

ALASKA WORKERS' COMPENSATION BOARD

MAR 21 2013



P.O. Box 115512

Juneau, Alaska 99811-5512

KERRY FADELY (DECEASED),)	
)	
Employee,)	FINAL DECISION AND ORDER
)	
DEBORAH HARRIS,)	AWCB Case No. 201116890
)	
Claimant,)	AWCB Decision No. 13-0028
)	
v.)	Filed with AWCB Anchorage, Alaska
)	On March 21, 2013
MILLENNIUM HOTEL,)	
)	
Employer,)	
and)	
)	
NEW HAMPSHIRE INSURANCE CO.,)	
)	
Insurer,)	
Defendants.)	
)	

Deborah Harris's (Claimant) April 9, 2012, workers' compensation claim for death benefits was heard on the written record on February 26, 2013, in Anchorage, Alaska. Attorneys Eric Croft and Peter Renn (Lambda Legal Defense and Education Fund, Inc.) represented Claimant. Attorney Colby Smith represented Millennium Hotel and its insurer, New Hampshire Insurance Co. (Employer). The parties filed a stipulation of facts on December 19, 2012, and a written record hearing date was selected. The record closed on February 26, 2013.

ISSUES

Claimant contends she is entitled to death benefits because she was in a same-sex relationship with Kerry Fadely (Employee) when Employee died, and was Employee's same-sex domestic

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partner. Claimant acknowledges the Alaska Workers' Compensation Act (Act) provides for death benefit payments to "widows" and "widowers." She also acknowledges she is not Employee's "widow" or "widower" as defined by the Act because Claimant and Employee were not married to one another when Employee died. However, Claimant contends Alaska law precludes Employee and Claimant from marrying one another, and therefore, AS 23.30.215's spousal limitation violates the Alaska and United States Constitutions. Claimant also contends the Alaska Workers' Compensation Board (board) lacks jurisdiction to decide her constitutional challenges. Claimant requests an award of attorney's fees and costs on her death benefits claim.

Employer agrees AS 23.30.215 provides for death benefit payments to "widows" and "widowers" and agrees Claimant is not Employee's "widow" as defined by the Act. It contends under AS 23.30.215's plain language and Alaska case law holding unmarried cohabitants are not entitled to death benefits, Claimant is not entitled to death benefits. It further contends because Claimant is not entitled to death benefits, she is not entitled to attorney's fees and costs. Employer agrees the board lacks jurisdiction to decide Claimant's constitutional challenges.

- 1) **Is Employee entitled to death benefits?**
- 2) **Does the Alaska Workers' Compensation Board have jurisdiction to determine if AS 23.30.215 is unconstitutional?**

FINDINGS OF FACT

A review of the entire record establishes the following facts and factual conclusions by a preponderance of the evidence:

- 1) On October 29, 2011, Employee, a food and beverage manager at the Millennium Hotel in Anchorage, Alaska, died in a work-related injury. (Report of Injury, November 7, 2011).
- 2) Claimant contends she was in a same-sex relationship with Employee when Employee died, and was her same-sex domestic partner. Claimant's assertions include: if Alaska law allowed her and Employee to marry, or recognized an out-of-state same-sex marriage certificate, they would have married; Claimant and Employee were in an exclusive, committed, financially interdependent relationship for over a decade by the time of Employee's death in 2011; Claimant and Employee lived for the majority of their ten-year relationship together in Anchorage; they

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wore matching rings to signify their love and commitment for one another and referred to each other as "partner" or "spouse"; they jointly submitted an Affidavit of Domestic Partnership so Claimant could access health insurance Employee received through a prior employer; had joint credit card accounts; jointly leased an apartment and were looking to jointly purchase a home; and on Facebook, a social media website, Employee listed Claimant as her "spouse" and stated Employee and Claimant were in a domestic partnership. Claimant submitted affidavits from herself, her daughter, and a friend attesting to the couple's committed and financially interdependent relationship. Claimant asserts she was financially dependent upon Employee. (Notice of Constitutional Challenge and Request for Final Decision and Order, September 24, 2012; Declaration of Deborah Harris, September 1, 2012; Declaration of Hannah Large, September 5, 2012; Declaration of Lynnette Warren, September 18, 2012; Adult Dependency Questionnaire, April 26, 2012).

