ALASKA WORKERS' COMPENSATION BOARD

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

JUAN MANRIQUEZ, Employee, Claimant, v. FINISHING EDGE CURB & SIDEWALK, Employer, and THE FIRST LIBERTY INSURANCE CORP., Insurer, Defendants.	)	FINAL DECISION AND ORDER AWCB Case No. 202411806 AWCB Decision No. 25-0064 Filed with AWCB Anchorage, Alaska on October 1, 2025.

Juan Manriquez's (Employee) August 23, 2024 and December 2, 2024 claims were heard on February 20, 2025, in Anchorage, Alaska, a date selected on January 15, 2025 A December 31, 2024 hearing request gave rise to this hearing. Attorney Robert Bredesen appeared and represented Employee, who appeared and testified. Attorney Rebecca Holdiman Miller appeared and represented Finishing Edge Curb & Sidewalk and The First Liberty Insurance Corp (Employer). Employer's February 20, 2025 request for a continuance was addressed as a preliminary matter. The record initially closed at the hearing's conclusion on February 20, 2025. On March 3, 2025, the designated chair approved a stipulation delaying the decision in this case, to allow the parties to attempt mediation. Once approved, the stipulation became an order, which resulted in Employer accepting his July 24, 2024 injury as compensable, and paying Employee

On August 28, 2025, Employee advised that mediation had failed, and he requested a decision on any remaining issues. On August 29, 2025, Employer petitioned for the record to include the approved stipulation. Employee responded on September 8, 2025, and did not object to the stipulation being considered as part of the decision. The record was reopened to consider this material, and closed on September 8, 2025.

ISSUES

Employer requested a continuance the day of hearing citing illness of a party, and requested a one week continuance to prepare for hearing.

Employee contended hearing continuances are disfavored, and noted Employer had not participated in this case prior to hearing, and granting a continuance would cause irreparable harm to him. An oral order denied Employer's request.

1) Was the oral order denying Employer's request for a continuance correct?

The parties after hearing stipulated to compensability and benefits. Employer requested the stipulation be considered as part of the record.

Employee did not object.

2) Should the parties' post-hearing stipulation be memorialized in an order?

Employee requests an order granting Employee permanent partial impairment (PPI) benefits once he is medically stable and a rating is issued.

Employer contends Employee has yet to receive a PPI rating, and therefore nothing is currently owed.

3) Should Employee's claim for PPI benefits be held in abeyance?

Employee contends he is entitled to statutory interest on all past-due payments.

The parties did not address interest in their stipulation.

4) Is Employer liable for interest?

Employee contends Employer failed to make any payments of compensation, pay for medical bills, or actually controvert any of Employee's claims or benefits. He argues Employer unfairly and frivolously "controverted-in-fact" all benefits he has requested.

Employer did not provide argument regarding unfair or frivolous controversions.

5) Did Employer unfairly or frivolously controvert Employee's benefits?

Employee contends the insurance carrier is liable for a late-notice penalty for failing to file a Report of Injury within 10 days of the date Employer had notice of Employee's injury.

Employer did not provide argument on this issue, but is presumed to be in opposition.

6) Is Employee entitled to a late-notice penalty?

FINDINGS OF FACT

A preponderance of the evidence establishes the following facts and factual conclusions:

1) On July 1, 2024, Employee filled a pre-employment health questionnaire. He checked the box indicating he had diabetes. (Health Questionnaire, July 1, 2024).

2) On July 28, 2024, Employee was seen at Alaska Regional Hospital Emergency Department for an injury that occurred at work. He was provided an off-work note starting July 28, 2024. The signing physician's name is illegible. (Off-work note, Alaska Regional Hospital, July 28, 2024).

3) On August 2, 2024, Employee reported an injury to his hands and right foot while working for Employer. He reported the date of injury as July 26, 2024. Employee stated, "while carrying heavy equipment, my toes on my right foot were rubbing against each other and I hurt my right foot and my big toe was bleeding when I got home." He described a blister-like injury to his second toe while carrying heavy equipment. Employee observed blood after removing his work boots. (Employee Report of Injury, August 2, 2024).

4) On August 2, 2024, Employee saw William Longhurst, MD, who stated Employee was seen in the Emergency Department at Alaska Regional Hospital on August 1, 2024, and due to his injury should be released from work for five days. (Longhurst note, August 2, 2024).

5) On August 5, 2024, Dinelle Pineda, MD, proffered a letter stating, "Mr. Manriquez is a patient under my care. He is very ill and can no longer work at this time. I am sending him to the hospital today. I expect him to have a long recovery time and will be unable to work for several months at least." (Pineda Letter, August 5, 2024).

6) On August 5, 2024, Employee was seen at the University of Washington Valley Medical Center Emergency Department. Jessica Doan, MD, noted hyperglycemia and an ischemic toe on his right foot. Employee reported he was experiencing pain in his toe since July 26, 2024. He believed his toe was repeatedly hitting the inside of his boot while he was working, and observed that his toe had turned black. Dr. Doan diagnosed hyperglycemia secondary to losing access to his insulin for the past week, and diabetic foot infection, necrosis, and gangrene. She provided antibiotics to address the foot infection and recommended Employee attend a podiatry appointment to discuss surgical intervention. (Doan note, August 5, 2024).

7) On August 6, 2024, Calvis Davis, DPM, performed surgery on Employee's foot. A right-foot debridement down to the level of the cortical bone occurred resulting in removal of Employee's right second toe. (Davis note, August 6, 2024).

