ALASKA WORKERS' COMPENSATION BOARD

P.O. Box 115512 **Juneau, Alaska 99811-5512**

JUANA CONTRERAS-MENDOZA, Employee, Claimant, v. QDOBA MEXICAN GRILL, Employer, and ARGONAUT INSURANCE COMPANY, Insurer, Defendants.	FINAL DECISION AND ORDER AWCB Case No. 200804514 AWCB Decision No. 16-0022 Filed with AWCB Anchorage, Alaska on March 24, 2016

The question, who should perform Juana Contreras-Mendoza's (Employee) hand and wrist examination, was heard on March 22, 2016, in Anchorage, Alaska, a date selected on February 24, 2016. Employee appeared by telephone and testified. Attorney Michelle Meshke appeared and represented Qdoba Mexican Grill and its workers' compensation insurer (Employer). There were no other witnesses. The record closed at the hearing's conclusion on March 22, 2016.

ISSUE

Employee initially said she wanted to see Deryk Anderson, D.O., for her right hand medical evaluation for her work injury as ordered in *Contreras-Mendoza v. Qdoba Mexican Grill*, AWCB Decision No. 16-0006 (January 12, 2016) (*Contreras-Mendoza V*). She contends Dr. Anderson is the only hand specialist who will agree to see her for her work injury. She further

contends all prior attending physicians refused to see her. Employee conceded she would rather see Dr. Leslie Dean, M.D., who had already seen her for this injury, if Dr. Dean is willing.

Employer contends Employee selected Miriam Nolte, M.D., as her attending physician and there is no reason why Employee could not return to her and obtain a referral to a hand specialist for the ordered examination. Alternately, Employer agreed to skip the referral requirement and agreed to pre-authorize a hand and wrist evaluation by a local hand and wrist orthopedic specialist for Employee's work injury. At hearing, Employer also agreed to pre-authorize an examination for Employee with Dr. Dean if she is willing to see Employee.

Who should Employee see for the examination ordered in *Contreras-Mendoza V*?

FINDINGS OF FACT

The following facts and factual conclusions are established by a preponderance of the evidence:

1) On February 22, 2008, Employee was working for Employer as a line server. While obtaining pots from a shelf above the sink, Employee's coworker accidentally dropped several line pots onto Employee while she stood leaning over the sink to get soap from a wall-mounted dispenser onto a sponge. Startled, Employee jammed her right hand into the soap dispenser. Employee injured her right thumb, index and middle fingers, wrist, and her mid-back. (*Contreras-Mendoza v. Qdoba Mexican Grill*, AWCB Decision No. 12-0174 (October 2, 2012) (*Contreras-Mendoza II*) at 6).

2) On February 25, 2008, Employee first sought medical treatment for this injury at Providence Hospital emergency room. The emergency room physician assessed a contusion on Employee's bilateral trapezius muscles and prescribed ibuprofen, rest, and follow-up with her family physician Michael Moser, M.D. (Providence Hospital emergency room note, February 25, 2008).

3) Employee testified at the September 4, 2012 hearing that when she went to the emergency room she complained about pain in her back, arm and the first three digits on her right hand, and specifically mentioned her right thumb. (*Contreras-Mendoza II* at 6).

4) On March 3, 2008, Employee saw Margaret Fitzgerald, ANP, with Family Health Center in Wasilla, Alaska for follow-up. Employee gave a history of the work injury, noted a pre-existing back injury, and complained of headaches following the injury. Employee said she had pre-existing

tingling and numbness in her right index finger. ANP Fitzgerald assessed muscle spasm of the mid- and lower-back, and suggested physical therapy. (Progress Notes, March 3, 2008).

5) On March 6, 2008, Employee, as the emergency room had directed, saw Dr. Moser also affiliated with Family Health Center in Wasilla for her work injury. He prescribed medication and physical therapy for neck and shoulder mobilization. (Progress Notes, March 6, 2008).

6) On March 14, 2008, Employee saw Dr. Moser and complained of right thumb and shoulder pain. Dr. Moser recommended a hand x-ray, which showed no fracture or dislocations and no destructive bone lesions. (Progress Report, March 14, 2008; x-ray report, March 14, 2008).

7) On March 17, 2008, Employee saw Dr. Moser again for "laxity or movement" in the first metacarpophalangeal and was anxious about an asymmetric "tendon silhouette" she perceived when she flexed and extended her thumb. Employee was anxious regarding her prognosis and wanted a specialist. Dr. Moser referred her to Anchorage Fracture & Orthopedic Clinic for assessment of her right thumb joint, and to physical therapy for her back pain. (Progress Notes, March 17, 2008).