3) Claimant and Employee were not married to one another when Employee died, and had never been married to one another. (Notice of Constitutional Challenge and Request for Final Decision and Order, September 24, 2012; Declaration of Deborah Harris, September 1, 2012; Stipulated Facts and Request for Final Decision and Order, December 19, 2012).

4) Claimant does not qualify as a "widow" or "widower" eligible to receive death benefits under AS 23.30.215, and AS 23.30.395(40) or (41). (Stipulated Facts and Request for Final Decision and Order, December 19, 2012).

5) Under the plain language of the Act, Employer has no obligation to pay death benefits to Claimant. (*Id.*).

6) On April 9, 2012, Claimant timely filed a claim for death benefits. (Workers' Compensation Claim, April 9, 2012).

7) On May 7, 2012, Employer disputed Claimant's death benefits claim on the basis Claimant was not Employee's husband or wife at the time of Employee's death. (Answer, May 7, 2012).

8) On May 18, 2012, Employer controverted Claimant's death benefits request, for reasons including the following:

...Consistent with AS 23.30.215, the employer has not received any documentation that Ms. Deborah Harris was either the decedent's wife, or husband. Additionally, consistent with *Runney v. Whitewater Engineering*, 122 P.3d 214 (October 14, 2005), surviving unmarried co-habitant who lived together

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and hold themselves out to the community as husband and wife are not entitled to workers' compensation widows benefits. Thus, the employer denies that Ms. Harris is entitled to benefits consistent with AS 23.30.215.

(Controversion Notice, May 4, 2012).

9) On September 24, 2012, to "preserve the factual context of her claim," Claimant filed Notice of Constitutional Challenge and Request for Final Decision and Order, with affidavits and documentary evidence attached. (Stipulated Facts and Request for Final Decision and Order, December 19, 2012; Notice of Constitutional Challenge and Request for Final Decision and Order, September 24, 2012).

10) On October 2, 2012, Employer filed its objection to Claimant's constitutional challenge and request for final decision and order. Specifically, Employer objected to the declaration and attached evidence and affidavits' admissions on the grounds of hearsay and relevancy. (Employers Objection to the Employee's Constitutional Challenge and Request for Final Decision and Order, October 1, 2012).

11) Employee's death occurred in the course and scope of employment. (Report of Occupational Injury or Illness, November 7, 2011; Stipulated Facts and Request for Final Decision and Order, December 19, 2012).

12) Employer and Claimant assert Claimant's constitutional challenge and the accompanying evidence and any contrary evidence need not be considered to deny Claimant's claim. Employer reserves its right to object to the evidence attached to Claimant's constitutional challenge and to submit their own evidence if necessary or required. (*Id.*).

13) Employer has paid death benefits to Vincent Fadely, who is Employee's (now) 23 year old son. (Compensation Reports, November 23, 2011 and February 2, 2012; Death Benefits Reports, November 23, 2011 and February 2, 2012).

PRINCIPLES OF LAW

Alaska Constitution, Article I, Section 1 - Inherent Rights. This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State.

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Alaska Constitution, Article I, Section 25 - Marriage. To be valid or recognized in this State, a marriage may exist only between one man and one woman.

Alaska Constitution, Article XII, Section 6 - Merit System. The legislature shall establish a system under which the merit principle will govern the employment of persons by the State.

AS 23.30.001. Intent of the legislature and construction of chapter. It is the intent of the legislature that

(1) this chapter be interpreted so as to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of this chapter;

(2) workers' compensation cases shall be decided on their merits except where otherwise provided by statute. . . .

