

Case: *Stonebridge Hospitality Associates, LLC, Argonaut Insurance Company, and Broadspire Services, Inc. vs. Debra K. Settje*, Alaska Workers' Comp. App. Comm'n Dec. No. 153 (June 14, 2011)

Facts: Debra Settje (Settje) claimed that she injured her back while working as a housekeeper for Stonebridge Hospitality Associates, LLC (Stonebridge) in February 2009. She lost her job shortly thereafter and sought medical treatment for her back two months later in April 2009. Settje had a prior history of back problems, including back surgery in 2007. Settje and Stonebridge disputed Settje's entitlement to permanent partial impairment (PPI) and to a reemployment eligibility evaluation. One doctor concluded that Settje suffered no injury in February 2009, and thus, provided no PPI rating. Another doctor concluded that any injury she did suffer resolved by September 2009 and so she suffered no permanent impairment. The board concluded that because Settje had not obtained a PPI rating, her claim for PPI was not ripe and that any reemployment eligibility evaluation was contingent on the PPI rating. Stonebridge appeals.

Applicable law: AS 23.30.120(a), compensability presumption. AS 23.30.010(a) (as amended in 2005). AS 23.30.190, permanent partial impairment.

The doctrine of ripeness pertains to whether there is an actual controversy between parties. "[R]ipeness asks whether there yet is any need for the court to act." *Brause v. State, Dep't of Health & Soc. Servs.*, 21 P.3d 357, 358 (Alaska 2001).

The concept of ripeness can be explained in both abstract and practical formulations. The abstract formulation is that ripeness depends on "whether . . . there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant [court action]." On a more practical level, our ripeness analysis fundamentally "balances the need for decision against the risks of decision." We examine "the fitness of the issues for judicial decision" and "the hardship to the parties of withholding court consideration." *State v. Am. Civil Liberties Union of Alaska*, 204 P.3d 364, 369 (Alaska 2009).

AS 23.30.041(f)(4) provides that "[a]n employee is not eligible for reemployment benefits if . . . at the time of medical stability, no permanent impairment is identified or expected."

Issue: Is Settje's PPI claim ripe for decision?

Holding/analysis: The commission outlined the changes to the compensability analysis made by AS 23.30.010(a), noting that the board must apply that analysis to the Settje's claim on remand. (But see note, below.)

The commission concluded the issue of PPI was ripe for decision. Several prehearing conference summaries reflected that Settje claimed PPI and Stonebridge controverted PPI. Thus, the parties identified PPI benefits as at issue and their interests were adverse. Moreover, Settje understood in June 2009 that she needed a rating to obtain benefits but she did not obtain one before the hearing in April 2010. The board's

decision that the claim was not ripe creates a hardship for Stonebridge, which incurred additional attorney fees and costs in pursuing the appeal and which had its potential liability for PPI and reemployment benefits unresolved. Moreover, the Alaska Supreme Court did not consider ripeness to be an issue in another case in which a claimant did not obtain a rating. “Fundamentally, we disagree with the board that [AS 23.30.190] ‘allows’ Settje to obtain a PPI rating. We view the statute as requiring Settje to obtain a rating, if she wanted an award of PPI benefits and was dissatisfied with Stonebridge’s evidence in that respect.” Dec. No. 153 at 13.

Lastly the commission observed that if Settje failed to prove her PPI claim on remand that she would not be eligible for reemployment benefits and that would render her request for an eligibility evaluation moot.

Note: This case was decided before the Alaska Supreme Court’s decision in *Runstrom v. Alaska Native Med. Ctr.*, 280 P.3d 567 n.16 (Alaska 2012). In *Runstrom* the court did not decide whether the new causation standard in AS 23.30.010(a) modifies the second step of the presumption analysis and encouraged the commission to reconsider the issue in another case in which the issue was fully briefed by the parties. Thus, how the changes to AS 23.30.010(a) affected the presumption analysis remains more of an open question than this case indicates.