

ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

LAURIE ZUBIA,)	
)	
Employee,)	
Claimant,)	
)	FINAL DECISION AND ORDER
v.)	
)	AWCB Case No. 201911816
HOPE COMMUNITY RESOURCES, INC.,)	
)	AWCB Decision No. 25-0085
Employer,)	
and)	Filed with AWCB Anchorage, Alaska
)	on December 10, 2025.
BERKSHIRE HATHAWAY HOMESTATE)	
INSURANCE CO.,)	
)	
Insurer,)	
Defendants.)	

Hope Community Resources, Inc.'s (Employer) July 28, 2025 petition for recoupment of an overpayment was heard in Anchorage, Alaska on November 4, 2025, a date selected on September 5, 2025. An August 8, 2025 hearing request gave rise to this hearing. Laurie Zubia (Employee) represents herself, appeared and testified on her own behalf. Attorney Michelle Meshke appeared and represented Employer and its insurer. Katie Wilhem, a claims adjuster, testified on behalf of Employer at hearing. On September 17, 2025, Employer was granted a temporary stay on the issuance of a permanent partial impairment (PPI) payment until after Employer's petition for recoupment of overpayment could be heard on November 4, 2025. (*Zubia v. Hope Community Resources, Inc.* AWCB Dec. No 25-0060, September 17, 2025 (*Zubia I*)). On November 18, 2025, the record was reopened to allow Employer to provide accurate calculations for its overpayment amount; the record closed on November 24, 2025.

ISSUE

Employer contends it has overpaid Employee and is entitled to recoup its overpayment amount of \$98,576.96. It contends under the Alaska Workers' Compensation Act (Act) Employer is required to issue a PPI payment to Employee, but due to the overpayment, Employer requests an order allowing it to withhold the PPI payment in its entirety and allow Employer to recoup 50 percent of any future indemnity payments owed to Employee.

Employee contends she is not responsible for Employer miscalculating her indemnity benefits and opposes Employer withholding the PPI payment and future indemnity benefits if owed.

Should Employer be allowed to withhold the PPI payment in its entirety and more than 20 percent of future compensation to recover its overpayment?

FINDINGS OF FACT

All factual findings in *Zubia I* are incorporated by reference and may be repeated below. A preponderance of the evidence establishes the following facts and factual conclusions:

- 1) On August 24, 2019, Employee rose from a seated position and rolled her ankle on her left foot resulting in a non-displaced fracture of her fifth metatarsal. (Report of Injury, August 24, 2019).
- 2) Employer began paying temporary total disability (TTD) benefits on November 19, 2019, at a rate of \$987.02 and continued to pay TTD benefits through June 5, 2025. (Agency file, ICERS Payments).
- 3) On February 28, 2020, Employee called the reemployment benefits office to inform them she relocated to Overton, Nevada. Employee did not notify Employer. (Agency File, Communications tab, Note from Darlene Charles, February 28, 2020).
- 4) On April 1, 2021, Employee's treating physician Neville Campbell, MD., diagnosed Employee with Complex Regional Pain Syndrome (CRPS) type 2 of the left lower extremity, left foot pain, and chronic postop pain. (Neville note, April 1, 2021).
- 5) On June 2, 2025, Kyle Wentz, MD., released Employee to full duty without restrictions. (Wentz note, June 2, 2025).
- 6) On July 28, 2025, Employer filed a petition to recoup an overpayment against Employee's forthcoming PPI payment. Employer alleged it overpaid Employee TTD when it failed to account

for a Cost of Living Adjustment (COLA) when Employee moved from Alaska to Nevada. Employer contends Employee has been deemed medically stable and a PPI rating was expected on September 5, 2025. Employer contended that the PPI payment must be stayed until its petition for overpayment is heard. Employer argued because Employee is medically stable and after the PPI payment is made, Employee will not be entitled to further compensation. Therefore, it will be irreparably harmed because it will be unable to recoup its overpayment through installment compensation payments after the PPI payment is issued. Employer requested an emergency decision. (Petition, July 28, 2025).

7) On August 5, 2025, Mary Shannon, MD, an orthopedic surgeon, evaluated Employee and issued an 11 percent PPI rating related to Employee's work injury. (Shannon PPI report, August 5, 2025).

8) On August 7, 2025, the parties attended a prehearing conference. Employer advised the designee Employee recently attended a PPI rating evaluation and it expected a rating to be issued soon. Employer requested the statutory requirement that it file an affidavit of readiness (ARH) on its petition be waived to allow Employer's petition to be heard on an expedited basis. Employee did not agree to waive the ARH requirement, and the designee did not set a hearing on Employer's July 28, 2025, petition. (Prehearing Conference Summary, August 7, 2025).

9) On August 8, 2025, Employer filed an ARH, on its July 28, 2025 overpayment petition. It requested an oral hearing with two witnesses for two hours. (Affidavit of Readiness for Hearing, August 8, 2025).