The board derives its authority and jurisdiction from Act at AS 23.30.005, et seq., and the Alaska Administrative Procedure Act AS 44.62.540. An administrative agency can only adjudicate a dispute if it has been given explicit adjudicatory authority by statute. *Far North Sanitation, Inc. v. Alaska Public Utilities Commission*, 825 P.2d 867, 870 (Alaska 1992). The Alaska Supreme Court has recognized the board's equitable powers, but only as necessarily incident to exercise statutory adjudicative responsibilities. *Blanas v. The Brower Co.*, 938 P.2d 1056, 1062 (Alaska 1997). Applying equitable or common law principles in a specific case is permitted, but the board can only adjudicate in the context of a workers' compensation case, and lacks jurisdiction to decide constitutional claims. *Alaska Public Interest Group v. State*, 167 P.3d 27, 36-37 (Alaska 2007), *Dougan v. Aurora Electric, Inc.*, 50 P.3d 789 (Alaska 2002).

The board may base its decision not only on direct testimony, medical findings, and other tangible evidence, but also on the board's "experience, judgment, observations, unique or peculiar facts of the case, and inferences drawn from all of the above." *Fairbanks North Star Borough v. Rogers & Babler*, 747 P.2d 528, 533-34 (Alaska 1987).

AS 23.30.145. Attorney Fees. (a) Fees for legal services rendered in respect to a claim are not valid unless approved by the board, and the fees may not be less than 25 percent on the first \$1,000 of compensation or part of the first \$1,000 of

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compensation, and 10 percent of all sums in excess of \$1,000 of compensation. When the board advises that a claim has been controverted, in whole or in part, the board may direct that the fees for legal services be paid by the employer or carrier in addition to compensation awarded; the fees may be allowed only on the amount of compensation controverted and awarded. When the board advises that a claim has not been controverted, but further advises that bona fide legal services have been rendered in respect to the claim, then the board shall direct the payment of the fees out of the compensation awarded. In determining the amount of fees the board shall take into consideration the nature, length, and complexity of the services performed, transportation charges, and the benefits resulting from the services to the compensation beneficiaries.

(b) If an employer fails to file timely notice of controversy or fails to pay compensation or medical and related benefits within 15 days after it becomes due or otherwise resists the payment of compensation or medical and related benefits and if the claimant has employed an attorney in the successful prosecution of the claim, the board shall make an award to reimburse the claimant for the costs in the proceedings, including reasonable attorney fees. The award is in addition to the compensation or medical and related benefits ordered.

AS 23.30.215. Compensation for death. (a) If the injury causes death, the compensation is known as a death benefit and is payable in the following amounts to or for the benefit of the following persons:

- (1) reasonable and necessary funeral expenses not exceeding \$10,000;
- (2) if there is a widow or widower or a child or children of the deceased, the following percentages of the spendable weekly wages of the deceased:
 - (A) 80 percent for the widow or widower with no children;
 - (B) 50 percent for the widow or widower with one child and 40 percent for the child;
 - (C) 30 percent for the widow or widower with two or more children and 70 percent divided equally among the children;
 - (D) 100 percent for an only child when there is no widow or widower;
 - (E) 100 percent, divided equally, if there are two or more children and no widow or widower;
- (5) \$5,000 to a surviving widow or widower, or equally divided among surviving children of the deceased if there is no widow or widower.

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(b) In computing death benefits, the spendable weekly wage of the deceased shall be computed under AS 23.30.220 and shall be paid in accordance with AS 23.30.155 and subject to the weekly maximum limitation in the aggregate as provided in AS 23.30.175, but the total weekly compensation may not be less than \$75 for a widow or widower nor less than \$25 weekly to a child or \$50 for children.

(c) All questions of dependency shall be determined as of the time of the injury, or death. . . .

AS 23.30.395. Definitions. In this chapter. . . .

. . .

(25) "married" includes a person who is divorced but is required by the decree of divorce to contribute to the support of the former spouse;

. . .

(40) "widow" includes only the decedent's wife living with or dependent for support upon the decedent at the time of death, or living apart for justifiable cause or by reason of the decedent's desertion at such a time;

(41) "widower" includes only the decedent's husband living with or dependent for support upon the decedent at the time of death, or living apart for justifiable cause or by reason of the decedent's desertion at such a time.

