Alaska Workers' Compensation Appeals Commission

Eagle Hardware & Garden, Hartford Insurance Co., State of Alaska (self-insured),
Movants,

vs.

Maryann Ammi,
Respondant.

Final Decision and Order
Decision No. 003 February 21, 2006

AWCAC Appeal No. 05-004
AWCB Decision No. 05-0303
AWCB Case Nos. 199430188M & 199919225

Final Decision on Motion for Extraordinary Review of Alaska Workers' Compensation Board Order No. 05-0303, Anchorage panel, by Rebecca Pauli, Chair, and John A. Abshire, Board Member for Labor.

Appearances: Robert L. Griffin, Griffin & Smith, for movant Eagle Hardware & Garden; Assistant Attorney General Patricia K. Shake for movant State of Alaska; Joseph A. Kalamarides, Kalamarides & Lambert, Inc., for respondent Maryann Ammi.

This decision has been edited to conform to technical standards for publication.

Commissioners: John Giuchici, Philip E. Ulmer, and Andrew M. Hemenway.

By: Andrew M. Hemenway, Chair *Pro Tempore*.

Introduction.

Eagle Hardware & Garden, an employer, filed a motion for extraordinary review of a Board Interlocutory Decision and Order dated November 16, 2005. The State of Alaska joins in the motion in its capacity as an employer. The employee, Maryann Ammi, opposes the motion and asserts that we do not have jurisdiction.

We conclude that we have jurisdiction, and we deny the motion for extraordinary review.

Underlying facts and proceedings.

In 1994, Maryann Ammi was an employee of the State of Alaska. She sought benefits for injuries alleged to have occurred at that time, resulting in AWCB

No. 199430188. In 1999, Ms. Ammi was an employee of Eagle Hardware and she sought benefits for injuries alleged to have occurred then, resulting in AWCB No. 199919225. Both cases were resolved by a joint compromise and release on May 24, 2002, waiving all benefits except limited future medical benefits associated with Ms. Ammi's left wrist.

On December 16, 2002, Ms. Ammi filed a claim against the State for benefits related to bilateral thoracic outlet syndrome. The State controverted the claim and Eagle was joined by stipulation.

The parties stipulated to a second independent medical examination,[1] which was conducted by Dr. Robert Foran on April 15, 2003. Dr. Foran opined that Ms. Ammi has thoracic outlet syndrome caused by injuries incurred in 2000 and 2002, but not in 1994. Eagle requested that Ms. Ammi participate in an employer's medical evaluation[2] by a panel consisting of general surgeon Dr. Esmond Braun, orthopedic surgeon Dr. Stephen Fuller, psychologist Jack Davies, and psychiatrist Dr. David Glass.

Ms. Ammi did not consent to examination by a psychologist or a psychiatrist and she petitioned the board for a protective order. She argued that a psychological or psychiatric examination would be unreasonably invasive.[3] Thereafter, at Eagle Hardware's request, Dr. Fuller examined Ms. Ammi, reviewed her medical records, and provided a report concerning Ms. Ammi's condition.[4] Dr. Fuller's report expressed the opinion that psychiatric examination was necessary to fully evaluate Ms. Ammi.

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[1] AS 23.30.095(k).

[2] AS 23.30.095(e).

[3] Ms. Ammi initially contended that a psychological or psychiatric examination would not lead to relevant information because she had not put her mental condition at issue. She did not maintain that objection before the board, however. [Board Dec. at 14] Neither party contends before us that Ms. Ammi's mental condition is not at issue.

[4] The Board's decision states that "Eagle asked Dr. Fuller to examine and reevaluate the employee." [Board Dec. at 4] The prehearing conference notes, according to the decision, state "Employee has . . . attended the ortho/neuron portions of the EME . . . ." [*Id.* at 5]

The board conducted a hearing on Ms. Ammi's request for a protective order on July 19, 2005. Dr. Glass, relying on Dr. Fuller's report, testified regarding the nature of the mental disorders that could be involved, and the need for and nature of a psychiatric examination appropriate to this case.

