

Alaska Workers' Compensation Appeals Commission

Konstantin Misyuk, Viktor Misyuk,
Valentina Misyuk, and Elena (Misyuk)
Medvedev,
Appellants,

vs.

Anna Shastitko, beneficiary of
Yevgeniy P. Shastitko, deceased,
Radimir Shastitko, minor beneficiary,
Simon Shastitko, minor beneficiary;
Thompson Valley Funeral Home, Ltd.,
and State of Alaska, Workers'
Compensation Benefits Guaranty
Fund,
Appellees.

Final Decision

Decision No. 202 November 4, 2014

AWCAC Appeal No. 13-009
AWCB Decision No. 13-0027
AWCB Case No. 200913721

Final decision on appeal from Alaska Workers' Compensation Board Final Decision and Order No. 13-0027, issued at Fairbanks, Alaska, on March 19, 2013, by northern panel members Amanda K. Eklund, Chair, Zeb Woodman, Member for Labor, and Krista Lord, Member for Industry.

Appearances: Konstantin Misyuk, Viktor Misyuk, Valentina Misyuk, and Elena (Misyuk) Medvedev, self-represented appellants; Robert M. Beconovich, for appellees, Anna Shastitko, beneficiary of Yevgeniy P. Shastitko, deceased, Radimir Shastitko, minor beneficiary, and Simon Shastitko, minor beneficiary; Thompson Valley Funeral Home, Ltd., self-represented appellee; Michael C. Geraghty, Attorney General, Toby N. Steinberger, Assistant Attorney General, and Rachel L. Witty, Assistant Attorney General, for appellee, State of Alaska, Workers' Compensation Benefits Guaranty Fund.

Commission proceedings: Appeal filed April 16, 2013; the Fund's motion for stay filed May 23, 2013; hearing on motion for stay held June 19, 2013, order granting motion for

stay issued June 20, 2013; briefing completed February 24, 2014; oral argument held on October 8, 2014.¹

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

By: Laurence Keyes, Chair.

1. Introduction.

Appellant, Konstantin Misyuk, filed Articles of Incorporation for MTI, Inc. (MTI), which is not a party to this appeal, on September 23, 2002.² The other appellants, Viktor Misyuk, Valentina Misyuk, and Elena (Misyuk) Medvedev, together with Konstantin (collectively, the Misyuks³), were officers in the corporation.⁴ MTI is in the trucking business.⁵ At all relevant times, it was uninsured for workers' compensation liability.⁶

Yevgeniy Shastitko drove trucks for MTI, as an employee in 2006 and into June 2007, and ostensibly as an independent contractor thereafter.⁷ On July 12, 2009, while driving a truck for MTI, Yevgeniy was killed. Appellees, Anna Shastitko, Radimir Shastitko, and Simon Shastitko (collectively, the Shastitkos⁸), are Yevgeniy's

¹ Oral argument on behalf of the appellants was presented by attorney J. John Franich, Jr.; oral argument on behalf of appellee, State of Alaska, Workers' Compensation Benefits Guaranty Fund, was presented by Assistant Attorney General Siobhan McIntyre.

² *See Yevgeniy P. Shastitko, et al. v. MTI, Inc., et al.*, Alaska Workers' Comp. Bd. Dec. No. 13-0027 at 3 (Mar. 19, 2013).

³ In this decision, the Misyuks and Elena (Misyuk) Medvedev will be identified by their first names or their first and last names when it is necessary to differentiate between them.

⁴ *See Shastitko*, Bd. Dec. No. 13-0027 at 4.

⁵ *See id.*

⁶ *See id.* at 6-7.

⁷ *See id.* at 4-5.

⁸ In this decision, the Shastitkos will be identified by their first names or their first and last names when it becomes necessary to distinguish between them.

beneficiaries. On December 2, 2009, Anna filed a workers' compensation claim on behalf of all of them for death benefits.⁹

The claims¹⁰ were heard by the Alaska Workers' Compensation Board (board) on August 2 and 3, 2012.¹¹ A threshold issue was whether Yevgeniy Shastitko was an employee of MTI, and thus entitled to workers' compensation benefits, or an independent contractor, not entitled to them.¹² The board concluded that 1) Yevgeniy was an employee, 2) his beneficiaries were owed death benefits, 3) the Misyuks were jointly and severally liable, along with MTI, for those death benefits, and 4) the Shastitkos were entitled to an award of attorney fees and costs.¹³

The Misyuks timely filed this appeal with the Workers' Compensation Appeals Commission (commission). They assert that the board erred in deciding that 1) Yevgeniy Shastitko was an employee of MTI, not an independent contractor, 2) that Konstantin Misyuk and Elena Medvedev are jointly and severally liable for benefits, and 3) that the Shastitkos are entitled to an award of attorney fees and costs.¹⁴ We affirm.

2. Factual background and proceedings.

Yevgeniy Shastitko died when the MTI truck that he was driving rolled over in British Columbia on July 12, 2009.¹⁵ His widow, Anna, and surviving children, Simon and Radimir, sought workers' compensation death benefits in a claim dated

⁹ See *Shastitko*, Bd. Dec. No. 13-0027 at 7.

¹⁰ On June 1, 2011, appellee, Thompson Valley Funeral Home, Ltd., filed a claim for services it provided following Yevgeniy Shastitko's death. See *id.* at 7.

¹¹ See *id.* at 1.

¹² See *Shastitko*, Bd. Dec. No. 13-0027 at 26-30.

¹³ See *id.* at 36. In addition, pursuant to the provisions of AS 23.30.082, appellee, the State of Alaska, Workers' Compensation Benefits Guaranty Fund (Fund), would be liable for any benefits the board awarded if MTI and the Misyuks failed to pay them.

¹⁴ See Statement of Grounds for Appeal.

¹⁵ R. 0001.

September 23, 2009.¹⁶ MTI was uninsured and the claim was amended a few months later to add the Fund as a party.¹⁷

MTI was incorporated in September 2002.¹⁸ It was in the business of freight trucking, specifically hauling produce and other perishables from Washington to Alaska and back.¹⁹ The corporate officers were listed as Konstantin, president; his father, Viktor, vice president; Konstantin's sister, Elena Medvedev, secretary; and Konstantin's mother, Valentina, treasurer.²⁰ These same family members were listed as the corporate officers in biennial reports filed for 2004 and 2006.²¹

Elena testified that her parents ran the corporation and made all the decisions related to its operations.²² She said that she and Konstantin were made corporate officers as a "formality" because their parents were advised that a corporation needed four people.²³ Elena was involved in the corporation solely to assist her Russian-speaking parents with English.²⁴ She explained that she was busy attending school and working in Anchorage in the corporation's early years and then moved farther away to South Carolina in 2008.²⁵ She testified that any documents that she wrote and signed were at her parents' direction,²⁶ including a letter written to a workers' compensation investigator,²⁷ and a letter from a funeral home that she signed to acknowledge receipt

¹⁶ R. 0002-03.