AS 25.05.011(a). Civil contract. (a) Marriage is a civil contract entered into by one man and one woman that requires both a license and solemnization. The man and the woman must each be at least one of the following:

- (1) 18 years of age or older and otherwise capable;
- (2) qualified for a license under AS 25.05.171; or
- (3) a member of the armed forces of the United States while on active duty.

(b) A person may not be joined in marriage in this state until a license has been obtained for that purpose as provided in this chapter. A marriage performed in this state is not valid without solemnization as provided in this chapter.

AS 25.05.013. Same-sex marriages. (a) A marriage entered into by persons of the same sex, either under common law or under statute, that is recognized by another state or foreign jurisdiction is void in this state, and contractual rights granted by virtue of the marriage, including its termination, are unenforceable in this state.

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(b) A same-sex relationship may not be recognized by the state as being entitled to the benefits of marriage.

In *Ranney v. Whitewater Engineering*, 122 P.3d 214 (Alaska 2005), Sharon Ranney, a surviving unmarried cohabitant, challenged the board's ruling she was ineligible for death benefits when her domestic partner was killed in a work-related accident. The Alaska Supreme Court held the unmarried cohabitant was ineligible for death benefits under the Act; and the board's decision did not violate Ms. Ranney's state constitutional rights to privacy or to equal protection. The Alaska Supreme Court found the plain meaning of "widow" and "wife" in the Act excluded unmarried cohabitants from death benefit eligibility. The Act's failure to include unmarried cohabitants in its detailed list of alternative beneficiaries eligible for death benefits if there is no surviving spouse or children further suggested such exclusion. *Id.* at 219.

Ranney contended the board's determination she was ineligible for death benefits violated her constitutional right to privacy and infringed her right to equal protection. In addressing Ranney's equal protection constitutional challenges, the Alaska Supreme Court noted the Act's purpose - to "ensure the quick, efficient, fair and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to employers" - is legitimate. Ranney argued the state cannot show the challenged provision bears a fair and substantial relation to the Act's purpose, because the Act is not intended to do anything except compensate injured workers and their *dependents* for work-related injuries and deaths; and the distinction between legally-married spouses and unmarried cohabitants is untenable. The Alaska Supreme Court rejected Ranney's arguments. Even if one of the Act's purposes is to compensate *dependents* rather than *families*, as contended by Ranney, the Alaska Supreme Court said the Act serves a broader purpose, to provide benefits in a "quick, efficient, fair, and predictable" manner, at a reasonable cost to employers, and found the Act's spousal benefit substantially furthers this overarching purpose, even if it might fall short in compensating all potential "dependents."

The Alaska Supreme Court found the legislature could have adopted a system that required each relationship be scrutinized on an individual basis to determine whether death benefits should be granted; but it did not. Instead, the legislature engaged in the traditional legislative practice of line drawing. It determined the potentially increased precision of requiring an ad hoc decision in all cases would be so administratively costly, the system would be better served by using a more

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formal rule for determining which relationships require death benefits. The formal rule requires marriage for a "widow" or "widower" to receive death benefits. *Ranney*, 122 P.3d at 221-22. The Alaska Supreme Court concluded:

By adopting marriage as the primary criterion for determining when an intimate partner qualifies for benefits, the legislature has determined that legal marriage is an adequate proxy for the more particularized inquiry concerning whether a relationship is serious enough or the partner is sufficiently dependent to justify awarding benefits.

Id., at 221.

The Alaska Supreme Court concluded the legislature's reliance on marriage as the determining factor for spousal death benefits bears a fair and substantial relationship to the goal to ensure "quick, efficient, fair and predictable" benefits delivery at a reasonable cost to employers. The Act's balance between perfect fairness on one hand, and cost, efficiency, speed, and predictability on the other, does not violate the equal protection clause. *Id.*, at 223-24.

