

**Case:** *Paul Pietro v. Unocal Corp.*, Alaska Workers' Comp. App. Comm'n Dec. No. 082 (June 26, 2008)

**Facts:** The first board decision, dated November 4, 2005, addressed Paul Pietro's claim that his peripheral neuropathy was caused by his exposure to arsenic and other chemicals or metals in his employment. The board decided that the peripheral neuropathy was not work related. Pietro appealed to the superior court. Later, in 2006, Pietro petitioned the board for modification of its 2005 decision on the grounds that it did not consider whether his skin cancer was work-related and asked the board to consider new evidence. So that the board could take up the petition for modification, the superior court stayed the appeal in a brief order issued November 1, 2006. The board's decision issued on August 27, 2007, decided the petition for modification. Pietro appealed the 2007 decision to the commission.

**Applicable law:** 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 n.4 (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).

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.

*See also Thoeni v. Consumer Elec. Servs.*, Alaska Workers' Comp. App. Comm'n Dec. No. 039 (April 30, 2007) and *Wolf Dental Servs., Inc. v. Wolf*, Alaska Workers' Comp. App. Comm'n Dec. No. 031 (Feb. 2, 2007).

**Issue:** Does commission have jurisdiction to hear the appeal?

**Holding/analysis:** The commission concluded it lacked jurisdiction without further instruction from the superior court on whether the issues were severable. The superior court implicitly retained jurisdiction of the 2005 appeal because the court did not make a final disposition of the parties' rights. The remand order was not ministerial because it required the board to make findings of fact based on new evidence. Because both the peripheral neuropathy and skin cancer claims relied on the same evidence of employment facts, they were "not sufficiently discrete" for the commission to hear an appeal of the skin cancer claim while the superior court heard the neuropathy appeal.

This commission, if it decided the merits of the appeal of the remanded issue (to allow the board to decide the petition for modification), would necessarily infringe on the exercise of the superior court's jurisdiction in the original claim arising out of the same injury and facts. Therefore, the

commission must decline to act on this appeal until the court instructs the commission otherwise. Dec. No. 082 at 5.