8) On March 17, 2008, Employee reported to Excel Physical Therapy on ANP Fitzgerald's and Dr. Moser's referral to treat a "mid-back strain." (Excel Physical Therapy notes, March 3, 2008).

9) On March 20, 2008, Employee saw Leslie Dean, M.D., at Anchorage Fracture & Orthopedic Clinic, on Dr. Moser's referral. Dr. Dean referred Employee to Shawn Hadley, M.D., for electrodiagnostic studies to rule out carpal tunnel syndrome. (Physician's Report, March 20, 2008).

10) At Dr. Dean's direction, Employee continued physical therapy with Anchorage Fracture & Orthopedic Clinic. (Physical Therapy Notes, March 20, 2008).

11) On March 28, 2008, Employee returned to Family Health Center and saw Deborah Bushnell, ANP. ANP Bushnell restricted Employee's duties until further evaluation and follow-up with Dr. Moser or Dr. Dean. (Progress Notes, March 28, 2008).

12) On April 3, 2008, Employee saw ANP Fitzgerald, who suggested Employee consult her physical therapist for an off-work opinion. (Progress Notes, April 3, 2008).

13) On April 4, 2008, Employee's therapist at Excel Physical Therapy wrote a letter to Employee's supervisor asking Employer to accommodate Employee's right hand difficulties. (Letter, April 4, 2008).

14) On April 7, 2008, Employee saw Dr. Hadley for electrodiagnostic testing on Dr. Dean's referral. (Narrative report, April 7, 2008).

15) On April 10, 2008, Employee visited Providence Hospital emergency room and complained of shooting pain in her right hand. She described her work injury and subsequent treatment. Employee was given medication and advised to follow up with Dr. Dean who "seems to be her primary provider." (Emergency Room report, April 10, 2008).

16) On April 14, 2008, Employee saw Dr. Dean, as directed. Dr. Dean referred Employee for blood work and to Alaska Regional Hospital to check for thoracic outlet syndrome. (Physician's Report, April 14, 2008).

17) Employee stated at the September 4, 2012 hearing that her adjuster told her the insurer would no longer pay for her to travel from her home in Anchorage to her family physician in Palmer. Accordingly, as Employee had moved from Palmer to Anchorage about a year prior to her injury, she selected Miriam Nolte, M.D., at Hillside Family Medicine in Anchorage as her attending physician for this injury. (Employee).

18) On May 13, 2008, Employee saw Dr. Nolte for her work injury. (Chart Note, May 13, 2008).

19) On May 14, 2008, Employee returned to Dr. Dean, who referred her back to physical therapy for another spica splint, strengthening, and conditioning. (Physician's Report, May 14, 2008).

20) On May 21, 2008, Employee saw Scott DeBerard, D.O., at Hillside Family Medicine, the same clinic with which Dr. Nolte is affiliated. He recommended Employee continue with Dr. Dean. (Chart Note, May 21, 2008).

21) On June 11, 2008, Employee saw Dr. Dean, who found a weak muscle and a swollen joint, which was "objectively asymmetrical" on the radial aspect. Dr. Dean explained most people with this condition do not require surgery but, if Employee feels the joint is unstable, surgery may be necessary. Options included, first, repair or reconstruction of the right MP ligament, and second, possible MP joint fusion. Dr. Dean offered the first surgical procedure, and ordered a right thumb magnetic resonance imaging (MRI) scan. (Physician's Report, June 11, 2008).

22) Dr. Dean referred Employee to John McCormick, M.D. for the MRI. (Experience, judgment and inferences drawn from the above).

23) On June 12, 2008, an MRI interpreted by Dr. McCormick disclosed disruption of the ulnar collateral ligament at the MCP joint of the thumb and refers to a "ruptured tendon." (MRI report, June 12, 2008).

24) On June 13, 2008, Patrick Radecki, M.D., saw Employee for an employer's medical evaluation (EME). (EME report, June 13, 2008).

25) On June 17, 2008, Employee again saw Dr. Nolte, who prescribed medication but did not specifically refer her to another physician. (Chart Note, June 17, 2008; Employee).

26) On July 2, 2008, Employee and case manager Tracy Davis saw Dr. Dean as "the last visit that workers' compensation will be paying for her appointments, but any further appointments or surgery will be under her own private insurance." Dr. Dean explained the MRI results showed an ulnar collateral ligament injury, which Dr. Dean stated did not necessarily require surgery. Frustrated with Employee's questioning, Dr. Dean concluded Employee "should probably be seen by someone else" if she decides to have surgery. (Chart Note, July 2, 2008).

27) Employee, at the September 4, 2012 hearing, testified she never said she did not want to have the surgery Dr. Dean suggested. She wanted the surgery but had no way to pay for it because her case was controverted. (Employee).

