Alaska Workers' Compensation Appeals Commission

Municipality of Anchorage, Appellant, vs. Lee O. Stenseth, Appellee.	Final Decision Decision No. 194 April 11, 2014 AWCAC Appeal No. 13-008 AWCB Decision No. 13-0039 AWCB Case No. 199117984

Final decision on appeal from Alaska Workers' Compensation Board Final Decision and Order No. 13-0039, issued at Anchorage, Alaska, on April 11, 2013, by southcentral panel members Ronald P. Ringel, Chair, Patricia Vollendorf, Member for Labor, and Janet Waldron, Member for Industry.

Appearances: Trena L. Heikes, Office of the Municipal Attorney, for appellant, Municipality of Anchorage; Robert A. Rehbock and Raymond Beard, Rehbock & Rehbock, for appellee, Lee O. Stenseth.

Commission proceedings: Appeal filed April 12, 2013; briefing completed October 29, 2013; oral argument held March 26, 2014.

Commissioners: David W. Richards, S. T. Hagedorn, Laurence Keyes, Chair.

By: Laurence Keyes, Chair.

1. Factual background and proceedings.

On June 15, 1991, appellee, Lee O. Stenseth (Stenseth), while working for appellant, the Municipality of Anchorage (MOA), fell from some heavy equipment and injured his cervical spine.[1] Six months later, on December 5, 1991, a surgical procedure consisting of a discectomy and fusion at C5-6 and C6-7 was performed on

[1] *See Lee O. Stenseth v. Municipality of Anchorage*, Alaska Workers' Comp. Bd. Dec. No. 13-0039 at 2 (Apr. 11, 2013)(*Stenseth*). The factual recitation is based on the board's findings, with minimal paraphrasing. *See Stenseth*, Bd. Dec. No. 13-0039 at 2-6.

Stenseth's neck. He was subsequently released to work after recovery, but continued to experience pain.

On August 23, 1996, a Compromise and Release agreement (C&R)[2] was approved in which Stenseth waived all workers' compensation benefits other than future medical benefits. Later that same year, he retired from work with MOA.

Stenseth continued to be treated with prescription narcotic medication. His last request to MOA for medical benefits, specifically prescription medication, was in November 2006. A police investigation in October and November 2006 revealed that Stenseth had been using false identifications and forged prescriptions to obtain and illicitly sell prescription pain medications. The forged prescriptions were based on prescriptions Stenseth was given for treatment of his work injury. On June 25, 2010, he pled guilty to seven criminal counts, including misconduct involving a controlled substance, and operating a scheme to defraud.

On April 23, 2012, MOA filed a petition with the board alleging Stenseth had obtained workers' compensation benefits by making false statements or misrepresentations and seeking reimbursement of all benefits paid as a result of the misrepresentations.[3] Although the amount was uncertain, MOA alleged it was entitled to recover over $130,000 in benefits provided to Stenseth since January 2001. On May 15, 2012, Stenseth answered the petition, denying he made misrepresentations for the purpose of obtaining benefits. On June 28, 2012, MOA filed an amended petition, however, it did not change the relief sought.

Prior to a mediation scheduled for November 9, 2012, the mediator sent the parties a letter which indicated they should attend the mediation with authority to settle or be able to obtain that authority. Both parties and their respective attorneys attended the mediation, although Law Henderson (Henderson), MOA's workers' compensation administrator, participated telephonically. Henderson believed he had authority to settle and that MOA's attorney had the authority to bind MOA to the terms of the

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[2] MOA Exc. 001-06.

[3] MOA Exc. 102-03.

settlement. The parties eventually reached a settlement with terms that each accepted, as evidenced by subsequent correspondence quoted below.

