

**Case:** *Linda J. Perry-Plake vs. State of Alaska, Department of Fish and Game, Alaska Workers' Comp. App. Comm'n Dec. No. 166 (August 6, 2012)*

**Facts:** Linda Perry-Plake (Perry-Plake) injured her left side when she fell on an icy ramp while working as a biologist for the State of Alaska, Department of Fish and Game (the State) in October 1997. The board denied her claim for medical benefits for her neck, upper back, and upper extremity after January 1998, and Perry-Plake appeals. In denying her claim the board found most persuasive the report of Drs. James Robinson and Scot Fechtel. These doctors performed an employer medical evaluation on August 5, 2006. Among their relevant diagnoses were: 1) a history of cervical strain/sprain related to the fall in October 1997, which resolved in early 1998; 2) cervical spondylosis, degenerative in nature, and unrelated to the October 1997 fall; and 3) probable cervicogenic headaches related to neck pain, but unrelated to the fall. They concluded that, with respect to Perry-Plake's neck, any further treatment was not causally related to the 1997 injury.

Dr. Alan Roth performed a second independent medical evaluation on September 16, 2010, and reached similar conclusions. He diagnosed cervical degenerative disc and spine disease, and opined that Perry-Plake's neck, upper extremity, and upper back complaints were unrelated to her fall at work. Of particular significance to Dr. Roth was that there was no notation in her extensive chiropractic records, in the three years following her work-related fall, "of neck or upper back pain or radiating discomfort from the neck[.]"

However, Dr. Shawn Johnston, one of Perry-Plake's treating doctors, observed in a chart note in February 2009 that the October 1997 fall was "a substantial component" of her ongoing neck pain, for which she had no prior treatment. In another chart note dated May 4, 2009, Dr. Johnston acknowledged that Perry-Plake had neck symptoms after an earlier fall down the stairs that had resolved by the time she fell on October 2, 1997. He stated:

[I]t truly is difficult to know how much of her symptoms are from the underlying degenerative changes and how much are as a result of the [work-related] fall down the ramp. . . . It seems that given the fact that she did have a fall on the ramp and she has had intermittent cervical symptoms since, that she likely had some degree of aggravation of her underlying degenerative changes.

Perry-Plake appeals the board's denial of her claim for treatment of her neck, upper back, and upper extremity.

**Applicable law:** AS 23.30.120(a) presumption of compensability and related case law. AS 23.30.122 and AS 23.30.128(b) provide that the board's credibility findings and weight accorded to the evidence are binding on the commission.

AS 23.30.122 also provides: "The findings of the board are subject to the same standard of review as a jury's finding in a civil action." A jury's finding in a civil action can be overturned only if "the evidence, when viewed in the light most favorable to the

non-moving party [on a motion for judgment notwithstanding the verdict], is such that reasonable men could not differ in their judgment." *Alaska Children's Services, Inc. v. Smart*, 677 P.2d 899, 901 (Alaska 1984).

**Issue:** Did the board rely on substantial evidence in denying Perry-Plake's claim for medical benefits after January 1998?

**Holding/analysis:** The commission was required to defer to the board's weight findings. Moreover, viewing the evidence in the light most favorable to the State, the commission concludes that "the board exercised reasoned judgment in giving more weight to the report of Drs. Robinson and Fechtel, and less weight to the opinion of Dr. Johnston." Dec. No. 166 at 11. The Robinson/Fechtel report constituted substantial evidence. Moreover, the commission observed that the board did not decide that the 1997 fall did not injure Perry-Plake's neck; instead, it concluded that Perry-Plake was not entitled to further medical benefits for the cervical spine after January 1998 because any cervical complaints related to the work injury had resolved as of that date.

The commission concluded a number of the errors, which Perry-Plake asserted the board had made, were harmless because they were not relevant to its decision to deny her medical benefits. These purported errors included the board's apparent overstatement of the frequency of her treatment sessions with Dr. Nelson-Willis; the statement that she moved between Anchorage and Glennallen "for work," when, in fact, her only work was for Fish and Game in Glennallen and was seasonal; the statement that Dr. Kanady treated her from 1998 to 2000 when she saw him only in 1998; the board's failure to acknowledge that she expected an April 1998 magnetic resonance imaging (MRI) to include not only her lumbar spine but also her cervical spine; and the board's failure to include in its findings a discussion of a cervical nerve root block that she had in connection with the MRI.