

# Alaska Workers' Compensation Appeals Commission

Rickie D. Foreman,  
Appellant,

vs.

Northstar Construction Management and  
Cincinnati Insurance Company,  
Appellees.

Final Decision

Decision No. 315

May 21, 2026

AWCAC Appeal No. 25-004  
AWCB Decision No. 25-0041  
AWCB Case No. 202406218

Final decision on appeal from Alaska Workers' Compensation Board Final Decision and Order No. 24-0041 issued at Fairbanks, Alaska, on July 11, 2025, by northern panel members William Soule, Chair; John Corbett, Member for Labor; and Sarah Lefebvre, Member for Industry.

Appearances: Rickie D. Foreman, self-represented appellant; Brian S. Weinstock, Law Offices of BSW, LLC, pro hac vice, and Krista M. Schwarting, Griffin & Smith, for appellees, Northstar Construction Management and Cincinnati Insurance Company.

Commission proceedings: Appeal filed July 25, 2025; briefing completed January 5, 2026; oral argument held February 27, 2026.

Commissioners: Nancy Shaw, S. T. Hagedorn, Andrew M. Hemenway, Chair.

By: Andrew M. Hemenway, Chair.

## *1. Introduction.*

Appellant, Rickie D. Foreman, alleges he was injured while employed by Northstar Construction Management, which is insured by Cincinnati Insurance Company (Northstar). Mr. Foreman filed workers' compensation claims in both Alaska and Missouri.

The Alaska Workers' Compensation Board (Board) issued a decision dismissing Mr. Foreman's Alaska workers' compensation claim under the doctrine of *forum non*

*conveniens*.<sup>1</sup> Mr. Foreman timely appealed the Board's decision to the Alaska Workers' Compensation Appeals Commission (Commission).

The Board did not err in concluding that Alaska is an inconvenient forum. However, whether Missouri was, and remains, an alternative forum is a matter that has been insufficiently developed. We therefore vacate the Board's decision and remand the case for further proceedings.

*2. Factual Background and Proceedings.*<sup>2</sup>

Mr. Foreman alleges that on or about February 18, 2024, he was moving shelving while at work for Northstar near Fairbanks, Alaska, when he heard a "pop" in his right shoulder.<sup>3</sup> He was seen on February 19, 2024, at the Tanana Valley Clinic in Fairbanks.<sup>4</sup> According to Northstar, after February 19, 2024, Mr. Foreman obtained all medical care for his alleged work injury in Missouri.<sup>5</sup>

Mr. Foreman filed a written claim against Northstar for his alleged injury with the Missouri Department of Labor and Industrial Relations, Division of Workers' Compensation

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<sup>1</sup> *Foreman v. Northstar Constr. Mgmt.*, Alaska Workers' Comp. Bd. Dec. No. 25-0041 (July 11, 2025) (*Foreman II*). A prior interlocutory decision in this claim, *Foreman v. Northstar Constr. Mgmt.*, Alaska Workers' Comp. Bd. Dec. No. 25-0003 (Jan. 21, 2025) (*Foreman I*), denied Northstar's petition to strike Mr. Foreman's hearing briefs, and granted Mr. Foreman's petition for an SIME.

<sup>2</sup> We make no factual findings. We state the facts as found by the Board, adding context by citation to the record with respect to matters that do not appear to be in dispute. We state the contents of pleadings filed with the Board as they appear in the record.

<sup>3</sup> *Foreman II* at 2 (No. 1). See R. 1368-74, 1-2, 422-32.

<sup>4</sup> *Foreman I* at 2 (No. 2). See R. 1368-74.

<sup>5</sup> The Board's purported "Findings of Fact" are for the most part a recitation of evidence, rather than statements resolving disputed material factual issues. One "Finding of Fact" is that Northstar "noted that . . . Employee saw Peter Dillon MD . . . in Fairbanks . . . for his 'only medical visit in Alaska[.]'" *Foreman II* at 12 (No. 44). Another "Factual Finding" includes this affirmative statement: "After February 19, 2024, Employee obtained all medical care for his alleged work injury in Missouri." *Foreman II* at 12-13 (No. 46). Both "Findings of Fact" reference a brief as supporting the Board's finding; neither references evidence in the record. We have found no evidence in the record of medical care in Alaska after February 19, 2024.

(Missouri DWC).<sup>6</sup> Northstar answered the Missouri claim<sup>7</sup> and the Missouri DWC noticed a prehearing conference for the claim.<sup>8</sup>

Thereafter, Mr. Foreman filed a claim with the Board in Alaska for the same alleged injury.<sup>9</sup> Northstar answered Mr. Foreman's Alaska claim, asserting that Mr. Foreman had filed a claim for the same injury in Missouri and that Missouri had jurisdiction, and identifying a variety of procedural defenses as well as defenses on the merits.<sup>10</sup> It also filed a controversion of all benefits, listing a host of alleged factual and legal bases for its denial.<sup>11</sup>

At a prehearing conference before a Board designee on August 1, 2024, Northstar contended that both Missouri and Alaska had jurisdiction over Mr. Foreman's alleged work injury.<sup>12</sup> Mr. Foreman said he had three pending claims, one in Missouri, one in Alaska, and one with the "federal government."<sup>13</sup> He asserted he had the right to have his case adjudicated in all three jurisdictions, which Northstar disputed.<sup>14</sup> The designee noted

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<sup>6</sup> *Foreman I* at 3 (No. 5), *Foreman II* at 2 (No. 2). *See* R. 69-70.