On November 13, 2012, MOA's counsel sent Stenseth's attorney a letter which stated in part:

> This will summarize the settlement reached at mediation last Friday, November 9, 2012. As I understand the arrangement, MOA has agreed to accept either $30,000.00 cash to be paid within 90 days from today or a Promissory Note for $40,000.00 secured by a Confession of Judgment Without Action and a Deed of Trust on the home on east Foxtrot Avenue in Wasilla, Alaska in exchange for its waiver of the over $125,000.00 it claims is due under AS 23.30.250(b). The note will be payable at $500.00 per month and accrue interest at 3.5%. Mr. Stenseth is to commence these monthly payments immediately with the balance either in cash within 90 days or execute the Note, Confession of Judgment and have his daughter execute the Deed of Trust.
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> As you may recall, when the agreement was reached, I expressed the desire to hold off on a Compromise and Release until MOA was paid in full under either of the above methods as MOA was concerned it would otherwise be left with a significant reduction of the amount it claims is due and no money in the event of default. . . .
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> It was a long day on Friday and after pressure from you and Mr. Soule, I relented. I have since discussed the matter with Mr. Henderson today and spoken with you regarding that discussion. As I explained, Mr. Henderson prefers to either wait on the C&R until payment has been made OR make the agreement voidable at MOA's option in the event of default. I should have confirmed this element with Mr. Henderson prior to leaving on Friday but did not. You claim this changes the terms of the settlement. I am not so sure. . . .
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> Please let me know by December 3, 2012[,] how you wish to proceed[.] . . .[4]

On December 5, 2012, MOA's attorney again wrote to Stenseth's counsel. The letter stated in part:

> This will confirm MOA's response to your client's new settlement proposal. As I understand Mr. Stenseth's post-mediation offer, he would immediately tender $25,000 in certified monies to MOA in exchange for a release of any further liability to MOA under AS 23.30.250. I have tendered Mr. Stenseth's proposal to my client and, as I explained, have

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[4] MOA Exc. 134-35.

> been advised MOA wishes to maintain the previous settlement amounts verbally agreed to by the parties at the November 9, 2012 mediation. Thus, in exchange for $30,000.00 in certified monies by February 22, 2013 (90 days from the November 13, 2012 letter of confirmation), MOA would execute any and all documents necessary for its full release of Mr. Stenseth from any further liability to MOA under AS 23.30.250.[5]
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> On December 11, 2012, Stenseth's attorney wrote to MOA's attorney:
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> My client accepts your post mediation offer to pay $30,000.00 by latest February 22, 2013 in exchange for a complete release of all rights and claims against Mr. Stenseth arising [out] of or in connection with AS 23.30.250.
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> In reliance on the December 4th offer and to assure his acceptance is fulfilled before the deadline, my client has arranged for the funds and I hold them.
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> We are prepared to tender in exchange for releases to be simultaneously filed with the Board, so to meet any requirements of AS 23.30.012.
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> Please accordingly provide draft for me to review for conformity. I will tender certified and/or my trust fund checks and/or cash to you personally in exchange the finalizing Board filing.[6]

Early Monday morning, December 17, 2012, MOA's attorney sent an email to Stenseth's counsel stating: "Started working on [a draft of the settlement agreement] Friday. Should have [it] to you at the end of the day today."[7] Later that same morning, MOA's attorney sent an email to Stenseth's attorney, which stated: "I've encountered a glitch here this morning – need to get higher ups to sign off. Higher ups demand closure of narcotics. Under circumstances that shouldn't be a problem, . . . right?"[8] Later that morning, Stenseth's attorney responded to MOA's counsel's email: "We are done changing goal posts. Was very precise and the deal is done. Was explicit in terms and acceptance due your first change of terms. . . ."[9] Later that morning, MOA's attorney replied:

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5 Stenseth Exc. 008-09.

6 MOA Exc. 140.

7 Stenseth Exc. 011.

8 Stenseth Exc. 012.

9 Stenseth Exc. 013.

> I understand your frustration completely. Please accept my apologies. I just found out this morning that the settlement exceeds Risk Management's authority since it involves MOA's agreement to forebear recoveries of monies the dollar amount of which are in excess of Risk's authority. I did not realize Risk's settlement authority limits included forbearance of claims . . .[10]

On or about December 18, 2012, Stenseth tendered two cashier's checks to MOA to cover the amount owing under the terms of the presumed settlement,[11] which MOA rejected. That same day, Stenseth filed a petition to dismiss MOA's petitions for reimbursement on the basis that they were moot, given the parties' settlement.[12]

On April 11, 2013, the board issued its decision. It dismissed MOA's April 23, 2012, petition,[13] concluding that the parties had entered a binding settlement agreement.[14] Under that agreement, Stenseth would pay MOA $30,000 and MOA would forego further recovery.[15] It found that MOA had breached that agreement when it refused Stenseth's tender of funds.[16] In due course, MOA timely appealed the board's decision to the Workers' Compensation Appeals Commission (commission).[17] We affirm the decision of the board.

