Case: *Municipality of Anchorage v. Lee O. Stenseth,* Alaska Workers' Comp. App. Comm'n Dec. No. 194 (April 11, 2014)

Facts: Lee Stenseth (Stenseth) injured his cervical spine working for the Municipality of Anchorage (the Municipality) in 1991. In 1996, he settled all claims with the Municipality except for future medical benefits. A police investigation in October and November 2006 revealed that Stenseth had been using false identifications and forged prescriptions to obtain and illicitly sell prescription pain medications. The forged prescriptions were based on prescriptions Stenseth was given for treatment of his work injury. On June 25, 2010, he pled guilty to seven criminal counts. On April 23, 2012, the Municipality filed a petition with the board alleging Stenseth had obtained workers' compensation benefits by making false statements or misrepresentations under AS 23.30.250 and seeking reimbursement.

The parties went to mediation on November 9, 2012. The mediator advised the parties to come with the authority to settle. After the mediation the Municipality wrote to Stenseth's attorney on December 5, 2012, stating in part:

> This will confirm MOA's response to your client's new settlement proposal. As I understand Mr. Stenseth's post-mediation offer, he would immediately tender $25,000 in certified monies to MOA in exchange for a release of any further liability to MOA under AS 23.30.250. I have tendered Mr. Stenseth's proposal to my client and, as I explained, have been advised MOA wishes to maintain the previous settlement amounts verbally agreed to by the parties at the November 9, 2012 mediation. Thus, in exchange for $30.000.00 in certified monies by February 22, 2013 (90 days from the November 13, 2012 letter of confirmation), MOA would execute any and all documents necessary for its full release of Mr. Stenseth from any further liability to MOA under AS 23.30.250.

On December 11, 2012, Stenseth's attorney wrote to the Municipality's attorney:

> My client accepts your post mediation offer to pay $30,000.00 by latest February 22, 2013 in exchange for a complete release of all rights and claims against Mr. Stenseth arising [out] of or in connection with AS 23.30.250.
>
> In reliance on the December 4th offer and to assure his acceptance is fulfilled before the deadline, my client has arranged for the funds and I hold them.
>
> We are prepared to tender in exchange for releases to be simultaneously filed with the Board, so to meet any requirements of AS 23.30.012.
>
> Please accordingly provide draft for me to review for conformity. I will tender certified and/or my trust fund checks and/or cash to you personally in exchange the finalizing Board filing.

On December 17, 2012, however, the Municipality's attorney advised she had encountered a "glitch" and that she needed the approval of "higher-ups" to settle. She stated:

> I just found out this morning that the settlement exceeds Risk Management's authority since it involves MOA's agreement to forebear recoveries of monies the dollar amount of which are in excess of Risk's authority. I did not realize Risk's settlement authority limits included forbearance of claims."

Stenseth tendered payment the next day but the Municipality refused to accept the funds.

Stenseth sought to have the settlement agreement enforced and the Municipality's petition for reimbursement set aside due to the agreement. The board concluded that the parties had entered into a binding settlement agreement and that the Municipality had breached the agreement. The Municipality appeals.

Applicable law: "Equitable estoppel applies against the government in favor of a private party if four elements are present in a case: (1) the governmental body asserts a position by conduct or words; (2) the private party acts in reasonable reliance thereon; (3) the private party suffers resulting prejudice; and (4) the estoppel serves the interest of justice so as to limit public injury." *Pfeifer v. State, Dep't of Health & Soc. Services, Div. of Pub. Assistance*, 260 P.3d 1072, 1082 (Alaska 2011).

AS 23.30.012 states in relevant part that an employer and employee "have the right to reach an agreement in regard to *a claim for injury* or death under this chapter, but a memorandum of the agreement in a form prescribed by the director shall be filed with the division. Otherwise, the agreement is void for any purpose. . . . [A]n agreement filed with the division discharges the liability of the employer for the *compensation*[.]" (italics added).

8 AAC 45.160 provides in relevant part that:

> (a) The board will review a settlement agreement that provides for the payment of compensation due or to become due and that undertakes to release the employer from any or all future liability. A settlement agreement will be approved by the board only if a preponderance of evidence demonstrates that approval would be for the best interest of the employee or the employee's beneficiaries. . . .
>
> (b) All settlement agreements must be submitted in writing to the board, must be signed by all parties to the action and their attorneys or representatives, if any, and must be accompanied by form 07-6117.

Subsection (c) specifies the details that a settlement agreement must include, including attached medical reports, a written statement concerning the nature of the injury, the employee's wages and earning capacity as well as other requirements.

Issues: Were the statements made during settlement negotiations admissible? Did the board have substantial evidence to conclude that the parties settled and to establish the terms of that agreement? Should the Municipality be equitably estopped from avoiding the settlement because its attorney lacked the authority to settle? Was the settlement agreement enforceable under the Act and regulations that have specific requirements for such agreements?

Holding / analysis: The board admitted the statements made in the settlement negotiations on the issue of whether the parties settled. The commission concluded this was proper because this purpose was different than what Evidence Rule 408 would exclude. Rule 408 excludes statements made in settlement negotiations "to prove liability for or invalidity of the claim or its amount."

On the second issue, the board concluded that the Municipality's December 5, 2012, communication was an offer and Stenseth's letter dated December 11, 2012, accepted that offer. "The commission concludes that substantial evidence supports the board's finding that there was an agreement between the parties with respect to the essential terms of the settlement, which were set forth in the referenced correspondence." Dec. No. 194 at 9.

On the third issue, the commission concluded that the board properly found the Municipality was equitably estopped from asserting it lacked the authority to settle. The commission relied on the similar facts in *Municipality of Anchorage v. Schneider*, 685 P.2d 94, 96 (Alaska 1984), in which the Municipality issued property owners a building permit in accordance with a settlement agreement but then later revoked the permit because of zoning restrictions. The Alaska Supreme Court enforced the settlement in the interest of justice, equitably estopping the Municipality from revoking the permit.

On the fourth issue, the commission concluded that the AS 23.30.012 requirement of board approval did not apply to the settlement agreement because "the agreement that is now at issue did not involve *a claim for injury*, the settlement of which would discharge the employer's liability for *compensation*. On the contrary, the settlement covered efforts on the part of the Municipality to recoup benefits it had paid Stenseth." *Id.* at 11. For the same reasons, the commission concluded that the regulation did not apply to the settlement agreement. The commission concluded that the technical requirements in subsections (b) and (c) of the regulation "serve no purpose in the circumstances of this case because Stenseth is not seeking benefits. Therefore, as a matter of equity, the board declined to impose those requirements." *Id.* at 13.

Note: This case is on appeal to the Alaska Supreme Court.