28) On November 17, 2008, the office manager for Michael McNamara, M.D., wrote Employee in response to her request for an appointment for her right thumb injury. Because the case appeared "very complex" with "many issues," Dr. McNamara preferred not to accept the case. (Letter, November 17, 2008; Employee).

29) On December 9, 2008, Employee saw Jim Blivin, PA-C, at Orthopedic Physicians Anchorage (OPA) on referral from Dr. Nolte. He diagnosed right thumb pain and discussed the matter with an OPA physician, Marc Kornmesser, M.D. (Chart Note, December 9, 2008).

30) On January 5, 2009, Employee saw Dr. Nolte and asked for a referral to a California physician for her work injury, which she provided. (Chart Note; prescription form, January 5, 2009).

31) The above prescription form is a referral from Dr. Nolte to a hand specialist in California for another opinion. (Experience, judgment, and inferences drawn from the above).

32) At some point, Employee's former non-attorney representative Vincent Briggs met Employee and found Roy Meals, M.D., in California to evaluate her hand injury. (September 4, 2012 record).

33) On February 11, 2009, Employee saw Dr. Meals in Los Angeles for her right-hand injury. He suggested and performed an injection into the tendon sheath. (Report, February 11, 2009).

34) On February 13, 2009, Employee called Dr. Meals to report concerns with a possible allergic reaction from the February 11, 2009 injection. (Report, February 13, 2009).

35) On February 18, 2009, Employee was hospitalized for a suspected allergic reaction, and questioned Dr. Meals' recommended second hand-injection. (Report, February 18, 2009).

36) On February 23, 2009, Employee saw Dr. Meals who suggested Employee wait three or four weeks before a re-injection. (Report, February 23, 2009).

37) Dr. Meals suggested Employee see another physician when she returned to Anchorage, for allergy testing and possibly a follow-up injection. (September 4, 2012 record).

38) On March 27, 2009, Employee saw Rachel Carriccaburu, PA-C, at Anchorage Neighborhood Health Clinic (ANHC) for her work injury. PA-C Carriccaburu gave Employee several physicians' names who perform joint injections and said "we could see if we could get her another injection." (Chart Note, March 27, 2009; Employee).

39) On April 8, 2009, Employee saw Thomas Hunt, M.D., also at ANHC for her work injury. Dr. Hunt recommended additional thumb injections and if these did not prove effective, she should consider surgical management. (Chart Note, April 8, 2009; Employee).

40) On May 22, 2009, Dr. Hunt referred Employee to Jeffrey Demain, M.D., for more complete allergy testing. (Letter, May 22, 2009).

41) On July 14, 2009, Employee saw Christine Chandler, ANP, at ANHC who reported Employee had seen Dr. Demain for allergy testing. (Chart Note, July 14, 2009).

42) On September 3, 2009, Employee returned to Dr. Hunt. Employee wanted Dr. Hunt to inject her trigger finger, and he did. (Chart Note, September 3, 2009).

43) On October 21, 2009, Employee reported to an emergency room for back and right knee pain following a moderate-speed motor vehicle accident. (Emergency Room report, October 21, 2009).

44) On October 27, 2009, Employee reported to the emergency room again stating she had another motor vehicle accident on October 26, 2009. She reported increasing pain at the base of her neck and stated her prior medications from the October 21, 2009 motor vehicle accident were having no effect. The emergency room physician diagnosed an acute cervical strain and supplied additional medications. (Emergency Room report, October 27, 2009).

45) On or about November 16, 2009, Employee completed a form, possibly for Barry Matthisen, DC, who was treating her for her motor vehicle accidents. (Questionnaire, November 16, 2009).

46) On November 17, 2009, Employee saw Brandy Atkins, RN, at Alaska Spine Institute (ASI) on referral from Dr. Matthisen for her motor vehicle accidents. Employee reported "pre-existing" right thumb pain. (Narrative report, November 17, 2009).

47) On December 2, 2009, Larry Levine, M.D., at ASI determined Employee had "a large cervical disc herniation." There is no indication this had any relationship to Employee's work injury. (Narrative report, December 2, 2009).

48) On January 22, 2010, Employee saw Dr. Meals for her work injury and he recommended right thumb trigger digit release. (Chart Note, January 22, 2010).

49) On January 22, 2010, Dr. Meals performed "release of trigger digit, right thumb." (Operative Report, January 20, 2010).

50) On April 23, 2010, Employee told Dr. Meals wanted to schedule surgery for chronic pain at the metacarpophalangeal joint. (Chart Note, February 23, 2010).