2. Standard of review.

The commission is to uphold the board's findings of fact if they are supported by substantial evidence in light of the whole record. Substantial evidence is such relevant

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10 Stenseth Exc. 014.

11 *See Stenseth*, Bd. Dec. No. 13-0039 at 5-6.

12 Stenseth Exc. 019-20.

13 *See Stenseth*, Bd. Dec. No. 13-0039 at 18.

14 *See id*.

15 *See id*. at 14.

16 *See id.* at 17.

17 Stenseth filed a related appeal of the board's decision in *Municipality of Anchorage v. Lee O. Stenseth*, Bd. Dec. No. 13-0109 (Sept. 6, 2013). Consolidation of the appeals was denied.

evidence which a reasonable mind might accept as adequate to support a conclusion.[18] The question whether the quantum of evidence is substantial enough to support a conclusion in the contemplation of a reasonable mind is a question of law.[19] We exercise our independent judgment when reviewing questions of law and procedure.[20]

3. Applicable law.

> **AS 23.30.250. Penalties for fraudulent or misleading acts; damages in civil actions.**
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> (a) A person who (1) knowingly makes a false or misleading statement, representation, or submission related to a benefit under this chapter; (2) knowingly assists, abets, solicits, or conspires in making a false or misleading submission affecting the payment, coverage, or other benefit under this chapter; (3) knowingly misclassifies employees or engages in deceptive leasing practices for the purpose of evading full payment of workers' compensation insurance premiums; or (4) employs or contracts with a person or firm to coerce or encourage an individual to file a fraudulent compensation claim is civilly liable to a person adversely affected by the conduct, is guilty of theft by deception as defined in AS 11.46.180, and may be punished as provided by AS 11.46.120 – 11.46.150.
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> (b) If the board, after a hearing, finds that a person has obtained compensation, medical treatment, or another benefit provided under this chapter, or that a provider has received a payment, by knowingly making a false or misleading statement or representation for the purpose of obtaining that benefit, the board shall order that person to make full reimbursement of the cost of all benefits obtained. Upon entry of an order authorized under this subsection, the board shall also order that person to pay all reasonable costs and attorney fees incurred by the employer and the employer's carrier in obtaining an order under this section and in defending any claim made for benefits under this chapter. If a person fails to comply with an order of the board requiring reimbursement of compensation and payment of costs and attorney fees, the employer may declare the person in default and proceed to collect any sum due as provided under AS 23.30.170(b) and (c).
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[18] *See, e.g., Norcon, Inc. v. Alaska Workers' Compensation Bd.*, 880 P.2d 1051, 1054 (Alaska 1994).

[19] *See Wasser & Winters Co., Inc. v. Linke*, Alaska Workers' Comp. App. Comm'n Dec. No. 138, 5 (Sept. 7, 2010).

[20] *See* AS 23.30.128(b).

AS 23.30.012. Agreements in regard to claims.

(a) At any time after death, or after 30 days subsequent to the date of the injury, the employer and the employee or the beneficiary or beneficiaries, as the case may be, have the right to reach an agreement in regard to a claim for injury or death under this chapter, but a memorandum of the agreement in a form prescribed by the director shall be filed with the division. Otherwise, the agreement is void for any purpose. Except as provided in (b) of this section, an agreement filed with the division discharges the liability of the employer for the compensation, notwithstanding the provisions of AS 23.30.130, 23.30.160, and 23.30.245, and is enforceable as a compensation order.

