# Alaska Workers' Compensation Appeals Commission

| | |
|---|---|
| Denny's of Alaska, Alaska Insurance Guaranty Association, and Northern Adjusters, Inc.,<br>Appellants,<br><br>vs.<br><br>Laura H. Colrud,<br>Appellee. | Final Decision<br><br>Decision No. 148 March 10, 2011<br><br>AWCAC Appeal No. 10-015<br>AWCB Decision Nos. 09-0055 and 10-0055<br>AWCB Case No. 199212869 |

Final decision on appeal from Alaska Workers' Compensation Board Final Decision and Order No. 10-0055, issued at Anchorage on March 24, 2010, by southcentral panel members William J. Soule, Chair, Jim Fassler, Member for Labor, and Dave Kester, Member for Industry; and appeal from Alaska Workers' Compensation Board Interlocutory Decision and Order No. 09-0055, issued at Anchorage on March 19, 2009, by southcentral panel members William J. Soule, Chair, Daniel Repasky, Member for Labor, and Janet Waldron, Member for Industry.

Appearances: Michelle M. Meshke, Russell, Wagg, Gabbert & Budzinski, P.C., for appellants, Denny's of Alaska, Alaska Insurance Guaranty Association, and Northern Adjusters, Inc.; Laura H. Colrud, self-represented appellee, did not participate in this appeal.

Commission proceedings: Appeal filed April 23, 2010; appellants' opening brief filed July 14, 2010; no other briefs filed in this appeal; oral argument presented December 21, 2010.

Commissioners: Jim Robison, S.T. Hagedorn, Laurence Keyes, Chair.

By: S.T. Hagedorn, Commissioner.

*1. Introduction.*

Appellants, Denny's of Alaska, Alaska Insurance Guaranty Association, and Northern Adjusters, Inc. (collectively Denny's), appeal Alaska Workers' Compensation

Board (board) Decision No. 10-0055[1] where the board found that appellee, Laura H. Colrud (Colrud), never filed a claim that triggered the AS 23.30.110(c) time period to request a hearing. The board determined that because Colrud sought a finding of an unfair and frivolous controversion, rather than benefits, she did not file a "written application for benefits" that would require her to request a hearing within two years after her claim was controverted.

Denny's argues that the board erred in finding that Colrud never filed a valid claim that is subject to dismissal under AS 23.30.110(c). Denny's asserts that an unrepresented claimant's signing and filing of a board-prescribed "claim" form constitutes a "written application for benefits" that, when controverted by an employer, triggers the running of the subsection .110(c) time-bar. In addition, Denny's argues that Colrud's verbal amendment to include medical costs during a prehearing conference on September 12, 2007, should relate back to the original claim filed on May 30, 2007, and controverted by Denny's on July 5, 2007. Thus, because Colrud did not request a hearing within two years of Denny's July 2007 controversion, it argues her claim should be dismissed as time-barred under subsection .110(c). Lastly, Denny's contends that Colrud's circumstances do not satisfy any equitable grounds to excuse her noncompliance with subsection .110(c).

The commission agrees with Denny's and, therefore, reverses the board's decision. Colrud's claim for medical costs should be dismissed as time-barred under subsection .110(c).

*2. Factual background and proceedings.*

Colrud was working at a Denny's restaurant as a waitress, when she slipped on a wet floor and twisted her body on June 28, 1992, resulting in back pain.[2] Denny's accepted the claim and paid temporary total disability benefits from June 29, 1992,

---

[1] *Laura H. Colrud v. Denny's of Alaska, et al.*, Bd. Dec. No. 10-0055 (March 24, 2010) (*Colrud II)*.

[2] *See* R. 0001.

through April 5, 1993, and August 18, 1994, through February 1, 1995.[3] She received permanent partial disability benefits on April 14, 1993, in a lump sum payment,[4] and on September 20, 1995, she received a lump sum payment of permanent partial impairment benefits.[5]

Medical benefits continued to be paid until Denny's controverted all benefits (with the exception of the prescription drug "Lyrica") after an employer's medical evaluation (EME) was performed by Dr. John Swanson on April 16, 2007.[6] Dr. Swanson opined that no further medical treatment, other than the Lyrica prescription and a home exercise program, was medically necessary or reasonable as a result of the June 28, 1992, injury.[7] This controversion notice was dated May 21, 2007.[8]

On May 30, 2007, Colrud filed a "Workers' Compensation Claim" on a board-prescribed form no. 07-6106 (revised 5/06).[9] She stated on the form that the reason for filing the claim was: "Unfair controvert - After the insurance company received their chosen Drs. opinion, they denied my claim immediately. I'm at this time getting an attorney. June 8, 07 is when my next Drs appt. is."[10] On the back of the form, she checked box 24(k), indicating her claim was made for "[u]nfair or frivolous controvert (denial)[.]"[11] She did not check box 24(e) for medical costs.[12]

---

3 *See* R. 0005.

