ALASKA WORKERS' COMPENSATION BOARD

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

TIMOTHY BRADLEY, Claimant, v. JUNEAU GLASS, and BENEFITS GUARANTY FUND, Insurer, Defendants.	)	FINAL DECISION AND ORDER AWCB Case No. 202502469 AWCB Decision No. 25-0073 Filed with AWCB Juneau, Alaska on November 3, 2025.

Timothy Bradley's (Claimant) March 26, 2025 claim was heard on September 23, 2025, in Juneau, Alaska, a date selected on July 27, 2025. A July 11, 2025 hearing request gave rise to this hearing. Attorney Adam Franklin appeared and represented Claimant. Attorney Leif Thompson appeared and represented Juneau Glass owned by Christopher Bradley (collectively, Defendant); Velma Thomas, Administrator, and McKenna Wentworth, claims adjuster, appeared on behalf of the Benefits Guaranty Fund (Fund). Witnesses included Claimant on his own behalf and Christopher Bradley, Dave Vanpool, Doug Maller, Gordy Johnson, Shane Hooten, Lillian Bradley, Dan Hoffman, and April Sapp, DNP, who testified for Defendant. The record closed on October 3, 2025 to allow Employee to file supplemental fee affidavits, and defendants to file any objections.

ISSUES

Claimant contends he does not qualify as an independent contractor under AS 23.30.230, and should be considered an employee under the Alaska Workers' Compensation Act (Act). Defendant argues it is a sole proprietorship, and Claimant was an independent contractor at the time of his injury.

The Fund argues that Claimant was an independent contractor and is not eligible for benefits.

1) Was Claimant an Employee or Independent Contractor at the time of his injury?

Claimant argues his injury occurred while installing a windshield while working for Employer.

Defendant argues Claimant was not injured at work, nothing out of the ordinary happened to him, and Claimant's initial reports to his providers were that "he slept on his neck wrong."

The Fund contends Claimant did not incur a work injury.

2) Did Claimant's injury arise out of and in the scope of his employment?

Claimant contends he incurred medical costs related to his work injury, to include a prospective epidural steroid injection recommended by his physician that he was unable to pay for due to Defendant's controversion.

Defendants argue Claimant was not an employee at the time of his injury and any medical or transportation costs should be denied.

3) Is Claimant entitled to medical and transportation costs?

Claimant has been placed off work from January 13, 2025 to June 30, 2025, with corroborating notes from his treating physicians. He requests temporary total disability (TTD) benefit payments during this period.

Defendants argue that Claimant was not an employee at the time of his injury and any TTD benefits should be denied.

4) Is Claimant entitled to TTD benefits?

Claimant requests temporary partial disability (TPD) benefit payments for an unspecified period of time. He did not argue this point at hearing.

Defendants did not address TPD benefits in briefing or at hearing.

5) Is Claimant entitled to TPD benefits?

Claimant requests permanent partial impairment (PPI) benefits but did not make argument or present evidence of a PPI rating or forthcoming rating from a physician.

Defendants did not address PPI benefits in briefing or at hearing.

6) Is Claimant entitled to PPI benefits?

Claimant contends Defendant frivolously controverted his March 26, 2025 claim without cause.

Defendant controverted Claimant's claim based on initial medical reports in which Claimant indicated he believed he slept on his neck wrong not that a work injury occurred.

The Fund controverted on the basis Claimant was an independent contractor not an employee at the time of his injury.

7) Did Defendant unfairly or frivolously controvert Claimant's claim?

Claimant contends he is entitled to penalties and interest on late-paid compensation and benefits.

Defendant contends that no benefits are owed and therefore, no penalties or interest are due.

The Fund contends it cannot be ordered to pay penalties on behalf of uninsured employers.

8) Is Claimant entitled to penalties and interest?

Claimant contends he was aided by the services of his attorney, and he seeks an award of reasonable attorney fees and costs.

Defendants contend since no benefits should be awarded, neither should attorney fees and costs.

9) Is Claimant entitled to attorney's fees and costs?

FINDINGS OF FACT

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

1) On January 10, 2025, Claimant described feeling a small "pop" in the right side of his neck while installing a windshield. (Employee Report of Occupational Injury or Illness to Employer, February 9, 2025).

2) On January 13, 2025, Claimant was seen by April Sapp, DNP at Jordan Creek Family Health Care. Claimant reported he thought he slept on his right side wrong and woke up with pain radiating from his neck down into his shoulder and armpit. Dr. Sapp diagnosed Claimant with cervicalgia and prescribed Medrol. (Sapp note, January 13, 2025).

3) On January 21, 2025, Claimant was seen at the Bartlett Regional Hospital Emergency Department due to his pain symptoms not improving. Claimant reported again about 10-days earlier he woke up on his right side and had sharp right shoulder and neck pain that began radiating down his right arm. He added he began experiencing numbness in the fingers on his right hand. Lindy Jones, MD, initially diagnosed Claimant with cervical radiculopathy with pain, numbness and weakness in the right-upper-extremity. A magnetic resonance image (MRI) was ordered. The MRI revealed a C5-6 left disk osteophyte with joint enlargement along with spinal canal stenosis. Neural foramina narrowing was also present with left-side more severe than right-side. Dr. Jones believed Claimant's radiculopathy symptoms were likely secondary to acute inflammation of the nerve root. She opined Claimant likely had a pinched nerve in his neck; she prescribed Celebrex, an anti-inflammatory, and Gabapentin to manage his neuropathic pain, as well as an opiate pain medication to allow Claimant to sleep. She referred him to John Bursell, MD, for further treatment and possible steroid injections. (Lindy note, January 21, 2025).

4) Claimant and Defendant Christopher Bradley are brothers. (Observations).

5) On February 7, 2025, Claimant emailed Defendant stating he messed up his neck performing work for Defendant. He requested compensation from the time he missed work while he was recovering. He offered to accept three weeks of pay in lieu of filing a workers' compensation claim. (Email from Claimant to Christopher Bradley, 11:06AM, February 7, 2025).

6) On February 10, 2025, Claimant emailed Defendant again, requesting $4,320 for the time he was off work. (Email from Claimant to Christopher Bradley, 12:47 PM, February 10, 2025).

7) On February 11, 2025, Defendant responded stating Claimant worked for Last Frontier Cabinets and Millwork, not Defendant, implying Claimant was an independent contractor. Defendant offered a loan of $5,000 with no interest payable in two years and a release of any liability on the part of Defendant. If Claimant declined, Defendant would maintain its position Claimant was an independent contractor and no benefits were owed. (Email from Claimant to Timothy Bradley, 4:32 PM, February 11, 2025).

8) On February 14, 2025, Claimant forwarded Defendant an email Claimant intended on sending to the Alaska Business Licensing office, the Alaska Workers' Compensation Division and the Alaska Labor Standards and Safety Office. The email described Defendant as operating without workers' compensation insurance and requested an investigation into Defendant's business practices including its failure to have workers' compensation insurance and other infractions. (Email from Claimant to Christopher Bradley, 1:54PM, February 14, 2025).

9) On February 18, 2025, Claimant filed a February 9, 2025 injury report with the Division. (Employee Report of Occupational Injury or Illness to Employer, February 9, 2025).