(b) The agreement shall be reviewed by a panel of the board if the claimant or beneficiary is not represented by an attorney licensed to practice in this state, the beneficiary is a minor or incompetent, or the claimant is waiving future medical benefits. If approved by the board, the agreement is enforceable the same as an order or award of the board and discharges the liability of the employer for the compensation notwithstanding the provisions of AS 23.30.130, 23.30.160, and 23.30.245. The agreement shall be approved by the board only when the terms conform to the provisions of this chapter, and, if it involves or is likely to involve permanent disability, the board may require an impartial medical examination and a hearing in order to determine whether or not to approve the agreement. A lump-sum settlement may be approved when it appears to be to the best interest of the employee or beneficiary or beneficiaries.

8 AAC 45.160. Agreed settlements.

(a) The board will review a settlement agreement that provides for the payment of compensation due or to become due and that undertakes to release the employer from any or all future liability. A settlement agreement will be approved by the board only if a preponderance of evidence demonstrates that approval would be for the best interest of the employee or the employee's beneficiaries. The board will, in its discretion, require the employee to attend, and the employer to pay for, an examination of the employee by the board's independent medical examiner. If the board requires an independent medical examination, the board will not act on the agreed settlement until the independent medical examiner's report is received by the board.

(b) All settlement agreements must be submitted in writing to the board, must be signed by all parties to the action and their attorneys or representatives, if any, and must be accompanied by form 07-6117.

(c) Every agreed settlement must conform strictly to the requirements of AS 23.30.012 and, in addition, must

(1) be accompanied by all medical reports in the parties' possession, except that, if a medical summary has been filed, only those medical reports not listed on the summary must accompany the agreed-upon settlement;

(2) include a written statement showing the employee's age and occupation on the date of injury, whether and when the employee has returned to work, and the nature of employment;

(3) report full information concerning the employee's wages or earning capacity;

(4) state in detail the parties' respective claims;

(5) state the attorney's fee arrangement between the employee or his beneficiaries and the attorney, including the total amount of fees to be paid;

(6) itemize in detail all compensation previously paid on the claim with specific dates, types, amounts, rates, and periods covered by all past payments;

(7) include a written statement from all parties and their representative that

(A) the agreed settlement contains the entire agreement among the parties;

(B) the parties have not made an undisclosed agreement that modifies the agreed settlement;

(C) the agreed settlement is not contingent on any undisclosed agreement; and

(D) an undisclosed agreement is not contingent on the agreed settlement; and

(8) contain other information the board may from time to time require.

. . .

4. Discussion.

The board, in its decision, very methodically considered a number of factors having a bearing on whether the parties had reached a settlement, the terms of the settlement, and whether it was enforceable.[21] In the first place, the board decided that evidence regarding the mediation and subsequent settlement communications between the parties was admissible, notwithstanding the provision in Evidence Rule 408 that

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[21] *See Stenseth*, Bd. Dec. No. 13-0039 at 13-17.

statements made in settlement negotiations are not admissible "to prove liability for or invalidity of the claim or its amount."[22] Nevertheless, as the board pointed out, "[w]hether [Stenseth] obtained benefits through misrepresentation, whether [MOA] is entitled to recover those benefits, and, if so, the value of those benefits, [were] not issues for . . . hearing. Rather, the question [was] whether the parties, in fact, reached a settlement agreement, and the evidence is admissible to prove that fact."[23] We agree with the board that the evidence was admissible on the issue whether the parties settled.

Second, the board undertook an analysis whether the parties actually settled, and if so, on what terms.[24] It appropriately focused on the post-mediation exchange of correspondence between the attorneys for the respective parties. According to the board, MOA's counsel's letter dated December 5, 2012, constituted an offer to execute documents that would fully release Stenseth on MOA's claim for reimbursement in exchange for $30,000 payable by February 22, 2013. In a letter dated December 11, 2012, Stenseth's counsel responded, accepting MOA's offer. On the basis of this evidence, the board found that "[MOA] made an offer encompassing all the essential terms. [Stenseth] unequivocal[ly] accepted those terms. [Stenseth's] promise to pay and [MOA's] promise to forebear [its reimbursement efforts] are consideration, and both parties' letters evince the intent to be bound."[25] The commission concludes that substantial evidence supports the board's finding that there was an agreement between the parties with respect to the essential terms of the settlement, which were set forth in the referenced correspondence.

