bar, Bohlmann's claims for a compensation rate adjustment would not be tolled, because no order for an SIME was issued until after the time to file had lapsed and because medical disputes are not material to Bohlmann's claims for a compensation rate adjustment.

[51] 384 P.2d 445 (Alaska 1963).

[52] *Id.* at 449.

The board, and the division staff that act as the board's designees and support the adjudication functions, are required to be fair and *impartial*.[53] Acting on behalf of one party against another or pursuing a claim on behalf of one party in a matter before the board would violate the duty of the adjudicators. The division staff that assists the board in the adjudication process also must be impartial. The workers' compensation officer who conducts a pre-hearing conference conducts it as the designee of an impartial board.

The record in this case demonstrates that Ms. Cohen satisfied the *Richard* obligation by informing Bohlmann of the need to file a request for hearing within two years of the controversion, both verbally and in writing. She testified to her conversations with Bohlmann and the pre-hearing conference summaries that were sent to him. The controversion form prescribed by the board also firmly warns the recipient of the consequences of failing to file a request for hearing within two years:

> This notice means the insurer/employer has denied payment of the benefits listed on the front of this form for the reasons given. **If you disagree with the denial, you must file a timely written claim (see time limits below). The Alaska Workers' Compensation Board (AWCB) provides the "Workers' Compensation Claim" form for this purpose. You must also request a timely hearing before the AWCB (see time limits below). The AWCB provides the "Affidavit of Readiness For Hearing" form for this purpose. Get forms from the nearest AWCB office listed below.** (Emphasis in original)[54]

Lower on the same page, the form is more explicit:

> 2. When must you request a hearing (Affidavit of Readiness for Hearing form)?

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[53] *See Robles v. Providence Hospital,* 988 P.2d 592, 596 (Alaska 1999) ("In determining whether due process has been observed by an administrative agency, this court reviews the proceedings: [T]o assure that the trier of fact was an impartial tribunal . . ."). *See also* AS 23.30.001(4).

[54] Controversion form, Form 06-6105, page 2. Available at the Division of Workers' Compensation website at http://www.labor.state.ak.us/wc/forms/07-6105.pdf.

> If the insurer/employer filed this controversion notice after you filed a claim, you must request a hearing before the AWCB within two years after the date of this controversion notice. You will lose your right to the benefits denied on the front of this form if you do not request a hearing within two years.

We find there is substantial evidence in the record as a whole to support the board's finding that Bohlmann was informed of the consequences of failure to file a request for hearing.

B. The board may not excuse an informed claimant from failure to request a hearing.

Having determined that the board could find Bohlmann was adequately informed of the consequences of failure to file a request for hearing on his claims for a compensation rate adjustment, we turn to Bohlmann's argument that the board erred by not excusing his delay. Bohlmann argues the board has equitable power to excuse non-compliance with the statute.

The board, like this commission, is an administrative agency, created by the Alaska State Legislature. As such, the board has no inherent powers; it has only those that have been "expressly granted to it by the legislature or have, by implication, been conferred upon it as necessarily incident to the exercise of those powers expressly granted."[55] The Alaska Supreme Court found the board may exercise equitable powers that are necessarily incident to its statutory powers to set aside a settlement agreement approved by the board because the settlement was procured by fraud.[56] The Court also found the board has the power to invoke equitable principles, such as waiver or estoppel, to bar an employer from asserting an employer's statutory rights.[57] In both cases, the board's exercise of equitable powers could be asserted when one party's

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[55] *Blanas v. Brower Co.,* 938 P.2d 1056, 1061 (Alaska 1997); *citing Greater Anchorage Area Borough v. City of Anchorage,* 504 P.2d 1027, 1033 n. 19 (Alaska 1972); *see also Gunter v. Kathy-O-Estates*, 87 P.3d 65, 69 (Alaska 2004).

[56] 938 P.2d at 1062.

[57] *Schmidt v. Beeson Plumbing and Heating, Inc.,* 869 P.2d 1170, 1175 (Alaska 1994).

affirmative conduct results in an unjust advantage over the party seeking an equitable remedy from the board. That is not the case here.