10) On February 21, 2025, Claimant emailed Dr. Sapp. He stated when he initially sought treatment, he thought he slept on his neck wrong, but upon reflection he remembered installing a windshield on Friday January 10, 2025, when he felt a kink in his neck. He requested Dr. Sapp provide him a note excusing him from work for the past four weeks due to his injury. (Email from Claimant to Dr. April Sapp, 12:21 PM, February 21, 2025).

11) On March 4, 2025, Claimant was seen by Dr. Bursell, at Juneau Bone and Joint Center. Dr. Bursell assessed him with neck pain with radiculopathy likely due to nerve root inflammation. He attributed Claimant's injury to a work incident on January 10, 2025. He recommended a physical rehabilitation (PT) program for four weeks. Dr. Bursell provided Claimant an off-work note from March 4, 2025 to April 1, 2025. (Bursell note, March 4, 2025).

12) On March 12, 2025, Dr. Sapp provided Claimant an off-work note from January 13, 2025 to January 19, 2025, and longer pending further evaluation if needed. (Sapp note, March 12, 2025).

13) On March 26, 2025, Claimant claimed temporary total disability (TTD), temporary partial disability (TPD) and permanent partial impairment (PPI) benefits, a finding of an unfair or frivolous controversion, attorney's fees and costs, transportation costs, medical costs, a penalty for late-paid compensation and interest. (Claim for Workers' Compensation Benefits, March 26, 2025).

14) On April 1, 2025, Claimant returned to Dr. Bursell for a follow-up appointment. He reported no change in his reported symptoms four weeks earlier. Dr. Bursell, in his treatment plan, reiterated Claimant had upper extremity cervical radiculopathy due to an injury sustained at work. He recommended adding massage therapy to Claimant's treatment plan and scheduled a follow-up appointment in four weeks. He provided Claimant an off-work note until May 6, 2025. (Bursell note, April 1, 2025).

15) On April 14, 2025, Claimant was seen by Dr. Bursell. He noted due to scheduling difficulties Claimant had only attended two PT appointments. Claimant continued to report significant neck pain with pain radiating into his right upper extremity with numbness in his right hand. Dr. Bursell scheduled Claimant for PT twice a week for four to six weeks at which time a decision would be made regarding epidural steroid injections into Claimant's cervical spine. (Bursell note, April 14, 2025).

16) On April 15, 2025, Defendant denied all benefits. It stated Claimant's last day at work was January 10, 2025, he did not do anything strenuous that day and was not injured. Defendant contended Claimant fabricated his claim to receive coverage for his injury, due to Claimant initially reporting sleeping on his neck wrong to Dr. Sapp. (Controversion Notice, April 15, 2025).

17) On April 23, 2025, Claimant filed a medical summary which included a note from Dr. Sapp taking Claimant off work from January 13, 2025 though January 19, 2025 and longer pending further evaluation if needed. (Medical Summary, Dr. Sapp March 12, 2025 note, April 23, 2025).

18) On April 29, 2025, the Fund denied all benefits. The Fund contended Claimant was not an employee of the uninsured Defendant at the time of injury, Claimant's work was not the

substantial cause of his disability or need for treatment and the Fund cannot pay benefits to Claimant unless ordered to do so by the Alaska Workers' Compensation Board. (Controversion Notice, April 29, 2025).

19) On May 6, 2025, Dr. Bursell recommended Claimant undergo a cervical epidural steroid injection. Claimant was to follow-up with Dr. Bursell one to two weeks post-injection. (Bursell note, May 6, 2025).

20) On May 13, 2025, Megan Lindquist, PA-C, responded to a letter from the Fund. PA-C Lindquist stated Claimant was currently under her care at Juneau Bone and Joint Center. Claimant worked in a position that required heavy lifting repeatedly, leading to cervical spine nerve root inflammation, as seen on the cervical spine MRI obtained on January 21, 2025. She stated the work injury was the substantial cause of Claimant's need for medical treatment. (Lindquist letter, May 13, 2025).

21) On May 28, 2025, Claimant returned to Dr. Bursell for his neck pain with cervical radiculopathy. Dr. Bursell noted Claimant's pain complaints remained the same since May 6, 2025. He noted Claimant was unable to receive a steroid injection due to lack of coverage under workers' compensation and rescheduled the procedure for June 23, 2025, when the provider was next available to perform the injection. Claimant was placed off work until June 30, 2025. (Bursell note, May 28, 2025).

22) On July 11, 2025, Claimant filed his affidavit of readiness for hearing (ARH). (Affidavit of Readiness for Hearing, July 11, 2025).

23) On July 15, 2025, the Fund opposed Claimant's ARH on the basis discovery was incomplete, the Fund intended on having Claimant attend an employer's medical evaluation (EME) and the case cannot be heard within the next 30 days. (Benefits Guaranty Fund's Opposition to Employee's Affidavit of Readiness for Hearing, July 15, 2025).

24) On July 29, 2025, Claimant, Defendant and the Fund were present at a prehearing conference. The parties did not agree on a hearing date. The designee in accordance with 8 AAC 45.070(c), set a hearing on September 23, 2025, for six hours. Issues for hearing were TTD, TPD, and PPI benefits, medical and transportation costs, interest, a penalty for late-paid compensation, an unfair or frivolous controversion finding, attorney fees and costs. (Prehearing Conference Summary, July 29, 2025).

25) On September 16, 2025, the Fund through its brief asserted Claimant was not an employee but rather an independent contractor and under AS 23.30.230, Claimant is not entitled to any benefits. Further, the Fund argued it is not responsible to pay for any benefits to an individual classified as a sole proprietor in accordance with AS 23.30.239. (Fund brief, September 16, 2025).

26) On September 16 2025, Defendant submitted its hearing brief. It argued Claimant was an independent contractor and not an employee of Defendant. Defendant contended Claimant had his own business, with business licenses, insurance, a bond and his own tools. He did not work regular hours for Defendant; rather, he performed work whenever he did not have other jobs lined up. Defendant contended Claimant did not injure his neck at work; instead Claimant slept on his neck wrong and is now pursuing litigation against Defendant as a means of revenge and retribution. Defendant argued Claimant is not permanently and totally disabled, and referenced advertisements posted on Facebook by Claimant in April of 2025 for a rock chip repair business. Defendant states this shows the lack of credibility for Claimant. Further, any injury Claimant may have suffered is pre-existing. Finally, Defendant believed Claimant is committing fraud under AS 23.30.250. Defendant reiterates Claimant is requesting benefits while advertising for his rock chip business on Facebook. (Defendant's Hearing Brief, September 15, 2025).