Third, MOA maintained that its representatives at the mediation exceeded their settlement authority in compromising the amount MOA was to be reimbursed to the

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[22] *See Stenseth*, Bd. Dec. No. 13-0039 at 13 quoting ER 408.

[23] *Id*. at 13-14 citing *Uforma/Shelby Bus. Forms, Inc. v. NLRB*, 111 F.3d 1284 (6th Cir. 1997).

[24] *See id*. at 14.

[25] *Id.* at 14 citing *Sea Hawk Seafoods, Inc. v. City of Valdez*, 282 P.3d 359 (Alaska 2012).

extent that they did,[26] thus MOA was relieved of any obligation to follow through with the settlement. In contrast, Stenseth argued that, even if they lacked that authority, MOA ought to be equitably estopped from avoiding the settlement on that basis.[27] As legal authority for resolving this issue as it did, the board cited two Alaska Supreme Court (supreme court) decisions.[28]

Schneider is similar to this matter in a number of respects. It also involved MOA, and, on this occasion, several property owners. In accordance with the agreement of the parties reached at a settlement conference, MOA issued the property owners a building permit. However, MOA later discovered that the permit should not have been issued because of zoning restrictions and revoked it. The property owners argued that MOA should be equitably estopped from doing so. The supreme court agreed and enforced the settlement in the interest of justice.[29] The commission concurs with the board that *Schneider* and *Pfeifer* provide the requisite legal authority for its conclusion that MOA is equitably estopped from avoiding the settlement on the terms the parties agreed.

Fourth, there is the remaining legal issue whether the settlement agreement was enforceable under the Alaska Workers' Compensation Act and 8 AAC 45.160, the board regulation which provides detailed requirements for settlement agreements and the procedures to be followed by the board when reviewing a C&R for approval. MOA

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[26] *See Stenseth*, Bd. Dec. No. 13-0039 at 14-15.

[27] *See id*.

[28] *See id*. at 8-9 citing *Municipality of Anchorage v. Schneider*, 685 P.2d 94, 96 (Alaska 1984)(*Schneider*) and quoting *Pfeifer v. State, Dep't of Health & Soc. Services, Div. of Pub. Assistance*, 260 P.3d 1072, 1082 (Alaska 2011):

> Equitable estoppel applies against the government in favor of a private party if four elements are present in a case: (1) the governmental body asserts a position by conduct or words; (2) the private party acts in reasonable reliance thereon; (3) the private party suffers resulting prejudice; and (4) the estoppel serves the interest of justice so as to limit public injury.

[29] *See Schneider*, 685 P.2d at 98.

argued the agreement was unenforceable because it did not conform to the statutory requirements in AS 23.30.012 or the regulatory criteria in 8 AAC 45.160.

As the board did, we begin by noting that the statute governing settlement agreements, AS 23.30.012 was amended in 2005.

> Prior to the 2005 amendment of AS 23.30.012, all settlement agreements required board approval. Subsequent to the amendment, board approval is required only for agreements where the claimant is not represented by an Alaska attorney, is a minor or incompetent, or is waiving future medical benefits. Board approval is not required for a settlement, such as the one here, involving an employer's claim for reimbursement under AS 23.30.250.[30]

Moreover, the statute states in relevant part that an employer and employee "have the right to reach an agreement in regard to *a claim for injury . . .* under this chapter, but a memorandum of the agreement in a form prescribed by the director shall be filed with the division. Otherwise, the agreement is void for any purpose. . . . [A]n agreement filed with the division discharges the liability of the employer for the *compensation*[.]"[31] Here, the settlement of Stenseth's *claim for injury* occurred when the parties executed the C&R in August 1996, which stated that he was waiving all benefits except future medical benefits. That agreement is not at issue here. In contrast, the agreement that is now at issue did not involve *a claim for injury*, the settlement of which would discharge the employer's liability for *compensation*. On the contrary, the settlement covered efforts on the part of MOA to recoup benefits it had paid Stenseth.

