

# ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

CASEY KOBERG,	)	
	)	
Employee,	)	
Claimant,	)	
	)	FINAL DECISION AND ORDER
v.	)	ON RECONSIDERATION
	)	
EVERTS AIR FUEL, INC.,	)	AWCB Case No. 202101408
	)	
Employer,	)	AWCB Decision No. 25-0084
and	)	
	)	Filed with AWCB Fairbanks, Alaska
NATIONAL UNION FIRE INS. CO. OF	)	on December 3, 2025
PITTSBURG,	)	
	)	
Insurer,	)	
Defendants.	)	
	)	

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Everts Air Fuel, Inc.'s and National Union Fire Insurance Company of Pittsburg's (Employer) July 30, 2025 petition for reconsideration was heard in Fairbanks, Alaska on October 16, 2025, a date selected on August 15, 2025. Employer's July 30, 2025 petition gave rise to this hearing. Attorney Patricia Huna represented Casey Koberg (Employee). Attorney Krista Schwarting represented Employer. Previous decision in this case include *Casey Koberg v. Everts Air Fuel, Inc.*, AWCB Dec. No. 23-0017 (March 10, 2023) (*Koberg I*) (denied Employer's petition seeking review of the Reemployment Benefits Administrator's (RBA) designee's eligibility determination), and *Casey Koberg v. Everts Air Fuel, Inc.*, AWCB Decision No. 25-0046 (July 23, 2025) (*Koberg II*) (awarded temporary total disability (TTD), permanent partial impairment (PPI), reemployment stipend, and continuing medical and transportation benefits, as well as

interest and attorney fees and costs). The record closed upon receipt of Employer's objections to Employee's claimed attorney fees and costs on October 20, 2025.

### ISSUES

Employer contends *Koberg II* did not state specific dates for which TTD benefits were owed and this panel should make a "concrete determination" on dates it is ordering TTD to avoid confusion in the payment process. It contends it has also paid reemployment stipend benefits in the past and since Employee is not entitled to both types of benefits at the same time, previously paid stipend benefits should be reclassified.

Employee attaches a breakdown of benefits payments to his hearing brief that he contends he is owed.

#### **1) For which dates are Employee owed benefits?**

Employer contends *Koberg II*'s order for stipend benefits must also include a determination of whether Employee remains in the reemployment process given his efforts to retrain himself outside that process with Veterans Affairs (VA) vocational rehabilitation benefits. It further contends this panel must decide whether Employee is actively in a reemployment plan and contends if he is not actively in a reemployment plan, whether he remains in the workers' compensation reemployment process.

Employee contends there is no basis in law or fact to conclude he has rehabilitated himself outside the workers' compensation reemployment process. He contends he is currently in the vocational rehabilitation process and working on a plan and the only statutory requirement for him to remain in the reemployment process is for him to cooperate with the process and his reemployment counselor. Employee further contends it is improper for Employer to now raise the issues it does since these issues were not raised at the hearing on the merits of his claim.

#### **2) Should *Koberg II*'s reemployment benefits award be reconsidered?**

Employee claims additional attorney fees expended in response to Employer's instant petition.

Employer does not object to specific items listed but rather contends that any fee award be carefully tailored to any benefits awarded on reconsideration.

**3) Is Employee entitled to additional attorney fees?**

FINDINGS OF FACT

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

- 1) On February 2, 2021, Employee was knocked off a K-loader at work, fell ten feet, landed on his head on concrete, lost consciousness, and woke up on the ground in a “big pool of blood.” (*Koberg II*).
- 2) Employee underwent extensive treatment for head and back injuries, including acute thoracic compression fractures, traumatic brain injury, and intractable chronic post-traumatic migraine headache. (*Koberg II*).
- 3) Following the injury, Employer paid Employee TTD benefits from February 6, 2021 through September 23, 2021, totaling \$10,682.13; temporary partial disability (TPD) benefits from September 24, 2021 through September 30, 2021, totaling \$87.48; a lump-sum PPI benefit of \$5,310 on March 2, 2022; and reemployment stipend benefits from August 16, 2022 through December 2, 2022, totaling \$4,429.48. Employee’s weekly TTD rate is \$325.11, and his reemployment stipend rate is \$284.47. (Legacy Compensation Report, September 25, 2025). Employee’s daily TTD rate is \$46.44 (\$325.11 weekly TTD rate / 7 days per week). (Observations).
- 4) From September 24, 2021 through January 21, 2022, Employer employed Employee in a modified duty capacity where he was paid his regular wages. (*Koberg I*).
- 5) On February 18, 2022, Employer’s medical evaluator (EME) assessed a three percent whole person thoracic spine PPI rating. (*Koberg II*).
- 6) On August 16, 2022, Employee was found eligible for reemployment benefits. His vocational rehabilitation specialist has been Danial LaBrosse (LaBrosse) throughout the pendency of these proceedings. (*Koberg I*; *Koberg II*).
- 7) A reemployment plan has never been approved by the RBA. (Observations).