¹⁷ R. 0010-11.

¹⁸ R. 0140-42.

¹⁹ R. 0149.

²⁰ R. 0143.

²¹ R. 0144, 0146. No additional biennial reports had been filed as of September 1, 2011. R. 826-27.

²² Hr'g Tr. 165:12; 168:3-16, 179:17-181:20, Aug. 2 and 3, 2012.

²³ Hr'g Tr. 168:3-7, 168:19-169:4.

²⁴ Hr'g Tr. 163:1-9, 164:12-19. Valentina Dep. 47:6-8.

²⁵ Hr'g Tr. 165:3, 169:11-22.

²⁶ Hr'g Tr. 176:25-177:8.

²⁷ R. 0300. Hr'g Tr. 176:10-177:3.

of it,²⁸ both shortly after Yevgeniy's fatal accident. She further testified that she would not act without her parents' consent.²⁹ Elena was not listed as a signatory on the business checking account as of 2006,³⁰ but her check-writing authority was reinstated at least as of May 2009 on an addendum to a newly-opened business account.³¹ Valentina testified that writing checks was her responsibility, however, on "very rare" occasions Elena might sign a check.³²

Konstantin drove for the corporation before getting accepted to an International Brotherhood of Electrical Workers (IBEW) apprenticeship program.³³ He began working for the IBEW full time as an apprentice wireman in August 2003, and still works for the union.³⁴ He testified that after he began working for IBEW, his only involvement with MTI was drafting an occasional letter on behalf of his parents because they needed assistance communicating in English.³⁵ He did not believe that he was authorized to act for MTI in 2009. "I had no idea that I – I was required to withdraw my name from the – from the corporation. I mean, if I knew that, my name would not have been on any documents since 2003."³⁶ Konstantin also stated that he never wrote checks on behalf of MTI.³⁷ The business account documents indicated that he had authority to write checks for MTI until his authority was revoked in February 2009.³⁸ His check-writing authority was reinstated a few months later when a new business account was opened

²⁸ R. 0044. Hr'g Tr. 173:17–174:8.

²⁹ Hr'g Tr. 179:22–181:23.

³⁰ R. 0174-76.

³¹ R. 0170.

³² Valentina Dep. 7:14-21.

³³ Hr'g Tr. 63:14-15; 67:23–68:4.

³⁴ Hr'g Tr. 59:10-11, 68:5-22.

³⁵ Hr'g Tr. 62:13-18, 69:17-25.

³⁶ Hr'g Tr. 87:25–88:3.

³⁷ Hr'g Tr. 85:19-23.

³⁸ R. 0177.

in May 2009.³⁹ Konstantin testified that the signature adding him as an authorized signer on the account was not his because it did not look like his handwriting and his printed name was misspelled.⁴⁰

As for Yevgeniy Shastitko's relationship with MTI, he began working as a driver in April 2006.⁴¹ No taxes were withheld for his first three paychecks in April and May 2006,⁴² but thereafter, MTI withheld taxes from his pay.⁴³ At the end of 2006, he received a W-2 tax form reporting his employee wages.⁴⁴ Taxes continued to be withheld from Yevgeniy's wages in 2007 until a check dated June 23, 2007.⁴⁵ From June 23, 2007, until his death in July 2009, MTI issued him one or two checks a month and did not withhold any taxes.⁴⁶ For tax year 2007, Yevgeniy received a W-2 for his earnings in which taxes were withheld and a 1099-MISC tax form showing the rest of his earnings that year as "other income."⁴⁷ For tax year 2008, Yevgeniy received a 1099, showing all of his MTI earnings as "nonemployee compensation."⁴⁸ Over the three years that Yevgeniy drove for MTI, he received at least one check every month except January 2007, February 2009, and April 2009.⁴⁹ The checks, which were for

³⁹ R. 0162-65, 0170. Viktor opened the account; a day later, MTI faxed to the bank an addendum adding Konstantin, Elena, and Valentina, as authorized signers on the account.

⁴⁰ Hr'g Tr. 82:20–83:6, R. 0170.

⁴¹ R. 0047, Valentina Dep. 7:10-13 (testifying that Yevgeniy Shastitko's first check working as a driver was issued April 14, 2006).

⁴² R. 0047-49 (checks were issued April 14, 2006, April 21, 2006, and May 1, 2006).

⁴³ R. 0050-77.

⁴⁴ R. 0120.

⁴⁵ R. 0078-92.

⁴⁶ R. 0092-97, 0102-04, 0108-17, 0645-46, 0649-52, 0654, 0662-64.

⁴⁷ R. 0121-22.

⁴⁸ R. 0123. The commission could not locate a 1099 or W-2 in the record for tax year 2009.

⁴⁹ R. 0047-97, 0102-04, 0108-17, 0645-46, 0649-52, 0654, 0662-64.

varying amounts, identified driving jobs with notations indicating the city of origin and the destination.⁵⁰

Valentina testified that Yevgeniy requested the change from W-2's to 1099 tax forms. She stated that Yevgeniy wanted 1099's because too much money was being taken out of his pay for taxes.⁵¹ Valentina testified that she told Yevgeniy that the other drivers received 1099's and that "this is your choice."⁵² Valentina and Viktor both testified that changing Yevgeniy's status did not affect his job duties.⁵³

A few months later, on September 17, 2007, the corporation made official the classification of drivers as independent contractors at a special meeting. The meeting minutes signed by Konstantin, Viktor, Elena, and Valentina stated:

Beginning today, the drivers will receive 1099 tax forms at the end of the year and will be treated as contract laborers as permitted in the state of Alaska. The drivers will be paid based on job performed and will have no permanent continuous assignment.⁵⁴

Elena testified that she did not recall this meeting, although both she and Konstantin acknowledged that the signatures on the meeting minutes were theirs.⁵⁵ Elena also admitted that she learned about the differences between employees and independent contractors in a business law class but could not recall whether she took the course before or after the corporation's special meeting.⁵⁶ She testified that, out of her own personal interest, she analyzed a list of factors and concluded that the MTI truck drivers were independent contractors.⁵⁷ However, she maintained that she did not advise her

⁵⁰ R. 0092-97, 0102-04, 0108-17, 0645-46, 0649-52, 0654, 0662-64.

⁵¹ Hr'g Tr. 117:13-18:12.

⁵² Hr'g Tr. 117:13-18:12.

⁵³ Valentina Dep. 49:21-23; Viktor Dep. 98:4-5.

⁵⁴ R. 0151.

⁵⁵ Hr'g Tr. 211:9-14, 84:4-19.

⁵⁶ Hr'g Tr. 203:22-204:2, 206:11-18.

