

## Alaska Workers' Compensation Appeals Commission

Lowe's HIW, Inc., and Specialty Risk  
Services, Inc.,

Appellants,

vs.

Pamela G. Anderson,  
Appellee.

Memorandum Decision and Order

Decision No. 113 July 23, 2009

AWCAC Appeal No. 09-018

AWCB Decision No. 09-0097

AWCB Case No. 200305373

Motion for Stay of Alaska Workers' Compensation Board Decision and Order No. 09-0097, issued May 19, 2009, at Anchorage, Alaska by southcentral panel members Linda M. Cerro, Chair, Don Gray, Member for Industry, and Howard Hansen, Member for Labor.<sup>1</sup>

Appearances: Patricia Zobel, DeLisio, Moran, Geraghty & Zobel, for appellants Lowe's HIW, Inc., and Specialty Risk Services, Inc. Michael J. Jensen, Esq., for appellee Pamela G. Anderson.

Commission proceedings: Appeal, with Motion for Stay Pending Appeal, filed June 2, 2009. Hearing on motion for stay of board order pending appeal held June 23, 2009. Notice of proposed decision and order on motion for stay pending appeal issued June 26, 2009. Instruction to file briefs issued July 15, 2009.

Commissioners: David Richards, Stephen T. Hagedorn, Kristin Knudsen.

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

By: Kristin Knudsen, Chair.

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<sup>1</sup> Member Hansen, appointed to the at-large panel, sitting by assignment to the southcentral panel.

The appellants filed a timely request for a stay of Alaska Workers' Compensation Board Decision Number 09-0097.<sup>2</sup> The commission heard the motion for stay on June 23, 2009. At the end of the hearing, the commission requested the appellants to provide a statement of the calculation of amounts stayed in order to calculate a supersedeas bond amount, if required, and the appellee to list objections and alternative calculations, by Thursday, June 25, 2009. In response to the commission's request, the parties filed two documents: a calculation by the appellants showing a base bonded amount of \$343,678.81 including temporary disability compensation payable through October 17, 2009, and an alternate calculation by appellee including an additional \$102,000 (unallocated) for combined future permanent partial impairment (PPI) compensation, temporary total disability (TTD) compensation after October 17, 2009, and costs of future medical treatment.

The commission agreed to give the parties notice of its proposed decision in light of the anticipated absence of the commission chair. The commission's Notice of Proposed Decision was issued June 26, 2009. No objection was received to the proposed decision.<sup>3</sup> This memorandum decision is the final decision on the appellants' motion for stay. For reasons set out below, the commission granted the motion for stay in part and ordered the filing of a supersedeas bond in the amount of \$ 337,722.00.

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<sup>2</sup> *Pamela Anderson v. Lowe's Co., Inc.*, Alaska Workers' Comp. Bd. Dec. No. 09-0097 (May 19, 2009) (Linda Cerro, Chair; Don Gray, Member for Industry; Howard Hansen, Member for Labor). In hearing, the appellee challenged the timeliness of the motion, which was filed on June 2, 2009. The Board's decision was issued on May 19, 2009, and there is no evidence it was not mailed to the parties on the same day. The fourteenth day after May 19, 2009, is June 2, 2009. If the commission orders a stay *nunc pro tunc*, the stay is effective the day the stay is requested, but the requester risks owing penalty and interest on unpaid compensation and benefits that are not stayed. The commission prefers that stay requests be filed in time to hold a hearing with three days of notice on a motion for expedited consideration of the stay. However, the availability of parties does not always allow a hearing to be held on short notice, and the commission will not issue a stay of a board order without opportunity for the opposing party to be heard.

<sup>3</sup> The commission's Notice of Proposed Decision (June 26, 2009) contained a statement that "a party may object to this proposed decision by filing a motion in accordance with 8 AAC 57.210 within 10 days of this notice." *Id.* at 13.