By law, an employer's medical evaluation is limited to the existing diagnostic record, "unless medically appropriate."[5] In prior cases, the board has found diagnostic medical procedures medically appropriate when they are "reasonable, in light of all the relevant factors" and has expressed serious reservations about allowing an employer's physician to administer invasive medical diagnostic procedures.[6]

The board's decision in Ms. Ammi's case found that "a forensic psychiatric/psychological evaluation" conducted by an opposing party in the context of litigation "would be painful, intimidating, and objectionable to an average reasonable person." [Board Dec. at 11] It concluded, in light of the intrusive nature of the examination and the extensive medical record (including prior psychological records), that "it is premature to consider subjecting [Ms. Ammi] to a psychiatric/psychological evaluation," and that "the employer has non-intrusive procedures available . . . which should be at least attempted, if not exhausted, before subjecting [Ms. Ammi] to a forensic psychiatric evaluation." [Board Dec. at 14] The board issued an order (1) granting Ms. Ammi's request for a protective order, (2) permitting Eagle to "conduct a psychiatric records evaluation under AS 23.30.095(e)," and (3) ordering a "record [second independent medical examination] with [a neuropsychiatrist] under AS 23.30.110(g)." [Board Dec. at 17]

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[5] AS 23.30.095(e); 8 AAC 45.090(c).

[6] *See, e.g., Moffat v. Wire Communications, Inc.*, AWCB Interlocutory Dec. and Order No. 99-0034 (February 17, 1999).

Jurisdiction.[7]

Ms. Ammi argues that the commission lacks jurisdiction to hear interlocutory appeals from non-final decisions and orders based on AS 23.30.007(a), which states in part: "The commission has jurisdiction to hear appeals from final decisions and orders of the board under this chapter."

Whether AS 23.30.007(a) provides us with jurisdiction to hear appeals from interlocutory decisions and orders by the board, is an issue of statutory construction. We consider issues of statutory construction in the same manner as our courts:[8]

> The purpose of statutory construction is "to give effect to the intent of the legislature, with due regard for the meaning that the statutory language conveys to others." Statutory construction begins with the language of the statute construed in light of the purpose of its enactment. If the statute is unambiguous and expresses the legislature's intent, statutes will not be modified or extended by judicial construction. If we find a statute ambiguous, we apply a sliding scale of interpretation, where "the plainer the language, the more convincing contrary legislative history must be."

Eagle and the State argue, first, that the language used in AS 23.30 establishes that the legislative intent was to provide us with jurisdiction over interlocutory appeals from non-final decisions and orders. They rely on: (1) additional language in AS 23.30.007(a); (2) AS 23.30.008(a); and (3) AS 23.30.125(b). Their second argument is that a construction of AS 23.30 that would leave interlocutory appeals

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[7] This case was brought before the commission under 8 AAC 57.076. The regulation provides express authority for the commission to entertain interlocutory appeals. In this case, Ms. Ammi has not directly challenged the validity 8 AAC 57.076: her assertion is that under AS 23.30.007(a), the commission does not have jurisdiction. Because a tribunal always has jurisdiction to determine the scope of its own jurisdiction, and we clearly have authority to interpret AS 23.30.007(a), we will consider the jurisdictional argument asserted in this case. Because neither party raises the issue, we do not consider whether the regulation is valid. *See generally Libertarian Party of Alaska v. State, Alaska Public Offices Commission,* 101 P.3d 616 (Alaska 2004).

[8] *Tesoro Petroleum Corporation v. State,* 42 P.3d 531, 537 (Alaska 2002) (citations omitted).

within the jurisdiction of the superior court would be contrary to the legislature's intent to provide uniformity in workers' compensation appeals.