8) On October 4, 2022, Employee testified he worked a part-time job for three months, from May until August 15, 2022, doing grounds maintenance for the fairgrounds. (*Koberg II*).

9) On June 2, 2024, the SIME physician found the causes of Employee's disability and need for medical treatment included the work injury, which resulted in multiple thoracic spine fractures, concussion, and scalp laceration; chronic migraine, which was a pre-existing condition aggravated by the work injury; chronic back pain, which was aggravated by the thoracic spine fractures from the work injury; post-concussive syndrome with symptoms including persistent headaches, cognitive difficulties, and sensitivity to light and sound; and depression, possibly secondary to chronic pain and disability. He opined that the work injury aggravated Employee's pre-existing chronic migraines, which resulted in increased severity and frequency of the headaches and significantly impacted Employee's daily activities and quality of life. The increased severity and frequency of the headaches due to the work injury was the substantial cause of Employee's disability and need for medical treatment, in his opinion. According to the SIME physician, Employee's work-related disability was continuing since he still experiences daily headaches, chronic back pain, and cognitive difficulties that impact his ability to perform daily activities and work. He opined medical stability was reached on May 20, 2024, since no further improvement was expected from additional medical care. The SIME physician thought Employee required continuing treatment, including Ajovy for migraine management, ongoing physical therapy and chiropractic care to manage back pain, regular neurological follow-ups for headache management, acupuncture and massage therapy as adjunct treatments, and psychological counselling to address depression and coping strategies for chronic pain. He thought that these treatments will help manage symptoms and improve functionality, provide temporary relief from chronic pain, aid in the recovery of individual pain episodes, limit the progression of symptoms, support a "potential" return to work, and enable continued participation in educational activities, future work and reemployment efforts. The SIME physician opined work restrictions included avoiding prolonged standing, heavy lifting, and activities that exacerbated headaches and back pain. He rated Employee as having incurred a four percent whole person impairment for headaches. (*Koberg II*).

10) On July 23, 2025, *Koberg II* afforded the SIME physician's opinions the most weight versus other physicians' opinions in the medical record and concluded Employee was entitled to

additional TTD, reemployment stipend and PPI benefits with interest. It also denied Employee's TPD claim for his work at the fairgrounds. (*Id.*).

11) On July 30, 2025, Employer filed its instant petition for reconsideration. (Employer Petition, July 30, 2025).

12) On August 15, 2025, a designee informed the parties that the *Koberg II* panel would hear Employer's July 30, 2025 petition for reconsideration. A written record hearing was scheduled for October 16, 2025. (Prehearing Conference Summary, August 15, 2025).

13) In a September 8, 2025 progress report, LaBrosse informed the RBA that the previously selected vocational objective of Recreation Center Director was never pursued because Employee started working for a heating company in January 2025 as a Plumber Apprentice. Employee reported that the company wanted him to obtain a certification so he can take call outs for boiler repairs on his own and was sending him to a workshop to learn new skills to get him closer to becoming certified as a Heating Furnace Repair Technician. Employee still needed some tools and was willing to consider this as a reemployment plan with on-the-job training. (Labrosse Plan Progress report, September 8, 2025).

14) On October 10, 2025, Employee claimed an additional \$3,650 in attorney fees expended in response to Employer's petition. (Affidavit of Attorney Fees, October 10, 2025).

15) On October 20, 2025, Employer filed its response to Employee's October 10, 2025 attorney fee affidavit and did not object to specific items listed but rather contended that any fee award be carefully tailored to any benefits awarded on reconsideration. (Response to Attorney Fee Affidavit, October 17, 2025).

#### PRINCIPLES OF LAW

##### **AS 23.30.041. Rehabilitation and reemployment of injured workers.**

. . . .