⁵⁷ Hr'g Tr. 206:23-207:9.

parents concerning their drivers' status.⁵⁸ Konstantin testified his mother, Valentina, had told him "they're switching to 1099 . . . for all the drivers" and had "asked me to sign" the meeting minutes.⁵⁹ He also did not participate in the decision or attend the meeting.⁶⁰

The parties also testified about MTI's day-to-day operations. MTI received contracts to haul produce or other goods and Viktor would then call drivers on a list that he maintained to offer particular jobs.⁶¹ The drivers could refuse the job, and for each job that they agreed to take, they negotiated with Viktor what they would be paid.⁶² Viktor explained that the drivers preferred this hiring method because "[t]hey didn't want to be on constant schedule. They wanted to drive and then to have a break, to drive and to have a break. So it's like very flexible schedule."⁶³ Each agreement was "for one trip only. Every time for one trip because it was not constant, like stable, permanent job every time."⁶⁴

According to Anna Shastitko, Yevgeniy would sometimes take weekly trips and other times would have long periods at home.⁶⁵ She testified that he may have refused to accept driving jobs for MTI if he was sick or busy, but that he worked only for MTI.⁶⁶ In contrast, Konstantin Misyuk testified that Yevgeniy probably earned money by buying vehicles at auction, repairing them, and reselling them because he saw Yevgeniy driving and selling different vehicles.⁶⁷ Valentina Misyuk also testified that Yevgeniy was doing

⁵⁸ Hr'g Tr. 212:19-20, 213:9-20, 214:19-23.

⁵⁹ Hr'g Tr. 101:3-11.

⁶⁰ Hr'g Tr. 101:12-16.

⁶¹ Viktor Dep. 19:25-20:8, 95: 9-10.

⁶² Hr'g Tr. 267:6-19.

⁶³ Viktor Dep. 35:22-25.

⁶⁴ Viktor Dep. 34:22-25.

⁶⁵ Hr'g Tr. 49:25-50:4; 51:5-11.

⁶⁶ Hr'g Tr. 51:12-19, 52:2-5.

⁶⁷ Hr'g Tr. 73:9-14.

side work, “taking care of someone and also he was doing some work with the cars.”⁶⁸ Viktor believed Yevgeniy’s work repairing and reselling vehicles was about “equal” to the time he spent driving for MTI.⁶⁹ Viktor explained, “[S]ometimes when [Yevgeniy] refused to work as a driver, he explained [to] me that I have urgent job; I have to fix up a car.”⁷⁰

The drivers drove trucks and trailers owned and insured by MTI, and paid for fuel during their drives using MTI company credit cards.⁷¹ The drivers were responsible for maintaining their commercial driver’s licenses, and paying for any fines for driving violations.⁷² Valentina testified that, although MTI was responsible for the truck maintenance, drivers paid for any repairs that were a result of “fender-benders” on the road and their pay was deducted for any lost or damaged product.⁷³ Anna Shastitko stated that Yevgeniy paid for his own food and “probably” slept in the truck while driving on a job. She did not think that MTI reimbursed him for travel expenses.⁷⁴

Viktor also testified that the drivers could choose to hire others to help them drive or take other people with them for company.⁷⁵ Viktor and Valentina stated that a cousin of Yevgeniy’s, Pavel Gravcenka, rode with him at times.⁷⁶ Although she indicated she was uncertain, Anna Shastitko did not recall Pavel Gravcenka accompanying Yevgeniy on work trips.⁷⁷ Viktor and Valentina acknowledged, moreover, that when a customer or a delivery timeframe or other considerations required it, Viktor

⁶⁸ Hr’g Tr. 129:2-6.

⁶⁹ Viktor Dep. 24:13-19.

⁷⁰ Viktor Dep. 25:7-11.

⁷¹ Valentina Dep. 47:16-23; Hr’g Tr. 36:20-21, 37:7-10 (Anna Shastitko’s testimony).

⁷² Valentina Dep. 8:12-15. Viktor Dep. 37:19–38:4, 80:14-23.

⁷³ Valentina Dep. 19:24–20:3.

⁷⁴ Hr’g Tr. 37:14-20.

⁷⁵ Viktor Dep. 22:7-22.

⁷⁶ Hr’g Tr. 118:21–119:10.

⁷⁷ Hr’g Tr. 43:12-19, 49:19-24.

would hire two drivers to work as a team on a particular job.⁷⁸ On the day of the fatal accident, a team driver, who was in the sleeper of the truck that Yevgeniy was driving, suffered minor injuries.⁷⁹ MTI, not Yevgeniy, hired this driver.⁸⁰

The board heard the Shastitkos' claim for workers' compensation death benefits against MTI and the Fund on August 2 and 3, 2012. A funeral home also sought payment for services.⁸¹ The board concluded that Anna Shastitko and the Misyuks, Konstantin, Valentina, Elena, and Viktor, were credible.⁸²

The board decided that Yevgeniy was an employee, not an independent contractor. The board applied the presumption of compensability to the question whether Yevgeniy was an employee, concluding that Yevgeniy's family had attached the presumption and MTI had rebutted it.⁸³ Next, the board considered whether Yevgeniy's family had proved Yevgeniy was an employee by a preponderance of the evidence. The board applied the relative-nature-of-the-work test in 8 AAC 45.890 and relied on *Larson's Workers' Compensation Law*.⁸⁴ The board concluded that the two factors identified in the regulation as "most important" weighed in favor of finding Yevgeniy was an employee.⁸⁵

In terms of the first "most important" factor, whether Yevgeniy's work was a separate business, the board considered six sub-factors and decided that four out of the six of them raised the inference that Yevgeniy was an employee.⁸⁶ First, the board concluded that Yevgeniy did not own his own truck or hold himself out as truck driver

⁷⁸ Viktor Dep. 111; Valentina Dep. 102:3-10.

⁷⁹ R. 1306.

⁸⁰ Hr'g Tr. 103:23–104:3 (Konstantin's testimony).

⁸¹ *See Shastitko*, Bd. Dec. No. 13-0027 at 1.

⁸² *See id.* at 7-9, 11-12.

⁸³ *See id.* at 26.

⁸⁴ *See id.* at 23-25.

⁸⁵ *See id.* at 30-31.