4 *Id.*

5 *See* Appellants' Exc. 003.

6 *See* R. 0006.

7 *See id.*; *see also* R. 0466-470.

8 *See* R. 0006.

9 *See id.* at 0012-13.

10 R. 0012.

11 *See* R. 0013.

12 *See id.*

Denny's answered on July 2, 2007, denying an unfair or frivolous controversion as well as denying medical benefits.[13] Denny's also filed on July 5, 2007, a board-prescribed controversion notice dated July 2, 2007, denying all medical benefits (except Lyrica) based on Dr. Swanson's EME.[14]

At a prehearing conference held on September 12, 2007, Colrud verbally amended her claim to include medical costs.[15] She was told that she would be sent an affidavit of readiness for hearing (ARH) form and was advised to submit the medical bills and records that she was seeking to have paid before submitting the ARH form.[16] Colrud later acknowledged that she withdrew the claim of unfair controversion.[17] She stated that her claim was about "getting my medical bills taken care of."[18]

After the prehearing, Colrud failed more than once to appear for scheduled depositions.[19] Denny's filed a petition to compel her to attend a deposition,[20] and eventually, on August 12, 2008, a hearing was held.[21] Colrud did not appear for the hearing.[22] The board ordered Colrud to schedule and participate in her deposition within thirty days of the decision and order, which was dated September 26, 2008.[23] Two more attempts were made by Denny's to depose Colrud in October and November 2008, but these were unsuccessful.[24]

---

13 *See* R. 0016-17.

14 *See id.* at 0008.

15 *See id.* at 0122-23.

16 *See id.* at 0123.

17 *See* Feb. 2, 2010, Hr'g Tr. 56:14-20.

18 *Id.* at 57:24-25.

19 *See* R. 0148-49.

20 *See id.* at 0129-30.

21 *See id.* at 0180.

22 *See id.*

23 *See id.* at 0186.

24 *See id.* at 0188-89, 0193-94, 0203, and 0213.

Denny's then sought to have Colrud's claim dismissed as a discovery sanction due to her failures to appear for board-ordered depositions.[25] At the hearing on this petition on March 3, 2009, Colrud did not appear or call in, but the board eventually reached her by phone on its second attempt part way through the hearing.[26] She testified that she had not attended her depositions because "I have a sick daughter and I've had marriage problems and I'm losing my house and I've got bills going to collections since the insurance company won't pay for my medical, so I'm just -- I just feel like I need to give up. So I haven't been bothered."[27] She also acknowledged receiving messages from Denny's attorney trying to schedule a deposition between December 2007 and April 2008, but that she had not returned calls because

> I was kind of upset . . . at the insurance company. . . . [T]he so-called doctor they had examine me for about half an hour or 45 minutes, he said a bunch of lies and . . . crap that . . . I was really angry at, and I really didn't want to talk to anybody at that time.[28]

She also stated she did not understand what a deposition was.[29] After the chair explained to her the deposition process and its purposes, she agreed to make herself available for a deposition.[30] Although Denny's argued that Colrud's claim should nevertheless be dismissed because it had wasted time and resources and been prejudiced by Colrud's lack of cooperation,[31] the board ordered Colrud to attend a deposition within 30 days, or the board would reconsider imposing sanctions against her.[32]

---

25 *See* March 3, 2009, Hr'g Tr. 7:15–13:1.

26 *See id.* at 6:1-4, 31-32.

27 March 3, 2009, Hr'g Tr. 34:23–35:2.

28 *Id.* at 45:8-13.

29 *See id.* at 35:22-25.

30 *See id.* at 39:14–44:18.

31 *See id.* at 48:5-7.

32 *See Laura H. Colrud v. Denny's of Alaska, et al.*, Alaska Workers' Comp. Bd. Dec. No. 09-0055, 24 (March 19, 2009) (*Colrud I*).