8) On August 7, 2024, Employer through its controller, Gretchen Beauchamp, filed an Employer Report of Injury. Beauchamp stated Employee's right toe was bleeding caused by his diabetes. (Employer Report of Occupational Injury or Illness to Division of Workers' Compensation, August 7, 2024).

9) On August 12, 2024, Employee met with Alan Sun, MD, Hospitalist, to discuss his discharge from the hospital. Dr. Sun noted Employee would need additional inpatient care due to the necessity of a wound vac for his amputated toe. Employee was unable to procure a home vac system due to issues with his workers' compensation insurance. (Sun note, August 12, 2024).

10) On August 13, 2024, Dr. Davis who previously performed surgery on Employee, performed a repeat debridement procedure on his foot. The second procedure would allow Employee to return home without the need for a wound vac. (Davis note, August 13, 2024).

11) On August 23, 2024, Employee filed a claim for permanent total disability (PTD). (Claim for Workers' Compensation Benefits, August 23, 2024).

12) On September 3, 2024, Claims Administrator for Liberty, Kala Thometz, filed a First Report of Injury (FROI) for Employee. The form states the claims administrator had knowledge of the injury on August 29, 2024. (FROI, September 3, 2024).

13) On September 3, 2024, Thometz mailed Employee a letter requesting he sign and return a medical authorization release form. (Letter, September 3, 2024).

14) On September 11, 2024, Thometz mailed a letter to Employee in Spanish, requesting he contact her as soon as possible. (Letter, September 11, 2024).

15) On October 8, 2024, Employee attended an initial prehearing conference; a representative for Employer did not appear. The designee, through a Spanish-speaking interpreter, explained the workers' compensation adjudication process to Employee. (Prehearing Conference Summary, October 8, 2024).

16) On December 2, 2024, Employee filed a claim for TTD, temporary partial disability (TPD), PPI, an unfair or frivolous controversion, attorney fees and costs, transportation costs, medical costs, penalty for late-paid compensation, interest, and reemployment benefits. He noted no benefits had been paid and Employer had not responded to his previous claim. (Claim for Workers' Compensation Benefits, December 2, 2024).

17) On December 11, 2024, Beauchamp responded to a letter from Employee's attorney. She stated Employer is a concrete subcontractor with companies in Washington and Alaska. She stated Employee had articulated he was diabetic in his pre-employment health questionnaire. Employee was dispatched from the AK Cement Masons on July 1, 2024, and worked from July 2 to July 26, 2024, in Alaska. He sought medical treatment on July 29, 2024, from an injury occurring on July 26, 2024. She noted Liberty Mutual Insurance was Employer's insurance provider in Alaska. (Email from Gretchen Beauchamp to Robert Bredesen, December 11, 2024 at 12:21 PM, Employee's Notice of Intent to Rely, pp. 26-28, February 13, 2025).

18) On December 31, 2024, Employee filed an affidavit of readiness for hearing (ARH). He requested an oral hearing on his claims. (ARH, December 31, 2024).

19) On January 14, 2025, Employee attended a prehearing conference. The designee attempted to reach a representative for Employer but was unable to leave a voicemail; a second call was disconnected while the designee was waiting to speak to the next available representative. The designee set a hearing for February 20, 2025, on Employee's August 23, 2024 and December 2, 2024 claims. (Prehearing Conference Summary, January 14, 2025).

20) On January 29, 2025, the Workers' Compensation Division (Division) called Liberty Mutual Insurance to verify that First Liberty insurance was a subsidiary of Liberty Mutual. Liberty Mutual confirmed it had a record of Employee's Report of Injury. Liberty Mutual provided the name of the adjuster assigned to Employee's case. The Division faxed and emailed the hearing notice to the adjuster. (Agency file: Communications tab, January 29, 2025).

21) On February 12, 2025, a representative for Liberty Mutual called the Division to confirm Employee's information and date of injury. (Agency file: Communications, Phone Call with Adjuster, February 12, 2025).

22) On February 13, 2025, through his hearing brief, Employee articulated that outside of the initial letter he received from the adjuster, the Employer has not participated at all in this matter. No controversions had been filed, no medical records had been filed by the Employer and no representative from Employer appeared at any prehearing conference. Employee filed an ARH as his sole remedy as he had not received any compensation or benefits from his work injury as of the date of filing his brief. Employee requested a finding that his work injury is compensable, past and future medical benefits be awarded, compensation benefits be awarded including TTD, and PPI or in the alternative a reemployment stipend. Employee contended a penalty and interest is owed on all payments Employer failed to make. He contended Employer controverted-in-fact by failing to timely report the injury, make any payments, or report employment status to the reemployment benefits administrator and should therefore be held liable for an unfair or frivolous controversion. Employee requested actual attorney fees and costs if Employee is successful in procuring benefits, as well as 10% statutory fees on all benefits paid after the date of this decision. (Employee's Hearing Brief, February 13, 2025).

23) Employer did not file evidence, a brief or a witness list prior to hearing. (Agency file).

24) On February 18, 2025, Bredesen filed his fee affidavit. He performed 27.7 hours of work at $520 per hour totaling $14,404 and incurred $2,446.31 in legal costs in this litigation. He is requesting $16,850.31 in fees and costs. (Affidavit of Counsel, February 18, 2025).

25) On February 19, 2025, Holdiman-Miller filed her appearance in this matter. (Entry of Appearance, February 19, 2025).