⁸⁶ *See id.* at 30.

available for hire by companies other than MTI.⁸⁷ Moreover, there was no evidence that Yevgeniy could hire or fire other drivers because he never paid anyone else to help him on his drives.⁸⁸ Furthermore, the board found that MTI controlled the manner and means of completing the trips because Viktor arranged with vendors the pickup places and times for loading goods, and furnished, maintained, and insured the trucks.⁸⁹ The board concluded that although Yevgeniy was paid by the trip, his work history showed that he could depend on regular work from Viktor, creating an inference of employee status.⁹⁰ Finally, although Yevgeniy and the Misyuks treated Yevgeniy as an independent contractor for tax and liability purposes, the way the business was run nevertheless raised the inference that Yevgeniy was an employee.⁹¹

On the other hand, the board decided that the other two sub-factors, whether Yevgeniy and MTI could terminate the relationship at will, without cause, and whether MTI had the right to extensively supervise Yevgeniy, either did not apply or did not raise an inference that Yevgeniy was an employee.⁹² Based on four of the six sub-factors raising an inference of employee status, the board decided that “on balance,” this first factor “is resolved in favor of finding an employee-employer relationship.”⁹³

The board concluded that the second of the two “most important” factors also created a strong inference of employee status. Yevgeniy was one of MTI’s regular drivers and truck driving was an “integral part of MTI’s business.”⁹⁴

Finally, the board held that three out of four less important factors also weighed in favor of employee status. Yevgeniy could not be expected to afford to “carry his own

⁸⁷ *See Shastitko*, Bd. Dec. No. 13-0027 at 27.

⁸⁸ *See id.*

⁸⁹ *See id.*

⁹⁰ *See id.* at 29.

⁹¹ *See id.* at 30.

⁹² *See id.* at 28-29.

⁹³ *Id.* at 30.

⁹⁴ *See id.* at 30-31.

accident burden” based on what he earned driving for MTI.⁹⁵ Yevgeniy drove regularly enough for MTI that his employment was not “contracting for the completion of a particular job” and the employment was not “intermittent,” even though Yevgeniy and Viktor negotiated each assignment.⁹⁶ These factors weighed in favor of concluding Yevgeniy was an employee. The board concluded that Yevgeniy’s work did not involve “little or no skill or experience” because he had to have a commercial driving license and “knowledge of codes and regulations specific to commercial driving,” and thus, this factor did not create an inference of employee status.⁹⁷ Consequently, the board decided that Yevgeniy’s family proved by a preponderance of the evidence that Yevgeniy was an employee.⁹⁸

Next, the board concluded that all four MTI officers are jointly and severally liable with the corporation for benefits. Konstantin as president, Elena as secretary, and Valentina as treasurer, were held personally liable because AS 23.30.255’s plain language required “the president, secretary, and treasurer” to be held “severally personally liable, jointly with the corporation, for the compensation or other benefit which accrues under this chapter in respect to an injury which happens to an employee of the corporation while it has failed” to insure.⁹⁹ Viktor was held personally liable under AS 23.30.075(b) because he had the authority to insure MTI and was actively in charge of MTI’s business at the time of Yevgeniy’s death.¹⁰⁰

The board also awarded attorney fees and costs to the Shastitkos and concluded that MTI owed the funeral home \$5,000, the statutory maximum.¹⁰¹

The Misyuks appealed.

⁹⁵ *See Shastitko*, Bd. Dec. No. 13-0027 at 31.

⁹⁶ *See id.* at 31-32.

⁹⁷ *See id.* at 31.

⁹⁸ *Id.* at 32.

⁹⁹ *Id.* at 32-33.

¹⁰⁰ *See id.* at 33.

¹⁰¹ *See id.* at 34-36.

3. *Standard of review.*

“The board’s findings of fact shall be upheld by the commission if supported by substantial evidence in light of the whole record.”¹⁰² “Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”¹⁰³ “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”¹⁰⁴ and therefore independently reviewed by the commission.¹⁰⁵

We exercise our independent judgment when reviewing questions of law and procedure.¹⁰⁶

The board has the sole power to determine the credibility of a witness and a board finding concerning the weight to be accorded a witness’s testimony is conclusive even if conflicting or susceptible to contrary conclusions.¹⁰⁷ The board’s findings regarding the credibility of witness testimony are binding on the commission.¹⁰⁸

4. *Applicable law.*

a. *Statutes and regulations.*

AS 23.30.055. Exclusiveness of liability.

The liability of an employer prescribed in AS 23.30.045 is exclusive and in place of all other liability of the employer and any fellow employee to the employee, the employee's legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from the employer or fellow employee at law or in admiralty on account of the injury or death. The liability of the employer is exclusive

¹⁰² AS 23.30.128(b).

¹⁰³ *Pietro v. Unocal Corp.*, 233 P.3d 604, 610 (Alaska 2010) (quoting *Grove v. Alaska Constr. & Erectors*, 948 P.2d 454, 456 (Alaska 1997)(internal quotation marks omitted).

¹⁰⁴ *McGahuey v. Whitestone Logging, Inc.*, Alaska Workers’ Comp. App. Comm’n Dec. No. 054 at 6 (Aug. 28, 2007)(citing *Land & Marine Rental Co. v. Rawls*, 686 P.2d 1187, 1188-89 (Alaska 1984)).

¹⁰⁵ See AS 23.30.128(b).

¹⁰⁶ See AS 23.30.128(b).

¹⁰⁷ See AS 23.30.122.

¹⁰⁸ See AS 23.30.128(b).

even if the employee's claim is barred under AS 23.30.022. However, if an employer fails to secure payment of compensation as required by this chapter, an injured employee or the employee's legal representative in case death results from the injury may elect to claim compensation under this chapter, or to maintain an action against the employer at law or in admiralty for damages on account of the injury or death. In that action, the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, or that the employee assumed the risk of the employment, or that the injury was due to the contributory negligence of the employee. In this section, "employer" includes, in addition to the meaning given in AS 23.30.395, a person who, under AS 23.30.045(a), is liable for or potentially liable for securing payment of compensation.

AS 23.30.045. Employer's liability for compensation.

(a) An employer is liable for and shall secure the payment to employees of the compensation payable under AS 23.30.041, 23.30.050, 23.30.095, 23.30.145, and 23.30.180—23.30.215. If the employer is a subcontractor and fails to secure the payment of compensation to its employees, the contractor is liable for and shall secure the payment of the compensation to employees of the subcontractor. If the employer is a contractor and fails to secure the payment of compensation to its employees or the employees of a subcontractor, the project owner is liable for and shall secure the payment of the compensation to employees of the contractor and employees of a subcontractor, as applicable.

...

AS 23.30.075. Employer's liability to pay.

...

(b) If an employer fails to insure and keep insured employees subject to this chapter or fails to obtain a certificate of self-insurance from the division, upon conviction, the court shall impose a fine of \$10,000 and may impose a sentence of imprisonment for not more than one year. If an employer is a corporation, all persons who, at the time of the injury or death, had authority to insure the corporation or apply for a certificate of self-insurance, and the person actively in charge of the business of the corporation shall be subject to the penalties prescribed in this subsection and shall be personally, jointly, and severally liable together with the corporation for the payment of all compensation or other benefits for which the corporation is liable under this chapter if the corporation at that time is not insured or qualified as a self-insurer.

AS 23.30.082. Workers' compensation benefits guaranty fund.

...

(c) Subject to the provisions of this section, an employee employed by an employer who fails to meet the requirements of AS 23.30.075 and who fails to pay compensation and benefits due to the employee under this chapter may file a claim for payment by the fund. In order to be eligible for payment, the claim form must be filed within the same time, and in the same manner, as a workers' compensation claim. The fund may assert the same defenses as an insured employer under this chapter.

