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Wallace
3/15/16

CS FOR HOUSE BILL NO. 214()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVE OLSON

A BILL

FOR AN ACT ENTITLED

"An Act repealing the Workers' Compensation Appeals Commission; relating to decisions and orders of the Alaska Workers' Compensation Board; relating to superior court jurisdiction over appeals from Alaska Workers' Compensation Board decisions and orders; repealing Rules 201.1, 401.1, and 501.1, Alaska Rules of Appellate Procedure, and amending Rules 202(a), 204(a) - (c), 210(e), 508, 601(b), 602, and 603, Alaska Rules of Appellate Procedure; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*** Section 1.** AS 23.30.005 is amended by adding a new subsection to read:

(n) The board, in its administrative capacity, shall make available, upon request, the decisions and orders of the former Workers' Compensation Appeals Commission. Decisions and orders of the former Workers' Compensation Appeals Commission are final and conclusive unless appealed to the Alaska Supreme Court and shall stand instead of the order of the board from which review was taken. Unless

1 reversed by the Alaska Supreme Court, decisions of the former Workers'
2 Compensation Appeals Commission have the force of legal precedent.

3 * **Sec. 2.** AS 23.30.107(b) is amended to read:

4 (b) Medical or rehabilitation records, and the employee's name, address, social
5 security number, electronic mail address, and telephone number contained on any
6 record, in an employee's file maintained by the division or held by the board [OR THE
7 COMMISSION] are not public records subject to public inspection and copying under
8 AS 40.25.100 - 40.25.295. This subsection does not prohibit

9 (1) the reemployment benefits administrator, the division, the board,
10 [THE COMMISSION,] or the department from releasing medical or rehabilitation
11 records in an employee's file, without the employee's consent, to a physician providing
12 medical services under AS 23.30.095(k) or 23.30.110(g), a party to a claim filed by
13 the employee, or a governmental agency; or

14 (2) the quoting or discussing of medical or rehabilitation records
15 contained in an employee's file during a hearing on a claim for compensation or in a
16 decision or order of the board [OR COMMISSION].

17 * **Sec. 3.** AS 23.30.108(d) is amended to read:

18 (d) If the employee files a petition seeking a protective order to recover
19 medical and rehabilitation information that has been provided but is not related to the
20 employee's injury, and the board or the board's designee grants the protective order,
21 the board or the board's designee granting the protective order shall direct the division,
22 the board, [THE COMMISSION,] and the parties to return to the employee, as soon as
23 practicable following the issuance of the protective order, all medical and
24 rehabilitation information, including copies, in their possession that is unrelated to the
25 employee's injury under the protective order.

26 * **Sec. 4.** AS 23.30.108(e) is amended to read:

27 (e) If the board or the board's designee limits the medical or rehabilitation
28 information that may be used by the parties to a claim, either by an order on the record
29 or by issuing a written order, the division, the board, [THE COMMISSION,] and a
30 party to the claim may request and an employee shall provide or authorize the
31 production of medical or rehabilitation information only to the extent of the limitations

1 of the order. If information has been produced that is outside of the limits designated
2 in the order, the board or the board's designee shall direct the party in possession of
3 the information to return the information to the employee as soon as practicable
4 following the issuance of the order.

5 * **Sec. 5.** AS 23.30 is amended by adding a new section to read:

6 **Sec. 23.30.126. Review of board order.** (a) A decision or order of the board
7 becomes effective when filed in the office of the board under AS 23.30.110, and a
8 decision or order of the board becomes final on the 31st day after it is filed. A party
9 may seek review of a decision or order before the decision or order becomes final by
10 filing a petition for reconsideration with the board under AS 44.62.540, a petition for
11 modification under AS 23.30.130, or a petition for review with the superior court
12 under the rules of appellate procedure. After a decision or order becomes final, a party
13 may seek review by filing a notice of appeal with the superior court under
14 AS 44.62.560 under the rules of appellate procedure.