51) On May 12, 2010, Dr. Meals assessed a tendon rupture of the extensor pollicis longus tendon and recommended surgery. (Chart Note, May 12, 2010).

52) On May 14, 2010, Dr. Meals performed a tendon transfer surgery on Employee's right thumb and referred Employee to her Anchorage physician for bandage and stitch removal. (Operative Report, May 14, 2010).

53) On June 3, 2010, Employee's former attorney Michael Patterson wrote Dr. Meals seeking answers to questions concerning Employee's work injury. Dr. Meals asked attorney Patterson to "please" have a hand surgeon in Alaska "help" Patterson "with this" and answer questions with "all records in hand." (Letter, June 3, 2010; signed June 7, 2010).

54) On August 23, 2010, Dr. Meals advised Employee she needed no further treatment. (Chart Note, August 23, 2010).

55) On January 19, 2011, Loren Jensen, M.D., performed an EME addressing Employee's right thumb and recommended no further treatment or diagnostic testing and specifically recommended against further tendon transfers in an attempt to restore hyperextension of the IP joint in Employee's thumb. (EME report, January 19, 2011).

56) On July 16, 2011, Employee saw John Lipon, D.O., for a second independent medical evaluation (SIME). Among other things, he opined no further treatment was reasonable or necessary relating to the February 22, 2008 injury. (SIME report, July 16, 2011).

57) On January 4, 2012, Dr. Meals responded to a letter from Employee's former attorney, which referenced Dr. Meals' causation opinions expressed in an earlier letter. (Letter, January 3, 2012; signed January 4, 2012).

58) At the September 4, 2012 hearing, Employee wanted Employer to pay for another visit with Dr. Meals to evaluate her hand. (September 4, 2012 record).

59) On October 2, 2012, *Contreras-Mendoza II*, awarded Employee some benefits but denied without prejudice her request for an order requiring Employer to pay for a follow-up visit with Dr. Meals. (*Id*. at 50-51).

60) On October 31, 2012, *Contreras-Mendoza v. Qdoba Mexican Grill*, AWCB Decision No. 12-0187 (October 31, 2012) (*Contreras-Mendoza III)* modified a factual finding in *Contreras-Mendoza II* at Employee's request. (*Id*. at 9).

61) On September 13, 2013, *Contreras-Mendoza v. Qdoba Mexican Grill*, AWCB Decision No. 13-0112 (September 13, 2013) (*Contreras-Mendoza IV*) awarded additional benefits. (*Contreras-Mendoza IV* at 22-23).

62) On January 29, 2014, the parties attended a prehearing conference scheduled on Employee's October 22, 2013 petition for modification. Briggs stated Employee needed another hand evaluation with Dr. Meals and the board's designee "explained that EE's medical benefits are currently open and not controverted." (Prehearing Conference Summary, January 29, 2014).

63) On February 24, 2014, attorney Meshke timely objected to the January 29, 2014 prehearing conference summary. Her letter said she was unprepared for Employee's request at the prehearing conference for another medical evaluation and mistakenly agreed with the designee when she stated Employee's medical care was open and not controverted. (Letter, February 24, 2014).

64) On April 4, 2014, Employee filed a claim seeking only "Medical Costs (state amount requested). . . To Be Determined." (Workers' Compensation Claim, April 3, 2014).

65) On May 1, 2014, Employee filed a petition seeking an order to reinstate Dr. Dean as Employee's attending physician, and requesting other relief. Briggs contended Dr. Dean had been Employee's attending physician. (Petition, April 28, 2014).

66) On May 14, 2014, the parties appeared at a prehearing conference and the board's designee conceded she had been mistaken when she advised Employee that her medical benefits were open and not controverted. (Prehearing Conference Summary, May 14, 2014).

67) On May 22, 2014, Employer answered Employee's April 28, 2014 petition to "reinstate" Dr. Dean as her attending physician. Employer expressly consented to Employee changing her attending physician from Dr. Meals to Dr. Dean. Employer noted its consent did not obligate

Employer to pay for treatment with Dr. Dean and "medical benefits remain controverted." (Answer to Employee's Petition to Reinstate Dr. Dean as Employee's Attending Physician, May 20, 2014).

68) On June 20, 2014, Briggs sent an e-mail to the division stating he had spoken to the Executive Director at Anchorage Fracture & Orthopedic Clinic who told him Dr. Dean "would not be available to conduct medical care" for Employee. When Briggs asked her why, the Executive Director told him, "This case is too complicated." Briggs says he asked the Executive Director to send him a letter explaining her decision, but she refused. (Briggs e-mail, June 20, 2014).

69) On July 9, 2014, the parties attended a prehearing conference at which Employer consented to Employee changing physicians. (Prehearing Conference Summary, July 9, 2014).

