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Alaska State Legislature

Senator Paul A. Fischer
Senate District D
Box 784
Soldotna, Alaska 99669
(907) 262-9420 W
262-9269 H



State Senate

While in Juneau
Pouch V
Juneau, Alaska 99811
(907) 465-3791

APR 22 1985

Memo

April 22, 1985

To: Senator Fred Zharoff, Chairman
Senate State Affairs Committee

From: Senator Paul Fischer *PF*

Subject: Senate Bill 254

I introduced this legislation to enable sole proprietors and partners to be covered under workmans' compensation laws. The statutes allow coverage for corporate owners, but do not permit coverage by sole proprietors and partners. This legislation is modeled after a similar Oregon law.

I have reviewed the amendments proposed by the Department of Labor and would support a committee substitute including Labor's proposed amendments.

I would appreciate your expeditious consideration of this bill.

attachments:

~~Dick~~
Mueller
Realty

100 TRADING BAY RD., SUITE 1
KENAI, AK 99611
907-283-5888



February 20, 1985

State of Alaska
Director of Insurance
Dept. of Commerce &
Economic Development
Juneau, Alaska 99801

Sir:

I wish to call your attention to discrimination in Alaska Workman's Compensation laws and ask what can be done about it.

According to my insurance agent a sole proprietor of a business must furnish workmans's compensation insurance for all employees and all uninsured independent contractors. But, he can not be insured on this policy which he is forced to buy. Not even to the extent of injuries received on the job, doing the same work his insured employees and independent contractors are doing and this is discrimination against the small independent business man.

I can see some possible reason for excluding the employer from receiving compensation for lost time, but even this is hard to justify.

In the case of real estate brokers, they must cover all independent contractors. Builders and other business owners are only required to cover independent contractors if they do not have insurance. Why can real estate agents who are independent contractors not insure themselves? This is an unfair burden on the broker owner.

Most real estate brokers in our area work on listing and sales the same as their agents and pay commissions to themself the same as the agents.

The operation of running the business is done in addition to sales. In my case most of my income is from sales based exactly the same as my agents.

Thank you for prompt answers to my questions.

Sincerely,

Richard R. Mueller, GRI, CRS,
Broker/Owner

RRM:rm

cc; Sen. Paul Fisher, Rep. Mike Navarre & Rep. Andre Marrou

Date April 4, 1985

Title

"An Act relating to Workers' Compensation."

Contact *J. L. McClintock*
465-2790

The Department of Labor supports the concept of legislation that would give sole proprietors and partners the opportunity to obtain coverage for workers' compensation. We would propose two amendments to the bill to correct potential problems, as follows:

1. Amend AS 23.30.239(c) which begins on line 19 to read:

(c) Notwithstanding the provisions of AS 23.30.120(a), a person covered under (a) of this section bears the burden of proof of the validity of the claim.

Since there is no employee/employer relationship for persons who would be covered under this bill, there is no party to raise an affirmative defense in connection with a claim filed by a sole proprietor or partner. The proposed subsection (c) attempts to address this problem by the inclusion of a requirement of "corroborative evidence." That term could be defined quite broadly, however, leading to an interpretation which is not necessarily consistent with the intent of the Alaska Workers' Compensation Act. Our proposed amendment of subsection (c), which specifically provides that sole proprietors and partners do not get the benefit of the presumption contained in AS 23.30.120(a), would clarify the provision and avoid the potential for interpretations inconsistent with the intent of the Act.

2. Amend line 23 to read:

may cancel the election by giving written notice to the insurer. Notwithstanding the provisions of AS 23.30.030(5), the

This would eliminate the conflict between the proposed subsection (d), which provides that "The cancellation becomes effective the day following the filing of notice with the insurer;" and AS 23.30.030(5), which provides that "A termination of the policy by cancellation is not effective as to the employees of the insured employer covered by it until 20 days after written notice of the termination has been received by the board."

APPROVED:



Jim Robison
Commissioner

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 254
 Title: "An Act relating to workers' compensation"
 Sponsor: P. Fischer
 Requestor: Senate Labor & Commerce
 Date of Request: 3/27/85

FISCAL DETAIL

Agency Affected: Labor
 Program Category Affected: Public Protection
 BRU, Program or Subprogram(s) Affected: Workers' Compensation

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: ^{NS} Jacque McClintock *Jacque McClintock* Phone: 465-2790

Division: Workers' Compensation Date: 3/28/85

Approved by Commissioner: ^{NS} Jim Robinson *Jim Robinson* Date: 3/28/85

Agency: Labor

Distribution (by Agency preparing fiscal note):

Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

Fiscal note (0)

Bill No. Senate Bill 254

Date April 4, 1985

Title "An Act relating to Workers' Compensation."