<sup>7</sup> *See Foreman I* at 4 (No. 6), R. 71-72.

<sup>8</sup> *Foreman II* at 3 (No. 4). *See* R. 73.

<sup>9</sup> *Foreman II* at 3 (No. 5). *See* R. 17.

<sup>10</sup> *Foreman I* at 5 (No. 9). *See* R. 82-93.

<sup>11</sup> *Foreman I* at 6 (No. 10). *See* R. 6-8.

<sup>12</sup> *Foreman II* at 5 (No. 19). *See* R. 2000-14. The Alaska Workers' Compensation Act applies to employment "under a contract of hire" "in connection with a business or industry . . . carried on in this state. . . ." *See* AS 23.30.020 – .395(19), (20). Missouri's workers' compensation statutes are applicable "to all injuries received . . . outside of this state under contract of employment made in this state, unless the contract of employment in any case shall otherwise provide. . . ." V.A.M.S. § 287.110(2). *See* R. 2002. The Board did not make a finding that Mr. Foreman was hired in Missouri, but it did note that Mr. Foreman's supervisor had submitted a sworn affidavit to that effect. *Foreman II* at 3-4 (No. 8).

<sup>13</sup> *Foreman II* at 5 (No. 19). *See* R. 2003.

<sup>14</sup> *Id.*

that the parties did not come to an agreement on jurisdiction, and set a hearing for October 17, 2024, on the merits of Mr. Foreman’s Alaska claim.<sup>15</sup>

On September 10, 2024, Richard C. Lehman, M.D., orthopedist, saw Mr. Foreman for an employer’s medical examination.<sup>16</sup> Dr. Lehman’s opinion was that Mr. Foreman’s right shoulder condition was degenerative and not related to the alleged work injury.<sup>17</sup>

On September 19, 2024, the parties appeared by phone at a prehearing conference before a Board designee.<sup>18</sup> Mr. Foreman noted that he was scheduled for right-shoulder surgery the next day.<sup>19</sup> The designee found this would require additional discovery, and vacated the scheduled hearing date.<sup>20</sup>

On September 20, 2024, Thomas Rogers, M.D., operated on Mr. Foreman’s right shoulder.<sup>21</sup> Dr. Rogers saw Mr. Foreman three months post-surgery; his opinion was that although Mr. Foreman had pre-existing degenerative changes in his shoulder, he likely had incurred a “SLAP tear” from the alleged work injury.<sup>22</sup>

Mr. Foreman filed a petition for an independent medical examination,<sup>23</sup> and in *Foreman I* the Board granted the petition over Northstar’s objections. Northstar subsequently petitioned the Board for an order dismissing Mr. Foreman’s Alaska claim on *forum non conveniens* grounds and setting aside the previously ordered independent

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<sup>15</sup> *Foreman II* at 5 (No. 19), R. 2010.

<sup>16</sup> *Foreman I* at 7-8 (No. 14), *Foreman II* at 6 (No. 22). *See* R. 164, 1258-61.

<sup>17</sup> *Foreman I* at 7-8 (No. 14).

<sup>18</sup> *Foreman II* at 7 (No. 24). *See* R. 2215-20.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Foreman I* at 8 (No. 15), *Foreman II* at 7 (No. 25). *See* R. 1473-75.

<sup>22</sup> *Foreman I* at 9 (No. 18), *Foreman II* at 8 (No. 30). *See* R. 1590-93.

<sup>23</sup> *Foreman I* at 8 (No. 16), at 9 (No. 19). *See* R. 546.

medical examination.<sup>24</sup> Mr. Foreman opposed the petition, and both parties filed multiple pleadings addressing the *forum non conveniens* issue (and others).<sup>25</sup>

The Board scheduled a hearing on the written record on Northstar's petition to dismiss, and the parties submitted hearing briefs.<sup>26</sup> The Board's decision deemed the facts relevant to determination of the *forum non conveniens* issue to be undisputed.<sup>27</sup> It addressed the five factors identified in *Crowson*<sup>28</sup> as relevant to resolution of a *forum non conveniens* case:

*a. Access to Proof.*

The Board noted that a hearing in Missouri would allow for the presentation of testimony in person before the hearing panel, which it deemed preferable for assessing witness credibility, and which the Board deemed to be an important factor in deciding the case.<sup>29</sup>

*b. Availability and Cost to Obtain Witnesses.*

The Board noted that Mr. Foreman's attending physician and other medical providers, and Northstar's examining physician, all lived in proximity to the Missouri hearing location, and that attendance at a hearing in Alaska would be "a major inconvenience, and would not be cost-effective." It noted that while deposition testimony was possible, the parties had the right to present live medical witness testimony. As for Mr. Foreman in his capacity as a witness, the Board observed that Mr. Foreman's financial

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<sup>24</sup> *Foreman II* at 9 (Nos. 34, 35). See R. 855, 856-87, 935-51.

<sup>25</sup> *Foreman II* at 10-11 (No. 39, 40). See R. 965, 967-70, 972-79, 987, 988-89, 1031-34, 1086-89, 1091-96.

