

COMMENTS TO THE HOUSE JUDICIARY COMMITTEE

January 31, 2024

Good afternoon. Madame Chair and members of the committee, I'm Andy Hemenway. I retired as Chair of the Alaska Worker's Compensation Appeals Commission in 2016, and I'm appearing today in a personal capacity, in opposition to House Bill 63.

I'd like to address three points. First is the Commission's caseload. Second is the fact that the Commission's rulings have the force of legal precedent. And third, the Commission's productivity.

With respect to caseload, the number of cases filed in the Commission has drastically dropped in the last three years. Over the preceding ten years, from 2011 to 2020, the Commission received an average of 25 new cases per year, ranging from a high of 31 to a low of 21. In the last three years, from 2021 to 2023, the number of new cases, which was previously never lower than 20, dropped to 15 in 2021, 14 in 2022 and, remarkably, only 4 last year. But it would be a mistake to use these recent, historically low case numbers as justification for abolishing the Commission. In fact, the Commission has already received three new cases this month, and there is every reason to believe that case filings will in the next year or two return to their prior, normal level of about two dozen cases per year. The recent reduction is undoubtedly linked to the Covid pandemic. During the Covid pandemic, the number of claims filed with the board plummeted, from an average of 1222 per year in 2015-2019, to an average of 669 in 2020-2023. Lower numbers of claims lead to fewer decisions issued by the Board, and inevitably to lower numbers of appeals to the Commission. But employment levels in Alaska have not yet returned to pre-pandemic numbers, and as the economy returns to normal, it's reasonable to expect that the number of worker's compensation claims, and appeals to the Commission, will also return to normal levels. It would be a mistake to make a policy decision about the future of the Commission based on the current low caseload levels.

Second, I want to stress the importance of the fact that the Commission's decisions have the force of legal precedent. Before the Commission was created, appeals from the Board went to the Superior Court. Decisions by the Superior Court do not have the force of legal precedent. What that means is that when the Superior Court ruled on a legal question regarding the interpretation of the worker's compensation statutes, neither the Board nor insurance companies would need to abide by the ruling in the future. So, if the Board disagreed with the ruling, it could keep doing things the way it wanted, and likewise if an insurance company or an attorney representing injured workers didn't like the ruling they could disregard it when dealing with other claimants. Moreover, there was nothing to prevent another Superior Court judge from ruling differently in a later case. As a result, there was a lot of uncertainty regarding what rules would actually be applied. To put an end to that uncertainty, when the legislature created the Commission it included in statute, specifically as 36.30.008(a), a directive that "decisions of

the commission have the force of legal precedent.” What that means is that the Board, insurance companies, and workers and their attorneys know what the rules are, and can plan and act accordingly. Of course, if the parties to a case don’t like the Commission’s ruling, they can appeal to the Supreme Court. Because the Commission’s decisions create binding precedent, it is especially important that those decisions are the product of a body with experience and expertise in Alaska worker’s compensation laws, legal expertise on the part of the chair, and practical, real world experience on the part of the lay members of the commission, who by statute must have served on the Worker’s Compensation Board.

The last point i want to touch on is the Commission’s productivity. There’s been a lot of testimony regarding whether the Commission is an improvement over the court system in terms of how long it takes to resolve cases. I can’t speak to how long it might take the Superior Court to resolve these cases, but i did want to explain why it generally takes the Commission about a year. The Commission’s regulations provide about six months to prepare the record, submit briefs and schedule oral argument. But the parties almost always ask for extensions of time, and the Commission can allow, for good cause, up to 60 additional days for each of the steps along the way. So it is typical that a case will take close to a year, at the parties’ request, before it is heard. The Commission is required by statute to issue its decision within 90 days after oral argument. In short, the Commission resolves cases in a timely manner, without delays other than what the parties have asked for. One other aspect of productivity that has been mentioned is the relatively low number of decisions issued by the Commission’s one attorney member, as compared with the number of decisions issued by each member of the Alaska Court of Appeals and Supreme Court. But the number of decisions issued isn’t the only appropriate measuring stick. There’s also the cost per decision. Each member of the Court of Appeals and the Supreme Court has multiple law clerks, and there is a large clerical staff supporting them. On a cost per decision basis, the cost per decision of a Commission decision isn’t remarkably different from the cost per decision of the Court of Appeals and the Supreme Court, at the caseloads that existed prior to the pandemic.

I appreciate the opportunity to speak to the committee today, and i’d be happy to answer any questions you may have for me.