A. *Statutory language does not establish legislative intent to provide jurisdiction over non-final decisions and orders.*

In support of their argument that the legislative intent may be derived from the language of AS 23.30, Eagle and the State turn first to AS 23.30.007(A), which states in relevant part: "The commission has jurisdiction to hear appeals form final decisions and orders of the board under this chapter. Jurisdiction of the commission is limited to administrative appeals arising under this chapter." Eagle and the State argue that because an appeal from an interlocutory decision by the board is an administrative appeal, the second quoted sentence is a legislative grant of jurisdiction over non-final decisions and orders of the board.

Eagle and the State would read the second quoted sentence as expanding the express jurisdictional grant of the first sentence. But the second sentence expressly limits jurisdiction. The argument that it should be read to include non-final decisions and orders as within our jurisdiction is inconsistent with the general rule of statutory construction *expressio unius est exclusio alterius,* according to which a statute that expresses a particular mode of proceeding should be construed to exclude alternative modes.[9] It would be more consistent with that general rule (and with the word "limited") to read the second quoted sentence as limiting the jurisdictional grant in the immediately preceding sentence, rather than as expanding it. So read, the second sentence establishes that our jurisdiction over final decisions and orders is limited to final decisions and orders that are brought before us in the form of an administrative appeal under AS 23.30, such as under the express provisions of AS 23.30.125(c) or AS 23.30.127. We conclude that the second sentence limits the path by which final decisions and orders may be taken to us and does not expand the ground upon which our jurisdiction rests.

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[9] *See, e.g., Ranney v. Whitewater Engineering,* 122 P.3d 214, 218-19 (Alaska 2005); *Angnabook v. State,* 26 P. 3d 447, 454 (Alaska 2001).

Eagle and the State turn next to AS 23.30.008(a), which states that the commission has "authority for the hearing and determination of all questions of law and fact arising under this chapter in those matters that have been appealed to the commission." Eagle and the State argue that AS 23.30.008(a) is "[e]ven more persuasive" than AS 23.30.007(a). But AS 23.30.008(a) applies only to "those matters that have been appealed to the commission." Thus, it presupposes an appeal within our jurisdiction, for unless an appeal is within our jurisdiction, we cannot act on it at all. AS 23.30.008(a) does not provide us authority to determine an issue of law or fact relating to AS 23.30 that is raised in a case outside of our jurisdiction. AS 23.30.008(a) expresses the nature of our subject matter jurisdiction; it does not provide us with jurisdiction over particular cases.

Finally, Eagle and the State point to AS 23.30.125(b), which provides: "Not withstanding other provisions of law, a decision or order of the board is subject to review by the commission as provided in this chapter." They argue that this language modifies the language in AS 23.30.0087(a) providing for appeals from final decisions and orders.

AS 23.30.125(b) expressly states that the commission may review a decision or order "as provided in this chapter," that is, as provided in AS 23.30. AS 23.30.125(b) is not an independent grant of jurisdiction and does not specify any particular mode of review. It subordinates "other provisions of law" (provisions not within AS 23.30) to "this chapter" (provisions within AS 23.30). Thus, AS 23.30.125(b) provides that whether a particular case is "subject to review by the commission" is determined by reference to AS 23.30, not by any "other provisions of law." Because AS 23.30.125(b) does not subordinate AS 23.30.007(a) to any other provision within AS 23.30, it sheds no light on the scope of the jurisdiction provided in AS 23.30.007(a).

B. *Legislative intent to provide uniform and precedential review does not mandate our jurisdiction over non-final orders.*

Eagle and the State argue that an interpretation of AS 23.30 that would leave the superior court with jurisdiction over interlocutory appeals from the workers'

compensation board would be contrary to the legislature's intent to provide for a single, authoritative body to review board decisions and to give precedential effect to that body's decision.[10]

This argument has two flaws. First, as stated, the argument omits consideration of the specific language of the legislation in question, and as the Supreme Court has stated, statutory construction "begins with the language of the statute."[11] Second, the argument presumes that if interlocutory appeals are not within our jurisdiction, they are within the jurisdiction of the superior court rather than of the supreme court.