<sup>26</sup> See *Foreman II* at 10 (No. 36), at 12-15 (Nos. 43-53); R. 1140-59, 1161-62. Mr. Foreman also submitted two post-hearing memoranda. See R. 1164-68, 1170-71.

<sup>27</sup> *Foreman II* at 23.

<sup>28</sup> *Crowson v. Sealaska Corp.*, 705 P.2d 905, 908 (Alaska 1985).

<sup>29</sup> *Foreman II* at 26.

and other circumstances would make personal appearance at a hearing in Alaska not in his best interest.<sup>30</sup>

*c. Possibility Forum Chosen to Harass an Opposing Party.*

The Board noted evidence of Mr. Foreman's "animosity against [Northstar], its agents, and [counsel for Northstar], for actual or imagined slights and offenses" and concluded that there is "a possibility" that Mr. Foreman chose an Alaska forum to harass Northstar.<sup>31</sup>

*d. Enforceability of Judgment.*

The Board concluded that if Mr. Foreman's claim were heard in Missouri, "he would have little difficulty enforcing that judgment in Missouri", while enforcing an Alaska order in Missouri "would be legally possible . . . , but most likely at great time and expense."<sup>32</sup>

*e. Burden on Community.*

The Board observed that both Alaska and Missouri have an interest in this matter.<sup>33</sup>

Having reviewed the foregoing five factors, the Board concluded that because (1) concurrent litigation in two forums would create problems, such as the potential for inconsistent decisions on evidentiary matters as well as on the merits of the claim, and (2) the Alaska forum would be "seriously inconvenient" for both parties, Alaska should decline jurisdiction.<sup>34</sup> It granted the motion to dismiss. Mr. Foreman appeals.

*3. Standard of Review.*

The Board's findings of fact will be upheld by the Commission if the Board's findings are supported by substantial evidence in light of the record as a whole.<sup>35</sup> Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support

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<sup>30</sup> *Foreman II* at 26-27.

<sup>31</sup> *Foreman II* at 27.

<sup>32</sup> *Id.*

<sup>33</sup> *Foreman II* at 28.

<sup>34</sup> *Foreman II* at 28-30.

<sup>35</sup> AS 23.30.128(b).

a conclusion.<sup>36</sup> “The question of whether the quantum of evidence is substantial enough to support a conclusion in the contemplation of a reasonable mind is a question of law.”<sup>37</sup>

On questions of law and procedure, the Commission does not defer to the Board’s conclusions, but exercises its independent judgment.<sup>38</sup> The Commission will review the Board’s decision to dismiss a case on grounds of *forum non conveniens* for an abuse of discretion: when the Board has considered all the relevant factors and its balancing of these factors is reasonable, its decision deserves substantial deference and it will be reversed only if it is manifestly unreasonable.<sup>39</sup>

#### 4. Discussion.

The Board applied the doctrine of *forum non conveniens* without addressing the threshold issue of its authority to do so. We will assume, for purposes of our decision in this case, that the Board may apply *forum non conveniens* in appropriate circumstances. We do not, however, thereby adopt the position that the Board has that authority.<sup>40</sup>

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<sup>36</sup> See, e.g., *Norcon, Inc. v. Alaska Workers’ Comp. Bd.*, 880 P.2d 1051, 1054 (Alaska 1994).

<sup>37</sup> *McGahuey v. Whitestone Logging, Inc.*, Alaska Workers’ Comp. App. Comm’n Dec. No. 054 at 6 (Aug. 28, 2007) (citing *Land & Marine Rental Co. v. Rawls*, 686 P. 2d 1187, 1188-1189 (Alaska 1984)).

<sup>38</sup> AS 23.30.128(b).

<sup>39</sup> We have not previously adopted a standard of review for a Board decision on *forum non conveniens* grounds. We here adopt a standard based on the Alaska Supreme Court’s standard in such cases. See *Baypack Fisheries, L.L.C. v. Nelbro Packing Co.*, 992 P.2d 1116, 1118 (Alaska 1999); *Bromley v. Mitchell*, 902 P.2d 797, 800 (Alaska 1995).

<sup>40</sup> *Forum non conveniens* is an equitable doctrine. The Alaska Supreme Court has ruled that the Board has authority to apply some equitable principles, such as implied waiver and equitable estoppel, but not laches, to bar an employer from invoking statutory rights against an injured worker. See *Schmidt v. Beeson Plumbing and Heating*, 869 P.2d 1170, 1175 (Alaska 1994); *Wausau Ins. Cos. v. Van Biene*, 847 P.2d 584, 589 n. 15 (Alaska 1993) (“Laches is an equitable defense, not available in an action at law.”). It has also ruled that the equitable doctrine of *res judicata* is applicable to workers’ compensation proceedings. *Bignell v. Wise Mech. Contractors, Inc.*, 720 P.2d 490, 494 (Alaska 1986). More broadly, the Court has ruled that the Board may apply equitable principles when they arise in the context of a workers’ compensation claim. *Alaska Pub. Int. Rsch. Grp. v. State*, 167 P.3d 27, 36 (Alaska 2007). Whether the Board has discretion