Contact J. L. McClintock
465-2790

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Since there is no employee/employer relationship for persons who would be covered under this bill, there is no party to raise an affirmative defense in connection with a claim filed by a sole proprietor or partner. The proposed subsection (c) attempts to address this problem by the inclusion of a requirement of "corroborative evidence." That term could be defined quite broadly, however, leading to an interpretation which is not necessarily consistent with the intent of the Alaska Workers' Compensation Act. Our proposed amendment of subsection (c), which specifically provides that sole proprietors and partners do not get the benefit of the presumption contained in AS 23.30.120(a), would clarify the provision and avoid the potential for interpretations inconsistent with the intent of the Act.

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This would eliminate the conflict between the proposed subsection (d), which provides that "The cancellation becomes effective the day following the filing of notice with the insurer;" and AS 23.30.030(5), which provides that "A termination of the policy by cancellation is not effective as to the employees of the insured employer covered by it until 20 days after written notice of the termination has been received by the board."

APPROVED:



Jim Robison
Commissioner

Introduced: 3/26/85
Referred: Labor & Commerce

1 IN THE SENATE

BY P.FISCHER

2

SENATE BILL NO. 254

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to workers' compensation."

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

8 * Section 1. AS 23.30 is amended by adding a new section to read:

9 Sec. 23.30.239. SOLE PROPRIETORS AND PARTNERS AS EMPLOYEES. (a)

10 A person who is a sole proprietor, or a member of a partnership, may
11 elect coverage as an employee under this chapter by making written
12 application to an insurer. The insurer may accept the application and
13 fix an assumed monthly wage at which the person shall be carried on
14 the payroll for purposes of this chapter.

15 (b) When the application is accepted, the person is subject to
16 the provisions and entitled to the benefits of this chapter. The
17 person shall promptly notify the insurer whenever there is a change in
18 the status of the person as a sole proprietor or partner.

19 (c) A claim may not be allowed or paid to a person covered under
20 (a) of this section except upon corroborative evidence in addition to
21 the evidence of the claimant.

22 (d) A person subject to this chapter as provided in this section
23 may cancel the election by giving written notice to the insurer. The
24 cancellation becomes effective the day following the filing of notice
25 with the insurer.



Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

CS SB 254 (L&C): "AN ACT RELATING TO WORKERS" COMPENSATION"

NOTE: CHAIRMAN NEEDS TO MOVE FOR THE ADOPTION OF THE L&C CS;

Do you wish to "tighten up" the title?

THIS LEGISLATION EXTENDS THE OPPORTUNITY FOR SOLE PROPRIETORS AND "PARTNERS AS EMPLOYEES" TO OBTAIN WORKERS' COMPENSATION COVERAGE.

THE SENATE LABOR AND COMMERCE CS INCORPORATES CHANGES WHICH WERE PROPOSED BY THE DEPARTMENT OF LABOR AND BOTH THE DEPARTMENT OF LABOR AND THE DIVISION OF INSURANCE EXPRESSED SUPPORT FOR THIS BILL.

Chairman's Information:

- 1) SB 254: "An act relating to worker's compensation"
 - a) Introduced: P Fischer
 - b) Co-Sponsors:
- 2) INTENT: Extends the opportunity for sole proprietors and "partners as employees" to obtain workers' compensation coverage.

FISCAL NOTE: none

NOTE: It appears that the title is rather broad and I would suggest a title change to tighten it up. Also we have a L&C CS which contains changes requested by the Department of Labor.

- 3) ADDITIONAL REFERRALS:
- 4) PUBLIC HEARINGS:
 - a) Sponsor:
 - b) Public witnesses:
- 5) BILL ACTION:
 - a) Hold in committee?
 - b) Assign to sub committee for further review?
 - c) Move from Committee?
 - d) close public hearings?
- 6) COMMITTEE ACTION:
 - a) amendments?
 - b) CS adoption? Move for adoption of the L&C CS?



Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

SB 254: Summary

This legislation would extend the opportunity to obtain workers' compensation coverage to sole proprietors or members of a partnership who wish such coverage. The bill provides that an insurer may accept the application and fix an assumed monthly wage at which the person will be carried on the payroll for purposes of this chapter.

After an application is accepted, the person is entitled to the benefits of this chapter, and the person must notify the insurer when there is a change in his status as a sole proprietor or partner.

A person covered under this section bears the burden of proof of the validity of the claim and may cancel his coverage by giving written notice to the insurer. The cancellation becomes effective the day following the filing of such notice with the insurer.