Colrud attended her deposition on April 9, 2009,[33] but a few months later, on June 23, 2009, Denny's attorney sent her a certified letter quoting the back of the controversion form[34] to advise Colrud that she needed to file a request for hearing by July 2, 2009, or her claim would be dismissed.[35] The attorney enclosed a copy of the board's ARH form.[36] Although the letter properly advised Colrud how to determine when her request for hearing was due, it misstated the date that she had to file by. Because Denny's controversion, dated July 2, 2007, was actually filed on July 5, 2007, Colrud had until July 6, 2009, to request a hearing.[37]

In any event, Colrud never requested a hearing on her claim. Denny's then sought to dismiss Colrud's claim as time-barred. At the hearing on February 2, 2010, Colrud acknowledged receiving the June 2009 letter and filling out the ARH form, but she never mailed it. She testified, "I had to work two days straight, and when I got off I completely forgot about it. I still have it, by the way, I think."[38] She testified that her memory was affected by a "medical problem [that] has got something to do with nerves in my . . . brain."[39] She also testified that at that time, she worked delivering newspapers seven days a week, and regularly attended doctor's appointments, keeping track of her paper route and her appointments by having everything written down.[40]

---

33 *See* April 9, 2009, Colrud Dep. 4:10-16.

34 This form reads in relevant part:

> Within two years after the date the insurer/employer filed this controversion notice, you must request a hearing before the AWC Board. You will lose your right to the benefits denied on the front of this form if you do not request a hearing within the two years. Before requesting a hearing, you should file a written claim. R. 0405.

35 *See* R. 0402.

36 *See id* at 0406.

37 *See id.* at 0008. *See also* 8 AAC 45.063 on computing time periods.

38 Feb. 2, 2010, Hr'g Tr. 67:4-6.

39 *Id.* at 69:10-11.

40 *See id.* at 71:19–72:14.

The board decided that Colrud's May 30, 2007, claim that requested only a finding of "unfair or frivolous controvert" was not a claim subject to dismissal pursuant to AS 23.30.110(c). The board decided that because requesting a finding of "unfair controversion" was not a request for "benefits," it was not a "claim" because a "claim" for the purposes of subsection .110(c) is a "written request for benefits."[41] Second, the board decided that Colrud's verbal amendment of her claim to include medical costs could not relate back to the unfair controversion request because "there was never any claim for benefits in the first instance[.]"[42] Moreover, the request for medical benefits at the September 2007 prehearing conference was not a validly filed claim by itself because of the requirement that the employee sign the claim.[43]

Therefore, the board concluded that it could not dismiss a claim for medical benefits under AS 23.30.110(c) when no valid claim for those benefits had been made. It noted that Colrud had already withdrawn her request for a finding of an unfair controversion.[44] The board also observed that Denny's incorrect information in its June 2009 letter advising Colrud to request a hearing could have misled Colrud into thinking that after July 2, 2009, it was too late to file an ARH form when, in fact, she had a few more days until the deadline.[45]

Thus, the board denied Denny's petition to dismiss Colrud's claims as time-barred, and ordered Colrud to file a signed claim for medical benefits if she wanted to pursue those

---

41 *See Colrud II,* Bd. Dec. No. 10-0055 at 16.

42 *Id.*

43 *See id*. at 17.

44 *See id*.

45 *See id*. at 17-18. The board states that Colrud had until July 5, 2009, to file an ARH form, but she actually had until July 6, 2009, because "the day of the act, event, or default after which the designated period of time begins to run is not to be included." 8 AAC 45.063 (also providing that the "[l]ast day of the period is included, unless it is a Saturday, Sunday or a legal holiday, in which case the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday.").

benefits.[46] Denny's appeals this decision as well as the board's earlier decision[47] denying dismissal with prejudice of Colrud's claim as a sanction for repeatedly failing to attend properly noticed, board-ordered depositions.[48]

*3. Standard of review.*

The issue presented in this appeal requires the commission to determine if Colrud complied with the requirements stated in AS 23.30.110(c). Proper application of a statute of limitations is a question of law to which the commission applies its independent judgment.[49] We must uphold the board's findings of fact if they are supported by substantial evidence in light of the whole record.[50]

*4. Discussion.*

*a. The AS 23.30.110(c) time-bar applies to Colrud's claim because she filed a valid claim that was controverted and her amendment to include medical costs relates back to that claim.*

The question that must be answered in this appeal is, simply stated, did Colrud file a "claim"? If she did, did Colrud comply with the requirements of AS 23.30.110(c), which requires a claimant to request a hearing within two years of the date that his or her claim was controverted? AS 23.30.110(c) states in relevant part, "If the employer controverts a claim on a board-prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied."