15 (b) If not in accordance with law, a compensation order may be suspended or
16 set aside, in whole or in part, through injunction proceedings in the superior court
17 brought by a party in interest against the board and all other parties to the proceedings
18 before the board. The payment of the amounts required by an award may not be stayed
19 pending final decision in the proceeding unless upon application for an interlocutory
20 injunction the court on hearing, after not less than three days' notice to the parties in
21 interest and the board, allows the stay of payment, in whole or in part, where
22 irreparable damage would otherwise ensue to the employer. The order of the court
23 allowing a stay shall contain a specific finding, based upon evidence submitted to the
24 court and identified by reference to it, that irreparable damage would result to the
25 employer, and specify the nature of the damage.

26 (c) If an employer fails to comply with a compensation order making an award
27 that has become final, a beneficiary of the award or the board may apply for the
28 enforcement of the order to the superior court. If the court determines that the order
29 was made and served in accordance with law, and that the employer or the officers or
30 agents of the employer have failed to comply with it, the court shall enforce obedience
31 to the order by writ of injunction or by other proper process to enjoin upon the

employer and the officers and agents of the employer compliance with the order.

(d) Proceedings for suspending, setting aside, or enforcing a compensation order, whether rejecting a claim or making an award, may not be instituted except as provided in this section and AS 23.30.170.

(e) Subject to an employer's or employee's burden of proof, a finding of fact made by the board as a part of a compensation order is conclusive unless the court specifically finds that a reasonable person could not have reached the conclusion made by the board.

(f) The director may intervene in an appeal under AS 44.62.560 or petition for review. If a party is not represented by counsel and a compensation order concerns an unsettled question of law, the director may file an appeal or petition for review to obtain a ruling.

(g) A court may not make an award of costs and attorney fees against an injured worker unless the court finds that the worker's position on judicial review was frivolous or unreasonable or the judicial review was sought in bad faith.

* **Sec. 6.** AS 23.30.155(f) is amended to read:

(f) If compensation payable under the terms of an award is not paid within 14 days after it becomes due, there shall be added to that unpaid compensation an amount equal to 25 percent of the unpaid installment. The additional amount shall be paid at the same time as, but in addition to, the compensation, unless review of the compensation order making the award as provided under AS 23.30.126 [AS 23.30.008] and an interlocutory injunction staying payments is allowed by the court. The additional amount shall be paid directly to the recipient to whom the unpaid compensation was to be paid.

* **Sec. 7.** AS 39.50.200(b)(31) is amended to read:

(31) Workers' Compensation Board (AS 23.30.005) [AND WORKERS' COMPENSATION APPEALS COMMISSION (AS 23.30.007)];

* **Sec. 8.** Rules 201.1, 401.1, and 501.1, Alaska Rules of Appellate Procedure, are repealed.

* **Sec. 9.** AS 23.30.007, 23.30.008, 23.30.009, 23.30.125, 23.30.127, 23.30.128, 23.30.129, 23.30.395(10); AS 39.25.110(40); AS 44.64.020(a)(12), and 44.64.020(a)(13) are repealed.

* **Sec. 10.** The uncoded law of the State of Alaska is amended by adding a new section to

1 read:

2 **INDIRECT COURT RULE AMENDMENTS.** The provisions of AS 23.30.126, added
3 by sec. 5 of this Act, and the repeal of AS 23.30.007, 23.30.008, 23.30.125, 23.30.127,
4 23.30.128, and 23.30.129 in sec. 9 of this Act have the effect of changing Rules 202(a),
5 204(a) - (c), 210(e), 508, 601(b), 602, and 603, Alaska Rules of Appellate Procedure, by
6 repealing the Alaska Workers' Compensation Commission and providing that appeals from
7 the Alaska Workers' Compensation Board be brought in the superior court, and by limiting
8 costs and attorney fees that may be awarded against an injured worker.