27) On September 16, 2025, Claimant filed his hearing brief. Claimant contends he is an "employee" for purposes of the Act and is entitled to benefits. He references AS 23.30.230, and asserts he does not meet requirements to be deemed an independent contractor as all elements of AS 23.30.230(a)(12) must be met in order for an individual to qualify as an independent contractor. Claimant argues Defendant in meeting the first element of the statute must show an express contract to perform services exists; Claimant notes no contract exists. He notes he was under the direct supervision of Defendant to perform tasks as articulated by Defendant. Claimant did not have authority or discretion to hire or fire any employees to perform work for him while he worked for Defendant and the vast majority of tools he used while working for Defendant were provided by Defendant. Claimant argued his claim is compensable and relies on the opinions of Dr. Bursell and PA-C Lindquist. Those physicians diagnosed Claimant with nerve root inflammation of the cervical spine from repetitive industrial use, and recommended PT and a series of steroid injections. Claimant notes neither Defendant nor the Fund has presented any medical evidence to the contrary and he is entitled to indemnity and medical

benefits. Claimant requests TTD for the period of time he was placed off-work by his providers. He stated he was an hourly worker and under AS 23.30.220(a)(4) his compensation rate should be $783.62 calculated using his hourly wage. He requested TTD benefits from the date of injury until June 30, 2025. (Employee's Hearing Brief, September 16, 2025).

28) On September 17, 2025, Claimant's attorney Franklin filed his attorney fee affidavit. Franklin spent 26.89 hours at a rate of $500.00 per hour, totaling $13,500.10. He included an affidavit in compliance with ARCP 1.5 and *Rusch* justifying his rate and total fees. (Attorney Fee Affidavit of Adam R. Franklin, September 17, 2025).

29) On September 23, 2025, Claimant testified at hearing. He said he was part owner and operator of Last Frontier Cabinets and Millwork for almost 12 years. However, due to the COVID-19 pandemic and the loss of his shop due to rent increases, he stated the business ceased to function. He let his licenses lapse and was mired in litigation from former clients and a foreclosure proceeding. In 2023, he reconnected with his brother, Chris Bradley (Defendant). Claimant said he was in a bad position financially and Defendant offered to "put him to work." A written contract for employment was never made, according to Claimant. He stated he showed up in 2023 and shadowed another person working in the Juneau Glass shop. His daily work consisted of three to four projects on a list provided by Defendant. He stated the majority of the work he performed was auto glass replacement with occasional cutting of glass for inserts in boats or for residential purposes. Claimant said on January 10, 2025, the day of his injury, he and Defendant were installing a windshield which required using suction cup devices to move the windshield into place. He was standing on a ladder pulling up on the windshield, while Defendant was pushing from below. This is a time-sensitive process as the adhesive used for windshields is incredibly strong and sets fast. After pulling the windshield into place, Claimant stepped off his ladder and reached across the windshield to disengage the suction cup attached to windshield when he felt a pop in his neck. He stated at the time he "didn't think nothing of it," as he did not immediately experience any pain. However, the next morning, he woke up with debilitating pain in his neck, which he initially attributed to sleeping on his neck wrong. He first went to see Dr. Sapp his family doctor. He proceeded then to Bartlett Regional Hospital where an MRI showed cervical radiculopathy. He received a referral to see Dr. Bursell at Juneau Bone and Joint Center. Claimant said Dr. Bursell placed him off-work and he did not attempt to return to work except to do a rock chip repair on one vehicle. Claimant stated that on January 10, 2025,

he and Defendant got into a verbal altercation regarding his pay. He was required to track his time at work through invoices which included details of all work performed that day; he would submit his invoices and then get paid on Friday for the previous weeks' work. On January 10, 2025, Claimant wanted his pay check for the previous weeks' work; he was upset because he wanted to cash his check before the bank closed at the end of the day. He felt Defendant was not acting promptly enough in handing over his paycheck and Claimant became upset and began yelling and throwing his arms around before he stormed out of the shop. (Claimant testimony, September 23, 2025).

30) On cross-examination, Claimant explained that he wrote February 9, 2025 on his report of injury because he knew he had 30 days to report his injury to Defendant but at that time he and Defendant were emailing back and forth in attempts to resolve their dispute prior to utilizing the workers' compensation system. Claimant stated his intent was not to deceive the panel but instead, he filled out the form on February 9, 2025, attempted to resolve matters with Defendant, and subsequently sent the report of injury to the Division on February 18, 2025, when he realized Defendant was unlikely to submit his report due to its lack of workers' compensation insurance. Claimant also admitted he was only placed off work by Dr. Bursell until June 30, 2025; since then he had attempted a few small projects to make money since he was not receiving any benefits. (Claimant testimony, September 23, 2025).

31) Dr. Sapp testified at hearing on behalf of Defendant. Dr. Sapp stated that Claimant reported to her on January 13, 2025, that he thought he slept on his neck wrong. She said her report reflected what Claimant reported to her on the day of the appointment. Dr. Sapp stated Claimant emailed her weeks after she saw him on January 13, 2025, requesting an off-work note of four weeks. She declined to provide an off-work note for longer than one week. She stated she is familiar with the Alaska workers' compensation system and had previously filled out forms for patients. (Sapp testimony, September 23, 2025).

32) Dave Vanpool testified on behalf of Defendant. Vanpool stated he had known Claimant for many years, as they were in neighboring business locations in Juneau. In the summer of 2024 Vanpool asked Claimant if he would be willing to build some cabinets on site for him. He said Claimant agreed but never performed the work. (Vanpool testimony, September 23, 2025).

33) Doug Maller testified on behalf of . He runs a tow truck business in Juneau, and drives around town on a regular basis. Maller testified he observed Claimant disassembling a car port

tent outside of his shop in 2025. He observed Claimant taking bolts out of the metal tent poles with an electric hand tool. He later observed a car port tent erected outside of Claimant's residence; he did not observe Claimant erecting the tent in its new location. (Maller testimony, September 23, 2025).

34) Christopher Bradley testified on his own behalf. He stated he has known Claimant for 56 years; they are brothers. Bradley had reconnected with Claimant in 2022, after a prolonged period without any contact. He recalled an incident in the fall of 2024 when Claimant pierced his finger while shucking crab legs, resulting in a spine from the crab leg becoming embedded in Claimant's finger. Bradley remembered Claimant's finger appearing to be infected and cold to the touch. He recalled another incident in 2024 when Claimant slipped on ice and injured his back and broke his cell phone. Bradley remembered Claimant complaining of back pain from the slip and fall and a separate incident injuring his back while wrestling with his son. Relating to his business, Bradley said he is a sole proprietor, and hires independent contractors to provide him with services at Juneau Glass. He observed that in 2023, Claimant was struggling with his business and he offered work to Claimant. Bradley said his business has always operated by having contractors invoice their work to Juneau Glass and he would pay their invoices. He said Claimant could come and go as he pleased, and noted Claimant did not perform work for Juneau Glass for months at a time in 2023, and 2024. However, when Claimant would show up at Juneau Glass and submit invoices for work he performed, Bradley would pay the invoice. He explained if Claimant was gone for a long period of time, over a week, he would drive over to Claimant's house to check on him as he knew Claimant had personal issues he was dealing with. Bradley stated that on January 10, 2025, work was ordinary; he and Claimant installed a few windshields. That afternoon, Claimant asked for his check for the previous week's work. Bradley said he went into his office to sign the check when he heard Claimant yelling and storming out of the shop. He followed Claimant out to his car, but Claimant did not stop; instead Claimant got in his car and "floored it" out of the parking lot. On January 13, 2025, Claimant asked Bradley to take him to the doctor, because he slept on his neck wrong. Bradley said he was not informed by Claimant that Claimant was injured at work until February 5, 2025, in an email Claimant sent to Bradley. Pertaining to their work relationship, Bradley said he had a verbal contract with Claimant but nothing in writing. The verbal contract required Claimant be designated a subcontractor with his own license and bonded insurance with responsibility for his

own taxes. Bradley never issued Claimant a 1099 form or any W2s during his time working for Juneau Glass. (Bradley testimony, September 23, 2025).