---

[46] *See Colrud II,* Bd. Dec. No. 10-0055 at 18.

[47] *See Colrud I,* Bd. Dec. No. 09-0055.

[48] The commission does not address Denny's arguments that Colrud's claim should have been dismissed as a discovery sanction because the commission's conclusion that Colrud's claim was time-barred renders the sanction issue moot.

[49] *See, e.g., Kim v. Alyeska Seafoods, Inc.*, 197 P.3d 193, 195 (Alaska 2008) and *see* AS 23.30.128(b).

[50] *See* AS 23.30.128(b).

The supreme court has interpreted "claim" in subsection .110(c) to mean a "written application for benefits filed with the [b]oard[.]"[51] Moreover, the employer's controversion must come after the employee's filing of a claim to start the running of the two-year time period to request a hearing.[52]

The commission concludes that Colrud filed a claim for the purposes of subsection .110(c) on May 30, 2007. Colrud used the board's own recommended form in order to file a "written application for benefits."[53] On the form titled "Workers' Compensation Claim[,]" she checked box 24(k), indicating that the *claim* was made for "[u]nfair or frivolous controvert (denial)[.]"[54] Thus, the board's own form specifies that "[u]nfair or frivolous controvert (denial)" is a claim that an employee may make. To say that requesting a finding of unfair or frivolous controvert is not a claim defies logic, and effectively invalidates the board's own form meant to assist employees filing claims for benefits.

---

[51] *Jonathan v. Doyon Drilling, Inc.*, 890 P.2d 1121, 1124 (Alaska 1995). *See also Tipton v. ARCO Alaska, Inc.*, 922 P.2d 910, 912 n.4 (Alaska 1996) ("[W]e held that the word 'claim' in section 110(c) refers only to the employee's written application for benefits, not the employee's right to compensation.").

*See also* 8 AAC 45.050(b)(1): "A claim is a written request for benefits, including compensation, attorney's fees, costs, interest, reemployment or rehabilitation benefits, rehabilitation specialist or provider fees, or medical benefits under the Act, that meets the requirements of (4) of this subsection." 8 AAC 45.050(b)(4)(A) and (b) require claims to state names and addresses of all parties, date of injury, general nature of the dispute and be signed by the claimant. Although this regulation does not list "unfair or frivolous controversion," use of the word "including" indicates it was not meant to be an exhaustive list of all the categories of benefits. Moreover, the fact that other types of claims are also left out tends to indicate the list is not exhaustive; these include death benefits, penalties, and transportation costs, all of which are listed as claims that may be checked on the board's claim form.

[52] *See Jonathan*, 890 P.2d at 1124-25.

[53] 8 AAC 45.050(b)(1) provides in part that "The board has a form that may be used to file a claim."

[54] R. 0013.

Moreover, Colrud's form was not incomplete. As required by 8 AAC 45.050(b)(4), the claim form included the parties' names and addresses, the date of injury, and described the dispute: "After the insurance company received their chosen Drs. opinion, they denied my claim immediately."[55] Thus, Colrud's written description indicated her reason for filing was the denial of medical benefits. Lastly, the claim was properly signed.[56]

In addition, the commission concludes that Colrud's claim for medical costs relates back to her May 2007 claim for unfair or frivolous controversion. When an "amendment arose out of the conduct, transaction, or occurrence set out or attempted to be set out in the original pleading, the amendment relates back to the date of the original pleading."[57] Colrud verbally amended her claim to include medical costs on September 12, 2007, at a prehearing conference.[58] She indicated that her intent was "getting my medical bills taken care of."[59] This amendment clearly arose out of the insurance company's denial of her claim based on its doctor's opinion, that Colrud set out in her original pleading.[60] Thus, Colrud's amendment seeking medical costs relates back to the May 30, 2007, claim.

Denny's controverted Colrud's claim by filing the board-prescribed controversion notice on July 5, 2007.[61] Denny's understood that Colrud's claim was related to medical

---

55 R. 0012.

56 *See id* at 0013; *see also* 8 AAC 45.050(b)(4)(B).