In *Alaska Civil Liberties Union v. State of Alaska and Municipality of Anchorage*, 122 P.3d 781 (Alaska 2005), public employees with same-sex domestic partners challenged government benefit policies under which unmarried couples were not eligible for benefits. The State of Alaska and Municipality of Anchorage offered valuable benefits to their employees' spouses not offered to their unmarried employees' domestic partners. The Alaska Supreme Court noted all opposite-sex adult couples may marry and thus become eligible for these benefits. But no same-sex couple could ever be eligible for these benefits because same-sex couples may not legally marry in Alaska. Therefore, spousal limitations in the benefits programs affected public employees with same-sex domestic partners differently than public employees who are married. The Alaska Supreme Court had to determine if it was reasonable to pay public employees in committed domestic relationships with same-sex partners less in benefits than their married co-workers.

The issue before the Alaska Supreme Court was whether the benefits programs' spousal limitations violated the rights of public employees with same-sex domestic partners "equal rights, opportunities, and protection under the law." The Alaska Constitution guarantees the

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right to equal treatment and states "all persons are equal and entitled to equal rights, opportunities, and protection under the law." This is known as the "equal protection clause," and guarantees not only equal "protection," but also equal "rights" and "opportunities" under the law. *Alaska Constitution Article I, Section 1.*

To begin its inquiry, the Alaska Supreme Court determined the proper comparison was between same-sex couples and opposite-sex couples, whether or not they were married, rather than a comparison between same-sex and opposite-sex unmarried couples. Unmarried public employees in opposite-sex domestic relationships could obtain benefits by marrying opposite-sex domestic partners. Unmarried, public employees in committed same-sex domestic relationships were absolutely denied any opportunity to obtain benefits because they were barred by law from marrying their same-sex partners in Alaska or having any marriage performed elsewhere recognized in Alaska. *Id.*, at 788. The Alaska Supreme Court found cost control, administrative efficiency, and promotion of marriage are legitimate governmental interests, but absolute denial of benefits to public employees with same-sex domestic partners is not substantially related to these governmental interests. *Id.*, at 793-94.

Alaska Constitution Article I, Section 1 guarantees all Alaskans "the rewards of their own industry," and Article XII, Section 6 requires public employment be based on merit. The Alaska Supreme Court found benefit programs allowing governments to give married workers substantially greater compensation than given to workers with same-sex partners for identical work cut against these constitutional principles, yet further no legitimate government goal as public employers. The Alaska Supreme Court concluded the public employers' spousal limitations violated the Alaska Constitution's equal protection clause.

The Alaska Workers' Compensation Board performs a quasi-judicial function, which resembles a trial court. The board may be required to apply equitable or common law principles in a specific case, but it can only adjudicate in the context of a workers' compensation case. Administrative agencies do not have jurisdiction to decide constitutional law issues. *Alaska Public Interest Group v. State*, 167 P.3d 27, 36-37 (Alaska 2007); *Dougan v. Aurora Electric, Inc.*, 50 P.3d 789 (Alaska 2002).

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ANALYSIS**1) Is Employee entitled to death benefits?**

AS 23.30.215(a)(2) states death benefits are payable to the "widow or widower or a child or children of the deceased. . ." The terms "widow" and "widower" as used in the Act include only a decedent's wife, or husband, "living with or dependent for support upon the decedent at the time of death, or living apart for justifiable cause" or because the decedent deserted the marriage. AS 23.30.395 (40) and (41).

In Alaska, a person becomes a "wife" or "husband" by marriage. To be married, one woman and one man must undertake certain acts, including both a license and solemnization. AS 25.05.011. Marriage's definition in Alaska does not recognize common law marriage. *Harrelson v. Harrelson*, 932 P.2d 247, 250 (Alaska 1997). The Act defines "married" to include a "person who is divorced but is required by the decree of divorce to contribute to the support of the former spouse." AS 23.30.395(25). "Married" does not include persons who live together or present themselves to the community as husband and wife, or as same-sex or domestic partners.

