

Case: *Mack A. Parker vs. Safeway, Inc. and Safeway Stores, Inc.*, Alaska Workers' Comp. App. Comm'n Dec. No. 144 (December 28, 2010)

Facts: Mack Parker (Parker) was injured when a shoplifter attacked him while he was working for Safeway, Inc. and Safeway Stores, Inc. (Safeway) in January 1993. Parker later sought permanent partial impairment (PPI) benefits after a surgery for a herniated disc in 2005. As a result of this surgery, he received a PPI rating of 10 percent. However, no doctor connected the 2005 surgery to the 1993 work-related injury. Three doctors, Dr. Horton, Dr. Sanan, and Dr. Matthisen, agreed that the 1993 work injury was a temporary aggravation of Parker's preexisting disc disease and that the sprain/strain as a result of the 1993 work injury was resolved three to four weeks later. Parker testified that he had back problems ever since the 1993 work injury and thus, his PPI claim must be work-related.

The board applied the three-step presumption analysis to Parker's claim for PPI. The board concluded that Parker failed to attach the presumption of compensability because he did not have medical evidence documenting that the PPI rating was related to his work injury. However, even if Parker attached the presumption through his own testimony, the board decided that Safeway rebutted the presumption through the three doctors' affidavits. The board concluded that Parker could not prove his claim for PPI by a preponderance of the evidence; the only evidence supporting his PPI claim was Parker's testimony. Parker appeals.

Applicable law: AS 23.30.120(a) presumption of compensability and related case law.

"[I]n claims based on highly technical medical considerations medical evidence is often necessary" to establish a preliminary link between disability and employment. *Burgess Constr. Co. v. Smallwood*, 623 P.2d 312, 316 (Alaska 1981) (internal quotations omitted).

A claim for PPI based on the aggravation of a pre-existing condition is such a "highly technical claim." See *Tinker v. Veco, Inc.*, 913 P.2d 488, 493 (Alaska 1996).

"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, LLC*, Alaska Workers' Comp. App. Comm'n Dec. No. 111, 13 (June 17, 2009).

Issues: Did Parker attach the presumption of compensability to his PPI claim? Does substantial evidence support the board's decision that Parker cannot prove his claim by a preponderance of the evidence?

Holding/analysis: Parker's lay testimony was insufficient to attach the presumption.

Parker argues that the board ignored the medical evidence documenting his work-related back injury in 1993 and his back surgery in 2005. However, the parties do not dispute whether Parker injured his back at work in 1993 or whether his back required surgery in 2005. Rather, they disagree about whether the two events were connected; in other words, whether the 1993 back injury was a substantial factor in the need for the

2005 back surgery that resulted in a PPI rating. Thus, Parker needs medical evidence relevant to the causation dispute to attach the presumption and, ultimately, to prove his case. Dec. No. 143 at 8.

Second, the board had substantial evidence to deny Parker's claim because he did not meet his burden of proof. The only evidence that Parker had in support of his claim was his lay testimony.