57 8 AAC 45.050(e).

58 *See* R. 0122-23.

59 Feb. 2, 2010, Hr'g Tr. 57:24-25.

60 The commission also notes that allowing amendments to relate back to original pleadings under these circumstances furthers the purpose of a prehearing conference. Prehearing conferences are intended to "identify[] and simplify[] the issues" for hearing, 8 AAC 45.065(a)(1), and to "limit the issues for hearing to those that are in dispute at the end of the prehearing. Unless modified, the summary [of the prehearing conference] governs the issues and the course of the hearing." 8 AAC 45.065(c).

61 *See* R. 0008.

benefits, even though she had not yet amended her claim.[62] It specifically denied both filing an unfair or frivolous controversion and that any further medical care (except for the Lyrica prescription) was due.[63] Thus, the two-year time period for requesting a hearing under subsection .110(c) began to run. Colrud had until July 6, 2009, to request a hearing on her claim for medical costs,[64] and she did not do so.

*b. Colrud did not present evidence supporting legal excuse from the operation of AS 23.30.110(c).*

The supreme court has held that claimants may substantially comply, absent significant prejudice to the other party, with the requirements of subsection .110(c).[65] Substantial compliance does not mean claimants can ignore the statutory deadline and fail to file anything; but, if they are not ready for hearing within the two years, they may comply with subsection .110(c) by filing a request for additional time to prepare for a hearing.[66] In addition, recognized forms of equitable relief may excuse a claimant from

---

[62] Denny's attorney stated:

> [W]hen . . . you see that people who come in and fill out the forms themselves either check all the boxes or not very many of the boxes, and you pretty much assume that at the first prehearing conference they're going to be discussing what their actual claim is, and so I believe . . . having received her file and looking at the controversion notice I had a pretty good guess . . . that her claim was going to be dealing with medical costs . . . . So when I received the workers' compensation claim from her, although there was only one box checked I had a pretty good idea that she would also be making a claim for medical costs, and that's why I denied that as part of my answer . . . . Feb. 2, 2010, Hr'g Tr. 78:1-18.

[63] *See* R. 0008 and 0016-17.

[64] *See* 8 AAC 45.063 on computation of time.

[65] *See Kim*, 197 P.3d at 198.

[66] *See id.*; *see also Omar v. Unisea, Inc.*, Alaska Workers' Comp. App. Comm'n Dec. No. 053, 8 (Aug. 27, 2007) (remanding to the board to consider whether the circumstances as a whole constitute compliance with AS 23.30.110(c) sufficient to excuse the claimant's filing an incomplete ARH form).

filing on time.[67] The claimant bears the burden of establishing one of the grounds for legal excuse.[68] A self-represented litigant's delay in filing might be excused by lack of mental capacity or incompetence; lack of notice of the time-bar; equitable estoppel against a governmental agency;[69] or the board's failure to provide information when it had a duty to do so.[70]

None of this applies to Colrud's case, however. Because Colrud never filed an ARH form or requested more time to prepare for hearing, much less within the statutory time period, she did not substantially comply with the requirements of subsection .110(c). Moreover, Colrud's forgetfulness does not rise to the level of mental incapacity or incompetence. Although Colrud testified that she suffered from a condition that affected her memory, substantial evidence shows that she was capable of conducting her daily affairs, including driving a newspaper route seven days a week and remembering to attend doctor's appointments, and therefore, she did not lack the mental capacity to mail the ARH form to the board before the deadline.[71]

---

[67] *See Kim,* 197 P.3d at 197 (quoting *Morgan v. Alaska Reg'l Hosp.,* Alaska Workers' Comp. App. Comm'n Dec. No. 035 at 17-18 (February 28, 2007) (citation omitted)).

[68] *See Providence Health System v. Hessel*, Alaska Workers' Comp. Appeals Comm'n Dec. No. 131, 17 (March 24, 2010) (citing *Tonoian v. Pinkerton Security*, Alaska Workers Comp. App. Comm'n Dec. No. 029, 9 (January 30, 2007)).

[69] *See Hessel*, App. Comm'n Dec. No. 131 at 17 (citing *Tonoian*, App. Comm'n Dec. No. 029 at 11).

[70] *See Bohlmann v. Alaska Constr. & Eng'g, Inc.*, 205 P.3d 316, 320-21 (Alaska 2009).