Bohlmann argues the board has equitable power to excuse his non-compliance with the statute, even if the employer did not engage in conduct sufficient to support application of equitable estoppel. The statutes and regulations contain no support for Bohlmann's argument. First, the board's own regulations prevent the board from excusing non-compliance. While the board may, in the exercise of sound discretion, relax regulatory requirements for pleadings and procedures under 8 AAC 45.195[58] to permit self-represented litigants to make their case when manifest justice would otherwise result, 8 AAC 45.195 expressly states that the board may not waive the statutory requirements "merely to excuse a party from failing to comply with the requirements of law."[59] AS 23.30.110(c) is a "requirement of law." Second, the Alaska State Legislature made an express grant to the board of the power to excuse non-compliance with AS 23.30.095(c) and AS 23.30.100(a).[60] The Legislature required the

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[58] 8 AAC 45.195 provides:

> A procedural requirement in this chapter may be waived or modified by order of the board if manifest injustice to a party would result from a strict application of the regulation. However, a waiver may not be employed merely to excuse a party from failing to comply with the requirements of law or to permit a party to disregard the requirements of the law.

[59] 8 AAC 45.195. *See generally, Alaska Airlines v. Nickerson*, AWCAC Dec. No. 021, 11-12 (October 19, 2006).

[60] AS 23.30.100 provides in relevant part:

> (a) Notice of an injury or death in respect to which compensation is payable under this chapter shall be given within 30 days after the date of such injury or death to the board and to the employer.
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> * * *
>
> (d) Failure to give notice does not bar a claim under this chapter

board to excuse non-compliance with AS 23.30.105(a) in certain circumstances.[61] No excuse provision was included in AS 23.30.110.

> (1) if the employer . . . had knowledge of the injury or death and the board determines that the employer or carrier has not been prejudiced by failure to give notice;
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> (2) if the board excuses the failure on the ground that for some satisfactory reason notice could not be given;
>
> (3) unless objection to the failure is raised before the board at the first hearing . . . .

AS 23.30.100(d) gives the board discretionary power to excuse failure to comply with the law when it finds "some satisfactory reason" notice could not be given. A similar excuse provision is found in AS 23.30.095(c):

> . . . The board shall, however, excuse the failure to furnish notice within 14 days when it finds it to be in the interest of justice to do so, and, upon application by a party in interest, make an award for the reasonable value of the medical or surgical treatment so obtained by the employee. . . .

[61] A different approach is taken in AS 23.30.105, which lists a series of occasions that excuse late filing:

> (a) The right to compensation for disability under this chapter is barred unless a claim for it is filed within two years after the employee has knowledge . . . *except* that if payment of compensation has been made without an award on account of the injury or death, a claim may be filed within two years after the date of the last payment of benefits . . . . It is additionally provided that, in the case of latent defects pertinent to and causing compensable disability, the injured employee has full right to claim *as shall be determined by the board, time limitations notwithstanding*.
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> (b) Failure to file a claim within the period prescribed in (a) of this section is not a bar to compensation *unless* objection to the failure is made at the first hearing of the claim in which all parties in interest are given reasonable notice and opportunity to be heard.
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> (c) *If* a person who is entitled to compensation under this chapter is mentally incompetent or a minor, the provisions of (a) of this section are not applicable so long as the person has no guardian or other authorized representative, but are applicable in the case of a person who is mentally incompetent or a minor

There are sound policy reasons for requiring workers' compensation claimants to proceed steadily toward resolution. Claims that linger often change with time and changing circumstances, becoming unwieldy and difficult to decide; evidence is lost; positions harden, so reducing settlements; delay inhibits reemployment planning or training; injured workers' losses mount; and, for employers, lingering claims become unduly expensive as lawyers bill their time and interest accrues. As the Court said in *Bailey v. Texas Instruments, Inc.,*[62] in the context of the worker's compensation system as a whole, it is not unreasonable to require an employee to move forward on the claim after the employer has filed a formal controversion.[63] An employee who files a claim need only do one thing to avoid dismissal under AS 23.30.110(c) after a controversion is filed: the employee must file a request for hearing.[64] The Alaska Supreme Court has held that the board can require no more from an employee;[65] the board can require no less.