In 1998, Alaska voters adopted Alaska Constitution Article I, Section 25, commonly known as the Marriage Amendment, which provides, "To be valid or recognized in this State, a marriage may exist only between one man and one woman." Although it does not contain an express prohibition, the Marriage Amendment confers validity and recognition in Alaska of marriage only between one man and one woman. In Alaska, the Marriage Amendment effectively prohibits marriage, or the recognition thereof, between same sex individuals.

Claimant acknowledges when Employee died, she and Employee were not married and were unable to marry under Alaska law. However, she asserts if Alaska law permitted marriage between same-sex couples, or recognized out-of-state same-sex marriage certificates, she and Employee would have married. Claimant asserts she was in a same-sex relationship with Employee when Employee died, was Employee's same-sex domestic partner, and was financially dependent upon Employee.

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The Alaska Supreme Court in *Ranney* examined the legislature's distinction between married and unmarried "wives," and the Act's broad purpose to provide "quick, efficient, fair and predictable" benefits that are not unreasonably expensive for employers. It focused on the legislature's ability to adopt a system that, when determining whether death benefits are compensable, could have required each relationship be scrutinized on a case-by-case basis and recognized the legislature did not adopt such a workers' compensation system. Instead, *Ranney* found the legislature balanced the benefits of greater precision against the administratively costly requirement of a determination in all cases. To determine which relationships are entitled to death benefits, *Ranney* further found the legislature determined the system would be better served through a formal rule requiring marriage. *Ranney*, 122 P.3d at 221-22. By adopting marriage as the primary criterion for determining when an intimate partner qualifies for death benefits, the legislature determined legal marriage is an adequate "proxy" for the inquiry whether a relationship is serious enough or the partner sufficiently dependent enough to justify awarding death benefits. *Id.*, at 222.

Claimant was not married to Employee when Employee died, nor was Claimant Employee's "widow" or "widower" as defined by the Act because Claimant and Employee were not, and could not be married to one another in Alaska. Under AS 23.30.215 and AS 23.30.395(40) or (41)'s plain language, Employee is not entitled to death benefits and, therefore, she is not entitled to an attorney's fees and costs award. AS 23.30.145.

2) Does the Alaska Workers' Compensation Board have jurisdiction to determine if AS 23.30.215 is unconstitutional?

Claimant contends Alaska law precluded Employee and Claimant from marrying one another and therefore AS 23.30.215's spousal limitation violates the Alaska and United States Constitutions. Claimant does not identify which constitutional rights she contends are violated. Presumably, she is referring to the respective constitution's equal protection clauses. A person asserting an equal protection violation must demonstrate the challenged law treats similarly situated persons differently. Absent disparate treatment of similarly situated persons, the law does not violate the aggrieved person's right to equal protection. Alaska Constitution Article I, Section 1.

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It is uncertain if Claimant is solely challenging the constitutionality of the Act's death benefits provisions, AS 23.30.215, AS 23.30.395(40) or (41), or if her challenge also goes to AS 25.05.011 and AS 25.05.013. AS 25.05.013 voids same-sex marriages in Alaska, even if recognized elsewhere, and provides same-sex marriages are not recognized in Alaska, and are not entitled to the benefits of marriage.

In *Ranney*, the Alaska Supreme Court considered whether denial of death benefits under the Act to an unmarried opposite-sex cohabitant, in a committed and financially dependent relationship with a partner killed in a work-related accident, violated the surviving cohabitant's rights of privacy and equal protection under the Alaska Constitution. The Alaska Supreme Court rejected Ms. Ranney's argument the Act's definition of "wife" could include unmarried cohabitants, so unmarried cohabitants would fall within the definition of "widow." The Alaska Supreme Court found Ms. Ranney failed to identify any significant burden on the rights of unmarried couples to pursue committed relationships while at the same time choosing not to marry, and found no violation of her right to privacy. *Ranney*, 122 P.3d at 222.

