Alaska Workers' Compensation Appeals Commission

Hugo Rosales, Appellant, vs. Icicle Seafoods, Inc. and Seabright Insurance Co., Appellees.	Final Decision Decision No. 163 July 11, 2012 AWCAC Appeal No. 11-007 AWCB Decision Nos. 11-0065 and 11-0089 AWCB Case No. 200706610

Atencion Sr. Rosales: Usted necesita obtener una persona que habla ingles y español para traducir este documento.

Final decision on appeal from Alaska Workers' Compensation Board Final Decision and Order No. 11-0065, issued at Anchorage on May 19, 2011, by southcentral panel members Deirdre D. Ford, Chair, Patricia Vollendorf, Member for Labor, and Robert Weel, Member for Industry, and Alaska Workers' Compensation Board Final Decision and Order on Reconsideration No. 11-0089, issued at Anchorage on June 22, 2011, by southcentral panel members Deirdre D. Ford, Chair, Patricia Vollendorf, Member for Labor, and Robert Weel, Member for Industry.

Appearances: Hugo Rosales, self-represented appellant; Rebecca Holdiman Miller, Holmes Weddle & Barcott, P.C., for appellees, Icicle Seafoods, Inc. and Seabright Insurance Co.

Commission proceedings: Appeal filed July 1, 2011; briefing completed December 19, 2011; oral argument held on April 24, 2012.

Commissioners: James N. Rhodes, S.T. Hagedorn, Laurence Keyes, Chair.

By: Laurence Keyes, Chair.

1. Introduction.

Appellant, Hugo Rosales (Rosales), was employed by appellee, Icicle Seafoods, Inc., on the processing line aboard the seafood processing vessel M/V Bering Star.[1] On May 13, 2007, he was pushing a cart loaded with frozen fish when a pan of fish hit him on the head.[2] Rosales filed a Workers' Compensation Claim (WCC) with the Alaska Workers' Compensation Board (board) against his employer and its carrier, Seabright Insurance Company (collectively Icicle), on November 7, 2007.[3] Ultimately, Rosales, represented by counsel, pursued both the WCC and a maritime personal injury claim under the Jones Act.[4] In late 2009, the parties signed a global settlement of both claims.[5] Following hearings in February 2010, the board approved the Compromise & Release (C&R), settling the WCC.[6] On October 12 and December 8, 2010, Rosales filed new WCCs, the effect of which would be to modify or set aside the C&R.[7] The board declined to set aside the C&R in a final decision,[8] and upon reconsideration.[9] Rosales appealed these board decisions to the Workers' Compensation Appeals Commission (commission).[10] We affirm.

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[1] R. 0664.

[2] R. 0001, 0243-44.

[3] R. 0040-41 (signed October 26, 2007, and served by the board on November 7, 2007).

[4] R. 0018, 0020, 0133-34. *See Basel v. Westward Trawlers, Inc.*, 869 P.2d 1185, 1188 n.5 (Alaska 1994) (citing 46 U.S.C.App. § 688).

[5] R. 0237-53. Rosales signed the agreement on November 28, 2009, and Icicle Seafoods and its insurer signed it in early December 2009.

[6] R. 0253, 0337-44.

[7] R. 0630-32, 0641-42.

[8] *See Hugo Rosales v. Icicle Seafoods, Inc. and Seabright Ins. Co.,* Alaska Workers' Comp. Bd. Dec. No. 11-0065 (May 19, 2011) (*Rosales I*).

[9] *See Hugo Rosales v. Icicle Seafoods, Inc. and Seabright Ins. Co.,* Alaska Workers' Comp. Bd. Dec. No. 11-0089 (June 22, 2011) (*Rosales II*).

[10] In this appeal, Rosales is assisted by his wife, Venessa Rosales.