Bohlmann argues the board ought "merely to excuse" his failure to comply with AS 23.30.110(c) because if his attorney or the division staff had acted properly, his request would have been filed on time. Bohlmann's arguments are without merit. For example, Bohlmann argued that he relied on his attorney to file an amended claim, but

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> from the date of appointment of a guardian or other representative, or in the case of a minor, if no guardian is appointed before the person becomes of age, from the date the person becomes of age.
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> (d) *If* recovery is denied to a person, in a suit . . , on the ground that the person was an employee and that the defendant is an employer . . . , the limitation of time prescribed in (a) of this section begins to run only from the date of termination of the suit.

62 111 P.3d 321 (Alaska 2005).

63 111 P.3d at 325 n.10.

64 *Tipton v. ARCO Alaska, Inc.,* 922 P.2d 910, 913 (Alaska 1996).

65 *Huston v. Coho Electric,* 923 P.2d 818, 820 (Alaska 1996).

the attorney did not do so.[66] The record clearly indicates that Bohlmann was informed that a request for hearing must be filed after his attorney ceased to represent him. There is no evidence that Bohlmann's attorney prevented Bohlmann from filing a request for hearing, and there is substantial evidence in the record to support the board's finding that Bohlmann had "proved himself capable of filing claims and petitions even absent having counsel."[67]

Bohlmann also argues that the board should have excused his failure because division staff did not try "to the highest standards to help me pursue my claim," suggesting that if they had, they would have filed his request for hearing, or somehow ensured he met the deadline. There is substantial evidence in the record as a whole that Bohlmann was informed that he must file a request for hearing within two years of the date of the controversion and that he was provided with copies of the necessary forms.

Finally, Bohlmann argues he should not be subject to the same standards as an attorney. The board, like this commission, commonly relaxes standards for pleadings in order to allow claimants to bring their dispute to hearing and guides self-represented claimants through the hearing procedure to ensure that they are able to present their claims fairly. If there were some defect in Bohlmann's request for a hearing, such as a failure to use the correct form, the board may have exercised discretion under 8 AAC 45.195 to excuse Bohlmann's failure. However, AS 23.30.110(c) is not a rule of pleading or hearing procedure; it is a time-bar, and it is clear. Bohlmann's status as self-represented does not affect his obligation to comply with the statute.

Conclusion.

The board had before it substantial evidence that Bohlmann filed his request for hearing more than two years after his claims for adjustment of compensation rate were

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[66] Bohlmann does not suggest his attorney led Bohlmann to believe that he *had* filed an amended claim or request for hearing before his representation ceased. Bohlmann asserts an amended claim would have restarted the two year period for filing a request for hearing.

[67] *Theodore A. Bohlman*, AWCB Dec. No. 06-0042, 4.

formally controverted. The board had substantial evidence that Bohlmann was adequately informed of the time-bar in AS 23.30.110(c) and the consequences of failure to file a timely request for hearing. AS 23.30.110 does not contain a provision allowing the board to excuse Bohlmann's non-compliance with AS 23.30.110(c). Therefore, we AFFIRM the board's dismissal of Bohlmann's claims for a compensation rate adjustment.

Date: *8 December 2006* ALASKA WORKERS' COMPENSATION APPEALS COMMISSION

Signed
John Giuchici, Appeals Commissioner

Signed
Philip Ulmer, Appeals Commissioner

Signed
Kristin Knudsen, Chair

APPEAL PROCEDURES

This is a final decision on this appeal. It becomes effective when filed in the office of the Commission unless proceedings to reconsider it or seek Supreme Court review are instituted. Effective November 7, 2005 proceedings to appeal must be instituted in the Alaska Supreme Court within 30 days of the filing of a final decision 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.

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 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 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 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 Theodore Bohlmann v. Alaska Construction and Engineering, Inc., North American Specialty Ins. Co., and Wilton Adjustment Services; Appeal No. 06-008; dated and filed in the office of the Alaska Workers' Compensation Appeals Commission in Anchorage, Alaska, this *8th* day of December, 2006.

Signed
C. J. Paramore, Appeals Commission Clerk

I certify that a copy of this Final Decision and Order in AWCAC Appeal No.06-008 was mailed on *12/8/06* to Bohlmann & Gabbert at their addresses of record and faxed to Director WCD, AWCB Appeals Clerk.

Signed *12/8/06*
L. Beard, Deputy Clerk Date