

Case: *Hope Community Resources and Liberty Northwest Insurance Co. vs. Estate of Veronica Rodriguez*, by Larry Henry, personal representative, Alaska Workers' Comp. App. Comm'n Dec. No. 086 (August 8, 2008)

Facts: Veronica Rodriguez, a home alliance coordinator, suffered an abdominal hernia lifting clients for her work in February 2004. She had two surgeries and her doctor, Dr. Rosato, reported she was healed from the hernia in August 2005. Her employer paid benefits, and Rodriguez requested a reemployment benefits evaluation. Dr. Braun conducted an employer medical evaluation and decided that there was no permanent impairment. Dr. Rosato predicted that Rodriguez would have a permanent impairment but did not provide a rating. Rodriguez was found eligible for reemployment benefits. The employer appealed to the board.

Deciding, based solely on Rodriguez's testimony, that Dr. Braun had made an offensive remark to her during his examination, the board found that "the obvious evidence of racial bias by Dr. Braun means that the Board will give no weight to Dr. Braun's reports." The board determined that Dr. Rosato's prediction of a permanent impairment was substantial evidence on which the administrator could rely to determine that Rodriguez was eligible for benefits. The board also determined that Rodriguez remained eligible. The board dismissed the employer's petitions, but nevertheless concluded that a significant medical dispute between the doctors ranged over the areas of causation, compensability, treatment, medical stability, and degree of impairment. The board ordered a second independent medical evaluation (SIME).

The employer appealed the reemployment benefits decision and the SIME order. The employee died before oral argument. The employer argued the board errors were so important that the commission should hear the appeal anyway. The employer asserted the errors were: 1) failing to consider evidence that the administrator continued the eligibility decision for three months so employee could obtain a favorable doctor opinion; 2) disregarding Dr. Braun's opinion without the requisite foundation or findings; and 3) ordering an SIME when no claim or petition was pending.

Applicable law: *Pacific Log & Lumber v. Carrell*, Alaska Workers' Comp. App. Comm'n Dec. No. 047, 6 (June 29, 2007) held:

the parties to an appeal must have a recognized interest in the outcome of the appeal. This requirement serves as a check on the commission's exercise of its power of review – it prevents the commission from giving general advisory opinions and thereby intermeddling in the board's power to approve, and the department's authority to adopt, regulations that interpret and enforce the workers' compensation statutes.

An appeal is moot when "a decision on the issue [on appeal] is no longer relevant to resolving the litigation, or where it has lost its character as a 'present, live controversy.'" *Maness v. Daily*, 184 P.3d 1, 8 (Alaska 2008). "A case is moot if the party bringing the action would not be entitled to any relief even if they prevail." *Maynard v. State Farm Mut. Auto. Ins. Co.*, 902 P.2d 1328, 1329 n.2 (Alaska 1995).

When determining if it should apply the public interest exception to the mootness doctrine, the Alaska Supreme Court has said,

[w]e weigh three factors in deciding whether to apply the public interest exception: (1) whether the disputed issues are capable of repetition, (2) whether the mootness doctrine would, if applied, repeatedly prevent review of the issues, *and* (3) whether the issues are so important to the public interest as to warrant overriding the mootness doctrine. *Maness*, 184 P.2d at 8 (emphasis added).

The capability of repetition refers not to the possibility that the issue may appear in another case, but whether it will arise again between the same parties. *Maness*, 184 P.2d at 8.

Issues: Is the appeal moot? If so, does the public interest exception apply?

Holding/analysis: The employee's death ended the employer's liability for reemployment benefits. Moreover, no SIME could be conducted. Thus, there was no longer a present, live controversy or relief that the commission could grant. The appeal was moot.

The public interest exception did not apply because the issues were not capable of repeating again between the same parties. Even if commission applied it, the employer would not be entitled to any relief in this case.

Note: Dec. No. 041 determined that the board's decision was a final appealable order and allowed this case to proceed. (It was decided before the employee's death.)