2. Factual background and proceedings.

Following the May 13, 2007, incident on the vessel, Rosales was paid temporary total disability (TTD) benefits beginning May 14, 2007.[11] On September 7, 2007, Icicle controverted payment of TTD beginning in May 2007 to July 27, 2007, because Rosales had been released to light duty work and such work was available at Icicle during that timeframe, but Rosales did not accept the work and returned to his home in Arizona.[12] The WCC that Rosales filed on November 7, 2007, indicated he had suffered a head laceration, cervical strain, herniated lumbar disc at L4-5, and left foot contusion. He sought benefits for those injuries in the form of medical treatment, transportation costs, penalty, and interest. Rosales also asserted that Icicle's controversion was unfair or frivolous.[13] Icicle ceased paying Rosales TTD on November 30, 2007,[14] and filed additional controversions on December 13 and December 28, 2007, asserting in part

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[11] R. 0008. As Rosales points out in his brief, Appellant's Br. 19, the board mischaracterized the accident as one in which Rosales "hit his head pushing a cart," *Rosales I*, Bd. Dec. No. 11-0065 at 3, when, in actuality, a pan of frozen fish fell on his head. R. 0001, 0243-44. However, this would not be reversible error because how the accident happened is not relevant to the question of whether misrepresentation, fraud or duress occurred during the settlement negotiations such that the C&R should be set aside. *See, e.g., Marsh Creek, LLC v. Benston*, Alaska Workers' Comp. App. Comm'n Dec. No. 101 (March 13, 2009) (discussing board's harmless errors). Moreover, the parties did not dispute how Rosales was injured. R. 0243-44.

[12] R. 0004-05 (controverting TTD from May 14, 2007, to July 27, 2007), R. 0244 (stating that TTD was controverted from May 22, 2007, to July 27, 2007).

[13] R. 0040-41.

[14] R. 0011.

that he was no longer owed TTD as he had reached medical stability.[15] Rosales was found ineligible for reemployment benefits on May 20, 2008, his treating physician having released Rosales to the work he was performing at the time of injury and other employment he had had in the preceding 10 years.[16]

On July 11, 2008, attorney Richard J. Davies (Davies), who had already filed a maritime personal injury lawsuit on behalf of Rosales, entered an appearance to represent him before the board.[17] Davies had Rosales evaluated by a neurologist on May 6, 2009, evaluated in terms of his physical capacity for work on June 15, 2009, and

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[15] R. 0010-11, 0014-15. One basis for both of these controversions was that the lumbar condition was not work-related, and thus medical benefits and transportation costs were not owed. R. 0010-11, 0014-15. Subsequently, Dr. Alan Horowitch, Rosales's treating physician, confirmed that was the case in his February 21, 2008, deposition. R. 0110-11. Both controversions also were based on the reported results of an employer's medical evaluation performed on November 15, 2007, indicating Rosales was medically stable as of September 12, 2007, and had no permanent partial impairment. R. 0749-56. The controversions alleged Rosales was overpaid benefits for periods beginning in May 2007 to July 27, 2007, and September 12, 2007, to November 30, 2007. R. 0010-11, 0014-15, 0244. The second controversion also denied reemployment benefits. R. 0014-15.

[16] R. 1433 (the doctor did not consider Rosales's lumbar condition in making this determination because that condition was not work-related), R. 1452-53 (eligibility denial). Rosales filed another WCC on June 9, 2008, requesting review of the reemployment benefits ineligibility determination. R. 0124-25. Icicle answered the claim on June 25, 2008, denying the benefits Rosales was seeking and the need for a second independent medical evaluation, as there was no medical dispute regarding the non-work-relatedness of his lumbar condition. R. 0126-30.

[17] R. 0133-34. Coincidentally, that same day, the Superior Court in King County, Washington, set a December 28, 2009, trial date for the Jones Act claim. R. 0659.

evaluated for vocational training on June 17, 2009.[18] Also, Rosales had surgery on his left foot in November 2009.[19]

On December 7, 2009, Rosales and Icicle submitted a C&R to the board for approval of the settlement of the WCC, accompanied by a settlement agreement pertaining to the maritime claim.[20] The terms of the global settlement were that Rosales would receive a total of $200,000, with $195,000 of that amount allocated to the maritime claim, less attorney fees and costs.[21] On December 11, 2009, the board initially rejected the settlement because of incomplete medical information on the employee's foot problem, an inadequate explanation of the waiver of medical benefits, incomplete information on the attorney fee arrangement, and the lack of a copy of the Jones Act settlement.[22] A few days later, on December 14, 2009, apparently without his attorney's assistance, Rosales filed a petition requesting that the C&R be set aside and filed a WCC seeking permanent partial impairment (PPI), reemployment benefits, a second independent medical evaluation (SIME), and ongoing medical benefits.[23] On

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[18] R. 0847-62. Dr. Arthur H. Ginsberg performed the neurological evaluation and, among his opinions, concluded that Rosales had suffered a concussion and occipital laceration, had resolving post-concussion headaches, and had sustained aggravation of preexisting cervical and lumbar spondylosis. R. 0853. Theodore J. Becker performed the physical capacity evaluation, concluding that Rosales could perform light to medium level work. R. 0847-48. Kent Shafer performed the vocational rehabilitation evaluation and concluded Rosales needed additional training to enhance his earning capacity. R. 0861.