Ford
4/10/85

Original sponsor: P.Fischer

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IN THE SENATE

BY THE LABOR AND
COMMERCE COMMITTEE

CS FOR SENATE BILL NO. 254 (L&C)
IN THE LEGISLATURE OF THE STATE OF ALASKA
FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to workers' compensation."

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

* Section 1. AS 23.30 is amended by adding a new section to read:

Sec. 23.30.239. SOLE PROPRIETORS AND PARTNERS AS EMPLOYEES. (a)
A person who is a sole proprietor, or a member of a partnership, may elect coverage as an employee under this chapter by making written application to an insurer. The insurer may accept the application and fix an assumed monthly wage at which the person shall be carried on the payroll for purposes of this chapter.

(b) When the application is accepted, the person is subject to the provisions and entitled to the benefits of this chapter. The person shall promptly notify the insurer whenever there is a change in the status of the person as a sole proprietor or partner.

(c) Notwithstanding the provisions of AS 23.30.120(a), a person covered under (a) of this section bears the burden of proof of the validity of the claim.

(d) A person who has elected coverage under (a) of this section may cancel the election by giving written notice to the insurer. Notwithstanding AS 23.30.030(5), the cancellation becomes effective the day following the filing of notice with the insurer.

23.30.270 due to a loss which is excluded by the terms of the policy and for which the employer has paid no premiums. *Munz v. Underwriters at Lloyds*, 336 F.2d 798 (9th Cir. 1964).

Airplane trips not within coverage of policy. — Airplane trips to remote fishing lodges for free recreation were not necessary, incidental or appurtenant to, or connected with the business of the employer under an insurance policy covering all operations of every nature incidental to employer's hotel and bar. *D.K. MacDonald & Co. v. Alaska Indus. Bd.*, 14 Alaska 483,

116 F. Supp. 555 (D. Alaska), 117 F. Supp. 401 (9th Cir. 1954). See also *Underwriters at Lloyds v. Munz*, 224 F. Supp. 954 (D. Alaska 1963), aff'd, 336 F.2d 798 (9th Cir. 1964).

Apportionment of liability between insurance carriers rejected. — See *Underwriters at Lloyds v. Alaska Indus. Bd.*, 17 Alaska 527, 160 F. Supp. 248 (D. Alaska 1958).

Applied in Providence Washington Ins. Co. v. Alaska Pac. Assurance Co., Sup. Ct. Op. No. 2579 (File No. 6398), 654 P.2d 269 (1982).

Sec. 23.30.030. Required policy provisions. A policy of a company insuring the payment of compensation under this chapter is considered to contain the provisions set out in this section.

(1) The insurer assumes in full all the obligations to pay physician's fees, nurse's charges, hospital services, hospital supplies, medicines, prosthetic devices, transportation charges to the nearest point where adequate medical facilities are available, burial expenses, and compensation or death benefits imposed upon the insured under the provisions of this chapter.

(2) The policy is made subject to the provisions of this chapter and its provisions relative to the liability of the insured employer to pay physician's fees, nurse's charges, hospital services, hospital supplies, medicines, prosthetic devices transportation charges to the nearest point where adequate medical facilities are available, burial expenses, compensation or death benefits to and for said employees or beneficiaries, the acceptance of the liability by the insured employer, the adjustment, trial and adjudication of claims for the physician's fees, nurse's charges, hospital services, hospital supplies, medicines, prosthetic devices, transportation charges to the nearest point where adequate medical facilities are available, burial expenses, compensation or death benefits and the liability of the insurer to pay the same are considered a part of this policy contract.

(3) As between the insurer and the employee or the employee's beneficiaries, notice to or knowledge of the occurrence of the injury on the part of the insured employer is notice or knowledge on the part of the insurer; jurisdiction of the insured employer for the purpose of this chapter is jurisdiction of the insurer; and the insurer, in all things, is bound by and subject to the orders, awards, judgments and decrees made against the insured employer under this chapter.

(4) The insurer will promptly pay to the person entitled to them the benefit conferred by this chapter, including physician's fees, nurse's charges, hospital services, hospital supplies, medicines, prosthetic devices, transportation charges to the nearest point where adequate medical facilities are available, burial expenses, and all installments of compensation or death benefits awarded or agreed upon under this

aska), 117 F. Supp. also Underwriters t F. Supp. 954 (D. i F.2d 798 (9th Cir.

liability between rejected. — See s v. Alaska Indus. 0 F. Supp. 248 (D.