*1. Factual background and board proceedings.*

The appellee was a kitchen designer for Lowe's HIW. She experienced low back pain when assisting a customer while lifting and rotating a 50-pound cabinet on April 4, 2003. She experienced low back pain on May 22, 2003, when reaching for a clip board. These are the only injuries that are the subject of her claim.

Appellee did not dispute that she had serious pre-existing degenerative disc disease, spinal stenosis, and myelopathy in her cervical spine, and severe degenerative disc disease and spondylosis in her lumbar spine before the 2003 injuries. She was also found to have degenerative osteoarthritis in her right hip. Thus, the question has always been whether the 2003 injuries so aggravated, accelerated, or combined with her pre-existing spinal disease as to be a substantial factor in bringing about the ensuing disability and need for medical treatment. The board's efforts to grapple with the contested issues arising from the well-documented injuries, and the parties' claim theories and defenses based on the mainstream of workers' compensation law, resulted in a decision that is 100 pages long.<sup>4</sup>

*2. Motion for stay before the commission.*

The appellants request that the board's order directing payment of a lump sum of PPI compensation, past TTD compensation, and past medical benefits related to neck surgeries be stayed.<sup>5</sup> The appellants also ask that the board's order directing payment of TTD compensation in the future be stayed, as well as all payment of medical benefits, past and future, related to the appellee's neck surgery. The appellants stated in hearing on the motion that they are willing to provide a supersedeas bond. In

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<sup>4</sup> *Pamela Anderson*, Bd. Dec. No. 09-0097.

<sup>5</sup> Appellants' motion for stay asks for a stay of "the lump sum of PPI ordered by the board, as well as a stay of periodic future payments of temporary total disability compensation and medical treatment costs related to the employee's contested cervical spine condition and chronic pain." Appellants' Mot. for Stay Pending Appeal 1. In the supporting Mem. in Support of Mot. for Stay, appellants ask for a stay of "past and future TTD compensation related to the c-spine condition, past and future medical treatment related to the c-spine condition, and PPI in a lump sum" and argue they met the test for "entry of a stay of all lump sum payments required by the Board's award." *Id.* at 7.

hearing, they requested the stay be issued *nunc pro tunc* to the day the appeal was filed.

The appellee objects to the requested stay. She argues that the appellants do not meet the test for a stay set out by this commission in *Peak Oilfield Serv. Co. v. Lindgren*.<sup>6</sup> The appellants, she argues, failed to demonstrate serious and substantial questions going to the merits of the board's decision on the PPI award, because they do not appeal the *amount* of the award. The appellee argues that the appellants fail to raise serious and substantial questions going to the question of entitlement to future TTD because they do not dispute the work-relationship of her chronic pain treatment to the lumbar spine injury. The appellee argues that the appellants have not raised serious and substantial questions on the merits of the award of medical benefits because no contrary evidence was introduced to dispute the reasonableness of the treatment. While appellee concedes that there was disputed evidence regarding the work-relationship of the cervical condition, she argues the appellants failed to establish that the future benefits related to that condition may not be stayed because the appellants failed to demonstrate irreparable harm and the likelihood, as appellee's counsel stated in hearing, of "success on appeal." Appellee argues that no stay should be ordered, although she concedes that she did not request the board to award a lump sum of PPI concurrent with TTD benefits for the same injury.

3. *Commission authority to stay board orders pending appeal.*

AS 23.30.125(c) permits the commission to stay enforcement of a compensation order pending the commission's final decision on appeal.<sup>7</sup> The commission may grant a

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<sup>6</sup> Alaska Workers' Comp. App. Comm'n Dec. No. 004 (Feb. 23, 2006).