[19] R. 1222. Dr. Stanton J. Cohen treated Rosales for his left foot problem from September 2009 to December 2009. He did not express an opinion on whether the foot surgery was related to the 2007 work accident. R. 1221-22.

[20] R. 0237-53.

[21] R. 0247-48. Of the $200,000, $195,000 was payable upon execution of the agreement with the remaining $5,000 payable after board approval. The $5,000 reflected "payment of the value of a 2% PPI at $3,540; additional medical in the amount of $1,000; and compensation in the amount of $460." After paying his attorney fees and costs, Rosales would net $113,223.56. R. 0247-48.

[22] Appellees' Exc. 019-20.

[23] R. 0228-32.

January 5, 2010, Davies withdrew the December 14, 2009, WCC and requested a hearing on the settlement.[24]

The board held a hearing on February 2, 2010, to review the settlement.[25] The board continued the hearing after Rosales asked for a little more time to think about whether he wanted the settlement approved.[26] That same day, Icicle's attorney wrote Davies asking if Rosales wanted to go through with the settlement, and, if not, that the maritime settlement proceeds in the amount of $195,000 be refunded to Icicle.[27] On February 23, 2010, a second hearing concerning the settlement was held, at which Rosales testified that he had discussed the settlement with Davies and wanted the board to approve it.[28] He stated that he understood that by settling, he was waiving all further workers' compensation benefits, including TTD, PPI, retraining, permanent total disability (PTD), and medical benefits; that the settlement was final; and that it was in his best interest.[29] Rosales testified that he believed the settlement would help him pay for retraining and he agreed that it was enough to pay for any medical treatment.[30] The board concluded that the settlement was in Rosales's best interest in part because Icicle would have a credit for the Jones Act settlement payment of $113,223.56 before any obligation required it to pay any future workers' compensation benefits.[31]

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[24] R. 0236.

[25] Feb. 2, 2010, Hr'g Tr. 3.

[26] *Id.* at 16:17–17:10.

[27] R. 0401.

[28] Feb. 23, 2010, Hr'g Tr. 4:25–5:2, 7:6-8.

[29] *Id.* at 5–6:16.

[30] *Id.* at 6:20–7:5.

[31] R. 0253; Feb. 23, 2010, Hr'g Tr. 9:20–10:24. The settlement agreement also stated Icicle's position that the Alaska Workers' Compensation Act did not cover Rosales's claim because at the time of injury, he was a Jones Act seaman, and Rosales's position that his claim did fall under the workers' compensation act and he was entitled to additional compensation, future medical benefits, and PPI. R. 0246-47.

Therefore, the likelihood that Rosales would receive any future workers' compensation was remote. The board approved the agreement.[32]

On October 14, 2010, Rosales filed another WCC, seeking to modify or set aside the C&R, and requesting an SIME, PPI, and reemployment benefits.[33] Davies withdrew as Rosales's counsel on November 1, 2010.[34] On December 13, 2010, Rosales filed another WCC seeking PTD benefits.[35] The board concluded that the C&R should not be set aside,[36] and declined to reconsider that decision.[37] Rosales appealed.

3. Standards of review.

The commission is to uphold the board's findings of fact if they are supported by substantial evidence in light of the whole record.[38] The board's findings regarding the credibility of the testimony of a witness are binding on the commission.[39] We exercise our independent judgment when reviewing questions of law and procedure.[40]

4. Discussion.

The issues presented in this appeal are whether the board erred in declining to modify or set aside the C&R on the grounds that: 1) Icicle misrepresented the terms of

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32 R. 0253.

33 R. 0622.

34 R. 0268-70.

35 R. 0641-42.

36 *See Rosales I,* Bd. Dec. No. 11-0065 at 15.

37 *See Rosales II*, Bd. Dec. No. 11-0089.