70) On September 30, 2014, Employee filed a claim requesting only "Medical Costs (state amount requested) To Be Determined." (Workers' Compensation Claim, September 29, 2014).

71) On November 10, 2014, Employee began seeing Steven Henderson, DC, for her motor vehicle accident symptoms. (Chart Notes, June 24, 2015).

72) On June 24, 2015, Employee saw Dr. Henderson, and at this visit Employee for the first time since beginning her treatment with him mentioned difficulties with finger flexion, and spasms in her right hand and forearm. She cited two right-hand surgeries done in California for what was "at the time" a work injury. Employee had difficulty using her right hand when driving. Dr. Henderson measured Employee's grip strength and wrist and finger flexion bilaterally and recorded the results. Along with things related to her automobile accidents, Dr. Henderson diagnosed pain in the elbow and forearm. He performed chiropractic therapy to the "right wrist," and massaged the right elbow, forearm and wrist. (Chart Notes, June 24, 2015).

73) On June 30, 2015, Employee returned to Dr. Henderson and said "after the accident" the left hand is not gripping very well. Her right hand was "the opposite," and locked closed when she was gripping or making a fist. Employee said the previous day she had fallen from a ladder because she lost her grip. There was no diagnosis offered for the right hand or any specific treatment applied to it at this visit. (Chart Notes, June 30, 2015).

74) On July 1, 2015, Employee saw Dr. Henderson and her third complaint included her right posterior elbow, forearm and wrist. Dr. Henderson applied manipulative and massage therapy to the elbow, hand and wrist. (Chart Notes, July 1, 2015).

75) On July 8, 2015, and thereafter through August 12, 2015, Dr. Henderson treated, among other things, Employee's right elbow, forearm, hand and wrist. Dr. Henderson noted Employee

had an appointment "with the orthopedic doctor on the 21st of this month" and suggested Employee start physical therapy to the right upper extremity, though he wanted to await the orthopedist's opinion. Dr. Henderson's main treatments addressed Employee's spine. (Chart Notes, July 8, 2015; observations).

76) Though one chart note mentioned Employee's work injury with Employer in reference to her right hand, Dr. Henderson treated Employee for symptoms and injuries related to her motor vehicle accidents. (Experience, judgment, and inferences drawn from all the above).

77) On June 30, 2015, Employee saw Owen Ala, M.D., at OPA for bilateral hand pain and right ankle swelling. According to the report, Employee said she had been working on her roof the prior week and injured her left hand and right ankle when she fell from a ladder. She mentioned long-standing left- and right-hand pain and a history of dropping objects. Dr. Ala examined both hands and found normal flexion and extension in the digits with intact flexor and extensor tendons. Her wrist range of motion was normal but the left hand had swelling and bruising. He diagnosed bilateral hand pain and a right ankle sprain. Dr. Ala recommended rest and observation for Employee's bilateral hand pain. (Report, June 30, 2015).

78) On July 21, 2015, Employee returned to OPA and saw Brandy Atkins, DNP, for neck pain from her motor vehicle accident and "twitching in her hand that is quite significant." DNP Atkins' report deals primarily with orthopedic symptoms from Employee's automobile accidents and diagnoses a "sensory disturbance" in the right upper extremity. DNP Atkins opined Employee's right upper extremity symptoms might be coming from her neck, and ordered a MRI scan to evaluate this possibility. (Report, July 21, 2015).

79) On July 31, 2015, Employee saw DNP Atkins again for her cervical and bilateral upper extremity issues following her cervical MRI scan. DNP Atkins diagnosed chronic cervical spine pain and right arm pain and "questionable carpal tunnel syndrome." She did not believe Employee's right upper extremity symptoms were related to her neck, so she did not send her for electrodiagnostic studies. (Atkins report, July 31, 2015).

80) On September 30, 2015, Employee saw Mark Flanum, M.D., at OPA for bilateral hand dysfunction and neck pain. Dr. Flanum noted electromyography showed no evidence of cervical radiculopathy or peripheral nerve compression. He assured Employee she did not need neck surgery. However, Dr. Flanum wanted her to see a neurologist. Additionally, Dr. Flanum

referred Employee to Dr. Ala for her "left index finger" which was currently "one of her larger symptoms." (Report, September 30, 2015).