<sup>7</sup> AS 23.30.125(c) provides:

If a compensation order is not in accordance with law or fact, the order may be suspended or set aside, in whole or in part, through proceedings in the commission brought by a party in interest against all other parties to the proceedings before the board. The payment of the amounts required by an award may not be stayed pending a final decision in the proceeding unless,

stay of payments required by a board order if the commission finds that the party seeking the stay is able to demonstrate the appellant “would otherwise suffer irreparable damage”<sup>8</sup> and that the appeal raises “questions going to the merits [of the board decision] so serious, substantial, difficult and doubtful, as to make them a fair ground for litigation and thus for more deliberate investigation.”<sup>9</sup> Continuing future periodic compensation payments may not be stayed unless the appellant can show both irreparable damage and “the existence of the probability of the merits of the appeal being decided adversely to the recipient of the compensation payments.”<sup>10</sup> The commission may take evidence and make findings of fact on motions for stay.<sup>11</sup>

4. *Request to stay payment of the lump sum of PPI payment concurrent with continuing TTD compensation and the lump sum of past owed TTD payments.*

The board directed appellants to pay TTD compensation from July 1, 2007, until the appellee “attains medical stability from her cervical surgeries, her chronic pain, and her chronic pain-related mood disorder” with interest at the statutory rate on any installments not paid as either PPI compensation or .041(k) benefits, with credit for

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upon application for a stay, the commission, on hearing, after not less than three days' notice to the parties in interest, allows the stay of payment, in whole or in part, where the party filing the application would otherwise suffer irreparable damage. Continuing future periodic compensation payments may not be stayed without a showing by the appellant of irreparable damage and the existence of the probability of the merits of the appeal being decided adversely to the recipient of the compensation payments. The order of the commission allowing a stay must contain a specific finding, based upon evidence submitted to the commission and identified by reference to the evidence, that irreparable damage would result to the party applying for a stay and specifying the nature of the damage.

<sup>8</sup> AS 23.30.125(c).

<sup>9</sup> *Olsen Logging Co. v. Lawson*, 832 P.2d 174, 176 (Alaska 1992) (quoting *A.J. Indus., Inc., v. Alaska Pub. Serv. Comm'n*, 470 P.2d 537, 540-541 (Alaska 1970) (footnotes omitted), *modified in other respects*, 483 P.2d 198 (Alaska 1971)).

<sup>10</sup> AS 23.30.125(c).

<sup>11</sup> AS 23.30.128(c).

payments previously made as PPI compensation or .041(k) benefits.<sup>12</sup> The board also directed payment of “the lump sum of \$60,180.00, representing a 34% permanent partial impairment for her lumbar spine condition and subsequent lumbar surgeries, pursuant to AS 23.30.190.”<sup>13</sup> These are lump sum payments.

When an appeal has been taken, the commission may grant a stay of board orders to pay lump sums upon a showing that the appellants face irreparable harm if the appellants obey the board’s order, but they succeed on appeal. Against the appellants’ asserted loss, the commission balances the possibility that the appellee will be a future recipient of compensation from which the appellants may recoup the compensation ordered,<sup>14</sup> the seriousness and difficulty of the questions raised on appeal, and the hardships faced by the parties. The harm to appellants is considered irreparable as a matter of law in workers’ compensation appeals when there is no prospect that the sum paid by the appellants pursuant to board order may be recovered from future compensation paid to the employee.<sup>15</sup> Therefore, the first question presented to the commission is: Does future payment of compensation payable to appellee based on undisputed liability exceed the disputed amount the board ordered appellants to pay as a lump sum?

The appellants contend that they did not contest coverage of a 2003 injury to the lumbar spine. They have paid compensation and benefits for it and they asserted in hearing before the commission that they will continue to do so. They did contest whether the appellee was medically stable from the 2003 injuries, and thus no longer entitled to TTD compensation, beginning in July 2007. They now appeal the order of the board holding that they must continue to pay TTD compensation concurrently with

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<sup>12</sup> Bd. Dec. No. 09-0097 at 98.

<sup>13</sup> *Id.*

<sup>14</sup> The Supreme Court, in *Croft v. Pan Alaska Trucking, Inc.*, 820 P.2d 1064 (Alaska 1991), interpreted AS 23.30.155(j) so as to make overpayments of benefits and compensation (including payments to the employee’s attorney) not recoverable except through deduction from future payments of compensation, if owed. *Id.* at 1067.

<sup>15</sup> *Id.* at 1066-67.