[71] *See Morgan*, App. Comm'n Dec. No. 035 at 18-19 (concluding that, although claimant was suffering from emotional stress due to family problems, she was not mentally incapacitated such that she could not file a request for hearing because she worked at administrative jobs, took classes toward a degree, and volunteered at a legal office during the time period); *see Tonoian*, App. Comm'n Dec. No. 029 at 11-12 (noting claimant was not mentally incompetent for purposes of complying with subsection .110(c) where she exercised judgment in retaining and dismissing attorneys, and negotiating a settlement and withdrawing from it for reasons that did not demonstrate a lack of mental capacity to conduct her own affairs).

In addition, the commission has held that mailing the board-prescribed controversion notice with the warning about subsection .110(c) satisfies the obligation to give notice, even when the claimant does not read the notice,[72] or fails to understand the warning.[73] Colrud received notice because she was mailed two controversion forms containing the warning about the subsection .110(c) deadline and acknowledged receiving a letter from Denny's attorney advising her that the deadline was imminent.[74] The board also mailed to Colrud in early 2009 the "Workers Compensation and You" pamphlet that provides information about the subsection .110(c) deadline.[75]

Lastly, Colrud's case can be distinguished from the facts establishing equitable estoppel[76] and requiring the board to correct mistaken information under *Bohlmann*.[77] In *Bohlmann*, the claimant filed his ARH form a few weeks late after the employer erroneously asserted at a prehearing conference that the employee's claim was already time-barred.[78] The court held that the board had a duty to either correct the erroneous assertion or, in light of the erroneous assertion, to explain again how to determine the subsection .110(c) deadline.[79] The court concluded that the appropriate remedy was to deem Bohlmann's affidavit timely filed because "the board's finding that Bohlmann 'had proved himself capable of filing claims and petitions even absent having counsel' is

---

[72] *See Tonoian*, App. Comm'n Dec. No. 029 at 12.

[73] *See Hessel*, App. Comm'n Dec. No. 131 at 17-18.

[74] *See* R. 0007 and 0009; *see also* Feb. 2, 2010, Hr'g Tr. 66:11-18.

[75] *See* R. 1725.

[76] Equitable estoppel against a governmental agency requires a litigant to establish that "(1) the governmental body asserted a position by conduct or words; (2) the litigant acted in reasonable reliance on the board's assertion; (3) the litigant suffered resulting prejudice; and, (4) estopping the board from dismissing the litigant's claim would serve the interest of justice so as to limit public injury." *Tonoian,* App. Comm'n Dec. No. 029 at 13 (citation omitted). The board in Colrud's case did not "assert[] a position by conduct or words" that led to Colrud suffering any prejudice.

[77] 205 P.3d at 316.

[78] *See id*. at 317.

[79] *See id*. at 320.

consistent with a presumption that Bohlmann would have filed a timely affidavit of readiness had the board or staff satisfied its duty to him."[80]

In Colrud's case, Denny's attorney incorrectly advised Colrud that her ARH form was due by July 2, 2009, rather than July 6, 2009.[81] The board was not copied on this letter, and the first appearance of the letter in the board's record was as an exhibit attached to the employer's hearing brief submitted for the February 2010 hearing on whether to dismiss Colrud's claim as time-barred.[82] The commission does not believe that *Bohlmann* requires the board to correct the erroneous information of which it was unaware;[83] here, the board did not learn of the misinformation until months after the deadline had run.

Moreover, although the board stated that "[h]ad she realized, for example, on July 3, 4 or 5, 2009 she had not yet filed an affidavit requesting a hearing, [e]mployee may have been misle[]d by [e]mployer's letter into thinking it was too late and thus dissuaded from filing an affidavit altogether[,]"[84] the board made no finding that Colrud would have filed an ARH form on time had she been correctly advised of the deadline. Additionally, substantial evidence in the record supports that she likely would not have timely filed had she been aware of the correct date. Unlike *Bohlmann*, who was erroneously told the deadline had already run, Colrud was warned that the deadline was imminent. Even if the actual date was erroneous, she testified that she did not file at all because she was busy and forgot.[85] Unlike *Bohlmann*, Colrud never filed an ARH form. Over the course of

---

[80] *Id*. at 321 (also noting in footnote 20 that the commission held on appeal that substantial evidence supported this finding).