35) Gordy Johnson testified on behalf of Defendant. Johnson's business is located in the same office park as Juneau Glass. He said that on January 10, 2025, Johnson observed Claimant leave Juneau Glass yelling and stomping to his vehicle. He remembered Claimant putting his car in reverse and then "flooring it" out of the parking lot. Johnson said Claimant's vehicle kicked up rocks that struck Johnson's vehicle as Claimant left. Johnson was not aware Claimant worked at Juneau Glass; he assumed Claimant was around the shop because he was the brother of Defendant. (Johnson testimony, September 23, 2025).

36) Lillian Bradley testified on behalf of Defendant. Lillian Bradley is Claimant and Defendant's mother. Lillian Bradley stated she remembered Claimant complaining about his finger tingling in the early fall of 2024 from shucking a crab leg. She said she did not observe a blister or wound, but noticed his fingers were cold to the touch. (Lillian Bradley testimony, September 23, 2025).

37) Shane Hooten testified on behalf of Defendant. Hooten has known Claimant and Defendant almost all his life; he stated they grew up together. He recalled running into Claimant in 2024. Claimant was in a bad way and asked to borrow money, which Hooten lent him. Hooten also provided some king crab to Claimant; the day after Claimant returned, remarking it had been a while since he had crab and thought he might have stuck himself with a spine on a crab leg. Hooten stated he did not observe a serious injury at the time, and Claimant's comment was made in passing. Hooten also stated, on occasion, he has seen Claimant outside his house doing woodworking. (Hooten testimony, September 23, 2025).

38) On September 24, 2025, Franklin submitted an amended fee affidavit. He noted he removed fees and costs for travel from Anchorage to Juneau, Alaska, but included total time incurred during the seven hour hearing. . Franklin's updated fee affidavit accounted for 38.19 hours at a rate of $500 per hour for a total of $19,095.00. (Attorney Amended Fee Affidavit of Adam Franklin, September 24, 2025).

39) Neither Defendant nor the Fund filed any objection to Claimant Attorney's fees affidavit. (Observations).

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, 533-34 (Alaska 1987).

> **AS 23.30.010. Coverage**. (a) . . . compensation or benefits are payable under this chapter . . . for medical treatment of an employee . . . if the . . . need for medical treatment arose out of and in the course of the employment. . . . When determining whether . . . the . . . 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 . . . need for medical treatment. Compensation or benefits under this chapter are payable for the . . . need for medical treatment if, in relation to other causes, the employment is the substantial cause of the . . . need for medical treatment. . . .

For claims arising after November 7, 2005, employment must be the substantial cause of the disability or need for medical treatment. *Huit v. Ashwater Burns, Inc.*, 372 P.3d 904 (Alaska 2016). Construing AS 23.30.010(a), *Morrison v. Alaska Interstate Construction, Inc.*, 440 P.3d 224, 234-37 (Alaska 2019), said the Board must consider different causes of the "benefits sought" and the extent to which each cause contributed to the need for the benefit at issue. The Board must then identify one cause as "the substantial cause." *Morrison* clarified the statutory language:

> The statutory language does not require the Board to look at the type of injury in identifying the substantial cause of the need for medical treatment. Alaska Statute 23.30.010(a) requires the Board to "evaluate the relative contribution of different causes of the . . . the need for medical treatment." That subsection then provides, "Compensation or benefits under this chapter are payable for . . . medical treatment if, in relation to other causes, the employment is the substantial cause of the . . . need for medical treatment" (citation omitted). When read together, these sentences do not reflect an instruction to consider the type of *injury* when evaluating compensability; instead, they require the Board to look at the *causes* of the injury or symptoms to determine whether "the employment" was a cause important enough to bear legal responsibility for the medical treatment needed for the injury.

In revising the applicable statute, the legislature did not remove from coverage certain injury or disease classes, "nor did it require a pathological change in a condition in order to establish compensability." (*Id.* at 234). *Morrison* held the statute does not require the substantial cause

to be a "51% or greater cause, or even the primary cause, of the disability or need for medical treatment." The causation test "remains flexible" and is "necessarily fact-dependent." The Board need only find which of all causes "in its judgment is the most important or material cause related to that benefit." (*Id*.). *Morrison* also held that preexisting conditions, which a work injury aggravates, accelerates or combines with to cause disability or need for medical treatment, can still constitute a compensable injury. (*Id*. at 234, 238-39). Lastly, *Morrison* held that the legislature gave the Board discretion "to assign a cause based on the evidence before it." (*Id.* At 240).

Traugott v. ARCTEC Alaska, 465 P.3d 499, 511-13 (Alaska 2020) said:

> The 2005 amendments did not change the but-for or factual part of compensability. For a disability to be compensable, work must still be a factual cause of the disability or need for medical treatment (footnote omitted). The 2005 amendments changed the proximate or legal cause component of the compensability analysis. Now the Board must determine which among the different causes-in-fact is the most important in the current disability or need for medical care.
> . . . .
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> Here, to show that the work at ARCTEC was a cause-in-fact of his disability and need for medical care, Traugott needed to establish that but for his work at ARCTEC he would not have suffered the disability at that time, in that way, or to that degree. No one disputes that he did so. The Board then needed to determine whether work was the most important of the identified causes of his disability and need for medical care.
> . . . .
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> And the Board, not a medical expert, is charged with determining legal responsibility. Experts can provide opinions about the ultimate question in a case, but the Board as the fact finder has the authority to interpret an expert's opinion and decide what weight to give it (citation omitted).

> **AS 23.30.020. Chapter part of contract of hire.** This chapter constitutes part of every contract of hire, express or implied, and every contract of hire shall be construed as an agreement on the part of the employer to pay and on the part of the employee to accept compensation in the manner provided in this chapter for all personal injuries sustained.

> **AS 23.30.082. Workers' compensation benefits guaranty fund.**

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> (c) . . . an employee employed by an employer who fails to meet the requirements of AS 23.30.075 and who fails to pay compensation and benefits due to the employee under this chapter may file a claim for payment by the fund. . . .
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> **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 . . . .

Injured workers must weigh many variables when deciding whether to pursue a certain course of medical or related treatment. An important treatment consideration in many cases is whether a physician's recommended treatment is compensable under the Act. *Summers v. Korobkin*, 814 P.2d 1369, 1372 (Alaska 1991). Thus, an injured worker is entitled to a hearing and a prospective determination on whether medical treatment for his injury is compensable. *Id.* at 1373-74.

> **AS 23.30.097. Fees for medical treatment and services.**
> . . . .
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> (d) An employer shall pay an employee's bills for medical treatment under this chapter, excluding prescription charges or transportation for medical treatment, within 30 days after the date that the employer receives the provider's bill or a completed report as required by AS 23.30.095(c), whichever is later.
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> **AS 23.30.120. Presumptions**. (a) In a proceeding for the enforcement of a claim for compensation under this chapter it is presumed, in the absence of substantial evidence to the contrary, that
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> (1) the claim comes within the provisions of this chapter. . . .