In *Crowson*, the Alaska Supreme Court identified five factors relevant to determining the appropriate forum for purposes of the doctrine of *forum non conveniens*. Mr. Foreman set forth his arguments for reversing the Board’s decision to dismiss on *forum non conveniens* grounds in his notice of appeal. Four of his arguments raise legal issues, subject to our independent judgment: that (a) his claim was “immediately compensable,” and therefore the Board ought to have awarded compensation rather than dismissing it;<sup>41</sup> (b) Alaska has sole jurisdiction pursuant to Federal Acquisition Regulation (FAR) 52.228-3 and the Davis-Bacon Act, 40 U.S.C. § 3141 *et seq.*;<sup>42</sup> (c) there is not an adequate alternative forum;<sup>43</sup> and (d) Alaska has jurisdiction under the parties’ alleged prehearing venue agreement.<sup>44</sup> Mr. Foreman’s other arguments pertain to the factors identified in *Crowson*. To the extent those arguments raise factual issues, they are subject to review for substantial evidence; to the extent they involve the Board’s exercise of discretion, they are subject to review for abuse of discretion. These arguments are that (e) the Board erred in its application of the *Crowson* factors because (1) key evidence is Alaska-based;<sup>45</sup> (2) telephone or video witness testimony will suffice to determine witness credibility;<sup>46</sup> (3) an Alaska compensation order can be enforced in Missouri;<sup>47</sup> and (4) the Board failed to weigh the relevant *Crowson* factors appropriately.<sup>48</sup>

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to decline to exercise jurisdiction imposed upon it by law, in favor of jurisdiction in another state, under the equitable doctrine of *forum non conveniens* is, we think, an open question. In particular, to decline jurisdiction on *forum non conveniens* grounds in the absence of a pending claim in another state would be problematic.

<sup>41</sup> Statement of Grounds at 7 (No. 3).

<sup>42</sup> Statement of Grounds at 3-4.

<sup>43</sup> Statement of Grounds at 5.

<sup>44</sup> Statement of Grounds at 4, 7, 8.

<sup>45</sup> Statement of Grounds at 4.

<sup>46</sup> Statement of Grounds at 4-5.

<sup>47</sup> Statement of Grounds at 5.

<sup>48</sup> Statement of Grounds at 5.

We turn first to the legal issues, namely, whether the Board erred by dismissing the case prior to awarding benefits, whether Alaska has sole jurisdiction, whether there is an adequate alternative forum, and whether a prehearing agreement mandates venue in Alaska.

*a. Mr. Foreman's Claim is Not "Immediately Compensable."*

Mr. Foreman makes several arguments to the effect that the Board should have awarded benefits rather than dismissing his claim on *forum non conveniens* grounds. He argues that Northstar's allegedly untimely (or otherwise invalid) controversion, its status as an uninsured employer on the date of his injury (insurance was subsequently obtained with a retroactive effective date), its alleged violations of federal wage and hour laws, and its attorney's lack of a license to practice law in Alaska "render my claim immediately compensable. . . ." <sup>49</sup>

These various arguments reflect a misunderstanding of applicable law. An untimely or otherwise invalid controversion does not make a claim immediately compensable. Rather, it subjects the employer to a penalty if the claim is subsequently granted in the normal course of proceedings.<sup>50</sup> Similarly, criminal penalties for failure to insure are imposed by the superior court,<sup>51</sup> not the Board, and personal liability for an uninsured corporation (whether the requirement for insurance is based on Alaska law, or on federal law) is imposed only if the corporation is found liable for the payment of compensation,<sup>52</sup> and in this case Northstar's liability has not been established. Lastly, the status of Northstar's attorney is irrelevant to the *forum non conveniens* issue.<sup>53</sup> There

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<sup>49</sup> Statement of Grounds at 7.

<sup>50</sup> *Shannon v. Nelson*, Alaska Workers' Comp. App. Comm'n Dec. No. 311 at 8-9 (Aug. 7, 2025).

<sup>51</sup> See AS 23.30.075(a).

<sup>52</sup> See AS 23.30.075(b) (establishing personal liability "for the payment of all compensation . . . for which the corporation is liable . . . if the corporation . . . is not insured. . .").

<sup>53</sup> We note that AS 23.30.110(d) states: "At the hearing the claimant and the employer . . . may be represented by any person authorized in writing for that purpose."

is no merit to Mr. Foreman’s various arguments that the Board ought to have awarded compensation rather than considering and deciding Northstar’s motion to dismiss based on *forum non conveniens* grounds.

*b. FAR 52.228-3 and 40 U.S.C. §§ 3141-3148 Do Not Provide Alaska with Exclusive Jurisdiction.*

On appeal, Mr. Foreman does not argue that under Missouri law, Missouri did not have jurisdiction. Rather, on appeal he argues that federal supremacy principles preclude Missouri from exercising its jurisdiction,<sup>54</sup> citing FAR 52.228-3 and the prevailing wage provisions of the Davis-Bacon Act, 40 U.S.C. §§ 3141-3148.<sup>55</sup> His argument lacks merit: neither of the cited provisions mandates that Mr. Foreman’s claim be adjudicated in Alaska.