PPI compensation in a lump sum for the same injury, pointing to the inherent inconsistency of being both permanently disabled and temporarily disabled at the same time, and the requirement in AS 23.30.041(k) that PPI compensation be paid biweekly if the recipient is in a vocational reemployment plan. The appellants also contend that the board's analysis of the evidence on the cervical injury was flawed because the board required "absolute certainty" by the physicians giving opinions on the relationship between the work injuries and the need for surgery, thus requiring appellants to meet a standard that is not required in law. The appellants argue that, if the cervical spine surgeries had not been found to be work related, the appellee's condition would be presumptively medically stable. They point to errors of law in the board's analysis of medical stability, notably the board's assertion of a presumption of instability, a shifting of the burden of proof to the employer, and a disregard of AS 23.30.395(27). The appellants assert that they face irreparable harm if they pay, but are successful on appeal, because the appellee then will be owed no further benefits from which payment may be recouped as her reemployment plan will conclude in about six months.

The appellee characterizes the lumbar spine surgeries as a different injury than the "chronic pain syndrome," which she asserts she suffered as a result of surgical treatment for the lumbar spine.<sup>16</sup> She asserts there is no prohibition against her receiving the lump sum for PPI attributable to the lumbar spine surgeries while continuing to receive TTD compensation because her chronic pain syndrome and cervical injuries are not medically stable, because the two should be considered different injuries. There is no evidence, she asserts, that she is medically stable, so there is no substance to a challenge to the board's decision based on medical stability. As to the reemployment plan issue, she contends it is a voluntary plan, not an

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<sup>16</sup> In their Mot. for Stay Pending Appeal at 1, appellants request a stay of "medical treatment costs related to the employee's contested cervical spine condition and chronic pain," and in the Mem. in Support of Mot. for Stay at 7 they request stay of "future periodic payments of TTD benefits related to the employee's chronic pain syndrome and cervical spine condition and a stay of future medical treatment costs related to the cervical spine condition." In the hearing on the motion for stay, appellants agreed the chronic pain syndrome is a result of the lumbar surgeries.

“approved” plan under AS 23.30.041(j), so PPI need not be paid biweekly. Therefore, she contends, the appellants failed to raise serious and substantial issues going to the merits of the board’s decisions awarding her past owed TTD and an increase in PPI. The appellee also asserted that the appellants do not face irreparable harm because the appellee is likely to be found permanently and totally disabled, because it is unlikely that her plan will return her to work with her many impairments. Appellee withdrew this assertion because there was no evidence before the commission on this point and the board had not decided the issue.

The commission finds that the appellants do not dispute liability for about six months of reemployment stipend benefits under AS 23.30.041(k), (assuming the last semester begins in August and ends in December), at \$537.01/week or about \$13,962. The commission finds that the commission’s decision will probably be issued after this sum is paid. In addition, the appellants do not dispute liability for an additional amount of PPI compensation; however, since this amount would have been paid bi-weekly, the previous payment of reemployment stipend may result in an offset. The difference is about 12% of PPI, or \$21,240. Assuming for purposes of this decision that this lump sum would be payable on reaching a decision in this case, the PPI benefit would be, if the appellants are successful and no further stipend is owed, the only compensation due to the appellant from which to recoup the approximately 98 weeks of past TTD compensation (about \$60,144) less the credits allowed by the board [\$38,940 (prior PPI benefit paid) \$2,229.90 (2008 stipend), \$10,471 (approx. 2009 stipend)] plus interest. Since the past TTD compensation, even with credits subtracted, equals about \$10,500 before addition of interest, any payments remaining from the additional 12% PPI would be insufficient to repay the total lump sums of compensation paid under the board’s order.<sup>17</sup> The commission finds, based on a showing that, if appellants prevail on

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<sup>17</sup> Although the board allowed a credit for past biweekly payment of PPI compensation, the board did not diminish the obligation to pay the PPI benefit, but increased it. Thus, the lump sum amount to be recouped from any unpaid portion of the \$21,240 PPI benefit (assuming any is left) if the appellant is successful would be

appeal, the appellee is unlikely to have sufficient compensation owing to allow the appellants to recover the sums paid under the board's order, that the appellants face irreparable harm.

