Alaska Workers' Compensation Appeals Commission

Linda J. Perry-Plake, Appellant, vs. State of Alaska, Department of Fish and Game, Appellee.	Final Decision Decision No. 166 August 6, 2012 AWCAC Appeal No. 11-010 AWCB Decision No. 11-0094 AWCB Case No. 199721907

Final decision on appeal from Alaska Workers' Compensation Board Final Decision and Order No. 11-0094, issued at Anchorage on July 1, 2011, by southcentral panel members Marie Y. Marx, Chair, Patricia A. Vollendorf, Member for Labor, and Robert C. Weel, Member for Industry.

Appearances: Linda J. Perry-Plake, self-represented appellant; Michael C. Geraghty, Attorney General, and Patricia A. Huna, Assistant Attorney General, for appellee, State of Alaska, Department of Fish and Game.

Commission proceedings: Appeal filed August 1, 2011; briefing completed February 29, 2012; oral argument held on June 5, 2012.

Commissioners: David W. Richards, Philip E. Ulmer, Laurence Keyes, Chair.

By: Laurence Keyes, Chair.

1. Introduction.

Appellant, Linda J. Perry-Plake (Perry-Plake), worked as a biologist for appellee, the State of Alaska, Department of Fish and Game (State).[1] She suffered work-related injuries on October 2, 1997, when she fell on her left side while walking up an icy ramp.[2] Perry-Plake filed a workers' compensation claim (WCC) that went to hearing

[1] *See Linda Perry-Plake v. State of Alaska, Dept. of Fish & Game*, Alaska Workers' Comp. Bd. Dec. No. 11-0094, 3 (July 1, 2011)(*Perry-Plake*).

[2] *See id*.

before the Alaska Workers' Compensation Board (board) on June 2, 2011.[3] The board granted her claim in part and denied it in part.[4] Perry-Plake appealed the board's denial of medical benefits for her neck, upper back, and upper extremity after January 1998[5] to the Workers' Compensation Appeals Commission (commission). The State did not cross-appeal. Consequently, this appeal is confined to consideration of the issue whether the board erred when it denied Perry-Plake's claim for ongoing medical benefits for her neck, upper back, and upper extremity. We affirm.

2. Factual background and proceedings.

Perry-Plake had a history of back, shoulder, and upper extremity problems prior to suffering injuries when she fell on the job. Between November 16, 1995, and October 2, 1997, Dr. Vickie Nelson-Willis treated Perry-Plake intermittently for ongoing pain complaints related to her upper and lower back, hip, and shoulders.[6] Perry-Plake was treated by Dr. Nelson-Willis following her fall at work on October 2, 1997, for back, neck, and hip pain.[7] Dr. Nelson-Willis diagnosed acute traumatic sprain/strain of the

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[3] *See Perry-Plake*, Bd. Dec. No. 11-0094 at 1.

[4] *See id*. at 27. The board granted Perry–Plake medical benefits and related transportation costs for her low back; granted Perry-Plake benefits for continuing medical treatment and related transportation costs for her depression; and granted her claim for interest. The board denied Perry-Plake benefits for ongoing medical treatment and related medical costs for her neck, upper back, and upper extremity; and denied her request for an order finding the State's controversions unfair or frivolous.

[5] At oral argument before the commission, the State pointed out that it paid benefits in the form of medical treatment for Perry-Plake's neck, etc., until controverting those benefits in September 2006. Exc. 328.

[6] Exc. 264-76. Perry-Plake argues the board incorrectly stated that she suffered cervical symptoms after a fall down some stairs at home in June 1992. Appellant's Br. 10-11. *See Perry-Plake*, Bd. Dec. No. 11-0094 at 2. She asserts that the medical record supports only that her left knee was injured in that fall, Exc. 217-19, and that an unsigned note on a separate page following those records does not concern the 1992 fall. Exc. 220. Nevertheless, even if the board misstated the facts in the 1992 fall, it relied on other evidence in deciding that her cervical symptoms had resolved by the beginning of 1998. *See* n.53, *infra*.