FAR 52.228-3 sets out a clause that must be included in federal contracts “as prescribed in [FAR] 28.309(a).”<sup>56</sup> FAR 28.309(a) states: “The contracting officer shall insert the clause at 52.228–3, Workers' Compensation Insurance (Defense Base Act), in solicitations and contracts when the Defense Base Act applies (see 28.305).” The Defense Base Act applies to contracts for construction at military bases outside of the United States.<sup>57</sup> It does not apply to a contract for work in Alaska. Moreover, even if FAR 52.228-3 were applicable, that provision does not mandate jurisdiction in any particular state: it simply requires that the employer obtain workers’ compensation insurance for its employees “[b]efore commencing performance under [the] contract.” If, as Mr. Foreman alleges, Northstar failed to obtain insurance before commencing performance, that has no bearing on whether Alaska or Missouri has jurisdiction to

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<sup>54</sup> See Statement of Grounds at 3 (“The Board’s dismissal . . . ignor[es] Alaska’s sole jurisdiction under FAR 52.228-3. . . .”; “This federal regulation supersedes forum non conveniens considerations. . . .”).

<sup>55</sup> Statement of Grounds at 3-4.

<sup>56</sup> FAR 52.228-3 states, “As prescribed in [FAR] 28.309(a), insert the following clause:” followed by the text of the clause to be inserted.

<sup>57</sup> 42 U.S.C. § 1651.

adjudicate his workers' compensation claim, or which is the appropriate forum if both have jurisdiction.

As for the prevailing wage provisions of the Davis-Bacon Act, 40 U.S.C. §§ 3141-3148, Mr. Foreman does not argue that those provisions mandate that a workers' compensation claim subject to the Davis-Bacon Act be adjudicated in a particular state. Rather, he argues that because those provisions of the Davis-Bacon Act applied to the contract in this case, Alaska has a "strong interest in enforcing federal labor standards[.]"<sup>58</sup> But the Board does not have jurisdiction to enforce the prevailing wage provisions of the Davis-Bacon Act, and hence the applicability of those provisions to this particular contract is of no significance for purposes of selecting a forum for a workers' compensation claim.

*c. Missouri May Not be an Alternative Forum.*

"The doctrine of *forum non conveniens* presupposes the existence of a preferable forum in which the dispute can be resolved."<sup>59</sup> In the absence of an alternative forum, an action ought not to be dismissed even if, under the doctrine of *forum non conveniens*, the venue in which the action is pending is inconvenient.<sup>60</sup> In this case, Mr. Foreman filed a claim in Missouri, but he has asserted on appeal that, under federal supremacy principles, Alaska has exclusive jurisdiction over his workers' compensation claim. As we have explained, the specific provisions of law that he argues mandate jurisdiction in Alaska have no bearing on this case. Nonetheless, there is a substantial question whether Missouri is an alternative forum.

Mr. Foreman has alleged, and Northstar has not disputed, that his injury occurred while he was working under a federal contract at Fort Wainwright, Alaska, a federal military base.<sup>61</sup> By enacting 40 U.S.C. § 3172, the United States waived its sovereign immunity for purposes of state law-based workers' compensation claims by non-federal

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<sup>58</sup> Statement of Grounds at 4.

<sup>59</sup> *Bromley v. Mitchell*, 902 P.2d 797, 803 (Alaska 1995).

<sup>60</sup> Restatement of Conflicts (2d) § 84, comment c.

<sup>61</sup> *See, e.g.*, R. 2, 23, 39, 2189; Statement of Grounds at 2, 3, 4.

employees injured while working on federal property in the state.<sup>62</sup> This is a waiver of sovereign immunity for a claim based on Missouri’s workers’ compensation laws for an injury to a non-federal employee working on federal property in Missouri, and for a claim based on Alaska law for an injury on federal property in Alaska. It is not a waiver for a claim based on Missouri law for an injury on federal property in Alaska.

Northstar argues that 40 U.S.C. § 3172 does not prohibit more than one state from applying its workers’ compensation laws to a given claim,<sup>63</sup> but that argument overlooks the statutory language applying the waiver of sovereign immunity only to property in the state that seeks to apply its workers’ compensation law, as well as 40 U.S.C. § 3172(b), which expressly preserves federal sovereign immunity “for any other purpose.”

Beyond the possibility that the injury occurred on federal property, and that therefore Missouri is barred by federal sovereign immunity from applying its workers’ compensation statutes in this case, on appeal Mr. Foreman has asserted that after the hearing in his case, his Missouri claim was dismissed with prejudice.<sup>64</sup> If that is so, then Missouri would no longer be an available forum, even if the injury did not occur on federal property in Alaska.

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<sup>62</sup> 40 U.S.C. § 3172. *See United States v. Washington*, 596 U.S. 832, 142 S.Ct. 1976, 213 L.Ed.2d 336 (2022).

<sup>63</sup> Supplemental Brief of Appellees at 2.

<sup>64</sup> *See* Statement of Grounds at 5 (“My commitment to dismiss Missouri Case No. 24-014750 upon SIME reinstatement eliminates Reyno’s alternative forum requirement.”); Motion for Expedited Decision (Oct. 10, 2025); Motion to Supplement the Record (Oct. 10, 2025); Appellant’s Brief (“Missouri: Petition briefed in AWCB (10/10/2025 Dismissed with prejudice (Judge Burks, 10/30/2025).”). Prior to the hearing, a brief Mr. Foreman submitted suggested the Missouri claim might be withdrawn. *See* R. 968, 969 (Reply to Petition to Dismiss, Apr. 18, 2025). According to Northstar, however, Mr. Foreman subsequently appeared at a prehearing in the Missouri case and asked that the Missouri case “proceed.” R. 1147 (Brief of Employer/Insurer for Petition (Motion) to Dismiss, June 5, 2025).