With respect to the first point, nowhere in AS 23.30 is there an express grant of jurisdiction for us to hear appeals from non-final decisions and orders. AS 23.30.008(a) and AS 23.30.125(b) are subject to AS 23.30.007(a) as the underlying grant of jurisdiction, and that statute, on its face, is an express grant of jurisdiction only with respect to final decisions and orders.

With respect to the second point, the superior court's jurisdiction to hear interlocutory administrative appeals is an adjunct of its jurisdiction to hear administrative appeals under AS 22.10.020(d). Only if the superior court has appellate jurisdiction in a particular administrative proceeding does it have authority to consider, by petition for review, an interlocutory order in that proceeding.[12] If AS 23.30.007(a),

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[10] Eagle and the State also invoke the rule of statutory construction *in pari materia.* [Joint Brief at 4] But the predicate for applying this rule is that there is an inconsistency in the statutes, such that it is impossible to give effect to all portions of the law. In this case, Eagle and the State do not point to any such inconsistency. Rather, they posit that as interpreted by Ms. Ammi, AS 23.30 provides two different procedures for two different types of appeal: non-final rulings to the superior court, and final rulings to the commission. That these are different paths does not make them "inconsistent" for purposes of the rule of statutory construction *in pari materia.* They are different, but compatible, paths for different situations.

[11] *Tesoro Petroleum Corporation v. State, supra,* n. 8.

[12] Alaska Rule of Appellate Procedure 610 ("An aggrieved party . . . may petition the superior court to review any order or decision . . . of an administrative agency in a proceeding in which the superior court has appellate jurisdiction."). *See generally Ostman v. State, Commercial Fisheries Entry Commission,* 678 P.2d 1323 (Alaska 1984).

in conjunction with AS 23.30.008(a), divests the superior court of appellate jurisdiction over proceedings before the board, the supreme court, not the superior court, would be the proper forum in which to seek appellate relief that is not available from us.[13] If the supreme court has jurisdiction, there is no risk of inconsistent or non-precedential decisions in appeals of interlocutory orders.

C. *We have implied jurisdiction to hear interlocutory appeals.*

Because the legislature did not expressly provide us with jurisdiction over non-final decisions and orders, if we have jurisdiction over non-final decisions and orders it must be implied. But that our jurisdiction to entertain appeals from non-final decisions and orders must be implied does not mean that it does not exist. Fundamentally, the question is whether it is consistent with legislative intent to read the express grant of jurisdiction in AS 23.30.007(a) to hear appeals of final decisions and orders as an implied grant of jurisdiction to review interlocutory decisions and orders. We conclude that it is, for the following reasons.

First, the Supreme Court has indicated that when a court has jurisdiction to hear an appeal from a final decision in a civil or criminal case, it may, in its discretion, review interlocutory orders in those cases.[14] Second, beyond providing for consistent and precedential review, the legislature also intended to provide for appeals before a body with expertise in workers' compensation matters, and to effectively substitute that body for the superior court as the first level of appeal in workers' compensation cases.[15]

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[13] Of course, the superior court has authority to provide relief otherwise than by appeal. *See, e.g.,* AS 23.30.005(h) ("the superior court . . . shall enforce the attendance and testimony of witnesses and the production and examination of books, paper, and records"); AS 44.62.305.

[14] *City and Borough of Juneau v. Thibodeau,* 595 P.2d 626 (Alaska 1979); *State v. Brower,* 486 P.2d 925 (Alaska 1971).