[7] Exc. 029, 032.

right sacroiliac joint, associated with subluxation, myofacitis of the right sacroiliac, lumbar/sacral, and cervical/dorsal spine.[8] Her treatment of Perry-Plake consisted of physical therapy, massage therapy, chiropractic manipulation, and electrical stimulation, as often as one-to-three times a week, over the next five years.[9]

Because she spent considerable time in both Glennallen and Anchorage,[10] Perry-Plake treated with Dr. Nelson-Willis in Glennallen, primarily for her back, neck, and

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[8] Exc. 032. Perry-Plake argues that the board omitted the diagnosis of the cervical spine from its factual findings and thus "proceeded from a completely erroneous position in [its] evaluation of the Employee's claim for treatment costs related to her cervical injury." Appellant's Br. 11-12. We disagree. The board did not decide that the 1997 fall did not injure Perry-Plake's neck; instead, it concluded that Perry-Plake was not entitled to further medical benefits for the cervical spine after January 1998 because any cervical complaints related to the work injury had resolved as of that date. *See Perry-Plake,* Bd. Dec. No. 11-0094 at 22.

[9] Exc. 033-38, 099-107, 120-30, 135-62, 169, 172-80, 185-91, 193-203, 205-14. Perry-Plake argues the board's description of her treatment with Dr. Nelson-Willis was "excessive," because there were times she could not miss work and because of regular seasonal absences from Glennallen. Appellant's Br. 12-13. While the board might have overstated the frequency of her treatment sessions with Dr. Nelson-Willis in its factual findings, any such error is not relevant to its decision to deny medical benefits for her neck, upper back, and upper extremities after January 1998. *See Bolieu v. Our Lady of Compassion Care Ctr.*, 983 P.2d 1270, 1275 (Alaska 1999) (requiring the board to make findings of fact only on issues that are both material and contested).

[10] Perry-Plake argues the board incorrectly stated that she moved between Anchorage and Glennallen "for work," when, in fact, her only work was for Fish and Game in Glennallen and was seasonal. Appellant's Br. 12. Any misstatement by the board in this regard was not material to its denial of medical benefits and so any error would be harmless. *See Bolieu*, 983 P.2d at 1275.

shoulder, and also was treated by Tim Kanady, D.C., when in Anchorage, in 1998.[11] His treatment addressed complaints related to her cervical and lumbar spine.[12] On August 6, 1998, Perry-Plake reported to a provider that her right shoulder and arm got numb at night,[13] and on January 4, 1999, reported tingling in her left shoulder and hand.[14]

On December 12, 2000, Perry-Plake saw orthopedic surgeon Davis C. Peterson, M.D., of Anchorage Fracture and Orthopedic Clinic, who had performed surgery on her lower back in October 1998. Perry-Plake reported she had neck and left arm pain since her fall in October 1997.[15] The following day, an MRI study of Perry-Plake's cervical spine was performed and showed protrusions at C4-5 and C6-7 and a small protrusion at T2-3.[16] Having reviewed the MRI, Dr. Peterson diagnosed cervical spondylosis.[17] On April 10, 2003, Shawn P. Johnston, M.D., performed an electrodiagnostic study of Perry-Plake's left arm, which showed no evidence of radiculopathy.[18]

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[11] Perry-Plake argues that the board erroneously stated that Dr. Kanady treated her from 1998 to 2000, when she only saw him in 1998. Appellant's Br. 13. Again, although the board might have more carefully summarized the facts in the record, any such error by the board regarding Dr. Kanady's treatment dates was harmless. *See Bolieu*, 983 P.2d at 1275. Moreover, her argument that the board should have acknowledged that she expected the April 1998 magnetic resonance imaging (MRI) to include the lumbar and cervical spine but her doctor ordered the MRI only of the lumbar spine is not relevant to the question whether her 1997 work-related injury was a substantial factor in her need for medical treatment for her neck, back, and upper extremities after January 1998. Lastly, she asserts the board's findings left out discussion of a cervical nerve root block that she had in connection with the MRI. Appellant's Br. 14, Exc. 166-67. Again, this fact was not essential to the board's decision and so the board was not required to include it in its factual findings.

