

Case: *Sourdough Express, Inc. and Alaska National Insurance Co. vs. Darrell Barron*, Alaska Workers' Comp. App. Comm'n Dec. No. 028 (January 17, 2007)

Facts: Sourdough Express moved the commission for extraordinary review of the board's decision rejecting its statute of limitations defense. The board concluded that the employee's injury was latent and the employer's controversion of the employee's 1999 claim was invalid thus absolving the employee of the obligation to request a hearing on his claim within two years of the controversion.

Applicable law: Former 8 AAC 57.076(a), repealed in 2011 (see below for an explanation).

The commission will grant a motion for extraordinary review if the commission finds the sound policy favoring appeals from final orders or decisions is outweighed because

(1) postponement of review until appeal may be taken from a final decision will result in injustice and unnecessary delay, significant expense, or undue hardship;

(2) an immediate review of the order or decision may materially advance the ultimate termination of the litigation, and

(A) the order or decision involves an important question of law on which there is substantial ground for difference of opinion; or

(B) the order or decision involves an important question of law on which board panels have issued differing opinions;

(3) the board has so far departed from the accepted and usual course of the board's proceedings and regulations, or so far departed from the requirements of due process, as to call for the commission's power of review; or

(4) the issue is one that otherwise would likely evade review, and an immediate decision by the commission is needed for the guidance of the board

Issues: Should commission grant extraordinary review on the issues of defining a latent defect and whether an invalid controversion triggers the running of the time bar in AS 23.30.110(c)?

Holding/analysis: The commission granted extraordinary review under 8 AAC 57.076(a)(2). Because Sourdough Express was raising a statute of limitations defense, that if valid would end the litigation, the first prong of this test was met. The second prong also was met because both issues were unresolved and important. The first issue dealt with the distinction between a latent versus a new injury and the second concerned whether a bad-faith or otherwise invalid controversion triggers the time-bar in AS 23.30.110(c). The commission "emphasize[d], however, that our grant of review does not imply any position on the merits, only that we believe serious questions needing further deliberation have been raised that should not wait for appeal of a final decision." Dec. No. 028 at 5.

Notes: Dec. No. 069 (February 7, 2008) decided the merits of this case.

The commission's MER regulations, 8 AAC 57.072, .074, .076, were repealed effective 3/27/11. The commission enacted new regulations, 8 AAC 57.073, .075, .077, effective 12/23/11, providing for petitions for review of non-final board decisions based on similar but not identical criteria as those under the MER regulations.