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chapter. The obligator insurer is not affected by a default of the insured employer after the injury, or by default in giving a notice required by this policy. The policy is a direct promise by the insurer to the person entitled to physician's fees, nurse's charges, fees for hospital services, charges for medicines, prosthetic devices, transportation charges to the nearest point where adequate medical facilities are available, and hospital supplies, charges for burial, compensation or death benefits, and is enforceable in the name of that person. The insurer shall provide claims facilities through its own staffed adjusting facilities located within the state, or by independent, licensed, resident adjusters with power to effect settlement within the state.

(5) A termination of the policy by cancellation is not effective as to the employees of the insured employer covered by it until 20 days after written notice of the termination has been received by the board. If the employer has a contract with the state or a home rule or other political subdivision of the state, and the employer's policy is cancelled due to nonpayment of a premium, the termination of the policy is not effective as to the employees of the insured employer covered by it until 20 days after written notice of the termination has been received by the contracting agency, and the agency has the option of continuing the payments on behalf of the employer in order to keep the policy in force. If, however, the employer has secured insurance with another insurance carrier, cancellation is effective as of the date of the new coverage.

(6) All claims for compensation, death benefits, physician's fees, nurse's charges, hospital services, hospital supplies, medicines, prosthetic devices, transportation charges to the nearest point where adequate medical facilities are available, and burial expenses, may be made directly against either the employer or the insurer, or both, and the order or award of the board may be made against either the employer or the insurer or both.

(7) If the insurer fails or refuses to pay a final award or judgment (except during the pendency of an appeal) made against it, or its insured, or if it fails or refuses to comply with a provision of this chapter, the insurance commissioner shall revoke the approval of the policy form, and may not accept further proofs of insurance from it until it has paid the award or judgment or has complied with the violated provision of this chapter, and has resubmitted its policy form and received the approval of the form by the insurance commissioner. (§ 40 ch 193 SLA 1959; am § 2 ch 1 SLA 1962; am § 2 ch 166 SLA 1972)

NOTES TO DECISIONS

Applied in Providence Washington Ins Co. v. Alaska Pac. Assurance Co., Sup. Ct. Op. No. 2579 (File No. 6398), 654 P.2d 267 (1982).

Stated in Richard v. Fireman's Fund Ins. Co., Sup. Ct. Op. No. 155 (File No. 267), 384 P.2d 445 (1963).

AWARD.
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 No. 1277), 477 P.2d 996

r is not to be barred
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**OF ORDER TO
 IANT AND
 LOYER.**

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ion claim. 63 ALR3d

Sec. 23.30.115. Attendance and fees of witnesses. (a) A person is not required to attend as a witness in a proceeding before the board at a place more than 100 miles from the person's place of residence, unless the person's lawful mileage and fee for one day's attendance is first paid or tendered to the person; but the testimony of a witness may be taken by deposition or interrogatories according to the Rules of Civil Procedure.

(b) A witness summoned in a proceeding before the board or whose deposition is taken shall receive the same fees and mileage as a witness in the superior court. (§§ 23, 24 ch 193 SLA 1959)

Cross references. — For court rules on depositions and interrogatories, see Civ. R. 26-37.

NOTES TO DECISIONS

Applied in Commercial Union Cos. v. Smallwood, Sup. Ct. Op. No. 1246 (File No. 2443), 550 P.2d 1261 (1976).

Collateral references. — Competency Workmen's Compensation Act as affected of witness in proceeding for death under by Deadman's Statute, 77 ALR2d 680.

Sec. 23.30.120. Presumptions. (a) In a proceeding for the enforcement of a claim for compensation under this chapter it is presumed, in the absence of substantial evidence to the contrary, that

- (1) the claim comes within the provisions of this chapter;
- (2) sufficient notice of the claim has been given;
- (3) the injury was not proximately caused by the intoxication of the injured employee or proximately caused by the employee being under the influence of drugs unless the drugs were taken as prescribed by the employee's physician;
- (4) the injury was not occasioned by the wilful intention of the injured employee to injure or kill self or another.

(b) If delay in giving notice is excused by the board under AS 23.30.100(d)(2), the burden of proof of the validity of the claim shifts to the employee notwithstanding the provisions of (a) of this section. (§ 9 ch 193 SLA 1959; am §§ 11, 13 ch 93 SLA 1982)

Revisor's notes. — Subsection (b) was enacted as a part of AS 23.30.100(d)(2). Renumbered in 1982.

Effect of amendments. — The 1982 amendment rewrote paragraph (3) of present subsection (a), which formerly read "the injury was not occasioned solely by the intoxication of the injured employee," and enacted the provisions of subsection (b).

NOTES TO DECISIONS

This section provides statutory guidance for the supreme court in evaluating the basis for a board decision. *Cook v. Alaska Workmen's Comp. Bd.*, Sup. Ct. Op. No. 644 (File No. 1168), 476 P.2d 29 (1970).