[15] *See* Governor's Transmittal Letter, 2005 Senate Journal at 465 (March 3, 2005) (Under proposed SB 130, "Appeals would be heard by a panel both knowledgeable in workers' compensation matters and available to produce consistent, legally precedential decisions in an expeditious manner."); Minutes of Senate Labor and Commerce, March 8, 2005 (testimony of Commissioner O'Clary: "In our bill we ask that

Because review of interlocutory orders or decisions by either the superior court or by the supreme court would be inconsistent with the latter legislative goals, the general principle *expressio unius est exclusio alterius* does not apply.[16] Third, as we recently noted in *Smith v. CSK Auto, Inc.,* No. 05-006 (AWCAC, January 27, 2006), AS 23.30.128(b) expressly provides that we may review "discretionary actions, findings of fact, and conclusions of law by the board in hearing, determining, or otherwise acting on a compensation claim or petition." This language, at the least, confirms our authority to review interlocutory orders in the context of an appeal from a final decision or order under AS 23.20.007(a). But given that authority, it is the timing of our review, not the availability of review that is at issue. AS 23.30.008(c) provides that the commission may adopt "regulations implementing the commission's authority . . . under this chapter, including rules of procedure . . . for proceedings before the commission." Given our authority under AS 23.30.128(b) to review an interlocutory order of the board, we have authority under AS 23.30.008(c) to establish procedures, not expressly precluded by AS 23.30.007(a), by which such orders may be heard.

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we do not use or put issues before the Superior Court on appeal.");- Minutes of Senate Labor and Commerce Committee, March 10, 2005 (testimony of Director Lisankie: "This provision is designed to bypass the Superior Court . . . It would actually take the first level of appeal, which right now is with the superior court, and replace it with the appeals commission."); Minutes of Senate Labor and Commerce Committee, March 24, 2005 (summarizing testimony of Director Lisankie: "[U]nder SB 130, the appeals commission would take the place of superior court") (emphasis added).

We have not been referred to, nor have we identified, any contrary legislative history regarding this aspect of SB 130, and "it is an accepted method of determining legislative intent to look at introductory executive messages." *Homer Electric Association v. City of Kenai,* 423 P.2d 285, 289 (Alaska 1967).

[16] *See Ellingstad v. State, Dep't of Natural Resources,* 979 P.2d 1000, 1006 (Alaska 1999). As previously stated, *supra* at 5, interpreting AS 23.30.007(a) on its face, we read a jurisdictional limitation, consistently with the general rule of statutory construction and the word "limited," as not constituting an expansion of our express jurisdiction. Here, considering the language of the statute in light of the legislative history, we address the distinct question whether an express grant of jurisdiction over final decisions and orders precludes jurisdiction over non-final decisions and orders.

We conclude that under AS 23.30.007(a), we have implied jurisdiction to review, prior to a final board decision and as provided by regulation non-final board decisions and orders.

Issue raised for review.

Did the board err in granting a protective order?

Grounds asserted for review.

Pursuant to 8 AAC 57.076(a), the commission will, in its discretion, grant a motion for extraordinary review when the sound policy favoring appeals from final decisions or orders is outweighed because (1) postponement of review will result in injustice and unnecessary delay, significant expense, or undue hardship; (2) immediate review may materially advance the ultimate termination of the litigation and the order involves an important question of law on which (A) there is a substantial ground for difference of opinion, or (B) board panels have issued differing opinions; (3) the board has so far departed from the accepted and usual course of proceedings or the requirements of due process as to call for the commission's power of review; or (4) the issue would otherwise likely evade review and immediate decision is needed for the guidance of the board. Eagle asserts that review is appropriate in light of subsections (1) and (2) (B); the State argues that subsection (3) applies.

A. *The petitioners have not established injustice and unnecessary delay, significant expense, or undue hardship.*

Eagle argues that the board's order has the effect of "severely limiting the defendants' discovery." [Pet. at 6] It argues this is an "impairment of a legal right."[17] Eagle asserts that the board's order will inevitably lead to a hearing on the merits at which the evidence will be inadequate, resulting in a need to reopen discovery such that "[t]he cost to the employer escalates . . . and the delay will measure in months, if not years."

[17] The reference to "impairment of a legal right" incorporates language contained in Appellate Rules 402 and 610 governing petitions for review to the supreme court and superior court, respectively, that was omitted from 8 AAC 57.076(a)(1).