It is presumed an injury is work-connected in the absence of substantial evidence to the contrary. *Beauchamp v. Employers Liability Assurance Corp.*, 477 P.2d 993; 997 (Alaska 1970). "The text of AS 23.30.120(a)(1) indicates that the presumption of compensability is applicable to *any* claim for compensation under the workers' compensation statute." *Meek v. Unocal Corp.*, 914 P.2d 1276, 1279 (Alaska 1996) (emphasis in original). Medical benefits, including continuing care, are covered by the AS 23.30.120(a) presumption of compensability. *Municipality of Anchorage v. Carter*, 818 P.2d 661, 664-65 (Alaska 1991). The Court in *Sokolowski v. Best Western*

Golden Lion, 813 P.2d 286, 292 (Alaska 1991) held a claimant "is entitled to the presumption of compensability as to each evidentiary question."

The presumption's application involves a three-step analysis. *Louisiana Pacific Corp. v. Koons*, 816 P.2d 1379, 1381 (Alaska 1991). First, an employee must establish a "preliminary link" between the claim and her employment, *Burgess Construction Co. v. Smallwood*, 623 P.2d 312, 316 (Alaska 1981), and need only adduce "some" relevant evidence to do so. *McGahuey v. Whitestone Logging, Inc.*, 262 P.3d 613, 620 (Alaska 2011); *Smith v. Univ. of Alaska, Fairbanks*, 172 P.3d 782, 788 (Alaska 2007); *Cheeks v. Widmer & Becker/G.S. Atkinson, J.V.*, 742 P.2d 239, 244 (Alaska 1987). A mere showing that the injury occurred at work will often suffice the make the employment connection. *Smallwood*. When a claim is based on "highly technical medical considerations," medical evidence is often necessary to make the connection. *Id.*; *e.g., Thornton v. Alaska Workmen's Compensation Bd.*, 411 P.2d 209; 211 (Alaska 1966) (cause of heart attack). Witness credibility is not examined at this first step. *Resler v. Universal Services Inc.*, 778 P.2d 1146 (Alaska 1989).

If the presumption is raised but not rebutted, the claimant prevails and need not produce further evidence. *Williams v. State*, 938 P.2d 1065, 1075 (Alaska 1997).

> **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 findings and weight accorded evidence are binding for any review. *Smith v. CSK Auto, Inc.*, 204 P.3d 1001; 1008 (Alaska 2009).

> **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. . . .
>
> (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.

In *Harnish Group, Inc. v. Moore*, 160 P.3d 146 (Alaska 2007), the Court discussed how and under which statute attorney's fees may be awarded in workers' compensation cases. A controversion, actual or in-fact, is required for the Board to award fees under AS 23.30.145(a). "In order for an employer to be liable for attorney's fees under AS 23.30.145(a), it must take some action in opposition to the employee's claim after the claim is filed." *Id*. at 152. Fees may be awarded under AS 23.30.145(b) when an employer "resists" payment of compensation and an attorney is successful in the prosecution of the employee's claims. *Id*. In this latter scenario, reasonable fees may be awarded. *Id.* at 152-53.

In *Wise Mechanical Contractors v. Bignell*, 718 P.2d 971, 974-75 (Alaska 1986), the Court held attorney fees awarded should be reasonable and fully compensatory. Recognizing attorneys only receive fee awards when they prevail on a claim's merits, the contingent nature of workers' compensation cases should be considered to ensure competent counsel is available to represent injured workers. *Id*. The nature, length, and complexity of services performed, the employer's resistance, and the benefits resulting from the services obtained, are considerations when determining reasonable attorney fees for a claim's successful prosecution. *Id*. at 973, 975.

In *Rusch v. Southeast Alaska Regional Health Consortium*, 453 P.3d 784 (Alaska 2019), the Court clarified its holding in *Bignell*, and held "the Board must consider of the factors set out in Alaska Rules of Professional Conduct 1.5(a) when determining a reasonable attorney fee." *Id*. at 798-99. It emphasized, "the Board must consider each factor and either make findings related to that factor or explain why that factor is not relevant." *Id*. at 799. The Court simultaneously noted:

> Alaska Rule of Professional Conduct 1.5(a) sets out eight non-exclusive 'factors

> to be considered in determining the reasonableness of a fee,' specifically:
>
> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal services properly;
>
> (2) the likelihood, that the acceptance of the particular employment will preclude other employment by the lawyer;
>
> (3) the fee customarily shared in the locality for similar legal services;
>
> (4) the amount involved and the results obtained;
>
> (5) the time limitations imposed by the client or by the circumstances;
>
> (6) the nature and length of the professional relationship with the client;
>
> (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
>
> (8) whether the fee is fixed or contingent.

Id. at n. 51. An attorney fee award will only be reversed if it is "manifestly unreasonable." This differs from the "substantial evidence" test used for review of factual determinations. *Id*. at 803.

Rule 1.5(a)(2) considers whether a lawyer undertaking specific representation might preclude being able to take on other work. There is no detriment to a lawyer who takes on a case and because of this does not have time to take on a different case that would involve the same amount of work and similar fees. Instead, the rule considers situations such as a lawyer's inability to take on other clients in the present or future because of conflicts of interests, taking "one off' cases that hold no promise of long-term future employment, and taking on unpopular clients who might significantly negatively impact the lawyers practice, such as a terrorist. *Lawyer Fee Basics: Reasonableness*, 3 Legal Ethics and Malpractice Reporter (Michael Hoeflich, ed. 2022).

> **AS 23.30.150. Commencement of Compensation.** Compensation may not be allowed for the first three days of the disability. . . .

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

(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.

(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.

(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. . . .

(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. When payment of temporary disability benefits is controverted solely on the grounds that another employer or another insurer of the same employer may be responsible for all or a portion of the benefits, the most recent employer or insurer who is party to the claim and who may be liable shall make the payments during the pendency of the dispute. When a final determination of liability is made, any reimbursement required, including interest at the statutory rate, and all costs and attorney fees incurred by the prevailing employer, shall be made within 14 days after the determination.

(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.
>
> (f) If compensation payable under the terms of an award is not paid within 14 days after it becomes due, there shall be added to that unpaid compensation an amount equal to 25% of the unpaid installment. The additional amount shall be paid at the same time as, but in addition to, the compensation, unless review of the compensation order making the award as provided under AS 23.30.008 and an interlocutory injunction staying payments is allowed by the court. The additional amount shall be paid directly to the recipient to the unpaid compensation was to be paid.
> . . . .
>
> (h) The board may upon its own initiative at any time in a case in which payments are being made with or without an award, where right to compensation is controverted, or where payments of compensation have been increased, reduced, terminated, changed, or suspended, upon receipt of notice from a person entitled to compensation, or from the employer, that the right to compensation is controverted, or that payments of compensation have been increased, reduced, terminated, changed, or suspended, make the investigations, cause the medical examinations to be made, or hold the hearings, and take the further action which it considers will properly protect the rights of all parties.
> . . . .
>
> (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.
> . . . .
>
> (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.
> (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.