...

AS 23.30.145. Attorney fees.

...

(b) If an employer fails to file timely notice of controversy or fails to pay compensation or medical and related benefits within 15 days after it becomes due or otherwise resists the payment of compensation or medical and related benefits and if the claimant has employed an attorney in the successful prosecution of the claim, the board shall make an award to reimburse the claimant for the costs in the proceedings, including reasonable attorney fees. The award is in addition to the compensation or medical and related benefits ordered.

...

AS 23.30.215. Compensation for death.

a) If the injury causes death, the compensation is known as a death benefit and is payable in the following amounts to or for the benefit of the following persons:

- (1) reasonable and necessary funeral expenses not exceeding \$10,000;
- (2) if there is a widow or widower or a child or children of the deceased, the following percentages of the spendable weekly wages of the deceased:
 - (A) 80 percent for the widow or widower with no children;
 - (B) 50 percent for the widow or widower with one child and 40 percent for the child;
 - (C) 30 percent for the widow or widower with two or more children and 70 percent divided equally among the children;
 - (D) 100 percent for an only child when there is no widow or widower;

(E) 100 percent, divided equally, if there are two or more children and no widow or widower;

(3) if the widow or widower remarries, the widow or widower is entitled to be paid in one sum an amount equal to the compensation to which the widow or widower would otherwise be entitled in the two years commencing on the date of remarriage as full and final settlement of all sums due the widow or widower;

(4) if there is no widow or widower or child or children, then for the support of father, mother, grandchildren, brothers, and sisters, if dependent upon the deceased at the time of injury, 42 percent of the spendable weekly wage of the deceased to such beneficiaries, share and share alike, not to exceed \$20,000 in the aggregate;

(5) \$5,000 to a surviving widow or widower, or equally divided among surviving children of the deceased if there is no widow or widower.

(b) In computing death benefits, the spendable weekly wage of the deceased shall be computed under AS 23.30.220 and shall be paid in accordance with AS 23.30.155 and subject to the weekly maximum limitation in the aggregate as provided in AS 23.30.175, but the total weekly compensation may not be less than \$75 for a widow or widower nor less than \$25 weekly to a child or \$50 for children.

(c) All questions of dependency shall be determined as of the time of the injury, or death.

(d) Compensation under this chapter to aliens not residents, or about to become nonresidents, of the United States or Canada is the same in amount as provided for residents, except that dependents in a foreign country are limited to widow or widower and child or children, or if there is no widow or widower and child or children, to surviving father or mother whom the employee has supported, either wholly or in part, for a period of one year before the date of injury. The board, at its option, or upon the application of the insurance carrier, may commute all future installments of compensation to be paid to an alien dependent who is not a resident of the United States or Canada by paying or causing to be paid to the alien dependent one-half of the commuted amount of the future installments of compensation as determined by the board.

(e) Death benefits payable to a widow or widower in accordance with (a) of this section shall abate as that person ceases to be entitled and does not inure to persons subject to continued entitlement. In the event a child ceases to be entitled, that child's share shall inure to the benefit of the surviving spouse subject to adjustment as provided in (f) of this section.

(f) Except as provided in (g) of this section, the death benefit payable to a widow or widower shall terminate 12 years following death of the deceased employee.

(g) The provisions of (f) of this section do not apply to a widow or widower who at the time of death of the deceased worker is permanently and totally disabled. The death benefits payable to a widow or widower are not subject to reduction under (f) of this section after the widow or widower has attained the age of 52 years.

(h) In the event a deceased worker is survived by children of a former marriage not living with the surviving widow or widower, then those children shall receive the amount being paid under a decree of child support; the difference between this amount and the maximum benefit payable under this section shall be distributed pro rata to the remainder of those entitled.

(i) In the event the total amount of all benefits computed under (a)(2) of this section exceeds the maximum benefit provided in AS 23.30.175, the maximum benefit under AS 23.30.175 shall be prorated among entitled survivors.

AS 23.30.255. Penalty for failure to pay compensation.

(a) An employer required to secure the payment of compensation under this chapter who fails to do so is guilty of a class B felony if the amount involved exceeds \$25,000 or a class C felony if the amount involved is \$25,000 or less. If the employer is a corporation, its president, secretary, and treasurer are also severally liable to the fine or imprisonment imposed for the failure of the corporation to secure the payment of compensation. The president, secretary, and treasurer are severally personally liable, jointly with the corporation, for the compensation or other benefit which accrues under this chapter in respect to an injury which happens to an employee of the corporation while it has failed to secure the payment of compensation as required by AS 23.30.075.

...

8 AAC 45.890. Determining employee status.

For purposes of AS 23.30.395(19) and this chapter, the board will determine whether a person is an "employee" based on the relative-nature-of-the-work test. The test will include a determination under (1) - (6) of this section. Paragraphs (1) and (2) of this section are the most important factors, and at least one of these two factors must be resolved in favor of an "employee" status for the board to find that a person is an employee. The board will consider whether the work

(1) is a separate calling or business; if the person performing the services has the right to hire or terminate others to assist in the

performance of the service for which the person was hired, there is an inference that the person is not an employee; if the employer

(A) has the right to exercise control of the manner and means to accomplish the desired results, there is a strong inference of employee status;

(B) and the person performing the services have the right to terminate the relationship at will, without cause, there is a strong inference of employee status;

(C) has the right to extensive supervision of the work then there is a strong inference of employee status;

(D) provides the tools, instruments, and facilities to accomplish the work and they are of substantial value, there is an inference of employee status; if the tools, instruments, and facilities to accomplish the work are not significant, no inference is created regarding the employment status;

(E) pays for the work on an hourly or piece rate wage rather than by the job, there is an inference of employee status; and

(F) and person performing the services entered into either a written or oral contract, the employment status the parties believed they were creating in the contract will be given deference; however, the contract will be construed in view of the circumstances under which it was made and the conduct of the parties while the job is being performed;

(2) is a regular part of the employer's business or service; if it is a regular part of the employer's business, there is an inference of employee status;

(3) can be expected to carry its own accident burden; this element is more important than (4) - (6) of this section; if the person performing the services is unlikely to be able to meet the costs of industrial accidents out of the payment for the services, there is a strong inference of employee status;

(4) involves little or no skill or experience; if so, there is an inference of employee status;

(5) is sufficient to amount to the hiring of continuous services, as distinguished from contracting for the completion of a particular job; if the work amounts to hiring of continuous services, there is an inference of employee status;

(6) is intermittent, as opposed to continuous; if the work is intermittent, there is a weak inference of no employee status.

b. The presumption of compensability analysis.

In *Runstrom v. Alaska Native Medical Center*,¹⁰⁹ the commission had the opportunity to discuss the presumption of compensability.