*d. Mr. Foreman Did Not Argue or Establish a Prehearing Venue Agreement.*

On appeal, Mr. Foreman argues that the parties had agreed that “Alaska was the proper venue” and that their agreement is binding.<sup>65</sup> However, none of Mr. Foreman’s various briefs and other pleadings filed with the Board in connection with the hearing asserted that the parties had a prehearing agreement regarding the appropriate forum.<sup>66</sup> Absent any argument to the Board that a prehearing agreement mandates venue in Alaska, the Board made no finding with respect to the existence of such an agreement, and Mr. Foreman has not identified any evidence of such an agreement.<sup>67</sup> The prehearing summary states that the parties did not agree on jurisdiction, and absent any modification that summary governs the course of proceedings.<sup>68</sup> Because Mr. Foreman did not raise this issue before the Board, the Board’s failure to make a finding regarding the existence of the alleged agreement is not reversible error, and because Mr. Foreman has not identified any evidence in the record supporting the existence of a prehearing agreement on venue, we do not see a need to remand this matter to the Board to make findings on that issue.<sup>69</sup>

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<sup>65</sup> Statement of Grounds at 4.

<sup>66</sup> *See*, R. 965, 967-70, 987, 989, 1086-89, 1161-62, 1164-68, 1170-71.

<sup>67</sup> Mr. Foreman asserts that there was an “explicit agreement” as to venue at a prehearing conference on August 2, 2024. Statement of Grounds at 4. There is no evidence in the record of a prehearing conference on August 2, 2024. The prehearing conference summary for a conference on August 1, 2024, states that “there would not be an agreement on jurisdiction at this juncture. . . .” R. 2003. In context, it appears the designee’s reference to “jurisdiction” actually pertained to “venue”; it follows the parties’ response to the designee’s question as to where the case should be adjudicated. The question referred to venue, not jurisdiction. *See id.*

<sup>68</sup> 8 AAC 45.065(c), (d).

<sup>69</sup> “The commission may remand matters it determines were improperly, incompletely, or otherwise insufficiently developed.” AS 23.30 128(d).

*e. Finding Alaska an Inconvenient Forum Was Not an Abuse of Discretion.*

Assuming that Missouri was, at the time the Board issued its decision, an alternative forum, we turn next to Mr. Foreman's argument that the Board erred in ruling that under the *Crowson* factors, Alaska is an inconvenient forum. To establish grounds for reversal, Mr. Foreman must show that the Board failed to consider all the relevant factors, or that having considered them, it has failed to balance them in a reasonable manner.<sup>70</sup>

With respect to consideration of the relevant factors, Mr. Foreman does not argue that the Board failed to consider any of them. Rather, he argues that it failed to balance them appropriately, in that it placed too little weight on the availability of evidence in Alaska,<sup>71</sup> and too much weight on the need for in-person testimony,<sup>72</sup> on the possibility that an Alaska venue was selected for purpose of harassment,<sup>73</sup> and on the difficulty of enforcing an Alaska award in Missouri.<sup>74</sup>

*(1) Access to Proof*

The Board's decision regarding this factor focused on the fact that the Missouri hearing location would be closer to Mr. Foreman's residence, which would facilitate in-person testimony. It deemed in-person testimony "an important factor because [Northstar] questions whether [Mr. Foreman] hurt himself on its job at all, which ultimately raises credibility issues."<sup>75</sup> It deemed this factor to "weigh heavily in favor of Missouri."<sup>76</sup>

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<sup>70</sup> *Supra*, note 39.

<sup>71</sup> Statement of Grounds at 4, 5.

<sup>72</sup> Statement of Grounds at 4-5.

<sup>73</sup> Statement of Grounds at 4-5.

<sup>74</sup> Statement of Grounds at 5.

<sup>75</sup> *Foreman II* at 26.

<sup>76</sup> *Foreman II* at 27.

The Board did not address access to documentary evidence. Mr. Foreman argues that “key [documentary] evidence . . . is Alaska-based”, referencing several emails, an affidavit, pay stubs, and a “WHD investigation.” He also references the previously ordered independent medical examination, to be obtained in Alaska. But all of the relevant referenced documentary evidence is already in the record or may be obtained from the parties in the case,<sup>77</sup> and an independent medical examination is also available under Missouri law.<sup>78</sup>

With respect to the Board’s emphasis on credibility, Mr. Foreman argues that telephonic and video testimony is “standard practice” and that the Board’s emphasis on in-person testimony for purposes of assessing credibility “ignores established practice” and that its concerns “are baseless, [and] overshadowed by Northstar’s lack of credibility.”<sup>79</sup>

The Board’s decision does not suggest that it was important to have in-person testimony from medical witnesses in this case. It may be that, as Mr. Foreman argues, credibility determinations are typically less important with respect to medical testimony: indeed in most cases there is not any medical testimony at a hearing. However, the Board’s emphasis was on in-person testimony as to the existence of the alleged work injury, which may be at issue in this case.<sup>80</sup> Because the Board’s credibility determinations are not subject to review, the Board’s own assessment of the desirability of in-person testimony warrants substantial deference.

We conclude that Mr. Foreman has not shown that the Board erred in finding that this factor weighs in favor of Missouri.