The central requirement of 8 AAC 57.076(a)(1) is that the petitioner show an "injustice." A claim of legal error is inherent in any appeal; legal error, if it exists, generally will not result in injustice if the error is corrected on appeal. In this case, other than a claim of legal error, neither Eagle nor the State has identified any particular "injustice" that will accrue to them in the absence of immediate review: there is no assertion of prejudice in their ability to litigate the case, ongoing harm, or any other untoward effects. With respect to delay, expense, and hardship, Eagle assumes that the board will not order any further discovery in advance of the hearing, even though the board retained jurisdiction over the claim pending receipt of additional information, and the board's decision does not foreclose a mental examination that goes beyond a review of existing records.

B. *This panel's decision is not inconsistent with other panel decisions.*

Eagle asserts that the board's order in this case is inconsistent with board orders entered in two prior cases, *Lucore*[18] and *Tate.*[19] In those cases, Eagle asserts, the panels issued decisions that "affirmed the power of the board to order psychiatric IME's where the psychiatrist actually has the opportunity to observe and interview the examinee." [Motion at 8]

In *Lucore*, as in this case, the employee alleged a physical injury and did not put her mental condition at issue; employer's examining physician suspected that "psychological factors may be interfering in her recovery" and referred the employee to a psychiatrist, with whom the employer scheduled an employer medical examination under AS 23.30.095(e). As in this case, the employee argued that because she had not asserted a mental injury, and had not put her mental condition at issue, the psychiatric examination would not lead to relevant evidence. The board's designee rejected that argument and directed the employee to attend the examination, but limited the scope

[18] *Lucore v. State of Alaska,* AWCB Dec. No. 05-0249 (September 29, 2005); *reversed, Lucore v. State, Department of Health and Social Services,* No. 3 AN 05-12395 CI (Superior Court, December 21, 2005).

[19] *Tate v. Key Bank,* AWCB Dec. No. 04-0076 (April 8, 2004).

of the examination to the issue of malingering. The board, reviewing the designee's decision for an abuse of discretion, agreed that there was sufficient evidence to warrant a psychiatric examination, but reversed the decision to limit that examination to malingering, and ordered "a comprehensive and unrestricted psychiatric examination."

The panels in both *Lucore* and this case agree that when the employee's mental condition is at issue, a psychiatric examination may be ordered under AS 23.30.095(e). According to the *Lucore* decision, this principle has been "frequently" upheld in prior board decisions,[20] and nothing in the decision by the panel in this case undercuts that principle. But *Lucore* did not address whether a psychiatric examination is "invasive," because the parties did not raise that issue. Beyond the availability of a psychiatric examination, which was the only issue raised by the parties in *Lucore,* both *Lucore* and this case address the nature of the examination that will be allowed. But they do not look at that issue in the same light. *Lucore* concerns the scope and topic of the examination. This case concerns the method and manner of the examination. These are distinct issues, raising different legal and practical concerns. Because the *Lucore* decision does not address the same legal issues as have been raised in this case, it is not inconsistent with the panel decision in this case.

Tate is not at all on point. In *Tate,* the only issue raised before the board was whether the employer's physician had made a referral to a psychiatrist. The board ruled that a referral had been made, and ordered the employee to attend an examination. No issue was raised concerning the scope or nature of the examination.

The panel in this case considered the applicability of both *Lucore* and *Tate,* and found neither controlling with respect to the issues raised in this case. The panel observed that on the facts of this particular case, the need for a psychiatric or psychological examination, and any attendant diagnostic procedures, should be determined in light of a competent professional's review of the complete medical and

[20] The only case cited in support of that assertion, however, is a recent one, *Veal v. Fred Meyer of Alaska,* AWCB Dec. No. 04-0036 (February 11, 2004). *Lucore,* at 4. *See generally Reid v. Jacques,* 81 P.3d 981 (Alaska 2003); *Dingeman v. Dingeman,* 865 P.2d 94 (Alaska 1993).

psychological records. The panel characterized the issue raised in the case, concerning whether a psychiatric examination is invasive, as of first impression, and no case has been identified where that issue was raised and decided by another panel. We do not see that the panel's decision in this case presents an irreconcilable conflict with other panel decisions that warrants intervention in advance of a final decision.