A preexisting disease or infirmity does not disqualify a claim if the work aggravated, accelerated or combined with the disease or infirmity to produce the death. *Cook v. Alaska Workmen's Comp. Bd.*, Sup. Ct. Op. No. 644 (File No. 1168), 476 P.2d 29 (1970); *Burgess Constr. Co. v. Smallwood*, Sup. Ct. Op. No. 2282 (File No. 4502), 623 P.2d 312 (1981).

There is a presumption in favor of compensability under the workmen's compensation laws. *Marsh v. Alaska Workmen's Comp. Bd.*, Sup. Ct. Op. No. 1745 (File No. 3643), 584 P.2d 1134 (1978).

And that injury is work-connected. — Since the Workmen's Compensation Act creates a presumption that a claim for compensation comes within the provisions of the statute, it must be presumed that an injury is work-connected in the absence of substantial evidence to the contrary. *Beauchamp v. Employers Liab. Assurance Corp.*, Sup. Ct. Op. No. 655 (File No. 1161), 477 P.2d 993 (1970). See also *Miller v. ITT Arctic Servs.*, Sup. Ct. Op. No. 1602 (File No. 3311, 3312), 577 P.2d 1044 (1978).

The test of coverage should not be limited to specific or required duties of the employment, but should include duties reasonably incidental to the employment. *Laborers & Hod Carriers Local 341 v. Groothuis*, Sup. Ct. Op. No. 773 (File Nos. 1435, 1459), 494 P.2d 808 (1972).

Hence, where the duties of decedent's position were broadly defined and included "anything that would inure to the benefit of the country," it would be difficult to find a rational basis upon which it could be asserted that he was not acting within the scope of his employment at the time of the crash. *Laborers & Hod Carriers Local 341 v. Groothuis*, Sup. Ct. Op. No. 773 (File Nos. 1435, 1459), 494 P.2d 808 (1972).

Compensable activity. — While labeling an employee's activity as "personal" may not render the ensuing injury per se noncompensable, the activity must still be "reasonably foreseeable and incidental" to the employment, and not just "but for" the employment, to enable the employee to claim compensation. *Marsh v. Alaska Workmen's Comp. Bd.*, Sup. Ct. Op. No. 1745 (File No. 3643), 584 P.2d 1134 (1978).

A heart attack is within the statutory presumption of compensability of accidental injuries under the Alaska Workmen's Compensation Act. *Employers Com. Union Ins. Cos. v. Schoen*, Sup. Ct. Op. No. 1325 (File No. 2616), 554 P.2d 1146 (1976).

Application of presumption. — Presumption of compensability in subsection (1) of this section applies in determining whether an employee's current problems are related to an on-the-job injury or arise from an independent cause. *Black v. Universal Servs., Inc.*, Sup. Ct. Op. No. 2348 (File No. 4786), 627 P.2d 1073 (1981).

The presumption in paragraph (1) of this section applies to claims of aggravation or acceleration of a preexisting condition. *Burgess Constr. Co. v. Smallwood*, Sup. Ct. Op. No. 2282 (File No. 4502), 623 P.2d 312 (1981).

The presumption of compensability is not so limited that it does not apply in cases where the injury is not shown to have occurred on the job and is not sudden or unexplained, but rather the result of a preexisting condition which may have been aggravated by the employment. *Burgess Constr. Co. v. Smallwood*, Sup. Ct. Op. No. 2282 (File No. 4502), 623 P.2d 312 (1981).

Where claimant's theory was that his employment conditions, particularly his work on a haul road, aggravated his preexisting renal dysfunction by preventing him from getting proper medical attention and maintaining a low salt diet necessary to control hypertension, which accelerated his ultimate renal failure, such aggravation or acceleration must be presumed in the absence of substantial evidence to the contrary. *Burgess Constr. Co. v. Smallwood*, Sup. Ct. Op. No. 2282 (File No. 4502), 623 P.2d 312 (1981).

Before the statutory presumption of compensability attaches, some preliminary link must be established between the disability and the employment, and in claims based on highly technical medical considerations medical evidence is often necessary in order to make that connection. *Burgess Constr. Co. v. Smallwood*, Sup. Ct. Op. No. 2282 (File No. 4502), 623 P.2d 312 (1981).