38 Substantial evidence is such relevant evidence which a reasonable mind might accept as adequate to support a conclusion. *See, e.g., Norcon, Inc. v. Alaska Workers' Compensation Bd.*, 880 P.2d 1051, 1054 (Alaska 1994).

39 *See* AS 23.30.122 and .128(b).

40 *See* AS 23.30.128(b).

the settlement; 2) the settlement was the product of duress; or 3) the C&R should never have been approved because of a failure to comply with board regulations.[41]

a. The board did not err in finding that Icicle did not misrepresent the terms of the C&R.

A C&R is a contract subject to interpretation as any other contract would be. To the extent they are not overridden by statute,[42] common law principles of contract formation and rescission apply to C&Rs.[43] The board is empowered to set aside a C&R as voidable based on a misrepresentation if the party seeking to void the contract can show that a fraudulent or material misrepresentation induced the party to enter the contract, and the party was justified in relying on the misrepresentation.[44] Moreover,

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[41] Rosales made other arguments in his briefing, that the hearing officer and the board were biased, Appellant's Br. 44-47, and that because the global settlement included a maritime component, it was contrary to law, Appellant's Br. 37-38. We perceive no merit to these arguments. Moreover, they were not adequately developed. Parties are deemed to have waived arguments that are not sufficiently briefed. *See Failla v. Fairbanks Resource Agency, Inc.*, Alaska Workers' Comp. App. Comm'n Dec. No. 162, 11 (June 8, 2012) (citing *Gunderson v. Univ. of Alaska, Fairbanks*, 902 P.2d 323, 327 n.5 (Alaska 1995)).

[42] Statutes and regulations that apply to workers' compensation C&Rs require board approval of such agreements upon a finding that the preponderance of the evidence shows the settlement agreement is in the employee's best interest, AS 23.30.012 and 8 AAC 45.160; and do not permit C&Rs to be set aside for mistake of fact, *see Olsen Logging Co. v. Lawson*, 856 P.2d 1155, 1158-59 (Alaska 1993) (interpreting language in AS 23.30.012 to mean that C&Rs cannot be set aside for mistake of fact because AS 23.30.130 (modification of awards) explicitly does not apply to board-approved settlements).

Although at times Rosales appears to argue his C&R should be voidable for purported mistakes of fact, Appellant's Br. 43-44, he conceded that he made no mistake when he agreed to the C&R, Appellant's Br. 18, 20-21, and per *Olsen*, his C&R cannot be voided on those grounds. *See also Smith v. CSK Auto, Inc.*, 204 P.3d 1001, 1007-08 (Alaska 2009) (holding that not knowing the extent of one's disability at the time a C&R is signed is a mistake of fact that cannot be the basis to set aside the settlement).

[43] *See, e.g., Seybert v. Cominco Alaska Exploration*, 182 P.3d 1079, 1093 (Alaska 2008); *Milton v. UIC Constr.*, Alaska Workers' Comp. App. Comm'n Dec. No. 143, 9 (Dec. 23, 2010).

[44] *See Seybert*, 182 P.3d at 1094.

"the misrepresentation must be made by the other party to the contract."[45] In terms of the foregoing elements, it follows that there must have been a misrepresentation by Icicle for the C&R to be set aside on these grounds.

Rosales asserts that the C&R should be set aside because it misrepresented that all medical reports in Icicle's possession had been filed with the board.[46] However, three of the medical reports at issue: 1) were in Rosales's possession, not Icicle's, because they were requested and received by Rosales's attorney; 2) were filed by Rosales on December 14, 2009, a week after the settlement agreement was submitted to the board; and 3) were in the board's file when the C&R was approved by the board on February 23, 2010.[47] Rosales asserted that because his December 14, 2009, claim was withdrawn, the reports were too,[48] but the board simply did nothing further to act on the claim after it was withdrawn; the original claim and reports remained in the board's file.[49] Furthermore, even assuming the records were in Icicle's possession as Rosales asserts,[50] he could not have relied on the purported misrepresentation because

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[45] *Smith*, 204 P.3d at 1009.

[46] Appellant's Br. 21-31.

[47] R. 0846 (Rosales's medical summary listing Becker's, Dr. Ginsberg's, and Shafer's reports was stamped as received by the board on December 14, 2009), R. 0847 (Becker's report was stamped as received by the board on December 14, 2009), R. 0849 (Dr. Ginsberg's report was stamped as received by the board on December 14, 2009). Shafer's report was not stamped as being received on December 14, 2009, but it was listed on the medical summary that was date-stamped and it immediately followed the other two reports in the record, so the commission infers that it also was placed in the record on December 14, 2009. R. 0846, 0855-62.