. . . [P]ursuant to AS 23.30.010(a), the board “must evaluate the relative contribution of different causes of the disability or death or the need for medical treatment.” This subsection further provides that “[c]ompensation or benefits under this chapter are payable for the disability or death or the need for medical treatment if, *in relation to other causes*, the employment is *the substantial cause* of the disability or death or need for medical treatment.” Under AS 23.30.010(a), as has always been required of the employee under the presumption of compensability analysis, to attach the presumption, the employee must first establish “a causal link” between employment and his or her disability, need for medical treatment, etc. . .

. . .

. . . [U]nder the new, statutory causation standard, the employer may rebut the presumption “by a demonstration of substantial evidence that the death or disability or the need for medical treatment did not arise out of and in the course of the employment.” To do so, “the board must evaluate the relative contribution of different causes of the disability or death or the need for medical treatment.”

In applying AS 23.30.010(a), what showing is required of the employer to rebut the presumption? We think that, similar to one of the alternative showings under former law, the employer can rebut the presumption with substantial evidence that excludes any work-related factors as the substantial cause of the employee’s disability, etc. In other words, if the employer can present substantial evidence that demonstrates that a cause other than employment played a greater role in causing the disability, etc., [it is one means by which] the presumption is rebutted. However, the alternative showing to rebut the presumption under former law, that the employer directly eliminate any reasonable possibility that employment was *a factor* in causing the disability, etc., is incompatible with the statutory standard for causation under AS 23.30.010(a). In effect, the employer would need to rule out employment as *a factor* in causing the disability, etc. Under the statute, employment must be more than *a factor* in terms of causation.

If the employer successfully rebuts the presumption, under former law, the supreme court consistently held that in the third step of the analysis,

¹⁰⁹ Alaska Workers’ Comp. App. Comm’n Dec. No. 150 (Mar. 25, 2011); the Alaska Supreme Court (supreme court) affirmed, 280 P.3d 567 (Alaska 2012).

1) the presumption dropped out, and 2) the employee was required to prove all elements of his or her claim by a preponderance of the evidence.

...

What form should the third step of the analysis now take? In light of the foregoing considerations, the commission believes the two elements of the third step in the presumption analysis under former law, that the presumption drops out and the employee must prove the claim by a preponderance of the evidence, should be engrafted on the third step of the analysis under AS 23.30.010(a). We come to this conclusion because the supreme court has held that “[t]he presumption shifts only the burden of going forward, not the burden of proof.” Accordingly, the commission is reluctant to dispense with this burden-allocation feature when applying a third step in the statutory presumption analysis. Therefore, we hold: If the employer rebuts the presumption, it drops out, and the employee must prove, by a preponderance of the evidence, that in [the circumstances of this case, Yevgeniy was an employee, not an independent contractor]. Should the [Shastitkos] meet this burden, compensation or benefits are payable.¹¹⁰

c. Principles of statutory construction.

“The goal of statutory construction is to give effect to the legislature's intent, with due regard for the meaning the statutory language conveys to others.”¹¹¹ A statute is interpreted according to reason, practicality, and common sense, considering the meaning of the statute’s language, its legislative history, and its purpose.¹¹² Statutes dealing with the same subject are *in pari materia* and are to be construed together.¹¹³ “[A]ll sections of an act are to be construed together so that all have meaning and no section conflicts with another.”¹¹⁴ If one statutory “section deals with a subject in general terms and another deals with a part of the same subject in a more detailed way, the two should be harmonized, if possible; but if there is a conflict, the

¹¹⁰ *Runstrom*, App. Comm’n Dec. No. 150 at 5-8 (footnotes omitted).

¹¹¹ *Shehata v. Salvation Army*, 225 P.3d 1106, 1114 (Alaska 2010).

¹¹² *See Municipality of Anchorage v. Adamson*, 301 P.3d 569, 575 (Alaska 2013) (citations omitted).

¹¹³ *See Benner v. Wichman*, 874 P.2d 949, 958, n.18 (Alaska 1994).

¹¹⁴ *In re Hutchinson's Estate*, 577 P.2d 1074, 1075 (Alaska 1978).

specific section will control over the general.”¹¹⁵ Statutes which cause forfeiture are not favored and are narrowly construed.¹¹⁶ “Administrative regulations which are legislative in character are interpreted using the same principles applicable to statutes. In the case of administrative regulations which deal with the same subject, their provisions should be considered together.”¹¹⁷

5. *Discussion.*

a. *Was Yevgeniy an employee or an independent contractor?*

The board applied a presumption of compensability analysis to the employment status issue. It found that the Shastitkos had attached the presumption that Yevgeniy was MTI’s employee.¹¹⁸ We concur. The board found that MTI/Misyuks had rebutted the presumption with evidence he was an independent contractor.¹¹⁹ We agree.

After citing a supreme court case and 8 AAC 45.890,¹²⁰ the board methodically considered the six factors, the first of which has six “sub-factors” listed in the regulation, and concluded that the preponderance of the evidence demonstrated that Yevgeniy was an employee of MTI, not an independent contractor.¹²¹ Although the commission views Yevgeniy’s employment status as a closer question than the board, nevertheless, there was substantial evidence to support the board’s finding that he was an employee. Therefore, we affirm the board’s decision in this respect, for the reasons which follow.

¹¹⁵ See *In re Hutchinson's Estate*, 577 P.2d at 1075.

¹¹⁶ *Forest v. Safeway Stores, Inc.*, 830 P.2d 778, 782, n.10 (Alaska 1992).

¹¹⁷ See *State, Dep’t of Highways v. Green*, 586 P.2d 595, 603, n.24 (Alaska 1978)(citation omitted).

¹¹⁸ See *Shastitko*, Bd. Dec. No. 13-0027 at 26.

¹¹⁹ See *id.*

¹²⁰ See *id.* at 26-27 citing *Alaska Pulp Corp. v. United Paperworkers International Union*, 791 P.2d 1008 (Alaska 1990).

¹²¹ See *Shastitko*, Bd. Dec. No. 13-0027 at 26-27. In the process, the board pointed out that, according to the introductory provision of the regulation, the first two factors are the most important and, at the very least, either the first or the second factor must be resolved in favor of employee status for the board to find an employer/employee relationship. See 8 AAC 45.890.

b. Was there a contract of hire?

The board started its analysis by noting that the parties agreed there was an express, oral contract that Yevgeniy would work as a regular driver for MTI. It then set about determining whether, by virtue of their relationship, Yevgeniy was an independent contractor or an employee.¹²²

(1) Was Yevgeniy's work a separate calling or business?

