

Case: *Nick Stepovich vs. State of Alaska, Division of Workers' Compensation*, Alaska Workers' Comp. App. Comm'n Dec. No. 117 (January 5, 2009)

Facts: The State sought a penalty against Nick Stepovich (Stepovich) as an uninsured employer. Stepovich filed a petition seeking to dismiss the State's penalty petition as untimely filed. The board denied Stepovich's petition in a decision titled Final Decision, leaving the pending State petition for assessment of a penalty for the board to resolve. Stepovich appealed the denial of his petition; the State argued the board decision was not a final appealable order.

Applicable law: Based on *Ostman v. State, Commercial Fisheries Entry Comm'n*, 678 P.2d 1323, 1327 (Alaska 1984), the commission concluded that a board decision is final when it settles the appellant's rights and "leaves no further dispute on a pending claim or petition for the board to resolve." Dec. No. 117 at 4. "The possibility of filing successive or overlapping claims for, or petitions related to, different benefits flowing from the same injury complicates the determination of when a compensation order 'fixes' a legal relationship. However, when there are no pending proceedings before the board, an appeal should not wait upon the possibility that a party will file another claim or petition in the future." *Hope Cmty. Res. v. Rodriguez*, Alaska Workers' Comp. App. Comm'n Dec. No. 041, 7 (May 16, 2007).

AS 23.30.127 provides for appeals to the commission.

Issue: Was the board's order a final appealable decision?

Holding/analysis: The board's order was not a final decision that could be appealed but Stepovich was permitted to convert his appeal into a motion for extraordinary review, if he chose. Despite the board's title of Final Decision, the order was not final because no decision had been made on the assessment of a penalty. The commission noted that if Stepovich's petition had been granted, it would have been a final order because "the resulting order would have adjudicated all disputes, finally fixed the parties' rights, and left no further dispute on a pending claim or petition for the board to resolve." Dec. No. 117 at 8.