26) On February 20, 2025, Employer requested a hearing continuance under 8 AAC 45.074(b)(1)(C)(N). (Petition, February 20, 2025).

27) At hearing, Employer contended Employee's injury was not caused by his work; rather his pre-existing diabetes was the substantial cause of his injury and subsequent amputation of his toe. It argued that Employee's injury involves a complex medical question that requires him to show with medical evidence that work is the substantial cause of his disability or need for treatment, and he had failed to do so. Employer noted Employee failed to respond to the adjuster's September 3, 2025 letter thus hampering Employer's ability to gather evidence. It also asserts Employee failed to notify Employer that he would not be returning to work and therefore, voluntarily removed himself from the job. Employer requests a summary denial of all benefits Employee requested and any fees or costs incurred by his attorney. (Record, February 20, 2025).

28) Employee testified at hearing. He stated he was from Mexico but had been living in the United States since 1993. Employee has had diabetes for the past fifteen years; he has treated his diabetes with insulin for the past five years. His primary care doctor is Dr. Pineda in Washington. Employee stated that on July 9th, after carrying bags of concrete weighing roughly 60 lbs. he noticed blisters on his hand when he took off his gloves. When he got home that day he noticed a blister on his toe after he took off his boot. As the blisters got significantly worse he took a picture and sent it to his supervisor who recommended he go to the hospital to have his foot looked at. On July 29th, he was seen at Alaska Regional Hospital and received an off-work note excusing him from work for five days. Employee returned home to Washington to see his Dr. Pineda. Dr. Pineda saw him on August 5th, and sent him immediately to the hospital; she noted he would be unable to work for several months at least after seeing his foot. Employee said he spent 10 days in the hospital and had two procedures resulting in the amputation of his toe. Employee continues to treat with Dr. Pineda for his diabetes. (Manriquez, February 20, 2025).

29) On February 24, 2025, Employee's attorney filed an updated fee affidavit with an additional $6,916 in fees and $1,097.38 in costs. Total fees and costs were $24,863.69. (Affidavit of Counsel, February 24, 2025).

30) On February 28, 2025, the parties filed the following stipulation:

> 1. Employer accepts that Employee sustained compensable injuries to his right foot (including the need for amputation of a toe) and both hands in the course and scope of his employment with the employer on July 26, 2024.

2. The parties agree to mediate prior to the Board's issuance of its Decision and Order (D&O). As such, the parties agree to request delay issuance of the D&O pending mediation with Janel Wright.
3. The parties have set a mediation date of June 20, 2025, with Janel Wright to allow the employee to proceed through the reemployment process.
4. Employer agrees to pay TTD retroactive to July 28, 2024, and ongoing through the mediation date at a rate of $1,478.00. Both parties reserve their respective rights to argue for a compensation rate adjustment, possible overpayment or underpayment, COLA adjustment, etc.
5. Employer will pay a 25% penalty on the past TTD benefits.
6. Employee retains his right to select an attending physician that will accept an Alaska Workers' Compensation Injury to evaluate and treat his work injury under the claim. The employee will establish an attending physician. The employer will preauthorize medical treatment with the attending physician of the employee's choosing if the medical provider requires the carrier to do so.
7. Employer will pay medical treatment costs related to the compensable condition billed by medical providers per the state's Fee Schedule where the treatment occurs. Employer will hold Employee harmless and indemnify him relative to past medical bills and/or any liens from his private carrier.
8. Employer retains its right to deny based on new evidence, except the Employer may not controvert on the basis that the Employee did not have compensable injuries to his hands or right foot. However, TTD benefits will continue until the mediation date regardless of any new medical evidence.
9. Employer retains its right to petition for a social security offset pending the social security award documentation and any reverse offset evidence.
10. Employer agrees to complete and file a 90-day reemployment notice immediately.
11. Employer agrees to pay $27,000 for attorney fees and costs through the date of mediation. Employer will also pay 10% attorney fees on benefits paid after the Board approves this stipulation. Employee does not waive his claim for additional attorney fees with this award of fees.
12. All other claims made by Employee shall be reserved and Employee waives no rights under the terms of this stipulation. Neither party may submit additional evidence or argument for consideration by the Board when issuing the forthcoming decision. The parties jointly request that the Board postpone issuance of the pending Decision & Order, to allow time for the mediation to occur.
13. Either party may notify the Hearing Officer in writing in the event settlement discussions fail, whereupon the Board shall proceed with issuing a decision. The parties shall also keep the Hearing Officer informed of the status of the mediation, the drafting of a C&R, etc. (Stipulation of the Parties, February 28, 2025).

31) On March 3, 2025, the designated chair approved the stipulation, making it an order. (Order, March 3, 2025).

32) On August 28, 2025, Employee filed a letter with the Division, informing the Board that the parties were unable to reach a settlement at mediation and the decision previously held in abeyance should issue. (Letter, August 28, 2025).

33) On August 29, 2025, Employer filed a petition requesting a rehearing and hearing record re-opening. It requested the Board consider the March 4, 2025 stipulation as part of the record and include payments made by the Employer in its decision. (Petition, August 29, 2025).

34) On September 8, 2025, Employee responded to Employer's August 29, 2025 petition. He did not object to the stipulation being considered because "the post-hearing order directly affected issues for hearing." (Employee's Answer to Petition, September 8, 2025).

PRINCIPLES OF LAW

The Board may base its decisions not only on direct testimony 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, 533-534 (Alaska 1987).