The supreme court subscribes to "the principle of statutory construction *expressio unius est exclusio alterius*. The maxim establishes the inference that, where certain things are designated in a statute, all omissions should be understood as exclusions."[32] Accordingly, if the Alaska legislature intended *all* settlement agreements, not just those settling claims for injury, to be subject to AS 23.30.012, it would have

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[30] *Stenseth*, Bd. Dec. No. 13-0039 at 15.

[31] AS 23.30.012(a)(italics added). The contents of the "form prescribed by the director" referenced in the statute are set forth in 8 AAC 45.160.

[32] *Croft v. Pan Alaska Trucking, Inc.*, 820 P.2d 1064, 1066 (Alaska 1991)(citations omitted).

been a simple matter to have said so. It did not. Consequently, the commission concludes that the provisions of AS 23.30.012 have no application to the parties' December 2012 agreement.

We now turn to the question whether the agreement satisfied the regulatory requirements set forth in 8 AAC 45.160. The board reasoned:

> Subsection (b) requires the agreement be submitted in writing, signed by the parties and their attorneys, and accompanied by Form 07-6117.[33] Here, the parties' letters of December 5 and 11, 2012[,] setting out their agreement[,] have been submitted to the board. The letters were not signed by the parties, but were signed by their attorneys. No Form 07-6117 was filed. Subsection (c) requires that all medical reports be filed and that the settlement agreement include information regarding the employee's age, ability to work and earn wages, a summary of the parties' claims, compensation already paid, and information on other agreements that may be related to the settlement.
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> . . .
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> Clearly, both 8 AAC 45.160(c) and Form 07-6117 are intended to elicit information regarding an employee, his medical condition, and ability to work, to assist the Board in determining whether or not an agreement is in the employee's best interest. None of that information is relevant here given the agreement does not require Board approval.[34]
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> . . .
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> Here, except to the extent they were not "in a form prescribed by the director, the parties['] December 5 and December 11, 2012[,] letters comply with AS 23.30.012. The "form prescribed by the director" is set out in 8 AAC 45.160(b) and (c). In this case, the information required by the regulation would have served no purpose, and as a matter of equity will not be required. Similarly, 8 AAC 45.19[5] permits the waiver of [a]

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[33] Form 07-6117 is a Compromise and Release Agreement Summary. *See Stenseth*, Bd. Dec. No. 13-0039 at 12.

[34] The board also found the requirement in subsection (b) of the regulation that the agreement must be signed by the parties, as well as their attorneys, to be redundant, in light of the commission's decision in *Alaska Mechanical, Inc. v. Harkness*, Alaska Workers' Comp. App. Comm'n Dec. No. 176 (Feb. 12, 2013). *Harkness* held that the purpose of a board regulation, 8 AAC 45.178, requiring attorneys who are representing parties in board proceedings to file appearances and withdrawals, was to prevent parties from disavowing the acts of their attorneys. *See Stenseth*, Bd. Dec. No. 13-0039 at 12.

> procedural requirement in the regulations to prevent a manifest injustice. The requirements of 8 AAC 45.160 are clearly procedural, and [Stenseth] would suffer a manifest injustice were they not waived. If the settlement agreement was found to be unenforceable because of noncompliance with 8 AAC 45.160, [Stenseth] would be forced to choose between the waiver of medical [benefits that MOA] now demands for settlement or proceeding to hearing where he risks substantially greater liability. Whether enforced as a matter of equity, or whether compliance with the procedural requirements of 8 AAC 45.160 is excused, the conclusion is the same: the parties had an enforceable settlement agreement as of December 11, 2012.[35]

The board's analysis offered multiple reasons for not requiring a settlement agreement that satisfied the technical criteria for them found in 8 AAC 45.160, and for not requiring a settlement summary on form 07-6117. First, 8 AAC 45.160(a) calls for board review and approval of settlement agreements that provide "for *the payment of compensation* due or to become due[.]"[36] However, here, the dispute between Stenseth and MOA did not involve *the payment of compensation*, on the contrary, it involved reimbursement of compensation paid. The analysis is similar to our analysis of the applicability of AS 23.30.012 to the parties' agreement. Had the board intended the regulation to apply to *all* settlement agreements, it should have worded the regulation accordingly. It did not, which leads us to conclude that like the statute, the regulation has no application to the parties' December 2012 agreement. Second, the board does not need the usual medical, disability, and other information necessary to determine whether the settlement is in Stenseth's best interest because the issue is whether Stenseth should reimburse MOA for benefits already provided. Third, the technical requirements in subsections .160(b) and (c) serve no purpose in the circumstances of this case because Stenseth is not seeking benefits. Therefore, as a matter of equity, the board declined to impose those requirements.