The presumption of compensability found in paragraph (1) of this section is expressly made applicable to any "proceeding for the enforcement of a claim for compensation under this chapter" of the Worker's Compensation Act, AS 23.30.005

is within the statutory compensability of accident under the Alaska Compensation Act. *Employers Cos. v. Schoen*, Sup. Ct. Op. No. 2616, 554 P.2d

presumption. — Presumption in subsection applies in determining employee's current problems on-the-job injury or arise from cause. *Black v. Union*, Sup. Ct. Op. No. 2348, 57 P.2d 1073 (1981).
in paragraph (1) of this section in claims of aggravation or preexisting condition. *Smallwood v. Smallwood*, Sup. Ct. Op. No. 4502, 623 P.2d 312

of compensability is that it does not apply in an injury is not shown to be the job and is not sudden rather the result of a condition on which may have been employed. *Smallwood v. Smallwood*, Sup. Ct. Op. No. 4502, 623 P.2d 312

theory was that his conditions, particularly his back, aggravated his dysfunction by not getting proper medication, maintaining a low salt diet, control hypertension, his ultimate renal condition or acceleration in the absence of substance to the contrary. *Burgess Constr. Co. v. Smallwood*, Sup. Ct. Op. No. 2282 (File No. 4502), 623 P.2d 312 (1981).

ory presumption of compensability, some preliminary findings established between the employment, and in the absence of technical medical evidence is often sufficient to make that conclusion. *Smallwood v. Smallwood*, Sup. Ct. Op. No. 4502, 623

of compensability in 1) of this section is applicable to any "promise of a claim for his chapter" of the Act, AS 23.30.005

— 23.30.270. The broad inclusiveness of this language does not mean that the mere filing of a claim gives rise to the presumption of coverage, for there must be some evidence that the claim arose out of, or in the course of, employment before the presumption arises. *Burgess Constr. Co. v. Smallwood*, Sup. Ct. Op. No. 2282 (File No. 4502), 623 P.2d 312 (1981).

Presumption may not be ignored. — The question in a particular case of whether the employment did so contribute to aggravate or accelerate the final result is one of fact which is usually determined from medical testimony, but once a prima facie case of work-relatedness is made, the board may not ignore the presumption and allocate the burden of proof to the claimant. *Burgess Constr. Co. v. Smallwood*, Sup. Ct. Op. No. 2282 (File No. 4502), 623 P.2d 312 (1981).

The board failed to apply the proper legal standard where nowhere in its findings and conclusions was there any mention of the statutory presumption of coverage, or of aggravation or acceleration of a preexisting condition, and the language employed by the board in its decision suggested that it improperly placed the burden of establishing work-relatedness on claimant. *Burgess Constr. Co. v. Smallwood*, Sup. Ct. Op. No. 2282 (File No. 4502), 623 P.2d 312 (1981).

Overcoming presumption of compensability. — Two possible ways of overcoming the presumption of compensability are (1) by affirmative evidence showing that the death was not work-connected, or (2) by eliminating all reasonable possibilities that the death was work-connected. *Miller v. ITT Arctic Servs.*, Sup. Ct. Op. No. 1602 (File Nos. 3311, 3312), 577 P.2d 1044 (1978); *Burgess Constr. Co. v. Smallwood*, Sup. Ct. Op. No. 2282 (File No. 4502), 623 P.2d 312 (1981).

The employer can overcome the presumption of compensability by introducing affirmative evidence that the assault was not work-related. *Marsh v. Alaska Workmen's Comp. Bd.*, Sup. Ct. Op. No. 1745 (File No. 3643), 584 P.2d 1134 (1978).

Where the statutory presumption of workers' compensation coverage governs, it is necessary for the employer to show by substantial evidence that the employee's continuing back problems did not result from the work-related accident. *Rogers Elec. Co. v. Kouba*, Sup. Ct. Op. No. 1990 (File No. 4164), 603 P.2d 909 (1979).

Presumption of compensability not

inconsistent with holding burden of proof on claimant. — There is no inconsistency between the presumption of compensability found in this section and a holding that the burden of proving that an injury arose out of and in the course of the employment rests upon the claimant for compensation, for the presumption of this section places a burden on the employer to go forward with evidence on the issue of whether the injury arises outside or within the scope of employment. Once competent evidence is introduced, the presumption drops out, and the final burden of proof as to all essential elements is on the claimant. *Anchorage Roofing Co. v. Gonzales*, Sup. Ct. Op. No. 867 (File No. 1533), 507 P.2d 501 (1973).

Burden of proof. — The presumption of this section applies until such time as there is evidence that the claimant was outside the scope of his employment. At such time the claimant then has the burden of going forward with evidence of the job-related nature of the injury. *Anchorage Roofing Co. v. Gonzales*, Sup. Ct. Op. No. 867 (File No. 1533), 507 P.2d 501 (1973).