The board turned its attention to the six factors set forth in 8 AAC 45.890, the first of which is whether Yevgeniy had his own separate business. He had a commercial driver's license, which would be a requirement in any event for operating any commercial vehicles, including MTI's trucks.¹²³ However, he did not own his truck and drove exclusively for MTI.¹²⁴ Other findings by the board were: 1) Yevgeniy reported only his income from MTI on tax documents, 2) he had no authority to hire or terminate others, although he did take family with him on several of his trips, and 3) there was no evidence in the record that Yevgeniy paid others to help him when they accompanied him on a trip.¹²⁵ We agree with the board that this evidence supports an inference of employer/employee status.

(A) Did MTI have the right to exercise control over how Yevgeniy accomplished his job?

Under this principle, the first "sub-factor" of subsection (1) of the regulation, the board found it significant that Viktor arranged the trips for Yevgeniy and the other drivers, coordinated the pick-up and delivery of the loads, arranged for maintenance and repairs on the trucks, and reprimanded Yevgeniy for speeding on one occasion. This evidence is also indicative of an employer/employee relationship, according to the board,¹²⁶ and the commission concurs.

¹²² See *Shastitko*, Bd. Dec. No. 13-0027 at 26-27.

¹²³ See *id.* at 27.

¹²⁴ See *id.*

¹²⁵ See *id.*

¹²⁶ See *id.* at 27-28.

(B) Did MTI and Yevgeniy have the right to terminate the relationship at will, without cause?

Under this second sub-factor, while the board found that Yevgeniy had the right to decline driving jobs offered to him by Viktor, the record was unclear whether Yevgeniy or Viktor could subsequently cancel (terminate) a driving job, once they had agreed to it. Appropriately, the board decided that this factor did not give rise to an inference of employee status.¹²⁷

(C) Did MTI have the right to extensive supervision of Yevgeniy's work?

The board found there was little supervision of Yevgeniy's work when he was on a driving job. Fittingly, it concluded that an inference of employee/employer status could not be made from this evidence.¹²⁸

(D) Did MTI supply the tools, instruments, and facilities for Yevgeniy to accomplish his work?

The board noted that "MTI provided the truck [Yevgeniy] drove, a company credit card for fuel, and secured liability insurance for the vehicle. MTI paid for routine vehicle maintenance and any necessary repairs."¹²⁹ On the other hand, Yevgeniy managed his own log books and paid for his own cell phone and food.¹³⁰ Citing Professor Larson, the board emphasized that when the ostensible employer furnishes valuable equipment, here, the truck, it is almost always indicative of an employer/employee relationship.¹³¹ The commission agrees.

(E) Did MTI pay Yevgeniy hourly or by the job?

The evidence was that Yevgeniy was paid bi-weekly until September 2007, when MTI reclassified its drivers as independent contractors, and monthly thereafter until his death in July 2009. Even though payment was on a per-trip basis, the records reflect that Viktor regularly offered driving jobs to Yevgeniy, who was one of MTI's regular

¹²⁷ See *Shastitko*, Bd. Dec. No. 13-0027 at 28.

¹²⁸ See *id.*

¹²⁹ *Id.*

¹³⁰ See *id.*

¹³¹ See *id.* quoting *Larson's Workers' Compensation Law*, §61.07[1].

drivers. The board found that this evidence created an inference of employer/employee status.¹³² The commission agrees.

(F) What employment status did MTI and Yevgeniy believe they were creating?

The board devoted considerable discussion to this topic, the last sub-factor under 8 AAC 45.890(1). The Misyuks pointed to Yevgeniy's change in his tax reporting documents from W-2's to 1099's, after all drivers were reclassified as independent contractors, as supportive of an inference that he was an independent contractor. The board did not consider his tax status, in and of itself, determinative of employment status.¹³³ Of more significance to the board was that MTI did not change its day-to-day operations when it converted all its drivers to independent contractors in September 2007. Yevgeniy was one of MTI's regular drivers, and despite the fact that he could turn down specific driving trips, the board thought it was reasonable to infer that both Yevgeniy and Viktor expected Yevgeniy to drive consistently and regularly for MTI.¹³⁴

Even though the board candidly acknowledged that Yevgeniy, Viktor, and Valentina thought the relationship they were creating was that of employer/independent contractor, nevertheless, it concluded that the contract of hire must be construed in accordance with the circumstances under which it was made and the parties' performance of the contract.¹³⁵ As far as the board was concerned, the totality of the circumstances demonstrated an employer/employee relationship. The commission agrees.

(2) Were Yevgeniy's services a regular part of MTI's business?

This is the second important factor in the relative nature of the work test applied by the board.¹³⁶ The board succinctly found that MTI's business was commercial

¹³² See *Shastitko*, Bd. Dec. No. 13-0027 at 29.

¹³³ See *id.*

¹³⁴ See *id.* at 29-30.

¹³⁵ See *id.* at 30.

¹³⁶ See n.120, *supra* and *Shastitko*, Bd. Dec. No. 13-0027 at 30-31.

trucking and Yevgeniy was one of its regular drivers. This evidence sufficed for the board to find an inference of employee status.¹³⁷ The commission agrees.

(3) Could Yevgeniy be expected to carry his own accident burden?

After first noting that there was no *direct* evidence or testimony whether Yevgeniy could be expected to carry his own accident burden, the board observed that MTI carried liability insurance on its trucks, including the one that Yevgeniy operated.¹³⁸ There is some evidence on the issue, however, the other considerations identified by the board as persuasive in this respect are not, in the commission's view, particularly beneficial evidence that Yevgeniy was an employee of MTI.¹³⁹ Therefore, we cannot agree that "there is a strong inference of employee status[,]" as the board did,¹⁴⁰ from the paucity of evidence on the issue.

(4) How much skill or experience did Yevgeniy's work involve?

The board did not find the evidence with respect to Yevgeniy's level of skill or experience created an inference of employee status.¹⁴¹ The commission agrees.

(5) Did the agreement entail a hiring for continuous services?

Even though the evidence reflected that Yevgeniy could and did turn down specific driving jobs, he worked consistently and exclusively driving for MTI for over three years.¹⁴² The commission agrees with the board that this factor created an inference of an employer/employee relationship.

(6) Was the employment intermittent?

The last of the six factors to be considered under 8 AAC 45.890 in determining Yevgeniy's employment status is whether his employment with MTI was intermittent or continuous. Based on MTI's records, the board observed that Yevgeniy was paid

¹³⁷ See *Shastitko*, Bd. Dec. No. 13-0027 at 30-31.

¹³⁸ See *id.* at 31.

¹³⁹ See *id.*

¹⁴⁰ *Id.*

¹⁴¹ See *id.*

¹⁴² See *id.* at 31-32.

regularly for driving trips throughout his service with MTI and he only drove for MTI. As a result, it found that Yevgeniy's employment with MTI was not intermittent, which supports an inference of employee status.¹⁴³ The commission agrees.

b. Are Konstantin and Elena personally, jointly, and severally liable for death benefits?