C. *The petitioners have not established a violation of due process or a departure from the usual course of proceedings.*

The State argues that the panel's decision is a denial of due process of law and "contradicts established board precedent that if information sought by an employer appears relative to the employee's injury, the appropriate means to protect an employee's right to privacy is to exclude irrelevant evidence . . . rather than limit the employer's ability to discover that information." [Joinder at 1-2]

The State fails to cite any authority for the proposition that employers have a due process right to conduct unlimited psychiatric examinations, either in the workers' compensation arena or in the context of civil litigation.[21] Assuming there is such a right, the panel's order does not foreclose an examination by the employer's psychiatrist at a later time, and therefore this issue has been raised prematurely. As for the contention that this panel's order conflicts with prior decisions, the cases cited by the State are not on point: they concern the permissible scope of discovery of previously prepared medical records under AS 23.30.095(e).[22]

Conclusion.

We have considered the reasons presented in support of the motion for extraordinary review. We have determined that the sound policy favoring appeals from

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[21] *See* Alaska Rule of Civil Procedure 35(a) (order for mental examination in a civil case "shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made").

[22] The cases cited by the State are *Theoni v. Consumer Electronic,* AWCB Dec. No. 05-0244 (September 26, 2005); *Smith v. Cal Worthington Ford, Inc.,* AWCB Dec. No. 94-0091 (April 15, 1994); and *Cooper v. Boatel,* AWCB Dec. No. 87-0108 (May 4, 1987).

final decisions or orders is not outweighed in this case. The motion for extraordinary review is DENIED.

Date: February 21, 2006 ALASKA WORKERS' COMPENSATION APPEALS COMMISSION

Signed
John Giuchici, Appeals Commissioner

Not available for signature at time signed
Philip E. Ulmer, Appeals Commissioner

Signed
Andrew M. Hemenway, Chair *Pro Tempore*

APPEAL PROCEDURES

This is a final commission decision. It becomes effective when filed in the office of the commission unless proceedings to appeal it are instituted. Beginning November 7, 2005, proceedings to appeal this decision must be instituted in the Alaska Supreme Court within 30 days from the date this decision is filed and be brought by a party in interest against the commission and all other parties to the proceedings before the commission, as provided by the Alaska Rules of Appellate Procedure. AS 23.30.129.

If a request for reconsideration of this final decision is timely filed with the commission, any proceedings to appeal must be instituted within 30 days after the reconsideration decision is mailed to the parties, or, if the commission does not issue an order for reconsideration, within 60 days after the date this decision is mailed to the parties, whichever is earlier. AS 23.30.128(f).

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

A party may ask the commission to reconsider this decision by filing a motion for reconsideration in accordance with 8 AAC 57.230. The motion requesting reconsideration must be filed with the commission within 30 days after delivery or mailing of this decision.

CERTIFICATION

I hereby certify that the foregoing is a full, true and correct copy of the Final Decision and Order in the matter of Eagle Hardware/Movant and State of Alaska/Movant v. Maryann Ammi/Respondent, Appeal No. 05-004; dated and filed in the office of the Alaska Workers Compensation Appeals Commission this *21* day of February, 2006.

Signed
Andrew M. Hemenway, Chair *Pro Tempore*

I certify that a copy of the foregoing Final Decision in AWCAC Appeal No. 05-004 was mailed on *February 22, 2006* to Robert Griffin, Patricia Shake, the AWCB-Anc, and the Director of the Workers' Compensation Division at their addresses of record.

Signed *2-22-06*
Signature Date