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<sup>77</sup> Mr. Foreman’s mention of a “WHD investigation” presumably refers to an investigation of Northstar’s alleged violations of the Davis-Bacon Act’s wage and hour provisions. As we have pointed out, Northstar’s alleged violations of wage and hour laws are irrelevant to the *forum non conveniens* issue. *Supra*, p. 10.

<sup>78</sup> See V.A.M.S. § 287.210(2).

<sup>79</sup> Statement of Grounds at 4.

<sup>80</sup> See *Foreman II* at 12 (No. 44).

*(2) Availability and Cost to Obtain Witnesses.*

The Board noted that Mr. Foreman's attending physician and other medical providers, and Northstar's examining physician, all live in proximity to the Missouri hearing location, and that attendance at a hearing in Alaska would be "a major inconvenience, and would not be cost-effective."<sup>81</sup>

Mr. Foreman identifies only one fact witness who is in Alaska, while three others are in Missouri.<sup>82</sup> The Board did not discuss fact witnesses, other than to observe that Mr. Foreman's financial and other circumstances would make personal appearance at a hearing in Alaska not in his best interest.<sup>83</sup>

Given that the majority of both factual and medical witnesses are relatively close to the hearing site in Missouri, as are Mr. Foreman and counsel for Northstar, and given the distance and cost for travel to Alaska, Mr. Foreman has not shown that the Board erred in finding that this factor weighs in favor of Missouri.

*(3) Possibility Forum Chosen to Harass an Opposing Party.*

The Board noted evidence of Mr. Foreman's "animosity against [Northstar], its agents and [counsel for Northstar], for actual or imagined slights and offenses" and concluded that there is "a possibility" that Mr. Foreman chose an Alaska forum to harass Northstar.<sup>84</sup>

Mr. Foreman argues that it is Northstar, rather than himself, that has engaged in harassment, by engaging in "egregious misconduct" that has had the effect of contravening the legislature's intent that claims be resolved quickly and efficiently.<sup>85</sup>

This factor considers whether the party who has selected a venue has done so for an improper purpose. Mr. Foreman chose to bring a claim in Alaska. It is his conduct,

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<sup>81</sup> *Foreman II* at 26-27.

<sup>82</sup> Statement of Grounds at 5 ("Seals is in Alaska; Olinger, Hodge, and Mangum are in Missouri").

<sup>83</sup> *Foreman II* at 26-27.

<sup>84</sup> *Foreman II* at 27.

<sup>85</sup> Statement of Grounds at 5. *See also id.* at 7 ("Systemic Harm").

not Northstar's, that is germane to this factor. Mr. Foreman has not shown that the Board erred in recognizing a possibility, based on evidence reflecting animosity towards his employer, that Mr. Foreman selected an Alaska forum in order to harass Northstar.

*(4) Enforceability of Judgment.*

The Board concluded that if Mr. Foreman's claim were heard in Missouri, "he would have little difficulty enforcing that judgment in Missouri", while enforcing an Alaska order in Missouri "would be legally possible . . . , but most likely at great time and expense."

Mr. Foreman argues that "Alaska judgments are enforceable in Missouri", citing V.A.M.S. § 511.760.<sup>86</sup>

The statute referenced by Mr. Foreman provides for enforcement in Missouri of judgments of another state's courts that are entitled to full faith and credit under federal law. That statute does not apply to an administrative order issued by another state's administrative agency. Enforcement in Missouri of an administrative compensation order that was issued in Alaska, absent any Missouri statute authorizing enforcement of such an order, is a more complex undertaking.<sup>87</sup> Mr. Foreman has not shown that the Board erred in determining that this factor favors Missouri.

*(5) Burden on Community.*

The Board weighed this factor equally as to both parties, and Mr. Foreman did not argue that the Board erred in doing so.

In summary, Mr. Foreman has not shown that the Board failed to consider the relevant factors, or that the manner in which it weighed them was unreasonable.

*f. Dismissal is Not Required.*

Given that the Board properly determined that Alaska is an inconvenient forum under the *Crowson* factors, dismissal of the Alaska action was not the only available remedy. That an action is pending in another jurisdiction does not mandate dismissal; indeed, the general rule in civil litigation (absent *forum non conveniens*) is that a party

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<sup>86</sup> Statement of Grounds at 5.

<sup>87</sup> See generally, *Crider v. Zurich*, 380 U.S. 39, 85 S.Ct. 769, 13 L.Ed. 2d 641 (1965); 13 Larson's Workers' Compensation Law §140.02.

may proceed on a claim even though the same claim is concurrently being litigated in another state.<sup>88</sup> Nonetheless, upon a finding that a venue is inconvenient for a claim in civil litigation, although dismissal is generally ordered, a conditional dismissal or a stay pending completion of proceedings in the other forum may be appropriate.<sup>89</sup>

In the context of an Alaska workers' compensation claim, AS 23.30.011(b) expressly permits an injured employee to file a claim for benefits under the Alaska Workers Compensation Act notwithstanding that the employee has received benefits under the laws of another jurisdiction, so long as the Alaska claim is "filed within the time limits set out in [the Act]." Such a provision does not violate the full faith and credit provision of the United States Constitution,<sup>90</sup> and successive awards, with a credit for a prior award, are routinely upheld.<sup>91</sup> Of course, even though a subsequent Alaska claim is not barred, the factual findings from the non-Alaska jurisdiction may have collateral estoppel effect in Alaska.<sup>92</sup>