81) At hearing on January 7, 2016, Employee testified her right hand, which she had previously injured at work with Employer and which required two surgeries, was still bothering her. Her affected digits from the work injury would sometimes spasm causing her to have difficulty holding objects. Her thumb and the area in her hand which had been surgically repaired were "sore." Employee conceded she had also had an automobile accident and had seen doctors at OPA for evaluation and treatment to her entire right upper extremity. Employee said she told her car insurance company and OPA physicians her hand symptoms were from a work injury but the car insurer said it would have to pay for the OPA evaluations because they arose from a car accident. There was some confusion among her physicians whether tingling and numbness in Employee's right upper extremity were caused by something in her neck or something in her arm. Employee said her right shoulder, right elbow and right wrist area were also painful and had other symptoms. On cross-examination, Employee admitted no physician said all her right upper extremity issues were related to her right thumb and hand injury incurred while working for Employer. Employee wanted to see Dr. Dean for "her arm" but Dr. Dean's office would not see her because Employer had controverted the case. Employee admitted the first time she requested an additional medical exam for her work injury following *Contreras-Mendoza II* was at the January 29, 2014 prehearing conference. At that prehearing conference, Briggs had listed Employee's right hand and upper extremity symptoms and suggested she might need another medical evaluation. When asked who she would like to see for her work injury if she prevailed in her claim, Employee said she would probably go to OPA but would not be opposed to seeing Dr. Dean, who she thought was a good doctor. (January 7, 2016 record).

82) English is Employee's second language. Though she speaks and understands English very well, Employee has difficulty responding directly to questions. At the January 7, 2016, and March 22, 2016 hearings, it sometimes took Employee several minutes to respond to a direct question. However, after careful questioning, it became apparent Employee's medical claim at the January 7, 2016 hearing was for an evaluation of her work injury by a physician of her choosing. (Observations; judgment and inferences drawn from all the above).

83) On January 12, 2016, *Contreras-Mendoza V* concluded, in relevant part:

> • 2) Employee is entitled to an examination from her attending physician for her work-related right thumb and hand injury.
> . . . .
>
> • 5) Employee's petition for an order 'reinstating' Dr. Dean as her attending physician will be denied as moot. (*Contreras-Mendoza V* at 36).

84) *Contreras-Mendoza V* ordered, in relevant part:

> • 2) Employer is ordered to pay for a medical evaluation of Employee's right thumb and hand as affected by her February 22, 2008 work injury, by her lawfully obtained attending physician.
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> • 3) The parties are directed to attend a prehearing conference, the purpose of which will be to determine who Employee's attending physician is. If the parties cannot agree on who Employee's attending physician is, and cannot stipulate to an attending physician, either party may request a hearing to address this issue and a hearing will be scheduled promptly.
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> • 4) Employee's April 28, 2014 petition to reinstate Dr. Dean as her attending physician is denied as moot. (*Id*. at 37).

85) On February 24, 2016, the parties attended a prehearing conference. The summary states, "Parties were not able to stipulate to an Attending Physician at this prehearing conference." Accordingly, the parties stipulated to an oral hearing on March 22, 2016, and the issue identified was: "Employee's Attending Physician." (Prehearing Conference Summary, February 24, 2016).

86) On March 21, 2016, Briggs withdrew as Employee's non-attorney representative. (Letter, March 18, 2016).

87) In its brief for the March 22, 2016 hearing, Employer contends it twice asked Briggs to identify the physician Employee wanted to see for the board-ordered hand and wrist examination. Employer contends Briggs failed to respond. Employer contends Briggs, at the February 24, 2016 prehearing conference, stated Employee wanted to see Dr. Ala at OPA. Employer further contends when it agreed to Dr. Ala, Briggs then refused to stipulate to the physician Briggs had recommended. Employer believes Briggs was deferring to or consulting with Dr. Henderson who had been seeing Employee for her motor-vehicle-accident-related injuries. It objected to a chiropractor becoming Employee's designated physician for this work injury. Employer contended it will stipulate to a local orthopedic surgeon who specializes in the

hand and upper extremity to perform the board-ordered evaluation. (Employer's Hearing Brief regarding Selection of Physician for Hand Evaluation, March 14, 2016).

88) In respect to the change of physician issue, Employer contended *Contreras-Mendoza II* already decided Dr. Nolte was Employee's most recent attending physician selection. Employer contended since "the employee has not seen any treating provider related to her work injury since 2012," she could return to Dr. Nolte to obtain a referral to Dr. Dean or to another qualified hand specialist without creating "any change of physician issue." Employer would agree to skip the referral step and have Employee's hand and wrist work injury evaluated by a local hand or upper extremity specialist. (*Id*. at 5).

89) At hearing on March 22, 2016, Employee initially said she wanted to see Deryk Anderson, D.O., in Wasilla, Alaska, who is affiliated with OPA and is a hand specialist. Employee said she has an appointment scheduled with Dr. Anderson in about one week. Employee said Dr. Anderson is the only local physician who would agree to see her for her right-hand work injury. Employee testified Drs. Ala, Henderson, Nolte and Dean all refused for various reasons to see her for this injury, when specifically asked to see her either at her request or at Briggs' request before he withdrew from the case. (Employee).