The employer has the burden of going forward with the evidence on the issue of whether the injury arose outside the scope of employment, but once substantial evidence is introduced, the presumption drops out, and the burden of proving all elements of the claim falls on the plaintiff. *Fireman's Fund Am. Ins. Cos. v. Gomes*, Sup. Ct. Op. No. 1230 (File No. 2421), 544 P.2d 1013 (1976).

The Alaska Workmen's Compensation Act contains a presumption that an injury is work-connected in the absence of substantial evidence to the contrary. Once substantial evidence is introduced, the presumption drops out and the burden of proving all elements of the claim falls on the claimant. *Miller v. ITT Arctic Servs.*, Sup. Ct. Op. No. 1602 (File Nos. 3311, 3312), 577 P.2d 1044 (1978).

If a company meets its burden of producing substantial evidence that the injury was not work-related, the presumption would then drop out, shifting the burden of proving all elements of the claim back to the claimant. *Burgess Constr. Co. v. Smallwood*, Sup. Ct. Op. No. 2282 (File No. 4502), 623 P.2d 312 (1981).

Substantial evidence required to overcome presumption. — When a claimant shows that he has been injured at work, substantial evidence is needed to overcome the presumption of com-

pensability. *Marsh v. Alaska Workmen's Comp. Bd.*, Sup. Ct. Op. No. 1745 (File No. 3643), 584 P.2d 1134 (1978). See also *Laborers & Hod Carriers Local 341 v. Groothuis*, Sup. Ct. Op. No. 773 (File Nos. 1435, 1459), 494 P.2d 808 (1972).

For a reviewing court to uphold a decision of the Alaska Workers' Compensation Board determining that an employer has rebutted the statutory presumption of coverage, it must find that the decision is supported by "substantial evidence." *Black v. Universal Servs., Inc.*, Sup. Ct. Op. No. 2348 (File No. 4786), 627 P.2d 1073 (1981).

"Substantial evidence". — The supreme court has consistently defined "substantial evidence" as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Evidence which is competent or admissible may nevertheless be insufficient to overcome the presumption of compensability; the question whether the quantum of evidence is substantial is a legal question. *Miller v. ITT Arctic Servs.*, Sup. Ct. Op. No. 1602 (File Nos. 3311, 3312), 577 P.2d 1044 (1978).

"Substantial evidence" is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Rogers Elec. Co. v. Kouba*, Sup. Ct. Op. No. 1990 (File No. 4164), 603 F.2d 909 (1979); *Burgess Constr. Co. v. Smallwood*, Sup. Ct. Op. No. 2282 (File No. 4502), 623 P.2d 312 (1981); *Black v. Universal Servs., Inc.*, Sup. Ct. Op. No. 2348 (File No. 4786), 627 P.2d 1073 (1981).

The mere inability to state that the disability was work-related does not constitute substantial evidence. *Miller v. ITT Arctic Servs.*, Sup. Ct. Op. No. 1602 (File Nos. 3311, 3312), 577 P.2d 1044 (1978).

The mere possibility of another injury is not "substantial" evidence sufficient to overcome the presumption of compensability. *Hoth v. Valley Constr.*, Sup. Ct. Op. No. 2736 (File No. 6750), 671 P.2d 871 (1983).

Affirmative evidence in the form of expert testimony that decedent's death was not work-related was sufficient to constitute substantial evidence for purposes of rebutting the statutory presumption of compensability. *Miller v. ITT Arctic Servs.*, Sup. Ct. Op. No. 1602 (File Nos. 3311, 3312), 577 P.2d 1044 (1978).

Where, even though an employee's injury was sustained while he was at work, there was compelling evidence presented to indicate that the employee had taken himself outside the scope and duties of his

employment in his encounter with a woman patron and that it was that conduct which motivated the assault on him by the woman's husband, there was substantial evidence to support the board's determination that the assault on the employee was not work-connected and did not entitle the employee to compensation. *Marsh v. Alaska Workmen's Comp. Bd.*, Sup. Ct. Op. No. 1745 (File No. 3643), 584 P.2d 1134 (1978).

In order to produce substantial evidence necessary to overcome the statutory presumption of compensability, it is imperative that the carrier be given an opportunity to cross-examine the claimant's medical experts and produce its own medical evidence of lack of aggravation or causation. *Burgess Constr. Co. v. Smallwood*, Sup. Ct. Op. No. 2282 (File No. 4502), 623 P.2d 312 (1981).

Uncontradicted lay testimony, coupled with inconclusive medical testimony, can be enough to support a finding by the board that a physical condition is causally connected to an accidental injury sustained in the course of the employment. *Employers Com. Union Co. v. Labor*, Sup. Ct. Op. No. 1162 (File No. 2119), 536 P.2d 129 (1975).