[12] Exc. 046-93, 097-98.

[13] Exc. 108.

[14] Exc. 114.

[15] Exc. 163-64.

[16] Exc. 165.

[17] Exc. 168.

[18] Exc. 297.

Perry-Plake continued to experience neck and left arm pain in 2003 and 2004.[19] Further diagnostic testing in April 2006 revealed degenerative cervical and lumbar changes.[20] On August 5, 2006, physiatrist and psychologist James P. Robinson, M.D., and chiropractic orthopedist and neurologist Scot G. Fechtel, D.C., M.D., performed an employer medical evaluation (EME). Among their relevant diagnoses were: 1) a history of cervical strain/sprain related to the fall in October 1997, which resolved in early 1998; 2) cervical spondylosis, degenerative in nature, and unrelated to the October 1997 fall; and 3) probable cervicogenic headaches related to neck pain, but unrelated to the fall.[21] They concluded that, with respect to Perry-Plake's neck, any further treatment was not causally related to the 1997 injury, and that she had reached "maximal benefit" from chiropractic treatment.[22] On September 25, 2006, on the basis of Drs. Robinson and Fechtel's EME report, the State controverted, *inter alia*, medical treatment for Perry-Plake's neck.[23]

Perry-Plake filed a WCC dated October 29, 2008.[24] In an Answer dated November 20, 2008, the State denied that Perry-Plake was owed medical benefits for her cervical spine, again based on Drs. Robinson and Fechtel's EME report.[25] Dr. Johnston saw Perry-Plake on February 23, 2009, and in a chart note indicated that the October 1997 fall was "a substantial component" of her ongoing neck pain, for which she had no prior treatment.[26] In another chart note dated May 4, 2009, Dr. Johnston acknowledged that Perry-Plake had neck symptoms after an earlier fall down the stairs that had resolved by the time she fell on October 2, 1997. He stated:

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19 R. 0980, R. 1021, R. 1043, R. 1051.

20 R. 1854-55.

21 Exc. 320-21.

22 Exc. 322-23.

23 Exc. 328.

24 Exc. 331-32.

25 Exc. 333-35.

26 Exc. 337.

> [I]t truly is difficult to know how much of her symptoms are from the underlying degenerative changes and how much are as a result of the [work-related] fall down the ramp . . . .
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> . . . .
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> . . . It seems that given the fact that she did have a fall on the ramp and she has had intermittent cervical symptoms since, that she likely had some degree of aggravation of her underlying degenerative changes.[27]

On June 11, 2010, the State controverted all benefits related to Perry-Plake's cervical condition, again, based on the report of Drs. Fechtel and Robinson.[28] Physiatrist Alan C. Roth, M.D., saw Perry-Plake on September 16, 2010, for a second independent medical evaluation (SIME).[29] He diagnosed cervical degenerative disc and spine disease;[30] however, it was Dr. Roth's opinion that Perry-Plake's neck, upper extremity, and upper back complaints were unrelated to her fall at work.[31] Of particular significance to Dr. Roth was that there was no notation in her extensive chiropractic records, in the three years following her work-related fall, "of neck or upper back pain or radiating discomfort from the neck[.]"[32]

Following the hearing on June 2, 2011, the board ruled that Perry-Plake was not entitled to continuing medical benefits for her neck, upper back, and upper extremity.[33] It is this ruling that Perry-Plake challenges on appeal.

3. Standard of review.

The board's findings regarding the credibility of testimony of a witness are binding on the commission.[34] As distinguished from the board's credibility findings, "[a]

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27 Exc. 338.