[48] Appellant's Br. 21-22.

[49] R. 0228-32, 0846-62.

[50] Appellant's Br. 22, 25. Rosales argues that Icicle was provided with the reports during the maritime settlement negotiations in September 2009. To the extent that Rosales is submitting any new evidence that Icicle also had possession of the reports, the commission cannot consider this evidence. *See* AS 23.30.128(a) and (c). As described in the text, even if Icicle also had possession of the reports, Rosales cannot prove all the elements of misrepresentation.

he knew about the reports since he filed them himself with the board a week later,[51] and nevertheless testified that he wanted the board to approve the settlement as in his best interest.[52]

The fourth record at issue is Dr. Cohen's notes on his visits with Rosales concerning his left foot from September 11, 2009, to December 14, 2009.[53] These records do not appear in the board file until months after the settlement was approved when Rosales submitted them along with a medical summary on October 14, 2010.[54] Thus, if Icicle had them in its possession, it committed a misrepresentation when it did not submit them with the settlement agreement. But Rosales bears the burden of proof and he presented no evidence that the notes were in Icicle's possession. Since none of the medical visits had even occurred, he could not have provided the notes to Icicle during a September 9, 2009, mediation session. In addition, Rosales could not have justifiably relied on any purported misrepresentation because he had just had foot surgery in November 2009 and was still seeing Dr. Cohen for follow-up when the settlement agreement was entered into and submitted to the board.[55] Again, despite knowing about his visits with Dr. Cohen, he nevertheless testified that he wanted the board to approve the settlement and that it was in his best interest.[56]

Ultimately, the board found that there was no misrepresentation in the C&R pertaining to either Rosales's medical condition or his need for retraining. The

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[51] R. 0228-32, 0846-62.

[52] Feb. 23, 2010, Hr'g Tr. 6:13–7:8, 7:25–8:2.

[53] R. 1221-22. Rosales pointed out that the board incorrectly referred to Dr. Stanton Cohen as "Dr. Stanton Chen" in its decision, Appellant's Br. 20 and *see Rosales I*, Bd. Dec. No. 11-0065 at 1, but we can infer the board meant Dr. Cohen because (1) Rosales was not treated by a Dr. Chen, (2) the doctor's first name is the same and (3) it was Dr. Cohen's notes that Rosales argued were not submitted with the C&R.

[54] R. 1220-22.

[55] R. 1221-22, 0243-53.

[56] Feb. 23, 2010, Hr'g Tr. 6:13–7:8, 7:25–8:2.

commission concludes there was no error in the board's finding. On the contrary, there was substantial evidence in light of the whole record to support the finding. The findings of the various medical providers and evaluators supported the view that some of Rosales's injuries or conditions related to the work incident. Even so Icicle's recitation of their findings in the C&R was not so inaccurate or misleading as to amount to misrepresentation.

Therefore, the commission finds that substantial evidence supports the board's decision that the C&R should not be set aside because of any misrepresentation.

b. The board did not err in finding that the C&R was not the product of duress.

According to Rosales, another reason the C&R should be set aside is because a letter dated February 2, 2010, from Icicle's attorney to his attorney, Davies, caused him duress and coerced him into going through with the settlement.[57] That letter requested Rosales to return the $195,000 Icicle had paid him, that was allocated to the maritime portion of the settlement, if Rosales was not prepared to settle the workers' compensation claim as well.[58] The Alaska Supreme Court (supreme court) has held that a party alleging duress must show that (1) he involuntarily accepted the terms offered by another party; (2) the circumstances permitted no alternative course of action; and (3) such circumstances were the result of the coercive acts of the other party.[59] When Rosales signed the maritime settlement, he agreed to "cooperate in the process of seeking the Board's approval of the settlement."[60] The board found that there was no coercion as a result of the letter, and thus, no basis for Rosales to claim he was under duress.[61] There is substantial evidence in the record as a whole supporting that finding.

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57 Appellant's Br. 31-35.

58 R. 0401.

59 *See Seybert*, 182 P.3d at 1096.