Although the appellee's counsel described the appellee as a single mother with a number of large unpaid medical bills and a prospective inability to return to the labor market given her numerous illnesses, the appellee presented no *evidence* that she is dependent on the lump sums for payment of her daily living expenses. Moreover, while the appellee's counsel suggested that appellee is permanently totally disabled and will be paid benefits for the rest of her life, that fact has not been established, nor has a claim for such benefits been filed, and appellee's counsel presented no evidence in support of his suggestion. The appellee's argument is also based on the commission upholding the award of compensation for the cervical surgeries and resulting disability.

The commission finds the appellee has been paid years of TTD compensation, PPI benefits, and reemployment stipend free of tax liability. She has not been penniless. The commission finds that the balance of hardships tips in favor of appellants as to the lump sums ordered by the board.

Next the commission determines if the appellants raise "questions going to the merits [of the board decision] so serious, substantial, difficult and doubtful, as to make them a fair ground for litigation and thus for more deliberate investigation." The commission finds that the appellants raise questions that go to the board's legal analysis, such as the assignment of the burden of proof, admission of evidence, and whether the board's rejection of certain physician reports was based on application of an improper standard instead of a considered weighing of the opinions.

For example, the board stated that "Dr. Blackwell's report fails to adequately or persuasively address the pertinent issue, and thus *fails to overcome the weight of evidence supporting our finding* the April 4, 2003 work injury aggravated Claimant's asymptomatic cervical spine stenosis to become symptomatic, causing pain . . . which

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about \$10,500 in TTD compensation, *plus* interest, *plus* TTD compensation equal to the previously paid PPI benefit of \$38,940.

never resolved, . . . such that, . . . she could no longer perform her job functions.”<sup>18</sup> The board here appears to assign the burden to prove and persuade to the physician (or the proponent of the physician’s opinion) instead of the claimant at the third stage of the presumption analysis. Alternatively, the board appears to have made a finding, and then required the physician’s opinion to dissuade the board from its finding, instead of weighing the opinions first and then making a finding. The commission finds that the appellants have raised serious and substantive questions going to the merits of the decision. The commission also finds that the board’s interpretation of the presumption concerning medical stability, in light of the commission’s decision in *Jones v. Frontier Flying Serv., Inc.*<sup>19</sup> is a “fair ground for litigation and thus for more deliberate investigation.”

Based on the foregoing findings, the commission concludes that the appellants are entitled to a stay of the board’s order directing payment of lump sums of past TTD and PPI benefits, together with interest applied to them.

For the same reasons, the commission stays payment of medical expenses related to the cervical surgeries, finding that medical expenses, which are paid to providers, cannot be recovered from the appellee, even from future compensation. The Alaska Workers’ Compensation Act provides no means of recovery of benefits paid *to medical providers* pursuant to an appealed order that is later overturned. If payments to medical providers are, like attorney fees, compensation within the meaning of AS 23.30.155(j), the amount of future compensation owed if the appellants prevail will not be sufficient to recoup the cost of the cervical surgeries. The appellee’s claim that she is “about to be referred for collection” of such bills should be referred to the Attorney General’s Consumer Protection Section, which pursues collection agencies that improperly attempt to collect payment of medical bills that are the subject of workers’ compensation claims.

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<sup>18</sup> Bd. Dec. No. 09-0097 at 89 (emphasis added).

<sup>19</sup> Alaska Workers’ Comp. App. Comm’n Dec. No. 018, 19-20 (Sept. 7, 2006).

The appellants did not explicitly request a stay of payment of the attorney fees and legal costs awarded, although they asserted that they met the test for “entry of a stay of all lump sum payments”<sup>20</sup> ordered by the board. The appellants presented no argument or evidence why attorney fees and costs should be stayed. The board awarded a lump sum of more than \$53,000 as an attorney fee, but the decision does not allocate the attorney fee to different issues decided by the board. The commission has no evidence on which to base a finding that divides the attorney fees attributable to the compensation and medical payments stayed from the fees attributable to the benefits the appellants conceded were due to the appellee before the hearing and benefits awarded but not now appealed. Therefore, the commission has no evidentiary basis for a stay.