(j) The employee, rehabilitation specialist, and the employer shall sign the reemployment benefits plan. If the employer and employee fail to agree on a reemployment plan, either party may submit a reemployment plan for approval to the administrator; the administrator shall approve or deny a plan within 14 days after the plan is submitted . . . .

(k) Benefits related to the reemployment plan may not extend past two years from date of plan approval or acceptance, whichever date occurs first, at which time the

benefits expire. If an employee reaches medical stability before completion of the plan, temporary total disability benefits shall cease, and permanent impairment benefits shall then be paid at the employee's temporary total disability rate. If the employee's permanent impairment benefits are exhausted before the completion or termination of the reemployment process, the employer shall provide compensation equal to 70 percent of the employee's spendable weekly wages, but not to exceed 105 percent of the average weekly wage, until the completion or termination of the process . . . . If permanent partial disability or permanent partial impairment benefits have been paid in a lump sum before the employee requested or was found eligible for reemployment benefits, payment of benefits under this subsection is suspended until permanent partial disability or permanent partial impairment benefits would have ceased, had those benefits been paid at the employee's temporary total disability rate, notwithstanding the provisions of AS 23.30.155(j). . . .

**AS 23.30.130. Modification of awards.** (a) Upon its own initiative, or upon the application of any party in interest on the ground of a change in conditions . . . or because of a mistake in its determination of a fact, the board may, before one year after the date of the last payment of compensation benefits . . . review a compensation case under the procedure prescribed in respect of claims in AS 23.30.110. . . .

**AS 23.30.145. Attorney fees.**

. . . .

(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.

**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.** (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 compensation is payable in a single lump sum, except as otherwise provided in AS 23.30.041 . . . .

### ANALYSIS

#### **1) For which dates are Employee owed benefits?**

TTD is paid to an employee during the continuance of the disability but may not be paid for any period of disability after the date of medical stability. AS 23.30.185. The Act further specifies the order in which compensation types will be paid when an employee is eligible for reemployment benefits. If an employee reaches medical stability before completion of a reemployment plan, TTD benefits shall cease, and PPI benefits shall then be paid at the employee's TTD rate. If the employee's PPI benefits are exhausted before the completion or termination of the reemployment process, the employer shall provide reemployment stipend benefits. AS 23.30.041(k).

*Koberg II* afforded the SIME physician's opinions the most weight versus other physicians' opinions in the medical record and according to that physician, Employee was medically stable on May 20, 2024 but his work-related disability was continuing since he was still experiencing daily headaches, chronic back pain, and cognitive difficulties that impacted his ability to perform daily activities and work.

#### ***September 24, 2021 through January 21, 2022***

Following the injury, Employer paid Employee TTD benefits from February 6, 2021 through September 23, 2021. It next employed Employee in a modified duty capacity from September 24, 2021 through January 21, 2022, a period that LaBrosse dubbed a failed work attempt and was addressed in *Koberg I*. Employer paid \$87.48 in TPD benefits during the first week of this period; otherwise, Employee was paid his regular wages, so he is not owed any further compensation for this period.

#### ***January 22, 2022 through May 14, 2022***

Employee is owed TTD for sixteen weeks and one day for this period, plus interest. AS 23.30.185.

***May 15, 2022 through August 15, 2022***

Employee was employed part-time at the fairgrounds and *Koberg II* denied Employee's TPD claim for that job. Therefore, Employee is not owed compensation for this period.

***August 16, 2022 through December 2, 2022***

Employer paid Employee reemployment stipend for 15 weeks and four days. According to the SIME physician, Employee remained disabled and his post-traumatic migraine headache condition was not yet medically stable. Therefore, reemployment stipend paid should be recharacterized as TTD and Employee is owed the difference between is TTD and stipend rates, plus interest. AS 23.30.041(k); AS 23.30.185.

***December 3, 2022 through May 20, 2024***

Temporary total disability benefits may not be paid for any period of disability occurring *after* the date of medical stability. AS 23.30.185 (italics added). Employee's post-traumatic migraine headache condition became medically stable on May 20, 2024. Therefore, he is owed TTD for 76 weeks and four days, plus interest. *Id.*

***May 21, 2024 through September 11, 2024***

If PPI benefits were paid in a lump sum before an employee was found eligible for reemployment benefits, payment of reemployment stipend benefits is suspended until PPI benefits would have ceased, had those benefits been paid at the employee's TTD rate. AS 23.30.041(k). On March 2, 2022, Employer paid Employee the \$5,310 lump sum thoracic spine PPI benefit. Subsequently, on August 16, 2022, Employee was found eligible for reemployment benefits. Therefore, Employer will be credited for periodic PPI payments prior to payment of reemployment stipend.