28 Exc. 339.

29 Exc. 341-59.

30 Exc. 354.

31 Exc. 356.

32 Exc. 355.

33 *See Perry-Plake*, Bd. Dec. No. 11-0094 at 20-23.

finding by the board concerning the weight to be accorded a witness's testimony, including medical testimony and reports, is conclusive . . . ."[35] Otherwise, the commission is to uphold the board's findings of fact if they are supported by substantial evidence in light of the record as a whole.[36] "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[37] "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."[38] The commission exercises its independent judgment in reviewing questions of law or procedure.[39]

4. Discussion.

With respect to Perry-Plake's neck, upper back, and upper extremity problems/complaints, it is incumbent on the commission to review the board's application of the presumption of compensability analysis. We do so mindful of the

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[34] *See* AS 23.30.128(b). *See also* AS 23.30.122, which states in part: "The board has the sole power to determine the credibility of a witness."

[35] AS 23.30.122. That statute also provides: "The findings of the board are subject to the same standard of review as a jury's finding in a civil action." A jury's finding in a civil action can be overturned only if "the evidence, when viewed in the light most favorable to the non-moving party [on a motion for judgment notwithstanding the verdict], is such that reasonable men could not differ in their judgment." *Alaska Children's Services, Inc. v. Smart*, 677 P.2d 899, 901 (Alaska 1984) (quoting *Holiday Inns of America v. Peck*, 520 P.2d 87, 92 (Alaska 1974)).

[36] *See* AS 23.30.128(b). *See also Rockstad v. Chugach Eareckson Support Services, et al.*, Alaska Workers' Comp. App. Comm'n Dec. No. 140, 26 n.194 (Nov. 5, 2010) which discusses the statutory standards of review of board factual findings. The commission decided that generally, it would apply the substantial evidence standard.

[37] *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)).

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

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

limitations placed upon the commission by AS 23.30.122 as far as the board's weight findings are concerned.

a. Applicable law.

The presumption of compensability applies to every element of a factual determination relative to a workers' compensation claim.[40] Under AS 23.30.120(a)(1),[41] benefits sought by an injured worker are presumed to be compensable.[42] To attach the presumption of compensability, an employee must first establish a "preliminary link" between his or her continuing need for treatment and the employment.[43] If the employee establishes this preliminary link, the presumption may be overcome if the employer presents substantial evidence that the continuing need for treatment is not work-related.[44] Because the board considers the employer's evidence by itself and does not weigh the employee's evidence against the employer's rebuttal evidence, credibility of the parties and witnesses is not examined at this point.[45] If the board finds that the employer's evidence is sufficient, then the presumption of compensability drops out and the employee must prove his or her case by a preponderance of the evidence.[46] This means that the employee must "induce a belief" in the minds of the board members that the facts being asserted are probably true.[47] At this point, the board weighs the

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[40] *See Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 861 (Alaska 2010).

[41] AS 23.30.120(a)(1) provides that "[i]n a proceeding for enforcement of a claim for compensation . . . it is presumed, in the absence of substantial evidence to the contrary, (1) that the claim comes within the provisions of [AS 23.30.]"

[42] *See, e.g., Meek v. Unocal Corp.*, 914 P.2d 1276, 1279 (Alaska 1996).

[43] *See, e.g., Tolbert v. Alascom, Inc.*, 973 P.2d 603, 610 (Alaska 1999).

[44] *See Tolbert*, 973 P.2d at 611 (explaining that to rebut the presumption "an employer must present substantial evidence that either '(1) provides an alternative explanation which, if accepted, would *exclude* work-related factors as a substantial cause of the disability; or (2) directly eliminates *any reasonable possibility* that employment was a factor in causing the disability.'") (italics in original, footnote omitted); *Miller v. ITT Arctic Services*, 577 P.2d 1044, 1046 (Alaska 1978).

[45] *See, e.g., Veco, Inc. v. Wolfer*, 693 P.2d 865, 869-870 (Alaska 1985).

[46] *See Miller*, 577 P.2d at 1046.

[47] *See Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964).

evidence, determines what inferences to draw from the evidence, and considers the question of credibility.

b. Did the board correctly apply the presumption of compensability analysis to Perry-Plake's claim for benefits related to her neck, upper back, and upper extremity?