> **AS 23.30.001. Intent of the legislature and construction of chapter**. It is the intent of the legislature that
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> > (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;
> > (3) this chapter may not be construed by the courts in favor of a party;
> > (4) hearings in workers' compensation cases shall be impartial and fair to all parties and that all parties shall be afforded due process and an opportunity to be heard and for their arguments and evidence to be fairly considered.

> **AS 23.30.010. Coverage.** (a) Except as provided in (b) of this section, compensation or benefits are payable under this chapter for disability . . . or the need for medical treatment of an employee if the disability . . . of the employee or the employee's need for medical treatment arose out of and in the course of the employment. To establish a presumption under AS 23.30.120(a)(1) that the disability . . . or the need for medical treatment arose out of and in the course of the employment, the employee must establish a causal link between the employment and the disability . . . or the need for medical treatment. A

> presumption may be rebutted by a demonstration of substantial evidence that the . . . disability or the need for medical treatment did not arise out of and in the course of the employment. . . . When determining whether or not the . . . disability or need for medical treatment arose out of and in the course of the employment, the board must evaluate the relative contribution of different causes of the disability . . . or the need for medical treatment. Compensation or benefits under this chapter are payable for the disability . . . or the need for medical treatment if, in relation to other causes, the employment is the substantial cause of the disability . . . or need for medical treatment. . . .

Summers v. Korobkin Construction, 814 P.2d 1369, 1372 (Alaska 1991) stated, "Moreover, we believe that an injured worker who has been receiving medical treatment should have the right to a prospective determination of compensability." A Board order determining compensability will help an injured worker decided whether to pursue medical treatment or procedures.

> **AS 23.30.070. Report of injury to division**. (a) Within 10 days from the date the employer has knowledge of an injury or death or from the date the employer has knowledge of a disease or infection, alleged by the employee or on behalf of the employee to have arisen out of and in the course of the employment, the employer shall send to the division a report setting out
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> (1) the name, address, and business of the employer;
> (2) the name, address, and occupation of the employee;
> (3) the cause and nature of the alleged injury or death;
> (4) the year, month, day, and hour when and the particular locality where the alleged injury or death occurred; and
> (5) the other information that the division may require.
> . . . .
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> (f) An employer who fails or refuses to send a report required of the employer by this section or who fails or refuses to send the report required by (a) of this section within the time required shall, if so required by the board, pay the employee or the legal representative of the employee or other person entitled to compensation by reason of the employee's injury or death an additional award equal to 20 percent of the amounts that were unpaid when due. The award shall be against either the employer or the insurance carrier, or both. . . .

> **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. . . .

> **AS 23.30.122. Credibility of witnesses.** The board has the sole power to determine the credibility of a witness. A finding by the board concerning the weight to be accorded a witness's testimony, including medical testimony and reports, is conclusive even if the evidence is conflicting or susceptible to contrary conclusions. The findings of the board are subject to the same standard of review as a jury's finding in a civil action.

The Board's credibility finding "is binding for any review of the Board's factual findings." *Smith v. CSK Auto, Inc.,* 204 P.3d 1001, 1008 (Alaska 2009).

> **AS 23.30.135. Procedure before the board**. (a) In making an investigation or inquiry or conducting a hearing the board is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this chapter. The board may make its investigation or inquiry or conduct its hearing in the manner by which it may best ascertain the rights of the parties. . . .

> **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 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.
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> (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 a reasonable attorney fee. The award is in addition to the compensation or medical and related benefits ordered. . . .

Rusch v. Southeast Alaska Regional Health Consortium, 453 P.3d 784, 798-99, 803 (Alaska 2019), clarified the Court's directives on awarding attorney fees to successful claimant lawyers:

> To clarify our holding in *Bignell*, we hold that the Board must consider all of the

> factors set out in Alaska Rule of Professional Conduct 1.5(a) when determining a reasonable attorney's fee. . . . On remand, the Board must consider each factor and either make findings related to that factor or explain why that factor is not relevant.

Wise Mechanical Contractors v. Bignell, 718 P.2d 971 (Alaska 1986) held attorney fees should be reasonable and fully compensatory, considering the contingent nature of representing injured workers, to ensure adequate representation. *State of Alaska v. Wozniak*, 491 P.3d 1081, 1087 (Alaska 2021) held a lump-sum award of fees incurred to the date of hearing and a separate award of ongoing fees on continuing benefits, under two subsections from the same attorney fee statute, was not "mutually exclusive," and affirmed decisions awarding attorney fees in this manner.

> **AS 23.30.155. Payment of compensation.** (a) Compensation under this chapter shall be paid periodically, promptly, and directly to the person entitled to it, without an award, except where liability to pay compensation is controverted by the employer. To controvert a claim, the employer must file a notice, on a form prescribed by the director, stating
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> (1) that the right of the employee to compensation is controverted;
> (2) the name of the employee;
> (3) the name of the employer;
> (4) the date of the alleged injury or death; and
> (5) the type of compensation and all grounds upon which the right to compensation is controverted.
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> (b) The first installment of compensation becomes due on the 14th day after the employer has knowledge of the injury or death. On this date all compensation then due shall be paid. Subsequent compensation shall be paid in installments, every 14 days, except where the board determines that payment in installments should be made monthly or at some other period.
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> (c) The insurer or adjuster shall notify the division and the employee on a form prescribed by the director that the payment of compensation has begun or has been increased, decreased, suspended, terminated, resumed, or changed in type. . . .
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> (d) If the employer controverts the right to compensation, the employer shall file with the board and send to the employee a notice of controversion on or before the 21st day after the employer has knowledge of the alleged injury or death. If the employer controverted the right to compensation after payments have begun, the employer shall file with the board and send to the employee a notice of controversion within seven days after an installment of compensation payable without award is due. . . .

