

adjudicative powers, must be accompanied by written findings and a decisional document.’ ”² We have also consistently suggested that even non-adjudicative decisions of an agency, like the ruling on the interlocutory motion at issue in this case, must be supported by adequate reasoning to permit judicial review, although such non-adjudicative decisions “need not occur in a formal, unified decisional document, as long as the record clearly reflects the reasoning underlying the agency’s decisions.”³

Here, the petitioner argues that the Juneau Board panel’s decision on this issue conflicts with that of the Anchorage and Fairbanks Board panels, and he argues that he will suffer hardship if there is delay in review of the Board’s decision. Respondent responds that there is no reason to interrupt the normal adjudication process prior to the Board’s issuance of a final, appealable decision and that this issue is not one that might otherwise evade review. Because the Commission did not provide the reasons for its denial of the interlocutory petition, we are unable to review it.

Although the dissent points out that we would not require an explanation of the decision of an intermediate appellate court, such as the court of appeals or the superior court when it reviews an administrative decision, as noted above, the Workers’ Compensation Appeals Commission is a quasi-judicial agency and not a court. We clarified this point in *Alaska Public Interest Research Group v. State*.⁴ There, AKPIRG challenged the legislature’s creation of the Commission as unconstitutional because the Alaska Constitution vests judicial power in the courts. We concluded that “the fact that

² *Usibelli Coal Mine, Inc. v. State, Dep’t of Natural Res.*, 921 P.2d 1134, 1149 (Alaska 1996) (quoting *Messerli v. State, Dep’t of Natural Res.*, 768 P.2d 1112, 1118 (Alaska 1989), *overruled on other grounds, Olson v. State*, 799 P.2d 289, 292-93 (Alaska 1990)).

³ *Id.* (quoting *Messerli*, 768 P.2d at 1118).

⁴ 167 P.3d 27, 37 (Alaska 2007).

the Appeals Commission reviews Board decisions and uses standards of review and procedures that closely parallel those of the court does not make the Appeals Commission a court.”⁵ And we agreed with the State’s argument that “the Appeals Commission is simply another quasi-judicial agency, creation of which is within the constitutional power of the legislature.”⁶ Although, as the dissent notes, findings are not required when an appellate court declines to exercise discretionary review of an interlocutory decision, we have strongly suggested that all agency decisions — even non-adjudicative decisions — must “be supported by an adequate decisional document.”⁷ Because the Commission is an agency and not a court, it must explain both its final decisions and its non-adjudicative decisions so that we can properly exercise our responsibility of judicial review.

IT IS THEREFORE ORDERED that the petition is granted to the following extent: On or before July 30, 2015, the Commission shall explain in writing its reasons for denying the petition for review to assist this court in its responsibility of reviewing that decision. This court retains jurisdiction of this matter.

Entered by direction of the court.

Clerk of the Appellate Courts

/s/ _____
Marilyn May

BOLGER, Justice, dissenting.

Every year we decide dozens of petitions for review of non-appealable orders of the superior court. We deny most of these petitions. But we generally do not

⁵ *Id.* at 37.

⁶ *Id.* at 35.

⁷ *Messerli*, 768 P.2d at 1118.

provide any explanation for our decision to deny a petition for review. In *Contento v. Alaska State Housing Authority*, we explained the reasons for this policy:

A denial of a petition for review of an interlocutory order does not mean that we either approve or disapprove of the order sought to be reviewed, but merely that we decline to pass judgment at all on the action of the trial court. Furthermore, denial of review signifies that the petitioner has not convinced us that there is need for early consideration of a non-appealable order, in accordance with the considerations governing the granting of review as outlined in Supreme Court Rules 23 and 24 [now Alaska Appellate Rule 402].^[1]

We also explained why a statement of reasons for these decisions would be unwise:

If we were to attempt to explain in each case how and why the petitioner has failed to convince us that our discretion should be exercised in favor of granting review, there is the danger that what we would say would be construed as indicating our views on the very issue or issues which we had decided not to pass upon. This would tend to be misleading or confusing to counsel and to the trial court, without any good purpose having been served. This is a factor which has persuaded us that the writing of opinions in cases where interlocutory review is denied generally would be an undesirable practice.^[2]

I believe the same considerations should apply when a petitioner asks the Workers' Compensation Appeals Commission to review an interlocutory decision of the Workers' Compensation Board.

I recognize that we require that final agency decisions in adjudicatory matters "must be accompanied by written findings and a decisional document" to

¹ 398 P.2d 1000, 1001 (Alaska 1965).

² *Id.* at 1002.

facilitate judicial review.³ We require similar findings to support final trial court decisions.⁴ But such findings are not required when an appellate tribunal declines to exercise discretionary review of an interlocutory decision. For example, the court of appeals decides many petitions for review every year. But the court of appeals generally is not required to give any explanation when it denies a petition for review, even though such an order could be subject to review by this court.

The reason such an explanation is not required is because it is unnecessary. Regardless of the Commission’s reasoning, if we make a collective decision that the petitioner has satisfied one of the grounds listed in Alaska Appellate Rule 402(b), then we can grant review. That is how we should approach the current case. I respectfully dissent from the court’s order requiring the Commission to state its reasons for denying this petition.

cc: Supreme Court Justices
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³ *Peninsula Mktg. Ass’n v. State*, 817 P.2d 917, 922 (Alaska 1991) (quoting *Johns v. Commercial Fisheries Entry Comm’n*, 758 P.2d 1256, 1260 (Alaska 1988)).

⁴ *Dickerson v. Geiermann*, 368 P.2d 217, 219 (Alaska 1962) (“It is the duty of a trial court to deal adequately with and state with clarity what it finds as facts and what it holds as conclusions of law.”).