60 R. 0239.

61 *See Rosales I*, Bd. Dec. No. 11-0065 at 14.

First, the board pointed out that the letter was sent to Rosales's counsel, not to Rosales, who could advise Rosales as to the propriety of Icicle's request and otherwise explain his rights.[62] Second, as a practical matter, despite any protestations to the contrary from Rosales, it was unrealistic for him to think he could renege on the settlement, yet remain free to spend the proceeds, which he claimed he did. Moreover, the fact that Rosales had spent the money is conduct attributable to him, not to Icicle. If he felt coerced as a result of having spent the proceeds of the settlement, the coercion was self-induced. Finally, the board found Rosales not credible in claiming he was not properly informed of the ramifications of the settlement or that he was under duress to approve the settlement.[63] This finding is binding on the commission.[64] Therefore, the commission affirms the board's decision not to set aside the C&R due to duress.

c. The fact that records may have been missing when the board approved the C&R is not reversible error in Rosales's case.

Rosales also contends that the fact that records were missing demonstrates a failure to comply with 8 AAC 45.160(c)(1), which requires settlement agreements to "be accompanied by all medical reports in the parties' possession," and that consequently, the board abused its discretion in approving the settlement. The commission disagrees.

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[62] R. 0401; *see Rosales I,* Bd. Dec. No. 11-0065 at 14. The commission does not find persuasive Rosales's arguments that sending the letter to his attorney did not diminish any remote coercive impact. Appellant's Br. 32. In any event, it is the board's role to choose among competing inferences so long as a reasonable mind would accept them as adequately based on the relevant evidence. Here, the board chose to draw the inference that sending a letter to an attorney diminishes any remote coercive impact. AS 23.30.122 (providing board's findings "concerning the weight to be accorded a witness's testimony . . . is conclusive even if the evidence is . . . susceptible to contrary conclusions."); *Rivera v. Wal-Mart Stores, Inc.,* 247 P.3d 957, 962 (Alaska 2011) (defining substantial evidence as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." (citations omitted)).

[63] *See Rosales I*, Bd. Dec. No. 11-0065 at 7.

[64] *See* AS 23.30.122 and .128(b).

Rosales cited *Smith v. CSK Auto, Inc.* in support of his arguments that an incomplete medical record is reversible error.[65] In *Smith*, the supreme court concluded the board abused its discretion in not setting aside a partial settlement.[66] In *Smith*, the board failed to apply the presumption in 8 AAC 45.160(e), which provides in relevant part:

> An agreed settlement in which the employee waives medical benefits, temporary or permanent benefits before the employee's condition is medically stable and the degree of impairment is rated, or benefits during rehabilitation training after the employee has been found eligible for benefits under AS 23.30.041(g) is presumed not in the employee's best interest, and will not be approved absent a showing by a preponderance of the evidence that the waiver is in the employee's best interest. . . .[67]

In *Smith*, it was undisputed that the claimant was not medically stable and the partial settlement agreement waived PTD, so the board needed to consider the presumption.[68] The board's analysis of the claimant's best interest was inadequate because the claimant was absent from the hearing considering the settlement and so could not detail the reasons he believed the partial settlement was in his best interest, the agreement included only two boilerplate assertions that the parties believed the settlement was "in the best interest of the employee" and the medical record was incomplete.[69] However, *Smith* noted that the "failure to submit complete medical records might not be reversible error in all cases[.]"[70]

The commission believes that Rosales's case can be distinguished from *Smith*. Although the board did not explicitly apply the presumption that waiving medical benefits is not in an employee's best interest, the board detailed the evidence

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65 Appellant's Br. 36.

66 *See Smith,* 204 P.3d at 1013.

67 *Smith,* 204 P.3d at 1011 (quoting 8 AAC 45.160(e)).

68 *See Smith,* 204 P.3d at 1011-12.

69 *See id.* at 1012-13.