90) After further discussion at hearing, Employee said she would rather see Dr. Dean for her work injury if Dr. Dean will take her back as a patient. (*Id*.).

91) Employer agreed to pre-authorize in writing a medical evaluation for Employee's right hand work injury with Dr. Dean. Employer also agreed to not later argue this was a change in Employee's physician choice. (Employer's hearing statements).

92) Drs. Dean, Ala and Anderson are all surgeons with experience treating hands. (Experience and inferences drawn from the above).

93) Most medical examinations are not accompanied by every past relevant medical record containing the patient's history. (Experience, judgment).

94) In a clinical setting, most examining physicians will ask for prior medical records if the examiner wants to review them. (*Id*.).

PRINCIPLES OF LAW

> **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 . . . to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to . . . employers. . . .

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 23.30.005. Alaska Workers' Compensation Board**. . . .
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> . . . .
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> (h) . . . Process and procedure under this chapter shall be as summary and simple as possible. . . .

> **AS 23.30.095. Medical treatments, services, and examinations.** (a) The employer shall furnish medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus for the period which the nature of the injury or the process of recovery requires, not exceeding two years from and after the date of injury to the employee. . . . It shall be additionally provided that, if continued treatment or care or both beyond the two-year period is indicated, the injured employee has the right of review by the board. The board may authorize continued treatment or care or both as the process of recovery may require. . . .

In *Richard v. Fireman's Fund*, 384 P.2d 445, 449 (Alaska 1963), the Alaska Supreme Court said:

> We hold to the view that a workmen's compensation board or commission owes to every applicant for compensation that duty of fully advising him as to all the real facts which bear upon his condition and his right to compensation, so far as it may know them, and of instructing him on how to pursue that right under the law.

> **8 AAC 45.082. Medical treatment**. . . .
> . . . .
>
> (c) If, after a hearing, the board finds a party made an unlawful change of physician in violation of AS 23.30.095(a) or (e) or this section, the board will not consider the reports, opinions, or testimony of the physician in any form, in any proceeding, or for any purpose. If, after a hearing, the board finds an employee made an unlawful change of physician, the board may refuse to order payment by the employer. . . .

ANALYSIS

Who should Employee see for the examination ordered in *Contreras-Mendoza V*?

Contreras-Mendoza V ordered Employer to pay for Employee's right hand and wrist evaluation by a validly obtained attending physician. Unfortunately, the parties were not able to stipulate before hearing on a physician to perform the evaluation. At hearing, Employee said many physicians who had previously seen her now refuse to see her for her work injury. Employee initially said she wanted to see Dr. Anderson because he was the only hand specialist who would agree to see her. After further discussion at hearing, Employee said she would really rather see Dr. Dean, who had seen Employee previously for her work injury. Employer agreed it would pre-authorize an examination for Employee with Dr. Dean. Selecting Dr. Dean to perform the examination makes sense since Dr. Dean has seen Employee for her right hand and wrist work injury before, and Employee respects Dr. Dean. However, at one point years ago, Dr. Dean said she no longer wanted to treat Employee. But, since *Contreras-Mendoza II* found Employee's right hand injury compensable and *Contreras-Mendoza V* ordered Employer to pay for another right hand and wrist examination, Dr. Dean may now feel differently about seeing Employee again. Neither the panel nor the parties know Dr. Dean's current position on examining Employee. Nevertheless, hope springs eternal and given the parties' agreement at hearing, Dr. Dean will be asked to examine Employee's work-related right hand and wrist injury.

In the event Dr. Dean cannot or will not examine Employee's right hand and wrist, the second choice for the examination will be Dr. Ala. This choice makes sense because he too has already seen Employee. Lastly, if neither Dr. Dean nor Dr. Ala will agree to examine Employee's right hand and wrist for her work injury, the third selection is Dr. Anderson. This third choice is reasonable since Employee has already determined Dr. Anderson will see her. To be clear, Employee is entitled to an examination with only one of these doctors, in this priority, not all three. If none of these three physicians will agree to see Employee for her right hand and wrist work injury, the parties will be directed to attend a prehearing conference for further instructions.