> (e) If any installment of compensation payable without an award is not paid within seven days after it becomes due, as provided in (b) of this section, there shall be added to the unpaid installment an amount equal to 25 percent of it. This amount shall be paid at the same time as, and in addition to, the installment, unless notice is filed under (d) of this section or unless the nonpayment is excused by the board after a showing by the employer that owing to conditions over which the employer had no control the installment could not be paid within the period prescribed for the payment. The additional amount shall be paid directly to the recipient to whom the unpaid installment was to be paid. . . .
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> (j) If an employer has made advance payments or overpayments of compensation, the employer is entitled to be reimbursed by withholding up to 20 percent out of each unpaid installment or installments of compensation due. More than 20 percent of unpaid installments of compensation due may be withheld from an employee only on approval of the board.
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> (o) The director shall promptly notify the division of insurance if the board determines that the employer's insurer has frivolously or unfairly controverted compensation due under this chapter. After receiving notice from the director, the division of insurance shall determine if the insurer has committed an unfair claim settlement practice under AS 21.36.125.
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> (p) An employer shall pay interest on compensation that is not paid when due. Interest required under this subsection accrues at the rate specified in AS 09.30.070(a) that is in effect on the date the compensation is due.

The Alaska Supreme Court has taken a broad reading of the term "controverted," and has held a "controversion in fact" can occur when an employer did not file a formal controversion. *Alaska Interstate v. Houston*, 586 P.2d 618 (Alaska 1978). A controversion-in-fact can occur when an employer does not "unqualifiedly accept" an employee's claim for compensation, *Underwater Const., Inc. v. Shirley*, 884 P.2d 156, 159 (Alaska 1994), or when an employer consistently denies and litigates its obligation to pay an increase in benefits. *Wien Air Alaska v. Arant,* 592 P.2d 352 (Alaska 1979). A controversion-in-fact also occurs when an employer does not file a controversion notice but denies liability for benefits in its answer to a claim. *Harnish Group, Inc. v. Moore*, 160 P.3d 146 (Alaska 2007). To determine whether there has been a controversion-in-fact, an employer's answer to a claim for benefits and its actions after the claim is filed must be examined. *Id*. at 152. Resistance before the filing of a claim cannot serve as a

basis for a controversion-in-fact. *Id*. For there to be a controversion-in-fact, an employer must take some action in opposition to a claim after it is filed. *Id.*

A controversion notice must be filed "in good faith" to protect an employer from a penalty under AS 23.30.155(e) or to avoid referral to the Division of Insurance under AS 23.30.155(o). *Harp v. ARCO Alaska, Inc*., 831 P.2d 352, 358 (Alaska 1992). "For a controversion notice to be filed in good faith, the employer must possess sufficient evidence in support of the controversion that, if the claimant does not introduce evidence in opposition to the controversion, the Board would find that the claimant is not entitled to benefits." *Harp* at 358.

The courts have consistently instructed the Board to award interest for the time-value of money, as a matter of course. *Land and Marine Rental Co. v. Rawls*, 686 P.2d 1187 (Alaska 1984).

> **AS 23.30.185. Compensation for temporary total disability.** In case of disability total in character but temporary in quality, 80 percent of the injured employee's spendable weekly wages shall be paid to the employee during the continuance of the disability. Temporary total disability benefits may not be paid for any period of disability occurring after the date of medical stability.

> **AS 23.30.190. Compensation for permanent partial impairment; rating guides. (effective January 1, 2023)** (a) In case of impairment partial in character but permanent in quality, and not resulting in permanent total disability, the compensation is $273,000 multiplied by the employee's percentage of permanent impairment of the whole person. The percentage of permanent impairment of the whole person is the percentage of impairment to the particular body part, system, or function converted to the percentage of impairment to the whole person as provided under (b) of this section. The compensation is payable in a single lump sum, except as otherwise provided in AS 23.30.041 but the compensation may not be discounted for any present value considerations. . . .

Egemo v. Egemo Construction Co., 998 P.2d 434, 439 (Alaska 2000), held that when a claim for benefits is premature, the claim should be held in abeyance until it is timely, or it should be dismissed with notice that it may be refiled when it becomes timely

> **AS 23.30.395. Definitions**. In this chapter
> . . . .

(24) "**injury**" means accidental injury or death arising out of an in the course of employment, and an occupational disease or infection that arises naturally out of the employment or that naturally or unavoidably results from an accidental injury.
. . .

8 AAC 45.050. Pleadings. (a) A person may start a proceeding before the board by filing a written claim or petition.
. . . .

(f) **Stipulations**. . . .

(2) Stipulations between the parties may be made at any time in writing before the close of the record, or may be made orally in the course of a hearing or a prehearing.
(3) Stipulations of fact or to procedures are binding upon the parties to the stipulation and have the effect of an order unless the board, for good cause, relieves a party from the terms of the stipulation. A stipulation waiving an employee's right to benefits under the Act is not binding. . . .