More clear cut than the employment status issue is the question of who is liable for workers' compensation benefits. There is no dispute that at the time of Yevgeniy's death, Konstantin was president of MTI, Viktor was vice president, Elena was secretary, and Valentina was treasurer. The Misyuks argue that Konstantin and Elena had very minor roles in the ongoing operations of MTI and should not be liable to the Shastitkos for death benefits.¹⁴⁴ They wrote checks because they had check-writing authority on some of the corporate accounts and both helped their parents by translating between Russian and English. However, a subsection of the statute that addresses the liability of corporate officers for workers' compensation benefits when the corporation is uninsured, AS 23.30.255(a), does not distinguish between corporate officers who are active in the operation of a corporation and corporate officers who are not. That subsection reads in relevant part:

The president, secretary, and treasurer are severally personally liable, jointly with the corporation, for the compensation or other benefit which accrues under this chapter in respect to an injury which happens to an employee of the corporation while it has failed to secure the payment of compensation as required by AS 23.30.075.

Construing the statute, the meaning the statutory language conveys is that the president, secretary, and treasurer of an uninsured corporation are liable for benefits, without regard to the extent of their participation in the operations of the corporation. The statute is absolute in the sense that it makes specific corporate officers liable, except vice presidents. Therefore, even though Konstantin and Elena were not particularly active in the operation of MTI, the statute makes no distinction between them and the officers who assumed a more active role in running the corporation,

¹⁴³ See *Shastitko*, Bd. Dec. No. 13-0027 at 32.

¹⁴⁴ See Appellants' Br. at 4-7.

namely Viktor and Valentina. We are not aware of a contrary legislative history, intent, or purpose.

c. Is Viktor also personally, jointly, and severally liable for death benefits?

Similarly, AS 23.30.075(b) provides in part:

If an employer is a corporation, all persons who, at the time of the injury or death, had authority to insure the corporation or apply for a certificate of self-insurance, and the person actively in charge of the business of the corporation shall be subject to the penalties prescribed in this subsection and shall be personally, jointly, and severally liable together with the corporation for the payment of all compensation or other benefits for which the corporation is liable under this chapter if the corporation at that time is not insured or qualified as a self-insurer.

This subsection plainly provides that any person who has authority to insure a corporation for its workers' compensation liability and the person actively in charge of the business, are personally, jointly, and severally liable together with the corporation for the payment of all compensation or other benefits. Based on substantial evidence in the record, with respect to MTI, that person was Viktor, although there was evidence that Konstantin, Elena, and Valentina also had authority to insure MTI for workers' compensation liability.

The board concluded that there was evidence that Viktor was actively in charge of MTI and had the authority to insure it for workers' compensation liability. It noted that Viktor was vice president of the corporation, an officer who is not liable for benefits under AS 23.30.055(a), nevertheless, Viktor "had authority to insure MTI and was

actively in charge of MTI's business at the time of Yevgeniy's death."¹⁴⁵ According to the board, in his testimony, Viktor admitted he was in charge of accepting or rejecting jobs for MTI, assigning drivers for the jobs that were accepted, negotiating with vendors, and maintaining the trucks. He also had check-signing authority.¹⁴⁶ Given the board's factual findings relative to Viktor's corporate responsibilities, the commission concurs in its decision finding him personally, jointly, and severally liable for benefits by virtue of the provisions of AS 23.30.075(b). We are not aware of any contrary legislative history, intent, or purpose in terms of §.075(b).

d. Attorney fees.

The Misyuks identified the board's award of attorney fees to Shastitkos' counsel as an issue on appeal.¹⁴⁷ Because they did not adequately brief the issue on appeal, we deem it to be waived and abandoned.¹⁴⁸ Consequently, the commission affirms the board's award of attorney fees and costs.

6. Conclusion.

We AFFIRM the board's decisions that 1) Yevgeniy was an employee of MTI, 2) the Shastitkos are entitled to workers' compensation death benefits, 3) Konstantin Misyuk, Viktor Misyuk, Elena (Misyuk) Medvedev, and Valentina Misyuk are jointly,

¹⁴⁵ *Shastitko*, Bd. Dec. No. 13-0027 at 33. We would also point out that aiding us in our exercise in statutory interpretation, AS 23.30.055(a) and AS 23.30.075(b) are distinguishable in at least one important respect. The former provides that the named corporate officers are liable for workers' compensation benefits, without regard to the extent to which the various officers were active in the operation of the corporation. In contrast, §.075(b) requires that the person be actively in charge of the business in order to be liable. We think it would have been a simple matter for the Alaska legislature to have worded §.055(a) like it worded §.075(b), if the intent was to make the corporate officers liable only in the event they were actively involved in the operation of the corporation.

¹⁴⁶ *See id.* at 33-34.

¹⁴⁷ *See* Statement of Grounds for Appeal.

¹⁴⁸ *See Coppe v. Bleicher*, 318 P.3d 369, 379 (Alaska 2014).

severally, and personally liable, together with MTI, for those benefits, and 4) the Shastitkos are entitled to an award of attorney fees and costs.¹⁴⁹

Date: 4 November 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. The commission's decision becomes effective when distributed (mailed) unless proceedings to reconsider it or to appeal to the Alaska Supreme Court are instituted (started).¹⁵⁰ For the date of distribution, see the box below.

Effective, November 7, 2005, proceedings to appeal this decision must be instituted (started) in the Alaska Supreme Court no later than 30 days after the date this final

¹⁴⁹ The commission appreciates that its holdings with respect to Yevgeniy's employment status, and the joint, several, and personal liability of Konstantin, Elena, Valentina, and Viktor for death benefits, result in harsh consequences for the Misyuks, whose lack of familiarity with Alaska workers' compensation law is understandable. However, we cannot allow their unfamiliarity with the requirements of the Alaska Workers' Compensation Act to operate to the detriment of the Shastitkos and deprive them of the workers' compensation benefits to which we believe they are entitled.

¹⁵⁰ A party has 30 days after the distribution of a final decision of the commission to file an appeal to the supreme court. If the commission's decision was distributed 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.

decision is distributed¹⁵¹ 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 is not a party.

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

More information is available on the Alaska Court System's website:
<http://www.courts.alaska.gov/>

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 the correction of a typographical error, this is a full and correct copy of Final Decision No. 202, issued in the matter of *Konstantin Misyuk, Viktor Misyuk, Valentina Misyuk, and Elena (Misyuk) Medvedev vs. Anna Shastitko, beneficiary of Yevgeniy P. Shastitko, deceased, Radimir Shastitko, minor beneficiary, Simon Shastitko, minor beneficiary; Thompson Valley Funeral Home, Ltd., and State of Alaska, Workers' Compensation Benefits Guaranty Fund, AWCAC Appeal No. 13-009*, and distributed by the office of the Alaska Workers' Compensation Appeals Commission in Anchorage, Alaska, on November 4, 2014.

Date: November 6, 2014



Signed

K. Morrison, Appeals Commission Clerk

¹⁵¹ *See id.*