The board found that Perry-Plake satisfied the first step in the presumption of compensability analysis. Specifically, she established the preliminary link between employment and injury to her neck, upper back, and upper extremity through the report of Dr. Johnston.[48] We agree. Second, the board found that the State had successfully rebutted the presumption through the reports of Drs. Robinson and Fechtel, and Roth.[49] Considered in isolation and without regard to credibility, in the board's view, those reports provided substantial evidence to overcome the presumption "because they unequivocally rule out the work injury as a cause of [Perry-Plake's]

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[48] *See Perry-Plake*, Bd. Dec. No. 11-0094 at 20.

[49] *See id*.

current neck, upper back and upper extremity complaints and symptoms."[50] Again, we agree with the board.[51]

It is the third step in the presumption analysis that is the central issue and primary focus of the parties' arguments on appeal. Perry-Plake contends that the board erred in concluding that she had not proved entitlement to ongoing benefits in the form of medical treatment for her neck, etc., by a preponderance of the evidence.[52] In this respect, the board found:

> Drs. Robinson and Fechtel's report is the most persuasive evidence with regard to [Perry-Plake's] neck, upper back and upper extremity conditions and symptoms. They opined because there are essentially no entries in the medical record supporting a cervical and upper extremity condition between January 1998 and June 1999, [Perry-Plake's] cervical and upper extremity symptoms were resolved by the beginning of 1998. Consequently, they opine treatment after the beginning of 1998 is not work-related.[53]

The board also observed:

> Although [Perry-Plake] contended at hearing her pain pre-injury consisted of aches while her pain post-injury consisted of sharp, stabbing pain, such a distinction is not reflected in the applicable medical records, specifically when comparing her pre-injury treatment with medical records for the period between January 1998 and June 1999. [Perry-Plake] also

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[50] *Perry-Plake*, Bd. Dec. No. 11-0094 at 20. The principle is well-settled that the presumption can be rebutted by presentation of a qualified expert's opinion that the employee's work was probably not a substantial cause of the need for medical treatment. *See Robinson v. Municipality of Anchorage*, 69 P.3d 489, 494-95 (Alaska 2003) (citing *Big K Grocery v. Gibson*, 836 P.2d 941, 942 (Alaska 1992)).

[51] Perry-Plake argues that Dr. Roth's report is insufficient to rebut the presumption because the board later assigns less weight to his report because he relies on an inaccurate fact, that the employee was not treated for neck and upper back problems within three years after the work injury. Appellant's Br. 14. Her argument has no merit because at the rebuttal stage, the board assumes the reports are true, and asks whether they exclude work-related causes as a substantial factor in Perry-Plake's need for treatment after January 1998. In addition, even if Dr. Roth's report is not considered, the board could have concluded that Drs. Fechtel and Robinson's report by itself was sufficient to rebut the presumption.

[52] *See Perry-Plake*, Bd. Dec. No. 11-0094 at 21.

[53] *Perry-Plake*, Bd. Dec. No. 11-0094 at 22; Exc. 299-324.

> disagreed with numerous statements and conclusions in Drs. Robinson and Fechtel's report, contended the [EME] physicians did not conduct a careful review of the records, and argued the report should consequently be given less weight. However, the record supports Drs. Robinson and Fechtel did carefully review the records as reflected in the 13-page "Chart Review" section of their report. Their opinion regarding the compensability of [Perry-Plake's] neck, upper back and upper extremity complaints and symptoms is the strongest evidence regarding such complaints and symptoms.[54]

First, we note that the board found the report of Drs. Robinson and Fechtel to be the "most persuasive" and the "strongest" evidence on the issue of entitlement to benefits for ongoing medical treatment for Perry-Plake's neck, etc., and it rejected her argument that it "should be given less weight." In other words, the board gave more weight to their evidence. The commission is constrained by law to defer to the board concerning its weight findings.[55] When we view the evidence in the light most favorable to the State,[56] the commission concludes that the board exercised reasoned judgment in giving more weight to the report of Drs. Robinson and Fechtel, and less weight to the opinion of Dr. Johnston.