In our independent judgment, the commission agrees with the board's legal conclusion that the parties' agreement is enforceable. The central issue was whether

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35 *Stenseth*, Bd. Dec. No. 13-0039 at 15-16.

36 8 AAC 45.160(a)(italics added).

Stenseth had to reimburse MOA for benefits he improperly obtained. Thus, there was no need to satisfy the requirements in AS 23.30.012 or the technical criteria for settlement agreements found in 8 AAC 45.160 in the particular circumstances of this case.

5. Conclusion.

Because we have concluded that the settlement agreement is enforceable, the question whether the board erred in dismissing MOA's petitions for reimbursement is answered. For the reasons stated, the commission AFFIRMS the board's decision.

Date: *11 April 2014* ALASKA WORKERS' COMPENSATION APPEALS COMMISSION

Signed
David W. Richards, Appeals Commissioner

Signed
S. T. Hagedorn, Appeals Commissioner

Signed
Laurence Keyes, Chair

APPEAL PROCEDURES

This is a final decision on the merits of this appeal. The appeals commission affirms the board's decision. This decision becomes effective when distributed unless proceedings to reconsider it or to appeal to the Alaska Supreme Court are instituted (started).[37] To see the date it is distributed, look at the box below. It becomes final on the 31st day after the decision is distributed.

[37] A party has 30 days after the service or distribution of a final decision of the commission to file an appeal to the supreme court. If the commission's decision was served by mail only to a party, then three days are added to the 30 days, pursuant to Rule of Appellate Procedure 502(c), which states:

> **Additional Time After Service or Distribution by Mail.** Whenever a party has the right or is required to act within a prescribed number of days after the service or distribution of a document, and the document is served or distributed by mail, three calendar days shall be added to the prescribed period. However, no additional time shall be added if a court order specifies a particular calendar date by which an act must occur.

Proceedings to appeal this decision must be instituted (started) in the Alaska Supreme Court no later than 30 days after the date this final decision is distributed[38] and be brought by a party-in-interest against all other parties to the proceedings before the commission, as provided by the Alaska Rules of Appellate Procedure. *See* AS 23.30.129(a). The appeals commission and the workers' compensation board are not parties.

You may wish to consider consulting with legal counsel before filing an appeal. If you wish to appeal to the Alaska Supreme Court, you should contact the Alaska Appellate Courts *immediately*:

Clerk of the Appellate Courts
303 K Street
Anchorage, AK 99501-2084
Telephone: 907-264-0612

RECONSIDERATION

This is a decision issued under AS 23.30.128(e). A party may ask the commission to reconsider this Final Decision by filing a motion for reconsideration in accordance with 8 AAC 57.230. The motion for reconsideration must be filed with the commission no later than 30 days after the day this decision is distributed to the parties. If a request for reconsideration of this final decision is filed on time with the commission, any proceedings to appeal must be instituted no later than 30 days after the reconsideration decision is distributed to the parties, or, no later than 60 days after the date this final decision was distributed in the absence of any action on the reconsideration request, whichever date is earlier. AS 23.30.128(f).

I certify that, with the exception of corrections of typographical errors, this is a full and correct copy of Final Decision No. 194 issued in the matter of *Municipality of Anchorage vs. Lee O. Stenseth*, AWCAC Appeal No. 13-008, and distributed by the office of the Alaska Workers' Compensation Appeals Commission in Anchorage, Alaska, on April 11, 2014.

Date: *11 April, 2014*

Signed

K. Morrison, Appeals Commission Clerk

[38] *See* n.37, *supra*.