A controversion notice must be filed "in good faith" to protect an employer from a penalty. *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; *citing Kerley v. Workmen's Comp. App. Bd.*, 481 P.2d 200, 205 (Cal. 1971). The evidence which the employer possessed "at the time of controversion" is the relevant evidence reviewed to determine its adequacy to avoid a penalty. *Harp* at 358. If none of the reasons given for a controversion is supported by sufficient evidence to warrant a Board decision the employee is not entitled to benefits, the controversion was "made in bad faith and was therefore invalid" and a "penalty is therefore required" by AS 23.30.155. *Id.* at 359.

Vue v. Walmart Associates, Inc., 475 P.3d 270, 289-90 (Alaska 2020) held though it is proper for a reviewing body to consider evidence an employer had when it filed a controversion, "an insurer has a continuing obligation to consider new evidence that comes to its attention and to modify or withdraw controversions based on that new evidence or face a possible penalty or referral to the Division of Insurance." *Vue* requires a review to see if a controversion remains appropriate as a matter of law.

A workers' compensation award accrues legal interest from the date it should have been paid. *Land and Marine Rental Co. v. Rawls*, 686 P.2d 1187, 1192 (Alaska 1984).

The Fund is not liable for payment of compensation or benefits until three conditions are satisfied: 1) the employer fails to pay compensation or benefits, 2) a claim for payment by the Fund is filed, and 3) the employer has no defenses that the Fund can assert. *Workers' Comp. Benefits Guaranty Fund v. West*, AWCAC Dec. No. 145 (Jan. 20, 2011) at 19.

> **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.

"The concept of disability compensation rests on the premise that the primary consideration is not medical impairment as such, but rather loss of earning capacity related to that impairment." *Vetter v. Alaska Workmen's Compensation Board,* 524 P.2d 264, 266 (Alaska 1974). An award of

compensation must be supported by a finding the claimant suffered a decrease in earning capacity due to a work-connected injury or illness. *Id*.

> **AS 23.30.190. Compensation for permanent partial impairment; rating guides.** (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.

When a claim for benefits is premature, it should be held in abeyance until it is timely, or it should be dismissed with notice it may be filed at a later date when it becomes timely. *Egemo v. Egemo Const. Co*., 998 P.2d 434, 441 (Alaska 2000) (applied in *Bankhead v. Yardarm Knot, Inc*., AWCB Decision No. 13-0084 (July 18, 2013).

> **AS 23.30.200. Temporary partial disability**. (a) In case of temporary partial disability resulting in decrease of earning capacity the compensation shall be 80 percent of the difference between the injured employee's spendable weekly wages before the injury and the wage-earning capacity of the employee after the injury in the same or another employment, to be paid during the continuance of the disability, but not to be paid for more than five years. Temporary partial disability benefits may not be paid for a period of disability occurring after the date of medical stability. . . .

> **AS 23.30.230. Persons not covered.** (a) The following persons are not covered by this chapter: . . .
> . . . .
>
> (3) harvest help and similar part-time or transient help;
> . . . .
>
> (12) a person employed as an independent contractor; a person is an independent contractor for the purposes of this section only if the person
>
> (A) has an express contract to perform the services;
>
> (B) is free from direction and control over the means and manner of providing services, subject only to the right of the individual for whom, or

entity for which, the services are provided to specify the desired results, completion schedule, or range of work hours, or to monitor the work for compliance with contract plans and specifications, or federal, state, or municipal law;

(C) incurs most of the expenses for tools, labor, and other operational costs necessary to perform the services, except that materials and equipment may be supplied;
(D) has an opportunity for profit and loss as a result of the services performed for the other individual or entity;

(E) is free to hire and fire employees to help perform the services for the contracted work;

(F) has all business, trade, or professional licenses required by federal, state, or municipal authorities for a business or individual engaging in the same type of services as the person;

(G) follows federal Internal Revenue Service requirements by

(i) obtaining an employer identification number, if required;

(ii) filing business or self-employment tax returns for the previous tax year to report profit or income earned for the same type of services provided under the contract; or

(iii) intending to file business or self-employment tax returns for the current tax year to report profit or income earned for the same type of services provided under the contract if the person's business was not operating in the previous tax year; and

(iv) meets at least two of the following criteria: the person is responsible for the satisfactory completion of services that the person has contracted to perform and is subject to liability for a failure to complete the contracted work, or maintains liability insurance or other insurance policies necessary to protect the employees, financial interests, and customers of the person’s business;

(v) the person maintains a business location or a business mailing address separate from the location of the individual for whom, or the entity for which, the services are performed;

(vi) the person provides contracted services for two or more different customers within a 12-month period or engages in any kind of business advertising, solicitation, or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.

AS 23.30.395. Definitions. In this chapter,

. . . .

(16) "disability" means incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment;

. . . .

(19) "employee" means a person . . . who, under a contract of hire, express or implied, is employed by an employer.

(20) "employer" means . . . a person employing one or more persons in connection with a business or industry coming within the scope of this chapter and carried on in this state;

. . . .

(24) "injury means accidental injury . . . arising out of in the course of employment

8 AAC 45.177. Claims against the workers' compensation benefits guaranty fund. (a) Upon receipt of a report of occupational injury or illness involving an injury to an employee employed by an employer who appeared to be uninsured at the time of the injury, the division shall immediately notify the division's special investigations section and the administrator of the workers' compensation benefits guaranty fund in the division's Juneau office.

(b) The division shall send a letter to the parties advising the parties that the employer may not have had workers' compensation insurance in effect at the time of the employee's injury. In the letter, the division shall also advise the parties of the rights and remedies available to the injured worker under the Act if the employer was not insured.

(c) A workers' compensation claim shall be filed against the fund within the same time and in the same manner as a claim filed against the employer in accordance with AS 23.30.105 , AS 23.30.110 , and 8 AAC 45.050. The division shall serve the claim upon the fund's administrator and advise the parties that copies of all future documents filed with the division are also to be served upon the fund's administrator.

(d) The fund is subject to the same claim procedures under the Act as all other parties.

(e) The fund may not be obligated to pay the injured worker's claim unless the

(1) employee and employer stipulate to the facts of the case, including that the employee's claim is compensable, which has the effect of an order under 8

> AAC 45.050(f) , or the board issues a determination and award of compensation; and
>
> (2) the employer defaults upon the payment of compensation for a period of 30 days after the compensation is due.
>
> (f) In case of default by the employer in the payment of compensation due under an award and payment of the awarded compensation by the fund, the board shall issue a supplementary order of default. The fund shall be subrogated to all the rights of the employee and may pursue collection of the defaulted payments under AS 23.30.170 .
>
> (g) In this section, "fund" means the worker's compensation benefits guaranty fund (AS 23.30.082 (a)). (Eff. 2/28/2010, Register 193).

ANALYSIS

1) Was Claimant an Employee or Independent Contractor at the time of his injury?