8 AAC 45.074. Continuances and cancellations. . . .
. . . .

(b) Continuances or cancellations are not favored by the board and will not be routinely granted. A hearing may be continued or cancelled only for good cause and in accordance with this section. For purposes of this subsection,

(1) good cause exists only when

(A) a material witness is unavailable on the scheduled date and the taking of the deposition of the witness is not feasible;
(B) a party or representative of a party is unavailable because of an unintended and unavoidable court appearance;
(C) a party, a representative of a party, or a material witness becomes ill or dies;
(D) a party, a representative of a party, or a material witness becomes unexpectedly absent from the hearing venue and cannot participate telephonically;
(E) the hearing was set under 8 AAC 45.160(d);
(F) a second independent medical evaluation is required under AS 23.30.095(k);
(G) the hearing was requested for a review of an administrator's decision under AS 23.30.041(d), the party requesting the hearing has not had adequate time to prepare for the hearing, and all parties waive the right to a hearing within 30 days;
(H) the board is not able to complete the hearing on the scheduled hearing date due to the length of time required to hear the case or other cases

scheduled on that same day, the lack of a quorum of the board, or malfunctioning of equipment required for recording the hearing or taking evidence;
(I) the parties have agreed to and scheduled mediation;
(J) the parties agree that the issue set for hearing has been resolved without settlement and the parties file a stipulation agreeing to dismissal of the claim or petition under 8 AAC 45.050(f)(1);
(K) the board determines that despite a party's due diligence in completing discovery before requesting a hearing and despite a party's good faith belief that the party was fully prepared for the hearing, evidence was obtained by the opposing party after the request for hearing was filed which is or will be offered at the hearing, and due process required the party requesting the hearing be given an opportunity to obtain rebuttal evidence;
(L) the board determines at a scheduled hearing that, due to surprise, excusable neglect, or the board's inquiry at the hearing, additional evidence or arguments are necessary to complete the hearing;
(M) an agreed settlement has been reached by the parties less than 14 days before a scheduled hearing, the agreed settlement has not been put into writing, signed by the parties, and filed with the board in accordance with 8 AAC 45.070(d)(1), the proposed settlement resolves all disputed issues set to be heard, and the parties appear at the scheduled hearing to state the terms of the settlement on the record; or
(N) the board determines that despite a party's due diligence, irreparable harm may result from a failure to grant the requested continuance or cancel the hearing;

(2) the board or the board's designee may grant a continuance or cancellation under this section

(A) for good cause under (1)(A)-(J) of this subsection without the parties appearing at a hearing;
(B) for good cause under (1)(K)-(N) of this subsection only after the parties appear at the scheduled hearing, make the request and, if required by the board, provide evidence or information to support the request; or
(C) without the parties appearing at the scheduled hearing, if the parties stipulate to the continuance for good cause as set out in (1)(A)-(I) of this subsection.

8 AAC 45.182. Controversion. (a) To controvert a claim the employer shall file form 07-6105 in accordance with AS 23.30.155(a) and shall serve a copy of the notice of controversion upon all parties in accordance with 8 AAC 45.060.
. . . .

(d) After hearing a party's claim alleging an insurer or self-insured employer frivolously or unfairly controverted compensation due, the board will file a

> decision and order determining whether an insurer or self-insured employer frivolously or unfairly controverted compensation due. Under this subsection,
>
> > (1) if the board determines an insurer frivolously or unfairly controverted compensation due, the board will provide a copy of the decision and order at the time of filing to the division of insurance for action under AS 23.30.155(o). . . .
> >
> > (e) For purposes of this section, the term 'compensation due,' and for purposes of AS 23.30.155(o) the term 'compensation due under this chapter,' are terms that mean the benefits sought by the employee, including but not limited to disability, medical, and reemployment benefits, and whether paid or unpaid at the time the controversion was filed.

"The Alaska Workers' Compensation Act sets up a system in which payments are made without need of Board intervention unless a dispute arises." *Harris v. M-K Rivers*, 325 P.3d 510, 518 (Alaska 2014). A controversion notice must be filed "in good faith" to protect an employer from a penalty. "For a controversion notice to be filed in good faith, the employer must possess sufficient evidence in support of the controversion that, if the claimant does not introduce evidence in opposition to the controversion, the Board would find that the claimant is not entitled to benefits." Only evidence the employer possessed "at the time of controversion" is relevant. *Harp v. ARCO Alaska, Inc*., 831 P.2d 352, 358 (Alaska 1992).

ANALYSIS

1) Was the oral order denying Employer's request for a continuance correct?

Employer filed a petition on the day of hearing requesting a continuance, due to illness of a party, and contended irreparable harm would occur if a continuance was not granted. 8 AAC 45.074(b)(1)(C), (N). Holdiman-Miller argued she had been on sick leave prior to hearing and a one-week continuance was necessary to allow her to review the case file and provide argument. Employee noted Employer had filed no controversions, attended no prehearing conferences, submitted no evidence, and no hearing brief or witness list according to the designee's prehearing order. He contends that in order for "good cause" to exist a party must first exercise due diligence on their part to then allege irreparable harm. Employee objected to any continuance.

Continuances are not favored and not routinely granted. 8 AAC 45.074(b). Other than wanting more time to prepare for the hearing, Employer did not show "good cause" for a continuance under 8 AAC 45.074(b)(1)(A-N). Had Employer participated in this case prior to hearing and subsequently fell ill or unavailable the day of hearing the outcome would likely have been different. The oral order ensured a quick and efficient hearing, and the oral order declining to continue the hearing was correct. AS 23.30.001(1).