At hearing, Employer agreed to pre-authorize the doctor's examination in writing. A question arises concerning medical records the examiner might find useful. This examination is not a

formal EME, SIME or change in Employee's choice of attending physician. It is simply an examination *Contreras-Mendoza V* ordered to move this case along to resolution. AS 23.30.005(h). Its intent is to ensure quick, efficient, fair and predictable delivery of indemnity and medical benefits to Employee, if she is entitled to them, at a reasonable cost to Employer. AS 23.30.001(1). There is a concern about inundating the examiner with medical records. Sending multitudinous medical records may dissuade an examiner from accepting Employee as a patient. On the other hand, neither party should pick or choose records the examiner reviews. Dr. Dean already has some medical records associated with Employee's right-hand injury. Dr. Ala has some records related to Employee's right upper extremity in connection with her automobile accidents. A treating provider is not normally given every relevant medical record in the patient's past. In a clinical setting, if physicians require additional medical records to review, they usually ask for them. *Rogers & Babler*. Therefore, to address this medical records issue, the insurer will be directed to include in its pre-authorization letter a statement advising the examining physician to contact the adjuster if the examiner wants to review any specific medical reports. Employer will be directed to file a copy of this pre-authorization letter and send a copy to Employee. Employee will be directed to bring no records with her to the examination and Employer will be directed to send no records to the examiner unless requested. If requested, the adjuster will be directed to forward the requested medical reports to the physician, with a copy to Employee. The adjuster will also be directed to include the following question in its pre-authorization letter: "Does Ms. Contreras-Mendoza need any further diagnostic testing or treatment to her right hand or wrist resulting from her February 22, 2008 work injury with Qdoba Mexican Grill?"

Lastly, at hearing Employee said she had an appointment scheduled with Dr. Anderson for a right-hand valuation. Employee is advised she should cancel this appointment pending her appointment with the examining physician as directed in this decision. *Richard*. If Employee sees Dr. Anderson for her work injury, she may violate AS 23.30.095(a), and Dr. Anderson may be an "unlawful change of physician in violation of AS 23.30.095(a)." In that event, Dr. Anderson's reports or opinions may not be considered in this case and Employer may not being required to pay for his services. 8 AAC 45.082(c). If Employee has any questions or concerns about this direction, she is referred to a Workers' Compensation Technician at 269-4980.

CONCLUSION OF LAW

Dr. Dean should see Employee for the examination ordered in *Contreras-Mendoza V*.

ORDER

1) Employer is ordered to send a pre-authorization letter to Dr. Dean for a medical evaluation of Employee's right hand and wrist as affected by her February 22, 2008 work injury.

2) If Dr. Dean refuses to see Employee, Employer is ordered to send the same pre-authorization letter to Dr. Ala.

3) If Dr. Ala refuses to see Employee, Employer is ordered to send the same pre-authorization letter to Dr. Anderson.

4) If these three physicians all decline to examine Employee's right hand and wrist in connection with her work injury, the parties are ordered to attend a prehearing conference for further instructions.

5) Employer is ordered to include in its pre-authorization letter a statement advising the examining physician to contact the adjuster if the examiner wants to review any specific medical reports.

6) Employer is ordered to file a copy of this pre-authorization letter and send a copy to Employee.

7) Employee is ordered to bring no medical records with her to the examination.

8) Employer is ordered to send no medical reports to the examiner unless reports are requested by the examiner.

9) If requested by the examiner, the adjuster is ordered to forward the requested medical reports to the physician, with a copy to Employee.

10) Employer is ordered to include in its pre-authorization letter the following question: "Does Ms. Contreras-Mendoza need any further diagnostic testing or treatment to her right hand or wrist resulting from her February 22, 2008 work injury with Qdoba Mexican Grill?"

11) Upon receiving the examiner's report, Employer may adjust the case and Employee may pursue her rights and benefits, all pursuant to the Act and regulations.

12) Employee is advised to cancel her pending appointment with Dr. Anderson.

Dated in Anchorage, Alaska on March 24, 2016.

ALASKA WORKERS' COMPENSATION BOARD

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William Soule, Designated Chair

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Rick Traini, Member

If compensation is payable under the terms of this decision, it is due on the date of issue. A penalty of 25 percent will accrue if not paid within 14 days of the due date, unless an interlocutory order staying payment is obtained in the Alaska Workers' Compensation Appeals Commission.

If compensation is awarded, but not paid within 30 days of this decision, the person to whom the compensation is payable may, within one year after the default of payment, request from the board a supplementary order declaring the amount of the default.

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 boards 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 ground 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 accord 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 accord with 8 AAC 45.150 and 8 AAC 45.050.

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Final Decision and Order in the matter of Juana Contreras-Mendoza, employee / claimant v. Qdoba Mexican Grill, Employer; Argonaut Insurance Co., insurer / defendants; Case No. 200804514; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties by First-Class U.S. Mail, postage prepaid, on March 24, 2016.

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Vera James, Office Assistant I