Given the statutory right to a subsequent claim in Alaska, dismissing a pending Alaska claim would be an abuse of discretion if the dismissal precluded such a subsequent claim. But it is generally held that dismissal on *forum non conveniens* grounds, while it is preclusive as to that issue, is not preclusive as to the underlying claim.<sup>93</sup> We view the Board's order, consistently with the general rule, as a dismissal without prejudice. However, because 40 U.S.C. § 3172 does not permit Missouri to apply its workers' compensation laws to a claim arising on federal property in Alaska, if Mr. Foreman was injured on federal property dismissal would be an abuse of discretion unless conditioned

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<sup>88</sup> Restatement of Conflicts (2d) § 86.

<sup>89</sup> *Id.*, § 84, comment e.

<sup>90</sup> U.S. Constitution, Art. IV, § 1. *See Thomas v. Washington Gas Light Co.*, 448 U.S. 261, 100 S.Ct. 2647, 65 L.Ed. 2d 757 (1980).

<sup>91</sup> *See generally*, 13 Larson's Worker's Compensation Law §§ 141.01-.07.

<sup>92</sup> *See Thomas v. Washington Gas Light Co.*, 448 U.S. at 281, 100 S.Ct. at 2660-61; *Bignell v. Wise Mech. Contractors*, 720 P.2d 490, 494 (Alaska 1986); Restatement of Judgments (2d) § 27.

<sup>93</sup> Wright & Miller, Federal Practice and Procedure § 4436.

on a waiver of that defense by Northstar in the Missouri case. Moreover, since Mr. Foreman alleges that after the Board's decision, the Missouri claim was dismissed with prejudice, it is not clear that Missouri remains an alternative forum. Lastly, assuming Missouri is an alternative forum (*i.e.*, the injury did not occur on federal property and Mr. Foreman's Missouri case was not dismissed with prejudice and may be timely reinstated), a stay rather than dismissal should be considered.<sup>94</sup>

*5. Conclusion and order.*

The Board did not abuse its discretion in determining that Alaska is an inconvenient forum for adjudication of Mr. Foreman's workers' compensation claim. However, we have determined that the availability of Missouri as an alternative forum is a matter that has not been adequately briefed or factually developed before the Board.<sup>95</sup> We therefore will remand the case for further proceedings.

IT IS HEREBY ORDERED:

1. The Board's order dismissing Mr. Foreman's claim is VACATED.
2. This case is REMANDED for further proceedings to determine (a) whether the injury occurred on federal property in Alaska; (b) if so, whether Northstar may, and has, waived the defense provided by 40 U.S.C. §3172 to application of Missouri law to this claim; and (c) whether Mr. Foreman's Missouri claim has been dismissed with prejudice.

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<sup>94</sup> If Missouri is an alternative forum, a stay of the Alaska proceedings would be consistent with the legislature's intent that the Workers' Compensation Act be interpreted "so as to ensure the quick, efficient, . . . and predictable delivery of . . . benefits . . . at a reasonable cost to . . . employers." AS 23.30.001(1). A stay would allow the other state's prior filing to proceed ("quick"), while avoiding duplicate administrative proceedings ("efficient"), and protecting the employer from the expense of litigation in multiple forums ("reasonable cost"). A stay, rather than dismissal, would also avoid any dispute as to whether a subsequent Alaska claim was timely.

<sup>95</sup> "The commission may remand matters it determines were improperly, incompletely, or otherwise insufficiently developed." AS 23.30 128(d).

3. If after making those determinations the Board concludes that Missouri was not, or no longer is, an alternative forum, the Board shall deny the petition for dismissal.
4. If after making those determinations the Board concludes that Missouri was and remains an alternative forum, the Board shall provide an appropriate remedy (conditional dismissal or stay) for the Board's finding that Alaska is an inconvenient forum.
5. We do not retain jurisdiction.

Date: May 21, 2026 Alaska Workers' Compensation Appeals Commission



*Signed*

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Nancy Shaw, Appeals Commissioner

*Signed*

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S. T. Hagedorn, Appeals Commissioner

*Signed*

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Andrew M. Hemenway, Chair

#### APPEAL PROCEDURES

This decision is issued under AS 23.30.128(e). A party may appeal this decision by filing a petition for review with the Alaska Supreme Court as provided by the Alaska Rules of Appellate Procedure (Appellate Rules). *See* AS 23.30.129(a) and Appellate Rules 401 – 403. If you believe grounds for review exist under Appellate Rule 402, you should file your petition for review not later than 10 days after the date shown in the Certificate of Distribution below.

You may wish to consider consulting with legal counsel before filing a petition for review. If you wish to petition for review 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>

I certify that, with the exception of changes made in formatting for publication, this is a full and correct copy of Final Decision No. 315 issued in the matter of *Rickie D. Foreman v. Northstar Construction Management and Cincinnati Insurance Company*, AWCAC Appeal No. 25-004, and distributed by the Alaska Workers' Compensation Appeals Commission in Anchorage, Alaska, on May 21, 2026.

Date: May 21, 2026



*Signed*

K. Morrison, Appeals Commission Clerk