2) Should the parties' post-hearing stipulations be memorialized in an order?

a) Compensability

After the hearing, on February 28, 2025, the parties filed a stipulation, which was approved. Employer stipulated Employee's foot (including toe amputation) and hand injuries arose out of and in the course of his employment. AS 23.30.010(a); 8 AAC 45.050(f)(2),(3). Employee requested a written order on compensability for his foot and hand injuries as is his right under *Summers*. The stipulation is well-supported by the evidence. Employee testified about his work as a concrete finisher and heavy labor he was performing on the date of his injury. His testimony was credible. AS 23.30.122; *Smith*. Dr. Pineda opined Employee would need a significant amount of time to recover as he was "very ill and can no longer work at this time." *Id*. Employer will be ordered to pay all reasonable and necessary medical costs and associated benefits for Employee's work-related foot and hand injuries, in accordance with the Alaska Workers' Compensation Act (Act) and applicable regulations. AS 23.30.010(a); AS 23.30.095(a); 8 AAC 45.050(f).

Employer retains its right to deny benefits based on new evidence. However, it may not controvert on grounds that Employee did not have compensable injuries to his hands or right foot. It will be so ordered.

b) Temporary Total Disability

The parties stipulated Employer would pay TTD benefits retroactive to July 28, 2024, and ongoing through the mediation date at a rate of $1,478. AS 23.30.185. Both parties reserved the

right to contest a rate adjustment, cost-of-living (COLA) adjustment, Social Security offsets, and possible over- or under-payments. It will be so ordered.

c) Medical and Transportation Costs

Employer has agreed to pay for medical treatment costs related to Employee's compensable conditions. AS 23.30.095(a). Employee must establish a treating physician, and Employer will pre-authorize treatment costs once a primary physician is established. Employer agrees it cannot controvert under the basis of Employee's hands or foot being compensable, but reserves the right to deny on other bases if applicable. It will hold Employee harmless and indemnify him relative to past medical bills or any liens from his private carrier. Employer will continue to pay for medical and transportation costs in relation to Employee's compensable injuries in accordance with the parties' stipulation, the Act and applicable regulations. It will be so ordered.

d) Penalty

Employer agreed to pay a 25 percent penalty on all TTD payments through the date of the parties' stipulation. AS 23.30.155(e) imposes a penalty on employers who fail to "pay or controvert," within certain time limits, an employee's workers' compensation claim "payable without an award." *Harp*. Employer did not pay Employee medical or time loss benefits and did not file a notice of controversion. Under the Act's "pay or controvert," provision, the penalty stipulation will be so ordered. AS 23.30.155(e); *Harp*.

e) Reemployment benefits

Employee contends Employer failed to file 45- and 90-day notices to the Reemployment Benefits Administrator. Employer agreed through stipulation to file a 90-day notice upon approval of the stipulation. It has agreed Employee is entitled to an eligibility evaluation. It will be so ordered.

f) Attorney's fees and costs

Employer through stipulation agreed to pay Employee's attorney fees and costs. It subsequently paid Employee's attorney $27,000.00 in fees and costs. Employee also requested a 10 percent

attorney fee award on all future payments under *Wozniak*. Employer through stipulation also agreed to pay *Wozniak* fees. Attorney fees and costs may be awarded when an employer fails to pay benefits when due and an attorney is successful in prosecuting an employee's claim. AS 23.30.145(a), (b). Employee's attorney obtained a stipulation stating his claimed injuries arose out of and in the course of his employment with Employer and his attorney successfully prosecuted his claim for past due TTD, medical treatment, transportation and reemployment benefits. Employer did not object to Employee's attorney fees and costs or contend they are unreasonable. This decision considered the *Rusch* factors based on Bredesen's affidavit. Bredesen has obtained valuable benefits for Employee. Employee is entitled to reasonable attorney fees and costs. *Bignell*. It will be so ordered.

Employer also stipulated to Employee's attorney receiving statutory attorney fees on any ongoing benefits paid to Employee after the July 9, 2024 hearing. *Wozniak*. It will be so ordered.

g) All other claims

The parties stipulated that Employee's other claims are reserved and he waives no benefits under the parties' stipulation. Neither party could submit additional evidence or argument for the panel's consideration on the issues not included in the parties' stipulation, with exception of the agreement to include the stipulation itself, approved on March 3, 2025. It will be so ordered.

3) Should Employee's claim for PPI benefits be held in abeyance?

Employee contends he is entitled to a PPI rating when he is medically stable. AS 23.30.190(a). There is currently no medical evidence to support Employee being medically stable; PPI ratings are generally not performed until the injured body part or function is medically stable. *Rogers & Babler*. The parties have agreed that Employee's injury is compensable. However, his PPI benefit request will be held in abeyance until Employee is medically stable and receives a rating. *Egemo*.

4) Is Employer liable for interest?

Employee prevailed on all issues in his claim that were subject to the parties' stipulation. The stipulation and this decision resulted in TTD benefits, medical benefits, and mileage. Employer paid none of these benefits when they were due under the Act without an award. AS 23.30.155(a). He is entitled to statutory interest on all benefits this decision awards him, and Employer will be ordered to pay interest in accordance with AS 23.30.155(p).

5) Did Employer unfairly or frivolously controvert Employee's benefits?