Second, especially given the board's underlying findings regarding the weight to be accorded the evidence, the question becomes: Was there substantial evidence in support of the board's conclusion that Perry-Plake had not proved by a preponderance of the evidence that she was entitled to ongoing medical benefits for her neck, upper back, and upper extremity? This is a legal question to which the commission exercises its independent judgment. Again, substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

The report of Drs. Robinson and Fechtel is certainly relevant evidence on the issue of entitlement to ongoing medical benefits. It is axiomatic that, for ongoing medical treatment to be compensable, there must be a nexus between the work-related injury and the need for that treatment. Perry-Plake argues that a work-related fall

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54 *Perry-Plake*, Bd. Dec. No. 11-0094 at 22.

55 *See* AS 23.30.122.

56 *See* n.35, *supra*.

could have exacerbated a preexisting condition such that the fall is a substantial factor in the need for ongoing treatment.[57] But Drs. Robinson and Fechtel provided evidence in the form of their opinion that such a connection no longer existed after January 1998. Furthermore, the report furnished a reasonable basis for concluding that Perry-Plake returned to pre-injury status in 1998, thus making any medical treatment for her neck after that non-compensable. As the board pointed out, Drs. Fechtel and Robinson conducted a thorough review of Perry-Plake's medical records and concluded that, in terms of her neck complaints, she had returned to pre-injury status. Although Perry-Plake continued to complain of neck pain and got treatment for it, they attributed the neck pain and need for further treatment to degenerative changes that would have happened even if the work-related fall had not occurred. The board has the sole power to determine "the weight to be accorded . . . medical . . . reports . . . even if the evidence is conflicting or susceptible to contrary conclusions."[58] Thus, the commission cannot overturn the board's assignment of the weight to be accorded Drs. Robinson and Fechtel's report.[59]

Finally, at oral argument before the commission, Perry-Plake maintained that initially, the emphasis of the medical treatment after the work-related fall was on her lower back, not her neck. Once she had the back surgery in October 1998, according to her, the emphasis shifted to her neck. While that may have been the case, it does not alter the fact that she had underlying degenerative changes to her neck, which, even according to Dr. Johnston, one of Perry-Plake's treating medical providers, made it difficult to determine whether her ongoing neck pain resulted from the work-related fall. In these circumstances, we are reluctant to overturn the board's finding that

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[57] Appellant's Br. 16, 18.

[58] AS 23.30.122.

[59] Moreover, their report cannot be discredited as biased against the employee simply because the employer requested and paid for the examination as Perry-Plake argues. Reply Br. 6. *See Moore v. Afognak Native Corp.*, Alaska Workers' Comp. App. Comm'n Dec. No. 087, 12-14 (Aug. 25, 2008) (concluding the board could not infer bias simply from the fact that a doctor was retained by the employer to do an evaluation).

Drs. Robinson and Fechtel provided the most persuasive *evidence* that the work injury was not a substantial factor in causing the need for ongoing medical treatment beyond a temporary aggravation.

5. Conclusion.

For the reasons stated, the commission AFFIRMS the board's decision denying ongoing medical benefits after January 1998 for treatment of Perry-Plake's neck, upper back, and upper extremity.

Date: *6 August 2012* ALASKA WORKERS' COMPENSATION APPEALS COMMISSION

Signed
David W. Richards, Appeals Commissioner

Signed
Philip E. Ulmer, 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).[60] For the date of distribution, see the box below.

[60] 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.

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 decision is distributed[61] 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 changes made in formatting for publication, this is a full and correct copy of the Final Decision No. 165 issued in the matter of *Linda J. Perry-Plake v. State of Alaska, Department of Fish and Game*, AWCAC Appeal No. 11-010, and distributed by the office of the Alaska Workers' Compensation Appeals Commission in Anchorage, Alaska, on August 6, 2012.

Date: *August 7, 2012*

Signed
B. Ward, Appeals Commission Clerk

[61] *See id*.