70 *Smith,* 204 P.3d at 1012 (citing *Irvine v. Glacier Gen. Constr.,* 984 P.2d 1103, 1108 (Alaska 1999)).

supporting why the settlement was in Rosales's best interest.[71] The board noted that the likelihood of him receiving further medical benefits was remote because of the maritime credit.[72] In Rosales's case, among other issues, the parties disputed whether he was medically stable, whether his lumbar condition in particular was work-related, and whether he was entitled to reemployment benefits. The reemployment benefits administrator had found Rosales ineligible, but Rosales was contesting that determination. Thus, Rosales could not assume, that absent the settlement, he would be entitled to all the benefits he was seeking. Moreover, Rosales testified at the hearings considering the settlement. He agreed that he had discussed the C&R with his attorney, understood all the specific benefits that he was waiving, and understood it would be "virtually impossible" to set aside an approved agreement; and explained that he believed the settlement was in his best interest because it would pay for retraining.[73]

The only similarity between Rosales's case and *Smith* is the ostensibly incomplete medical record. However, the only medical record that was actually missing from the board file when it considered and approved the settlement agreement was Dr. Cohen's notes. The commission concludes that this was not reversible error because the notes do not affect the board's determination that the settlement was in Rosales's best interest because of the Jones Act credit. In addition, Dr. Cohen did not address issues relevant to whether waiving medical benefits was in Rosales's best interest because he expressed no opinion on whether Rosales was likely to need medical treatment in the

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[71] Rosales, like the claimant in *Smith*, did not explicitly argue that the presumption should have applied in his case but we consider whether the board applied the presumption because Rosales asserted that the board's inquiry should have been more searching (as the presumption would require). Appellant's Br. 24 (arguing board had duty to investigate), Appellant's Br. 27 (arguing board failed to comply with its regulations), and Appellant's Br. 30-31 (arguing board "should [have] made a more deep investigation" into Rosales's need for retraining). Because we hold the pleadings of pro se litigants to less stringent standards, we conclude that Rosales adequately raised this issue.

[72] Feb. 23, 2010, Hr'g Tr. 10:18-24.

[73] *Id.* at 5-8.

future for his left foot condition, much less any opinion on whether such treatment was related to the 2007 work accident.[74]

Thus, we conclude the board did not abuse its discretion in approving the C&R and in declining to set it aside.

5. Conclusion.

For the reasons stated, we AFFIRM the board's decisions in *Rosales I* and *Rosales II*.[75]

Date: *11 July 2012* ALASKA WORKERS' COMPENSATION APPEALS COMMISSION

Signed
James N. Rhodes, 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 affirms the board's decision. The commission's decision becomes effective when distributed (mailed) unless proceedings to reconsider it or to appeal to the Alaska Supreme Court are instituted (started).[76] For the date of distribution, see the box below.

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[74] R. 1221-22.

[75] The commission does not need to address Rosales's arguments about board error in calculating the deadline to request reconsideration. These arguments are moot because substantial evidence supports the conclusions in *Rosales I*, so the board could properly deny reconsideration. *See* AS 44.62.540.

[76] A party has 30 days after the distribution of a final decision of the commission to file an appeal to the supreme court. If the commission's decision was distributed by mail only to a party, then three days are added to the 30 days, pursuant to Rule of Appellate Procedure 502(c), which states:

> **Additional Time After Service or Distribution by Mail.** Whenever a party has the right or is required to act within a

(footnote continued)

Effective, November 7, 2005, proceedings to appeal this decision must be instituted (started) in the Alaska Supreme Court no later than 30 days after the date this final decision is distributed[77] 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 is not a party.

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

More information is available on the Alaska Court System's website:
http://www.courts.alaska.gov/

RECONSIDERATION

This is a decision issued under AS 23.30.128(e). 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 no later than 30 days after the day this decision is distributed to the parties. If a request for reconsideration of this final decision is filed on time with the commission, any proceedings to appeal must be instituted no later than 30 days after the reconsideration decision is distributed to the parties, or, no later than 60 days after the date this final decision was distributed in the absence of any action on the reconsideration request, whichever date is earlier. AS 23.30.128(f).

I certify that, with the exception of changes made in formatting for publication, this is a full and correct copy of the Final Decision No. 163 issued in the matter of *Hugo Rosales v. Icicle Seafoods, Inc. and Seabright Insurance Co.*, AWCAC Appeal No. 11-007, and distributed by the office of the Alaska Workers' Compensation Appeals Commission in Anchorage, Alaska, on July 11, 2012.

Date: *July 17, 2012*

Signed
K. Morrison, Deputy Commission Clerk

prescribed number of days after the service or distribution of a document, and the document is served or distributed by mail, three calendar days shall be added to the prescribed period. However, no additional time shall be added if a court order specifies a particular calendar date by which an act must occur.

[77] *See id.*