Benefits under the Act must be paid or controverted timely. AS 23.30.155(a). Employee contends Employer frivolously or unfairly controverted compensation due under the Act. AS 23.30.155(o). "Compensation due" means benefits sought by Employee, including but not limited to disability, medical, and reemployment benefits, and whether paid or unpaid at the time the controversion was filed. 8 AAC 45.182(e). Employee seeks a referral to the Division of Insurance.

The relevant facts on this issue are the evidence upon which Employer relied to controvert. Employee contends Employer "controverted-in-fact" all benefits owed to Employee. He contends the Employer has neither paid benefits nor filed a proper Controversion Notice. He alleges multiple instances of unfair and frivolous controversions in fact: (1) Employer failed to pay compensation when due, (2) Employer failed to pay medical benefits, (3) Employer did not file an answer to any of Employee's claims, and (4) Employer did not file 45-, 60- or 90-day notices to the Reemployment Benefits Administrator, denying and delaying Employee's right to an eligibility evaluation. Employer offered no evidence at hearing to rebut Employee's allegations.

The Alaska Supreme Court adopted the *Harp* penalty analysis to resolve frivolous and unfair controversion issues. AS 23.30.155(o); *Harp*; *Harris*. *Harp* and *Huit* are used to find if the denials were "good faith" controversions. Under *Harp* and *Huit*, a good faith controversion notice is one that demonstrates with "substantial evidence that the disability . . . or need for medical treatment did not arise out of and in the course of the employment." In the immediate case, Employee argues the *Harp* analysis is unnecessary as Employer failed to file a Controversion Notice at all. He is correct. Moreover, in the absence of evidence to support

Employer's denial of benefits to Employee, its controversions-in-fact were not in good faith and were frivolous. Employee's request for a finding that Employer frivolously controverted compensation due will be granted. This decision will be sent to the director with a request that he notify the Division of Insurance. AS 23.30.155(o); 8 AAC 45.182(d)(1).

6) Is Employee entitled to a late-notice penalty?

Employee requests a penalty pursuant to AS 23.30.070(f). He contends that Employer knew of his injury on August 7, 2025, when Employer's controller Beauchamp filed an Employer's Report of Injury. Employer properly filed its report of injury with the carrier. *Rogers & Babler*. Employee argues that Employer's insurance carrier did not file a Report of Injury with the Division until September 3, 2024, more than 10 days after the carrier had notice of the injury. The statute states if Employer or the carrier failed or refused to file a report required under the Act in the required time, shall "if so required" pay Employee, his representative or other party entitled to compensation "an additional award" commonly referred to as a "penalty," equal to 10 percent "of the amounts that were unpaid when due." AS 23.30.070(a), (f).

Unlike other so-called "penalty" statutes in the Act, this one gives the fact-finders discretion to require the penalty, or not. Employer offered no defense as to why the carrier failed to file a timely Report of Injury. Employee provided medical documentation that he was placed off work due to his injury establishing indemnity benefits were owed, and at the date of hearing, no indemnity benefits or medical benefits had been paid. Employee's argument is further bolstered by the August 12, 2024 medical evidence that due to issues with his insurance he was not approved for an at-home wound vac, and required additional days in the hospital after his toe was amputated. Therefore, the insurance carrier will be ordered to pay a 20 percent penalty on all amounts unpaid when due, including medical and indemnity benefits in accordance with the Act and regulations.

CONCLUSIONS OF LAW

1) The oral order to proceed with the hearing was correct.
2) The parties' stipulation should be memorialized in an order.

3) Employee's claim for PPI benefits will be held in abeyance.
4) Employer is liable for interest on all benefits owed.
5) Employer made frivolous or unfair controversions-in-fact.
6) Employee is entitled to a late-notice penalty.

ORDER

1) Employee's hand and foot injures are compensable.
2) Employer shall pay past and future TTD benefits at the agreed rate of $1,478 per week, reemployment benefits, and medical and transportation costs, for Employee's hand and foot injuries in accordance with the Act, regulations and this decision. Both parties reserved their rights to argue for a compensation rate adjustment, possible overpayment or underpayment, COLA or Social Security offset.
3) Employer shall pay Employee interest in accordance with the Act for all indemnity and medical benefits from the July 28, 2024, in accordance with the Act, regulations and this decision.
4) Employer shall pay a 25 percent late-payment penalty on past-due TTD benefits in accordance with their stipulation.
5) Employer shall pay Employee's attorney fees and costs in accordance with the parties' stipulation and this decision.
6) Employer shall pay Employee's statutory minimum *Wozniak* fees on going benefits, pursuant to the Act, regulations and this decision.
7) The insurance carrier is ordered to pay Employee "or other person entitled to compensation" an additional 20 percent late-notice penalty on all amounts unpaid when due, including medical and indemnity benefits in accordance with the Act, regulations and this decision.
8) A copy of this decision and order shall be served upon the Commissioner's designee, Director Charles Collins, for referral to the Division of Insurance.
9) Employer is entitled to a credit on any and all benefits ordered in this decision that it already paid in accordance with the parties' approved stipulation.

Dated in Anchorage, Alaska on October 1, 2025.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Kyle Reding, Designated Chair

/s/
Bronson Frye, Member

If compensation is payable under 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 awarded is not paid within 30 days of this decision, the person to whom the awarded 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 Juan Manriquez, employee / claimant v. Finishing Edge Curb & Sidewalk, employer; The First Liberty Insurance Corp., insurer / defendants; Case No. 202411806; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties by certified US Mail on October 1, 2025.

/s/
Trisha Palmer, Workers' Compensation Technician