9 * **Sec. 11.** The uncoded law of the State of Alaska is amended by adding a new section to
10 read:

11 **APPLICABILITY.** Before December 2, 2016, AS 23.30.007 - 23.30.009,
12 23.30.107(b), 23.30.108(d) and (e), 23.30.125, 23.30.127, 23.30.128, 23.30.129, 23.30.155(f),
13 23.30.395(10), AS 39.25.110(40), AS 39.50.200(b)(31), and AS 44.64.020(a)(12) and (13), as
14 they existed on the day before the effective date of this Act, continue to apply to appeals,
15 petitions for review, and other proceedings pending before the Workers' Compensation
16 Appeals Commission. Appeals, petitions for review, and other proceedings under this section
17 shall be continued in the Workers' Compensation Appeals Commission until December 1,
18 2016. AS 23.30.126, added by sec. 5 of this Act, and AS 23.30.155(f), as amended by sec. 6
19 of this Act, do not apply to appeals, petitions for review, or other proceedings under this
20 section. AS 23.30.129, as it read on the day before the effective date of this Act, applies to
21 appeals to the Alaska Supreme Court from final decisions of the Workers' Compensation
22 Appeals Commission issued on or before December 1, 2016.

23 * **Sec. 12.** The uncoded law of the State of Alaska is amended by adding a new section to
24 read:

25 **TRANSITIONAL PROVISIONS.** (a) Appeals, petitions for review, and other
26 proceedings pending before the Workers' Compensation Appeals Commission before June 1,
27 2016, and not completed in the Workers' Compensation Appeals Commission before
28 December 2, 2016, shall automatically be transferred to the superior court in the judicial
29 district where the original claim was filed and placed within the jurisdiction of the superior
30 court on December 2, 2016, under AS 22.10.020 and Rules 604(b) and 609, Alaska Rules of
31 Appellate Procedure.

(b) Appeals, petitions for review, and other proceedings that seek review of Alaska Workers' Compensation Board decisions and that have not been filed and are not pending before the Workers' Compensation Appeals Commission on or before May 31, 2016, must be filed in the superior court on or after June 1, 2016, within 30 days after the date that the board decision becomes final.

(c) On or after November 1, 2016, a party seeking review of a Workers' Compensation Appeals Commission decision may file an appeal or petition for review with the supreme court under AS 23.30.129, as that section read on the day before the effective date of this Act.

(d) On December 2, 2016, the Workers' Compensation Appeals Commission shall transfer all appeals, petitions for review, and other proceedings that were pending before June 1, 2016, and that were not completed before December 2, 2016, to the superior court, which will assume jurisdiction of the action. The Workers' Compensation Appeals Commission shall provide notice to all parties of record 30 days before it transfers a pending case, advising the parties of the transfer of jurisdiction and the effective date of the transfer. The Workers' Compensation Appeals Commission shall prepare the file in accordance with the Alaska Rules of Appellate Procedure and mail or hand deliver the record in the pending case to the superior court in the judicial district where the original claim was filed. If the superior court determines that the record does not comply with the Alaska Rules of Appellate Procedure, the court may return the record to the Workers' Compensation Appeals Commission, and jurisdiction of the case will not transfer to the superior court until the record complies with the Alaska Rules of Appellate Procedure.

* **Sec. 13.** The uncoded law of the State of Alaska is amended by adding a new section to read:

TRANSITION: TERMS OF COMMISSIONERS. Notwithstanding AS 23.30.007(e), the terms of individuals appointed to the Workers' Compensation Appeals Commission expire December 31, 2016.

* **Sec. 14.** The uncoded law of the State of Alaska is amended by adding a new section to read:

CONDITIONAL EFFECT. This Act takes effect only if secs. 8 and 10 of this Act receive the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of

1 the State of Alaska.

2 * **Sec. 15.** This Act takes effect June 1, 2016.