Resolution of doubt as to substance of medical testimony. — If there is any doubt as to the substance of medical testimony, it must be resolved in favor of the claimant. *Beauchamp v. Employers Liab. Assurance Corp.*, Sup. Ct. Op. No. 655 (File No. 1161), 477 P.2d 993 (1970); *Cook v. Alaska Workmen's Comp. Bd.*, Sup. Ct. Op. No. 644 (File No. 1168), 476 P.2d 29 (1970); *Miller v. ITT Arctic Servs.*, Sup. Ct. Op. No. 1602 (File Nos. 3311, 3312), 577 P.2d 1044 (1978); *Alaska Pac. Assurance Co. v. Turner*, Sup. Ct. Op. No. 2067 (File No. 4304), 611 P.2d 12 (1980); *Kessick v. Alyeska Pipeline Serv. Co.*, Sup. Ct. Op. No. 2171 (File No. 4614), 617 P.2d 755 (1980).

The rule on resolving doubt as to the substance of medical testimony is properly applicable only when the substance of a particular witness' testimony is in doubt. *Miller v. ITT Arctic Servs.*, Sup. Ct. Op. No. 1602 (File Nos. 3311, 3312), 577 P.2d 1044 (1978).

Psychiatrist's report. — Where a psychiatrist concluded that an injured employee's problems were mental rather than physical, this report could be given more weight than other doctors' (who were not psychiatrists) conclusions to the contrary and where the psychiatrist's report was neither doubtful nor ambiguous, it

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Inc., Sup. Ct. Op. No. 2348 (File No. 4786),
627 P.2d 1073 (1981).

Where a psychiatrist who had no oppor-
tunity to examine the injured employee in
any depth concluded contrary to numerous
physicians who treated her that the
employee's problems were mental rather
than physical, this was insufficient evi-
dence to sustain the Workers' Compensa-
tion Board's determination that the
employee's injury was not compensable.
Black v. Universal Servs., Inc., Sup. Ct.
Op. No. 2348 (File No. 4786), 627 P.2d
1073 (1981).

Superior court's findings of an occupa-
tional disease were supported by
substantial evidence in light of the
whole record. Aleutian Homes v. Fischer,
Sup. Ct. Op. No. 365 (File No. 668), 418
P.2d 769 (1966).

Paragraph (1) presumption held to
operate. — Where deceased was shot and
killed, after closing time while cleaning

up, at the restaurant at which he was
employed as a bartender, by an unknown
assailant, and no words were spoken
during the attack and no money was
taken, the presumption of paragraph (1)
operated, since no motive was found, no
one knew why the assault was committed,
and no plausible explanation showing the
lack of employment connection was sug-
gested. Fireman's Fund Am. Ins. Cos. v.
Gomes, Sup. Ct. Op. No. 1230 (File No.
2421), 544 P.2d 1013 (1976).

Presumption of compensability not
overcome. — See Land & Marine Rental
Co. v. Rawls, Sup. Ct. Op. No. 2777 (File
Nos. 6963-7090), P.2d (1984).

Applied in Thornton v. Alaska
Workmen's Comp. Bd., Sup. Ct. Op. No.
327 (File No. 612), 411 P.2d 209 (1966);
Ruble v. Arctic Gen. Inc., Sup. Ct. Op. No.
1887 (File No. 3710), 598 P.2d 95 (1979);
Providence Washington Ins. Co. v. Bonner,
Sup. Ct. Op. No. 2818 (File No. 7308),
P.2d (1984).

Collateral references. — Matters
concluded, in action at law to recover for
the same injury, by decision or finding

made in workmen's compensation pro-
ceeding. 84 ALR2d 1036.

Sec. 23.30.122. Credibility of witnesses. The board has the sole
power to determine the credibility of a witness. A finding by the board
concerning the weight to be accorded a witness's testimony, including
medical testimony and reports, is conclusive even if the evidence is
conflicting or susceptible to contrary conclusions. The findings of the
board are subject to the same standard of review as a jury's finding in
a civil action. (§ 14 ch 93 SLA 1982)

NOTES TO DECISIONS

Absent specific findings by the board
that it chose to disbelieve a witness's testi-
mony, a court will not assume that lack of
credibility was a relevant factor in the

board's decision. Hoth v. Valley Constr.,
Sup. Ct. Op. No. 2736 (File No. 6750), 671
P.2d 871 (1983).

Sec. 23.30.125. Review of compensation order. (a) A compensa-
tion order becomes effective when filed in the office of the board as
provided in AS 23.30.110 and, unless proceedings to suspend it or set
it aside are instituted as provided in (c) of this section, it becomes final
on the 31st day after it is filed.