Case: *Peak Oilfield Service Co. and Liberty Mutual Fire Insurance Co. vs. James L. Lindgren,* Alaska Workers' Comp. App. Comm'n Dec. No. 004 (February 23, 2006)

Facts: Lindgren injured his lower back and insurer began paying temporary total disability (TTD) benefits after he filed a claim in December 2002 until March 14, 2003. The board awarded TTD from March 14, 2003, and continuing indefinitely into the future, medical benefits, statutory interest, and attorney fees of $28,302. Employer moved to stay these payments and appealed the board's decision.

Statutes/regulations: AS 23.30.125(c). The commission may grant a stay of payments required by a board order if the commission finds that the party seeking the stay is able to demonstrate the appellant "would otherwise suffer irreparable damage," AS 23.30.125(c), and that the appeal raises "questions going to the merits [of the board decision] so serious, substantial, difficult and doubtful as to make . . . a fair ground for litigation and thus more deliberate investigation." *Olsen Logging Co. v. Lawson*, 832 P.2d 174, 176 (Alaska 1992). Continuing future periodic compensation payments may not be stayed unless the appellant can show both irreparable harm *and* "the existence of the probability of the merits of the appeal being decided *adversely to the recipient* of the compensation payments." AS 23.30.125(c).

Issue: Should the commission stay the payments?

Holding/analysis: The commission stayed the payment of certain lump sums of compensation and interest but denied the motion to stay ongoing periodic payment of compensation and medical benefits. The commission stayed payments of compensation owed between September 10, 2004 (date that the employer argued employee definitely reached medical stability) and January 9, 2006 (date of the commission's hearing on the motion for stay) because this amount was a large sum that the employer would likely be unable to recoup and the questions raised regarding the board's decision were more serious. The commission denied the motion to stay ongoing periodic payments finding that the higher standard above was not satisfied. The commission also denied the motion to stay payments of compensation owed between March 14, 2003, and September 9, 2004, because "[w]hile we agree that the questions raised by the appellant are serious, for the compensation awarded for this period of time [about 78 weeks] we cannot say that the balance tips decidedly in the favor of the [employer] in view of the possibility of the award of future compensation." (The commission noted that no award of permanent partial impairment (PPI) or vocational rehabilitation benefits had been made.)

Note: The commission amended the regulation on stays, 8 AAC 57.100, effective March 24, 2012.