In addressing Ms. Ranney's contention the Act infringed upon her right to equal protection under the law, the Alaska Supreme Court relied upon a past holding that workers' compensation benefits are nothing more than an economic benefit, and therefore, under the court's equal protection analysis, entitled to only minimum protection. *Id.*, at 223; see also, *Williams v. State Dep't of Revenue*, 895 P.2d 99, 104 (Alaska 1995). The Alaska Supreme Court's analysis relied upon the Act's broad purpose to provide "quick, efficient, fair, and predictable" benefits at a reasonable cost to employers, and found the Act's death benefit provision bears a close and substantial relationship to this legitimate state interest. "The act's balance between perfect fairness on the one hand, and cost, efficacy, speed, and predictability on the other, does not violate the equal protection clause." *Id.*, at 223-224.

The Alaska Supreme Court found compelling the legislature's determination to draw a precise line and adopt the formal rule, which requires marriage for "widows" or "widowers" to receive death benefits. *Ranney* is distinguishable from the instant case. In *Ranney*, the Alaska Supreme Court did not have to address the obstacles faced by a same-sex couple because Ms. Ranney and the

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deceased employee were of opposite sexes and could have married. They could have crossed the precise line from unmarried to married, thereby entitling Ms. Ranney to death benefits.

In *Alaska Civil Liberties Union v. State of Alaska and Municipality of Anchorage*, the Alaska Supreme Court addressed whether state and municipal employee benefits provisions, which offered benefits to employees' spouses not also offered to unmarried employees' domestic partners, violated the equal protection clause. The Alaska Supreme Court considered cost control, administrative efficiency, and promotion of marriage legitimate governmental interests, but found denial of benefits to public employees with same-sex domestic partners was not substantially related to these governmental interests.

There are basic and distinguishing differences between the *Ranney* and *Alaska Civil Liberties Union* cases, and between those cases and Claimant's case. *Alaska Civil Liberties Union* dealt with two governmental programs; while at issue in *Ranney* and Claimant's case is a workers' compensation law, specifically the Act's death benefits provision, which applies to both public and private employers. State of Alaska employee benefit programs are subject to the "Merit System" constitutionally mandated in Alaska's constitution. Article XII, section 6 does not apply to private employers, including Employee's employer. *Alaska Civil Liberties Union* relied at least in part on this constitutional provision.

Claimant, like Ms. Ranney, asserts the Act's death benefits provision violates the Alaska constitution. Claimant additionally asserts AS 23.30.215's spousal limitation violates the United States Constitution. The distinguishing difference is *Ranney* involved an unmarried opposite-sex couple that could have married under Alaska law but did not. Claimant's case involves an unmarried same-sex couple unable to legally marry under Alaska law. Neither *Ranney* nor *Alaska Civil Liberties Union* directly addresses Claimant's state or federal constitutional law challenges.

The board as an administrative agency can only adjudicate a dispute if it has been given explicit adjudicatory authority by statute. *Far North Sanitation, Inc.* The board's equitable powers are limited as necessarily incident to exercise statutory adjudicative responsibilities. *Blanas*. Equitable

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or common law principles may be applied in a specific workers' compensation case, but the board lacks jurisdiction to decide Claimant's constitutional challenges, whatever those might be. *Alaska Public Interest Group; Dougan*.

Lacking jurisdiction to decide constitutional claims, this decision will not address Claimant's contentions the Act's death benefits provision violates her constitutional rights under the Alaska and United States Constitutions.

CONCLUSIONS OF LAW

- 1) Claimant is not entitled to a death benefits award.
- 2) The board lacks jurisdiction to decide Claimant's constitutional challenges.

ORDER

Claimant's April 9, 2012 death benefits claim is denied.

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Dated in Anchorage, Alaska this 21st day of March 2013.

