

**Case:** *Teresa Gauthier, d/b/a St. Mary's Assisted Living Home vs. State of Alaska, Division of Workers' Compensation, Alaska Workers' Comp. App. Comm'n Dec. No. 052 (August 24, 2007)*

**Facts:** Gauthier wanted the commission to accept her late-filed appeal. The board had determined that Gauthier failed to secure workers' compensation insurance for her employees for part of 2005 and 2006, and assessed a civil penalty against her. The board decision was issued March 21, 2007. The appeal deadline was April 20, 2007, but she filed an appeal on May 23, 2007. The state's opposition to her motion to accept a late-filed appeal was filed one day late because the office assistant mailed the opposition the day it was due, rather than faxing it, and thus, the commission did not receive it by the deadline. The State faxed its opposition immediately after it was made aware that the opposition had not been timely filed.

Gauthier argued that .127(a) was unconstitutional because it does not require notice to the parties and filing with the board is insufficient notice to the parties. She also argues that she did not receive notice of the decision. In addition, she asserts that because the State's opposition was filed late, it was only fair to excuse her late-filed appeal, too.

**Applicable law:** AS 23.30.127(a) provides that "A party in interest may appeal a compensation order issued by the board to the commission within 30 days after the compensation order is filed with the office of the board under AS 23.30.110."

AS 23.30.110(e): "The order rejecting the claim or making the award, referred to in this chapter as a compensation order, shall be filed in the office of the board, and a copy of it shall be sent by registered mail to the claimant and to the employer at the last known address of each."

On excusing a late-filed appeal, the commission stated: "We believe the exercise of any implied equitable authority should be limited to cases where the appellant was prevented by filing on time under circumstances recognized by the courts as allowing administrative agencies to exercise equitable powers in like cases." *Berean v. Coleman Bros. Timber Cutting, Inc.*, Alaska Workers' Comp. App. Comm'n Dec. No. 051, 5 (August 2, 2007).

On excusing the late-filed opposition, 8 AAC 57.270 allows the commission to alter time periods that differ from the time periods established otherwise by regulation where "(1) strict adherence to time periods . . . would work injustice; and (2) the change would assist in facilitating the business of the commission or advance the prompt, fair, and just disposition of appeals."

**Issues:** Is AS 23.30.127(a) unconstitutional? Does AS 23.30.127(a) provide for notice to the parties of the decision? Did Gauthier have notice of the board's decision? Should Gauthier's late filing of an appeal be excused for good cause? Should the State's late filing of its opposition to the request to accept the late-filed appeal be excused for good cause?

**Holding/analysis:** The commission does not have jurisdiction to decide constitutional questions, but the commission interprets the statute as requiring notice, thus avoiding

the constitutional issue. "We believe the reference to AS 23.30.110 in AS 23.30.127(a) incorporates the condition that the board mails the decision to the appellant when the board decision is filed in the office of the board." Dec. No. 052 at 4.

The commission concluded that Gauthier had notice. Although she denied receiving notice, she never filed an affidavit or any other evidence to support that she did not receive notice. The decision was mailed to the parties at their addresses of record and this is sufficient as a matter of law to establish that she had notice.

On excusing the late appeal: "Gauthier has not presented any *evidence* that would support exercise of implied equitable authority in her favor. She promised to deliver an affidavit in support of her claims in her motion, but did not do so in the two months that have followed the filing of her motion. She does not assert that she was *prevented* from filing an appeal, let alone such circumstances that the court has approved as allowing an administrative agency to extend a statutory appeal period." *Id.* at 5-6.

Lastly, the commission exercised its discretion under 8 AAC 57.270 to allow the State's opposition to be filed one day late. "We find that the one day delay in filing the opposition to Gauthier's late motion to allow her to file an appeal 33 days late is so minimal that Gauthier was not prejudiced; that service of the opposition was made on time to Gauthier; that the delay was inadvertent; and, that it was quickly corrected." *Id.* at 6.