The commission may not issue a stay in the absence of evidence to support a stay. While the ordered sum will overcompensate the appellee’s attorney if the appellants fully prevail on appeal, it is impossible on this record to allocate the portion of the order that may be stayed as attributable to other stayed payments (if the appellants’ memorandum is construed as a request for stay) and that which ought not to be stayed. Therefore, the commission does not stay the board’s order awarding attorney fees of \$53,101.50 and legal costs of \$7,187.36.<sup>21</sup>

*5. Request for stay of future payment of TTD compensation through the date of medical stability.*

AS 23.30.125(c) provides that compensation of future periodic payments of compensation may not be stayed absent a showing by an appellant of irreparable harm

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<sup>20</sup> Appellants’ Mem. in Support of Mot. for Stay, 7.

<sup>21</sup> The documents filed with the commission on Thursday, June 25, 2009, show the parties agree the value of past due benefits ordered, less attorney fees and future TTD to Oct. 17, 2009, is \$270,176.97. Appellee’s counsel estimates the value of future benefits at \$102,000 instead of \$13,501.84. One way of approaching this problem is to apply appellee’s counsel’s ratio of past benefits to future benefits [270177:102000 = 37.75%] to the attorney fee award, and stay all but 37.75% of the award. However, this approach does not take into consideration that portion of the fee awarded for work that secured benefits controverted but conceded before the hearing.

and the probability of the merits of the appeal being decided adversely to the recipient of the compensation payments.

The ongoing payments of TTD compensation ordered by the board are less than \$75 more than the undisputed payments of stipend benefits, anticipated by appellants to continue through December 2009. The commission's decision on appeal should be issued within a year of the appeal. Assuming the appellee remains temporarily totally disabled until the decision on appeal, the commission finds that the appellants face the possibility of paying approximately \$16,700 more than they concede they owe to the appellee in future periodic compensation. \$16,700 is less than the additional lump sum of PPI benefits (\$21,240) not contested by the appellants. If appellants prevail on appeal, the overpayment of TTD compensation may be recouped from the additional PPI lump sum the appellants ask the commission to stay. The commission finds that the appellants did not demonstrate the possibility of irreparable harm with regard to future periodic payments of compensation. The commission need not consider whether the appellants have demonstrated the probability of success on the merits of the appeal.

The board did not award periodic future payment of attorney fees.

The appellants do not dispute payment of on-going medical care for the sequelae of the lumbar spine surgeries. Therefore, future medical care for the sequelae of the lumbar spine surgeries, including treatment for chronic pain related to the lumbar spine surgeries, is not stayed.

*6. Bond on appeal.*

The commission requires the posting of a bond to assure that the appellee will have payment of the award, together with any interest thereon, in the event she prevails on appeal, but the employer or insurer is unable to pay the award promptly. The parties' calculations agree the total past-owed amount under the board's order is \$270,176.97. The appellants are a self-insured employer and its adjuster; the appellants shall therefore obtain a supersedeas bond in the amount of \$337,722, issued by an insurer licensed to issue such bonds in the State of Alaska, which is enforceable

in the courts of this state. A bond from the employer is not sufficient. The original signature must be filed with the commission clerk.