ALASKA WORKERS' COMPENSATION BOARD



Janel Wright
Janel Wright, Designated Chair

Patricia Vollendorf
Patricia Vollendorf, Member

15/ Amy Steele
Amy Steele, Member

APPEAL PROCEDURES

This compensation order is a final decision. It becomes effective when filed in the office of the board unless proceedings to appeal it are instituted. Effective November 7, 2005, proceedings to appeal must be instituted in the Alaska Workers' Compensation Appeals Commission within 30 days of the filing of this decision and be brought by a party in interest against the board and all other parties to the proceedings before the board. If a request for reconsideration of this final decision is timely filed with the board, any proceedings to appeal must be instituted within 30 days after the reconsideration decision is mailed to the parties or within 30 days after the date the reconsideration request is considered denied due to the absence of any action on the reconsideration request, whichever is earlier. AS 23, 30.127.

An appeal may be initiated by filing with the office of the Appeals Commission: (1) a signed notice of appeal specifying the board order appealed from and 2) a statement of the grounds upon which the appeal is taken. A cross-appeal may be initiated by filing with the office of the Appeals Commission a signed notice of cross-appeal within 30 days after the board decision is filed or within 15 days after service of a notice of appeal, whichever is later. The notice of cross-appeal shall specify the board order appealed from and the grounds upon which the cross-appeal is taken. AS 23.30.128.

RECONSIDERATION

A party may ask the board to reconsider this decision by filing a petition for reconsideration under AS 44.62.540 and in accordance with 8 AAC 45.050. The petition requesting reconsideration must be filed with the board within 15 days after delivery or mailing of this decision.

MODIFICATION

Within one year after the rejection of a claim, or within one year after the last payment of benefits under AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, a party may ask the board to modify this decision under AS 23.30.130 by filing a petition in accordance with 8 AAC 45.150 and 8 AAC 45.050.

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Dated in Anchorage, Alaska this 21st day of March 2013.

ALASKA WORKERS' COMPENSATION BOARD



Janel Wright, Designated Chair

Patricia Vollendorf, Member

Amy Steele

Amy Steele, Member

APPEAL PROCEDURES

This compensation order is a final decision. It becomes effective when filed in the office of the board unless proceedings to appeal it are instituted. Effective November 7, 2005, proceedings to appeal must be instituted in the Alaska Workers' Compensation Appeals Commission within 30 days of the filing of this decision and be brought by a party in interest against the board and all other parties to the proceedings before the board. If a request for reconsideration of this final decision is timely filed with the board, any proceedings to appeal must be instituted within 30 days after the reconsideration decision is mailed to the parties or within 30 days after the date the reconsideration request is considered denied due to the absence of any action on the reconsideration request, whichever is earlier. AS 23, 30.127.

An appeal may be initiated by filing with the office of the Appeals Commission: (1) a signed notice of appeal specifying the board order appealed from and 2) a statement of the grounds upon which the appeal is taken. A cross-appeal may be initiated by filing with the office of the Appeals Commission a signed notice of cross-appeal within 30 days after the board decision is filed or within 15 days after service of a notice of appeal, whichever is later. The notice of cross-appeal shall specify the board order appealed from and the grounds upon which the cross-appeal is taken. AS 23.30.128.

RECONSIDERATION

A party may ask the board to reconsider this decision by filing a petition for reconsideration under AS 44.62.540 and in accordance with 8 AAC 45.050. The petition requesting reconsideration must be filed with the board within 15 days after delivery or mailing of this decision.

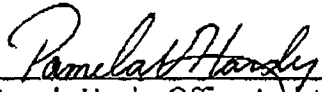
MODIFICATION

Within one year after the rejection of a claim, or within one year after the last payment of benefits under AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, a party may ask the board to modify this decision under AS 23.30.130 by filing a petition in accordance with 8 AAC 45.150 and 8 AAC 45.050.

KERRY FADELY (DECEASED) v. MILLENNIUM HOTEL

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Final Decision and Order in the matter of KERRY FADELY (DECEASED), employee; v. MILLENNIUM HOTEL, employer; NEW HAMPSHIRE INSURANCE CO., insurer / defendants; Case No. 201116890; dated and filed in the office of the Alaska Workers' Compensation Board in Anchorage, Alaska, on March 21, 2013.



Pamela Hardy, Office Assistant