[81] *See* R. 0402-03.

[82] *See* R. 0402-03.

[83] *See Hessel*, App. Comm'n Dec. No. 131 at 18-19 (holding board had no duty to correct an erroneous understanding about the subsection .110(c) deadline where the board "had no reason to know of [claimant's] misunderstanding . . . .").

[84] *Colrud II*, Bd. Dec. No. 10-0055 at 18.

[85] *See* Feb. 2, 2010, Hr'g Tr. 67:4-6.

two years, she missed prehearing conferences and one hearing.[86] Of the two hearings in which she participated, she testified at one only because of the board's effort in trying to reach her by phone twice during the hearing.[87] Although she eventually was deposed, she failed to attend other scheduled depositions numerous times.[88] Her lack of participation in her case demonstrates that she did not manifest an intent to prosecute her claim "in a timely manner"[89] such that the board could find that she would have filed on time had she been properly advised.[90]

Therefore, the commission concludes that Colrud cannot satisfy the requirements of any legal excuse and thus, her failure to comply with the subsection .110(c) deadline renders her claim time-barred.

---

[86] *See* R. 0128, 0180, 1710, and 1724-25.

[87] *See* Mar. 3, 2009, Hr'g Tr. 6:1-4; 31-32; *see also* Feb. 2, 2010, Hr'g Tr. 51:17.

[88] *See* R. 0148-49, 0165, 0203, and 0213.

[89] *See Jonathan*, 890 P.2d at 1124 (noting that subsection .110(c) "requires the employee, once a claim has been filed and controverted by the employer, to prosecute the employee's claim in a timely manner.").

[90] *See Bohlmann*, 205 P.3d at 321.

*5. Conclusion.*

The board erred in concluding that Colrud's May 30, 2007, claim was not a claim that triggered the running of the AS 23.30.110(c) deadline. Colrud did not substantially comply with the statutory deadline nor does she satisfy any grounds for equitable relief. Therefore, we REVERSE the board's decision and REMAND to the board for action consistent with this decision.

Date: *10 March 2011* ALASKA WORKERS' COMPENSATION APPEALS COMMISSION

*Signed*
Jim Robison, Appeals Commissioner

*Signed*
S.T. Hagedorn, Appeals Commissioner

*Signed*
Laurence Keyes, Chair

APPEAL PROCEDURES

This is a final decision on the merits of this appeal. The appeals commission reversed the board's decision and remanded to the board for action consistent with this decision. This decision becomes effective when distributed (mailed) unless proceedings to reconsider it or to appeal to the Alaska Supreme Court are instituted (started). To see the date it is distributed, look at the box below. It becomes final on the 31st day after the decision is distributed.

Proceedings to appeal this decision must be instituted (started) in the Alaska Supreme Court within 30 days of the date this final decision is mailed or otherwise distributed and be brought by a party-in-interest against all other parties to the proceedings before the commission, as provided by the Alaska Rules of Appellate Procedure. *See* AS 23.30.129(a). The appeals commission and the workers' compensation board are not parties.

You may wish to consider consulting with legal counsel before filing an appeal. If you wish to appeal to the Alaska Supreme Court, you should contact the Alaska Appellate Courts *immediately*:

Clerk of the Appellate Courts
303 K Street
Anchorage, AK 99501-2084
Telephone: 907-264-0612

RECONSIDERATION

This is a decision issued under AS 23.30.128(e), so a party may ask the commission to reconsider this Final Decision by filing a motion for reconsideration in accordance with 8 AAC 57.230. The motion for reconsideration must be filed with the commission within 30 days after this decision was distributed or mailed. If a request for reconsideration of this final decision is filed on time with the commission, any proceedings to appeal must be instituted within 30 days after the reconsideration decision is mailed to the parties, or, if the commission does not issue an order for reconsideration, within 60 days after the date this decision is mailed to the parties, whichever is earlier. AS 23.30.128(f).

I certify that, with the exception of changes made in formatting for publication, correction of typographical errors, and minor grammatical errors, this is a full and correct copy of the Final Decision No. 148 issued in the matter of *Denny's of Alaska v. Colrud,* AWCAC Appeal No. 10-015, dated and filed in the office of the Alaska Workers' Compensation Appeals Commission in Anchorage, Alaska, on March 10, 2011.

Date: *March 15, 2011*

*Signed*
K. Morrison, Deputy Commission Clerk