#### ORDER

1. Based on the foregoing findings of fact and the authority granted in AS 23.30.125(c), the commission STAYS, effective June 2, 2009,
  - A. Paragraph 1 of the board's order in *Pamela Anderson v. Lowe's Co., Inc.*, Alaska Workers' Comp. Bd. Dec. No. 09-0097, 98 (May 19, 2009), to the extent that the order requires payment of temporary total disability compensation from July 1, 2007, through May 19, 2009;
  - B. Paragraph 2 of the board's order in *Pamela Anderson v. Lowe's Co., Inc.*, Bd. Dec. No. 09-0097 at 98;
  - C. Paragraph 3 of the board's order in *Pamela Anderson v. Lowe's Co., Inc.*, Bd. Dec. No. 09-0097 at 98, to the extent it requires payment of medical expenses related to the appellee's cervical spine injuries and surgeries;
  - D. Paragraph 10 of the board's order in *Pamela Anderson v. Lowe's Co., Inc.*, Bd. Dec. No. 09-0097 at 99, including its subparagraphs;
  - E. Paragraph 13 of the board's order in *Pamela Anderson v. Lowe's Co., Inc.*, Bd. Dec. No. 09-0097 at 99, to the extent it relates to the cervical spine injuries and any sequelae thereto; and
  - F. Paragraph 14 of the board's order in *Pamela Anderson v. Lowe's Co., Inc.*, Bd. Dec. No. 09-0097 at 99.
2. The commission ORDERS that the stay is conditioned upon the appellant posting a supersedeas bond in the amount of \$337,722 within seven days of the commission's June 26, 2009, order.<sup>22</sup> Failure to post a bond acceptable to the commission clerk that satisfies the conditions set by the commission will result in dissolution of the stay.

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<sup>22</sup> The appellants posted a satisfactory bond on July 6, 2009. The seventh day after June 26, 2009, was a legal state holiday and the commission office was closed. Monday, July 6, 2009, was the first day that was not a Saturday, Sunday, or legal holiday. Therefore, the bond was filed on time.

3. Parties are reminded that a stay may be lifted on motion if a change in circumstances so warrants.

Date: 23 July 2009

ALASKA WORKERS' COMPENSATION APPEALS COMMISSION



*Signed*

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David W. Richards, Appeals Commissioner

*Signed*

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Stephen T. Hagedorn, Appeals Commissioner

*Signed*

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Kristin Knudsen, Chair

#### APPEAL PROCEDURES

This is a not a final decision on the merits of this appeal. The final written decision on appeal has not been issued. This is a final decision on the appellants' motion for a stay of enforcement of the board's order pending the commission's decision on the appeal of the board's decision. This is also an order to the parties staying enforcement of certain parts of the board's decision and order. Because this is not the final decision of the commission on an appeal of a final board order, the Supreme Court might not accept an appeal under AS 23.30.129.

Other forms of review are also available under the Alaska Rules of Appellate Procedure, including a petition for review or a petition for hearing under the Appellate Rules. If you believe grounds for review exist under Appellate Rule 402, you should file your petition for review within 10 days after the date this decision. You may wish to consider consulting with legal counsel before filing a petition for review or an appeal.

If you wish to appeal (or petition for review or hearing) to the Alaska Supreme Court, you should contact the Alaska Appellate Courts immediately:

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

#### RECONSIDERATION

This is a decision issued under AS 23.30.128(e), so reconsideration is available. A party may ask the appeals 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 appeals commission within 30 days after mailing of this decision.

A request for reconsideration must be filed within 30 days of the date of mailing of the decision. If a request for reconsideration of this final decision is timely filed with the commission, any proceedings to appeal, if appeal is available, 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.

CERTIFICATION

I certify that the foregoing is a full, true, and correct copy of Alaska Workers' Compensation Appeals Commission's Decision No. 113, the memorandum decision on a motion for stay pending the decision on the appeal of *Lowe's HIW, Inc., and Specialty Risk Services v. Pamela G. Anderson*, Appeal No. 09-018, dated and filed in the office of the Alaska Worker's Compensation Appeals Commission in Anchorage, Alaska, the 23rd day of July, 2009.

Signed  
L. Beard, Appeals Commission Clerk

CERTIFICATE OF DISTRIBUTION

I certify that on 7-23-09 a copy of this Memorandum Decision and Order No. 113 was mailed to: P. Zobel & M. Jensen at the addresses above and faxed to: P. Zobel, M. Jensen, AWCB Appeals Clerk, & the Director WCD.

Signed  
B. Ward, Deputy Appeals Commission Clerk