

Case: *Ruth Hansen vs. Mark McHoes and American Interstate Insurance Co.*, Alaska Workers' Comp. App. Comm'n Dec. No. 056 (September 24, 2007)

Facts: Hansen asserted that she injured her neck in a fall on the ice while carrying boxes for her employer from his house to his office in Cordova on February 19, 2005. Her employer, McHoes, contended that Hansen either was not working that day or was no longer an employee. McHoes testified that he gave Hansen leave to go to Anchorage for an overnight trip and allowed her to bill the company account for her hotel stay. But McHoes testified that instead of an overnight trip, he ended up paying for Hansen's Anchorage hotel from February 4 through February 18, 2005, that he called her a couple of times when she was in Anchorage and asked her to return to work in Cordova, that he himself returned to Cordova on February 18 and worked all day on February 19 and that he did not see Hansen on February 19, even though Hansen claimed that she worked all day that day. He also challenged her account of carrying boxes because he testified that he did not have any boxes of records that he needed her to carry at that time. He also called Hansen when they were both in Cordova to see if she was returning to work but she told him she fell and hurt her neck. McHoes testified her last day of work for him was February 4, 2004.

The board applied the presumption of compensability to the questions of whether Hansen was employed by McHoes on the day of her injury and whether she was injured in the course of her employment. The board found that Hansen's testimony was not credible based on "many inconsistencies in the employee's testimony" and the contradictory documentary evidence. (She claimed she worked February 14-19, but the Anchorage hotel bill was through February 18.) The board concluded that Hansen's injuries were not compensable because she was not employed by McHoes on the date of the injury. Hansen appealed.

Applicable law: AS 23.30.128(b), providing in part, that "[t]he board's findings regarding the credibility of a witness before the board are binding upon the commission. The board's findings of fact shall be upheld by the commission if supported by substantial evidence in light of the whole record."

AS 23.30.128(a), providing in part that "new or additional evidence may not be received with respect to the appeal" unless it concerns an application for a stay, for attorney fees and costs, for waiver of fees due to indigency or for dismissal of an appeal due to settlement or failure to prosecute.

Issue: Does substantial evidence support the board's decision denying benefits because Hansen's injury was not in the course of her employment?

Holding/analysis: First, the commission concluded that the board's decision about Hansen's lack of credibility was binding. Hansen argued that she had evidence, other than her testimony, that she returned to Cordova on February 14, in the form of an e-mail plane ticket and that she was working on February 19, relying on two witnesses, and that, therefore, the board's determination lacked substantial evidence. But the commission concluded that ticket was not in the board's record and therefore the

commission could not consider it as it was new evidence. In addition, the commission stated:

Hansen's assertion that the documentary evidence supports her testimony in part is not sufficient to overturn the board's determination; other documentary evidence contradicts her testimony. McHoes's testimony has contradictions, but many are sorted out as he found documents to establish dates. Hansen had two witnesses, but their testimony is not particularly helpful in corroborating her story. Neither witness places Hansen at work in the office between February 10 and February 19; neither witness observed her working in the office on February 19; neither witness observed her carrying boxes from the house to the office. Hansen submitted no record of work she did in that disputed week, such as bills paid or invoices received, a business log, letters written and mailed, or the like. On the most directly relevant points, Hansen's testimony conflicted with her employer's testimony. The board chose not to believe her, and to believe her employer.

. . . [T]he fact that there is contrary evidence is not enough to overturn the board's findings if the evidence the board relied on is sufficient to permit a reasonable mind to reach the same conclusion. The board's conclusion need not be the *only* conclusion a reasonable mind could reach, nor even the evidence the *best* evidence available. Dec. No. 056 at 10.

Second, the commission affirmed the board's decision on the grounds that substantial evidence supported that Hansen was not working the day of the injury, not deciding the more difficult question of whether substantial evidence supported that Hansen had abandoned her job and therefore was no longer an employee. (It was difficult to say whether Hansen breached her contract of employment such that she abandoned her job or whether McHoes had cause to terminate her employment but had not done so.) Substantial evidence supported she was not working February 19: (1) McHoes' testimony that he worked all day and did not see Hansen; (2) Hansen's testimony that she worked all day, making it unlikely that she missed seeing McHoes because she worked more than a few hours; and (3) McHoes' testimony that he did not have any boxes at home that he requested her to carry.