Employer's \$5,310 PPI payment represents 16 weeks and two days ((16 weeks x \$325.11 weekly TTD rate = \$5,201.76) + (two days x \$46.44 daily TTD rate = \$92.88) = \$5,294.64) at Employee's TTD rate, and leaves Employer with a \$15.36 (\$5,310 - \$5,294.64) PPI payment credit. AS 23.30.041(k).

***September 12, 2024 through February 10, 2025***

*Koberg II* ordered Employer to pay a four percent whole person PPI benefit, or \$7,080, for aggravation of Employee's migraine headaches. This amount remains unpaid. Applying the \$15.36 PPI payment credit above leaves a PPI balance of \$7,064.64 (\$7,080 - \$15.36).

Employee's \$7,064.64 PPI benefit represents 21 weeks and five days ((21 weeks x \$325.11 weekly TTD rate = \$6,827.31) + (five days x \$46.44 daily TTD rate = \$232.20) = \$7,059.51) at Employee's TTD rate, which would leave Employer still owing \$5.13 (\$7,064.64 - \$7,059.51), once paid. Employee is owed these periodic PPI payments, plus interest. AS 23.30.041(k).

***February 11, 2025 and continuing***

Employee's PPI benefits having now been exhausted, he is owed reemployment stipend from February 10, 2025, plus the \$5.13 owed from above, and continuing, plus interest. AS 23.30.014(k).

**2) Should *Koberg II*'s reemployment benefits award be reconsidered?**

Employer cites no statutory or decisional authority that stands for the proposition that Employee's use of his VA vocational rehabilitation benefits removed him from the workers' compensation reemployment process, and none is independently known. *Koberg II* rejected Employer's contention that Employee had not cooperated with the reemployment process and awarded additional reemployment stipend benefits. In other words, Employee's entitlement to reemployment benefits has already been decided and Employee correctly points out that Employer is improperly attempting to relitigate this issue. Employer alleges no mistake of fact or a change in conditions that would allow for modification of *Koberg II*, and neither does it allege a mistake of law such that the award of reemployment benefits in *Koberg II* should be

reconsidered. Therefore, Employer's petition seeking reconsideration of *Koberg II*'s reemployment benefits award will be denied.

**3) Is Employee entitled to additional attorney fees?**

The attorney fee analysis set forth in *Koberg II* remains applicable here as a continuance of that litigation. Employee submitted an additional \$3,650 in fees expended in response to Employer's instant petition and since this decision clarifies and preserves the substantial benefits previously awarded, Employee will be awarded the additional attorney fees he seeks. AS 23.30.145(b).

CONCLUSIONS OF LAW

- 1) Employee is owed benefits and interest for the dates set forth above.
- 2) *Koberg II*'s reemployment benefits award should not be reconsidered.
- 3) Employee is entitled to \$3,650 additional attorney fees.

ORDERS

- 1) Employer's July 30, 2025 petition is granted in part and denied in part.
- 2) Specific dates for which Employee is owed benefits are set forth above. Employer shall pay Employee benefits, interest and attorney fees accordingly.
- 3) Reconsideration of *Koberg II*'s reemployment benefit award is denied.

Dated in Fairbanks, Alaska on December 3, 2025.

ALASKA WORKERS' COMPENSATION BOARD

\_\_\_\_\_  
/s/  
Robert Vollmer, Designated Chair

\_\_\_\_\_  
/s/  
Lake Williams, 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 CASEY KOBERG, employee / claimant v. EVERTS AIR FUEL, INC., employer; NATIONAL UNION FIRE INS. CO. OF PITTSBURG, insurer / defendants; Case No. 202101408; dated and filed in the Alaska Workers' Compensation Board's office in Fairbanks, Alaska, and served on the parties by certified US Mail on December 3, 2025.

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/s/

CASEY KOBERG v. EVERTS AIR FUEL, INC.

Trisha Palmer, Workers' Compensation Technician