In 2018, the legislature set forth its criteria for determining whether an injured worker was an independent contractor exempt from coverage under the Act. AS 23.30.230(a)(12). Its first requirement requires the Defendant and Claimant have an express contract. Both parties testified credibly that no contract exists simply a verbal agreement, therefore no express contract existed between the parties. AS 23.30.230(a)(12)(A); AS 23.30.122. Other statutory standards defining an independent contractor are not met either. For example, Claimant was not free from direction and control over the means and manner of providing services because as Claimant and Defendant testified, Claimant was given daily listed tasks when he arrived at work. AS 23.30.230(a)(12)(B). Similarly, Defendant paid Claimant an hourly rate for work performed, so Claimant would not incur the expenses of any operational costs as an independent contractor would. AS 23.30.230(a)(12)(C). The statute continues listing many other criteria an individual must meet in order to be considered an independent contractor, but as written all the criteria must be met as opposed to weighed. Therefore, this decision need not address every single criteria if even one is not met. Claimant was not an independent contractor under the legislature's criteria. Having determined that Defendant was Claimant's employer, and he was its employee as defined in the Act, this decision henceforth will refer to Claimant as "Employee," and Defendant as "Employer."

2) Did Employee's injury arise out of and in the scope of his employment?

"Causation" is a primary issue in Employee's claim. If his cervical spine injury and need to treat it did not arise out of and in course of his employment with Employer, then the inquiry ends here -- Employer would not be liable for benefits. AS 23.30.010(a); AS 23.30.395(24).

"The substantial cause," standard of proof applies to this case, as does the presumption of compensability. AS 23.30.010(a); AS 23.30.120(a)(1). To raise the presumption that his injury arose out of and in the course of his employment, Employee must, without regard to credibility, make preliminary link between his injury and his need for treatment and any related disability.

At the first step of the analysis, Employee must show a preliminary link between his cervical spine symptoms and his employment. *McGahuey*; *Smith*; *Cheeks*. At this stage neither credibility nor evidence's weight is considered. *Resler*. Employee successfully raises the presumption through his testimony describing the work injury in which he felt a pop or kink in his neck after lifting a windshield into place on a vehicle. He thought nothing of it at the time, but a few days later he felt pain in his neck that he initially believed was due to sleeping on it wrong. *Wolfer*. Drs. Sapp's and Bursell's along with PA-C Lindquist's opinions that the cervical spine symptoms and need for medical treatment were caused by the work injury also raises the presumption. *Smallwood.*

Because Employee raised the presumption, Employer must rebut it and may do so with substantial evidence that either: (1) provides an alternative explanation excluding work-related factors as a substantial cause of the disability; or (2) directly eliminates any reasonable possibility employment was a factor in causing the disability. *Tolbert*; *Huit.* Substantial evidence is the amount of relevant evidence a reasonable mind might accept as adequate to support a conclusion. *Miller*. Again neither credibility nor the weight of the evidence is considered at the second step.

Neither Employer nor the Fund produced any medical evidence to rebut presumption of compensability. Employer claims Employee is not credible since he initially told his doctors he thought he slept on his neck wrong. Employer offered the testimony of Shane Hooten who

remembered vaguely Employee piercing his finger on a crab leg in the fall of 2024. However, there is no mention or indication an infection persisted as none of the medical reports indicate such. Employer also claimed any injury to Employee's neck was likely pre-existing however, no medical reports were submitted indicating such. Therefore, Employer has failed to rebut the presumption of compensability by providing an alternative explanation as the substantial cause of the disability. Employer was also unable to provide evidence that directly eliminates any reasonable possibility employment was a factor in causing the disability. Employer's own testimony corroborates Employee was installing windshields on the day of the injury. Because there is no evidence rebutting the presumption, Employee prevails. The work injury was the substantial cause of Employee's disability and need for medical treatment. *Williams.*

3) Is Claimant entitled to medical and transportation costs?

An injured worker is entitled to a hearing and a prospective determination on whether medical treatment for his injury is compensable. *Summers*. Here, Employee seeks such a determination and requests authorization to continue his treatment with Juneau Bone and Joint Center, where he previously treated, for additional medical care as his injury may require. He is presumed to be entitled to continuing medical care, *Carter*, and attaches the presumption with PA-C Lindquist's opinion and Dr. Bursell's opinion Employee would benefit from epidural steroid injections, and that Employee was unable to receive said injections because they were not covered under workers' compensation. *Cheeks*. Since neither the Fund nor Employer offer substantial evidence to rebut the presumption, the medical treatment Employee seeks will be awarded. *Koons*.

4) Is Claimant entitled to TTD benefits?

Employee is presumed to be entitled to the disability benefits he seeks. *Meek*. He attaches the presumption with his testimony of being injured while working for Employer, and of being unable to work thereafter due to his pain. Further, Dr. Bursell provided off-work notes for Employee from the date of injury until June 30, 2025. *Cheeks*. Employer rebuts the presumption with evidence Employee advertised on Facebook his rock chip repair business,

implying he returned to work in some capacity around April 2, 2025. *Miller*. Employee is now required to prove he is entitled to TTD benefits by a preponderance of the evidence. *Koons*.

Employer was generally correct in its contention that Employee attempted other employment by advertising his side-business on Facebook. However, Employee's testimony showed he performed one rock chip repair for one client, but the business itself never got off the ground. It is reasonable to understand Employee attempted despite his injury to work as he had received no compensation benefits for three months and was in a state of desperation to generate any revenue possible. In the absence of medical evidence to the contrary and relying on Dr. Bursell's opinion that Employee could not work from the date of his injury until June 30, 2025 proves Employee was temporarily totally disabled. However, TTD and TPD benefits are mutually exclusive. It is unclear what week Employee performed the rock chip repair. He will be required to present the date and amount he was paid for his work to the adjuster. Therefore, Employee is entitled to TTD benefits from January 10, 2025 until June 30, 2025, excluding the week(s) he performed the rock chip repair work. AS 23.30.185.

5) Is Claimant entitled to TPD benefits?

Employee also request TPD benefits, presumably for the period of time he was performing his rock chip repair business. AS 23.30.200(a). Employee contends he was only able to perform rock chip repair because of his disability. He testified he performed one rock chip repair and was paid in cash. This creates a factual dispute to which the presumption analysis applies. *Meek*. Disability is not necessarily a complex medical issue. *Wolfer*. Employee raises the presumption with his testimony and his medical records. He said his pain restricted his ability to work full-time and he needed to make money so he decided to attempt rock chip repair on windshields. His provider's medical records show he was never released to full or part-time work. *Cheeks*; *Resler*.

The TTD analysis from above is incorporated here by reference and Employee's claim for TPD benefits for the week(s) he was performing his rock chip repair business and being compensated will be granted. Having raised the presumption with his earnings testimony, Employee is entitled to TPD benefits for the week(s) he received compensation as part of his rock chip

business. Employee will be ordered to provide to the adjuster the dates he performed work as part of the business and his compensation during that period of time for calculation of his TPD rate.

6) Is Claimant entitled to PPI benefits?

Employee contends he is entitled to a PPI rating when he is medically stable. AS 23.30.190(a). He supports his position with Dr. Bursell's opinion that Employee is not stable. Employee's treatment with Dr. Bursell included steroid injections and follow up appointments to address their efficacy prior to rendering a stability opinion. The undisputed medical evidence shows he is not yet medically stable; PPI ratings are generally not performed until the injured body part or function is medically stable. *Rogers & Babler*. Based on Dr. Bursell's opinion Employee is not medically stable, this decision's finding Employee's injury is compensable, Employee is entitled to PPI benefits when he is medically stable and receives a rating. Employee's PPI claim will be held in abeyance. *Egemo.*

7) Did Employer unfairly or frivolously controvert Employee's claim?

For a Controversion Notice to be filed in good faith, Employer or the Fund must possess sufficient evidence in support of the controversion that, if Employee did not introduce evidence in opposition to the controversion, the panel would find that Employee was not entitled to benefits. *Harp*. Evidence in Employer's possession at the time of controversion is the relevant evidence reviewed to determine its adequacy to avoid a penalty. *Id*. If none of the reasons given for a controversion are supported by sufficient evidence to warrant a decision that the claimant is not entitled to benefits, the controversion was made in bad faith, was invalid and a penalty is required. *Id*.

On April 29, 2025, the Fund controverted all benefits from January 13, 2025, on the basis the injured worker must have been an employee of an uninsured employer at the time of injury. Since the Fund's stated reason could support a legal conclusion Employee was not entitled to disability or indemnity benefits, the inquiry then becomes the factual evidence in the Fund's possession at the time of controversion. *Vetter*; *Harp*.

At the time the Fund filed its controversion it had legally supportable argument that Employee was an independent contractor. *Vue.* If Employee was an independent contractor then he would not be covered under the Act. AS 23.30.230. Since the Fund's rationale for the controversion, that Employee was an independent contractor on the reported date of injury, was grounded on the evidence before it at the time, it was neither frivolous nor unfair.

8) Is Claimant entitled to penalties and interest?

Employee seeks an order awarding penalties and interest. The Fund does not oppose interest on past benefits but contends it is not liable for penalties. Employee seeks a 25 percent penalty on all benefits Employer owes him. AS 23.30.155(e). It is undisputed Employer paid Employee no disability benefits or medical bills. AS 23.30.155(b), (e).

a) Penalty

Penalties are imposed when employers fail to controvert in good faith or fail to pay compensation when due. AS 23.30.155(e); *Haile*. To avoid a penalty, a controversion must be filed in good faith. *Abood; Harp*. For a controversion to be filed in good faith, the employer or the Fund must possess sufficient evidence in support of the controversion that, if the claimant does not introduce evidence in opposition to the controversion, the claimant would not be entitled to benefits. *Id.* "An insurer has a continuing obligation to consider new evidence that comes to its attention and to modify or withdraw controversions based on that new evidence." *Vue*. The Act requires that a controversion notice state "the type of compensation and all grounds on which the right to compensation is controverted." AS 23.30.155(a)(5). Controversions thus give notice of disputed issues, which an employee can use to evaluate whether to pursue a claim. *Vue.*

Employers are required to pay an additional amount equal to 25 percent of all unpaid compensation installments that are not paid when due. AS 23.30.155(e); *Stafford*. Although Employer is obligated to pay any penalties awarded, that obligation does not extend to the Fund. *West*. Based on the analysis above the Fund's April 29, 2025 controversion was neither unfair nor frivolous, and therefore, no penalty will be assessed for late paid compensation.

b) Interest

Employee prevailed on some issues in his claim. This decision will award him TTD and TPD benefits, medical benefits, and mileage. He is entitled to statutory interest on all benefits this decision awards him. Similarly, Employee's medical providers are also entitled to interest on benefits awarded in this decision that were not paid when due, in accordance with the Act. AS 23.30.155(p).

9) Is Claimant entitled to attorney's fees and costs?

Employee seeks an award of reasonable attorney fees and costs. Since Employer resisted providing benefits by defending against Employee's claim, necessitating this hearing, an award of reasonable fees is appropriate. *Moore*. Pursuant to *Rusch*, the factors set for under Rule 1.5(a) are consulted to arrive at a reasonable, fully compensatory attorney fee award. *Bignell*.

Franklin has billed his time at $500 per hour. He has been awarded fees based on that hourly rate previously by a panel; neither Employer nor the Fund objected to that rate, or the hours billed. Franklin is well-known among both the workers' compensation bar and workers' compensation hearing officers for his work representing the State of Alaska and more recently representing injured workers. He has over 15 years' experience as an attorney and over five years' experience practicing workers' compensation law. Rule 1.5(a)(7). His hourly billing rate is comparable to billing rates customarily awarded to similarly experienced attorneys in workers' compensation cases. Rule 1.5(a)(3). Virtually all fees in workers' compensation cases are contingent, and here, Employee had to prevail on the employer-employee relationship issue and the Fund and Employer's statutory defense that he was an independent contractor, before the merits of his claim could be decided. Employee's success on each of these issues was not certain. Franklin's rate, while high, is not inappropriate given the contingent nature of the representation. Rule 1.5(a)(8).

This case presented a relatively rare employment status issue and required a specific presentation of facts to assert compensability of Employee's injury that is unusual in most workers'

compensation cases. Rule 1.5(a)(1). Employee's case as Franklin astutely pointed out in his brief, would hinge not only on the facts but on credibility determinations. Taking on Employee's case required zealous representation but would not necessarily preclude Franklin from taking on other cases concurrently. Rule 1.5(a)(2).

Franklin was successful in securing continued medical treatment for Employee's injury, which is an obviously valuable benefit under the Act. He also secured a TPD and TTD award and interest. He was successful in every aspect [penalty?] of this matter. Rule 1.5(a)(4). Considering the amounts involved and the results obtained, along with the other previously discussed factors under Rule 1.5, Employee will be awarded all his claimed fees and costs. *Id.*; *Bignell*.

CONCLUSIONS OF LAW

1) Claimant was an employee covered under the Act.
2) Employee's injury arose out of and in the course of his employment.
3) Employee is entitled to medical and related transportation benefits.
4) Employee is entitled to TTD benefits as set forth above.
5) Employee is entitled to TPD benefits.
6) Employee is not entitled to PPI benefits at this time.
7) Employer did not unfairly or frivolously controvert Claimant's claim.
8) Employee is not entitled to a penalty
9) Employee is entitled to interest.
10) Employee is entitled to attorney's fees and costs.

ORDER

1) Employee's March 26, 2025 claim is granted in part and denied in part.
2) Employer is directed to pay for Employee's medical treatment costs and related transportation expenses, pursuant to the Act, Alaska Medical Fee Schedule and this decision.

3) Employer is directed to pay and TTD benefits to Employee from January 13, 2025 through June 30, 2025 with the exception of the week(s) Employee performed work as part of his rock chip repair business.

4) Employee's request for TPD is granted in accordance with this decision.

5) Employee is ordered to provide the adjuster with the dates he worked for his rock chip repair business and the compensation he received during that time period.

6) Employee's request for PPI is held in abeyance.

7) Employee's request for a penalty is denied

8) Employee's request for interest is granted.

9) Employee's request for an attorney fee and cost award is granted. Employer is ordered to pay Franklin $19,095.00 in full, reasonable attorney fees and costs.

Dated in Juneau, Alaska on November 3, 2025.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Kyle Reding, Designated Chair

/s/
Mike Dennis, Member

/s/
Brad Austin, 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 Timothy Bradley, employee / claimant v. Juneau Glass, employer; Benefits Guaranty Fund, insurer / defendants; Case No. 202502469; dated and filed in the Alaska Workers' Compensation Board's office in Juneau, Alaska, and served on the parties by certified US Mail on November 3, 2025.

/s/
Trisha Palmer, Workers' Compensation Technician