10) On August 18, 2025, Employer filed an expedited petition for reconsideration of the designee's refusal to set a hearing and again requested an emergency stay of PPI payment. It contended the designee abused his discretion when he refused to apply 8 AAC 45.195 and schedule a hearing on Employer's petition for an overpayment recoupment. Employer argued it would suffer "manifest injustice" if it is required to issue a PPI payment to Employee before Employer can be heard on its overpayment issue. It believes it is entitled to recoupment, and if Employer is unable to recoup that payment from the forthcoming PPI payment Employer will have no further recourse because no future compensation payments will be owed to Employee after the PPI payment. (Expedited petition, August 18, 2025).

11) On August 18, 2025, Employer filed an ARH on its expedited petition. (Affidavit of Readiness for Hearing, August 18, 2025).

12) On August 19, 2025, the designee issued a letter to the parties informing them he would not be amending the prehearing conference summary. An emergency prehearing conference was set for September 5, 2025, to address Employer's August 7, 2025 petition and August 8, 2025 ARH. (Letter from Harvey Pullen to parties, Agency file, Communications Tab, August 19, 2025).

13) On September 5, 2025, the parties attended a prehearing conference. Employer argued a hearing on whether it was entitled to a recoupment of overpayment is required prior to issuance of the PPI payment. Employee disagreed with Employer's representations, contended an overpayment was not made, and did not believe Employer was entitled to a recoupment of an overpayment. She did not believe she was medically stable despite her doctor stating she was and providing her a PPI rating. The designee set two hearings. A September 17, 2025 written record hearing was set on Employer's petition for a stay of PPI payment, and an oral hearing was set for November 4, 2025, on Employer's petition for overpayment recoupment. (Prehearing Conference Summary, September 5, 2025).

14) On September 17, 2025, *Zubia I* granted Employer's request for a stay of payment until after its petition for recoupment of overpayment could be heard on November 5, 2025. (*Zubia I*).

15) On November 5, 2025, at hearing Employer argued it had miscalculated Employee's compensation rate at the outset of her case. Employee was being paid an elevated compensation rate and retaining a COLA from the date of her injury until June of 2024. Employer stated it never received previous work history, W2s or paystubs from Employee to accurately calculate her compensation rate. Instead Employer relied on Employee's supervisor providing the information Employee was paid \$9.99 per hour and worked 16 hour days for 12 days every two weeks. In June of 2025, Employee was deemed medically stable and referred for a PPI rating. Employer requests a withholding of the entirety of the PPI payment and up to 50 percent of remaining indemnity payments to recoup its overpayment amount. (Employer testimony, November 5, 2025).

16) Katie Wilhem testified on behalf of Employer. Wilhem stated she took over Employee's case from another adjuster in 2021 or 2022. At the time Wilhelm began working the case she admitted she believed the compensation rate and COLA payments to be correct, as the previous adjuster was more experienced than she was. After maintaining the case for a period of time, Wilhelm requested an attorney review the payment amounts in June of 2024. An overpayment due to not accounting for a COLA reduction was identified, Employer began withholding 20 percent of future indemnity payments to recoup its overpayment amount. (Wilhelm testimony, November 5, 2025).

17) Employee testified at hearing and said she recently underwent surgery for placement of a pain pump in her spine. Due to this procedure Employee was not medically stable and would require additional TTD payments through November 11, 2025. Employer acknowledged as much. Employee did not believe Employer was entitled to recoup an overpayment because it was Employer's error initially in calculating her rate wrong. Employee acknowledged that she has not been working but has the capacity to return to light duty or sedentary work after she is medically stable from her pain pump procedure. Employee stated she is relying on family to provide for her as she recovers but understood getting back to work was important to her recovery. Employee also testified she never provided any past earnings because her paperwork was all lost in a storage unit. (Zubia testimony, November 5, 2025).

18) On November 18, 2025, the record was reopened to allow Employer to provide the most current rate calculations and specific overpayment amount Employer believes it is entitled to. (Letter, Record Re-Opened under 8 AAC 45.120(m), November 18, 2025).

19) Employer has paid Employee a total of \$280,928.11 in indemnity benefits from November 19, 2019, until November 11, 2025. (ICERS, Payment Tab, date accessed November 11, 2025).

20) Employer initially paid Employee at a weekly rate of \$987.02, without taking a COLA adjustment for 291 weeks and 3 days, resulting in a total payment amount of \$280,928.11. Employee was paid \$9.99 per hour; she worked 16 hour days for 12 days straight then had two days off. She accrued overtime everyday she worked over 8 hours in the two-week period. Her projected wage was \$64,419.68. Her gross weekly earnings under AS 23.30.220(a)(4) are \$1,288.39 ($\$64,419.68 / 50 \text{ weeks} = \$1,288.39$). Putting her gross weekly earnings into the benefits calculator: Employee is single with one dependent, and her TTD rate is \$815.89. This is \$171.13 from less than Employer was actually paying her. The COLA for Overton, Nevada at the time of Employee's injury was 80.11; effective January 1, 2023, the COLA rose to 81.91. Had Employer paid the correct rate of \$815.89 and applied the correct COLA amounts for Overton, Nevada, Employee would have been paid \$182,351.15 for the duration of her case. Employer has an overpayment of \$98,576.96. As shown in the table below:

	Equations	Correct Calculations
Gross Weekly Earnings	$\$64,419.68 / 50 \text{ weeks} =$	\$1,288.39
TTD Rate		\$815.89
COLA (Nevada) Before 1/1/23		0.8011
COLA (Nevada) After 1/1/23		0.8191
COLA applied Before 1/1/23	$\$815.89 \times .8011 =$	\$653.61
COLA applied After 1/1/23	$\$815.89 \times .8191 =$	\$668.30
2/20/20 - 12/31/22	$(149 \text{ weeks } 3 \text{ days}) \times \$653.61 =$	\$97,668.00
1/1/23 - 6/5/25	$(126 \text{ weeks } 5 \text{ days}) \times \$668.30 =$	\$84,683.15
Total Amount of Indemnity Employer Paid	(Based upon payments issued by Employer)	\$280,928.11
Actual Amount of Indemnity Owed	$\$97,668.00 + \$84,683.15 =$	\$182,351.15
Over Payment Amount	$\$280,928.11 - \$182,351.15 =$	\$98,576.96

(Supplemental Briefing in Support Regarding Compensation Rate, November 24, 2025).

PRINCIPLES OF LAW

AS 23.30.001. Intent of the legislature and construction of chapter. It is the intent of the legislature that

- (1) this chapter be interpreted so as to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of this chapter;
- (2) workers' compensation cases shall be decided on their merits except where otherwise provided by statute;
- (3) this chapter may not be construed by the courts in favor of a party;
- (4) hearings in workers' compensation cases shall be impartial and fair to all parties and that all parties shall be afforded due process and an opportunity to be heard and for their arguments and evidence to be fairly considered.

The board may base its decisions not only on direct testimony and other tangible evidence, but also on the board's "experience, judgment, observations, unique or peculiar facts of the case, and inferences drawn from all of the above." *Fairbanks North Star Borough v. Rogers & Babler*, 747 P.2d 528, 533-534 (Alaska 1987).

AS 23.30.135. Procedure before the board. (a) . . . The board may make its investigation or inquiry or conduct its hearing in the manner by which it may best ascertain the rights of the parties. . . .

AS 23.30.155. 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. . . .

(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. . . .

. . . .

(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.

. . . .

(g) 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.

AS 23.30.155(j) permits withholding up to 20 percent of future compensation installments and can be invoked at an employer's discretion. *Davenport v. K&L Distributors, Inc.*, AWCB Dec. No. 92-0180 (July 22, 1992). It does not, however, provide any criteria or factors that should be considered in determining whether higher rate of withholding is appropriate. Thus, decisions have entertained various considerations when deciding appropriate withholding amounts. For example, *Barnett v. Lee's Custom Designs*, AWCB Dec. No. 99-0146 (July 8, 1999), considered the financial hardship the employee would suffer as result of withholding at a higher rate; *Decker v. Price/Northland J.V.*, AWCB Dec. No. 930304 (November 24, 1993), considered the length of time employee was expected to be disabled and whether the overpayment could be recouped within that time at 20 percent; and *Bathony v. State*, AWCB Dec. 98-0101 (April 22, 1998), considered the fact the overpayment arose or was exacerbated by the employee's resistance to providing correct information to the employer.

ANALYSIS

Should Employer be allowed to withhold the PPI payment in its entirety and more than 20 percent of future compensation to recover its overpayment?

If an employee receives an overpayment of workers' compensation benefits, the employer is entitled to withhold 20 percent of future benefit installments to recover the overpaid amount. AS 23.30.155(j); *Davenport*. An employer may withhold more than the statutorily permitted 20 percent "only upon approval of the board." AS 23.30.155(j).

Under AS 23.30.155(j), it is not necessary to determine the exact amount of an overpayment to determine whether an employer should be allowed to recover the overpayment at an accelerated rate. However, because one of the factors considered in determining whether to allow an accelerated recovery is how long it would take an employer to recover the full amount, an

approximation of the overpayment is needed. Employer's list of indemnity payments shows the balance of the overpayment was \$98,576.96 as of November 24, 2025. For purposes of determining whether Employer should be allowed to recover the overpayment by withholding more than 20 percent of future payments, \$98,576.96 will be used as the current balance.

In *Bathony*, one factor was whether the overpayment arose or was exacerbated by the employee's resistance to providing correct information to the employer. Here, both parties share some responsibility for the overpayment. The bulk of the overpayment occurred between November 19, 2019, and June 30, 2024. Wilhelm testified Employer changed adjusters, and Employer failed to apply COLA reductions to Employee's indemnity payments. Most of Employee's treatment took place in Nevada and the adjuster could infer Employee was no longer residing in Alaska and should have applied a COLA to Employee's indemnity payments. *Rogers & Babler*. Also relevant, Employee did not provide any wage documentation to support her compensation rate; according to her, all her paperwork was lost in a storage unit. Thus, Employer relied on inaccurate projected wage data provided by Employee's supervisor. As a result, she was overpaid from November 19, 2019, through June 30, 2024. Because the overpayment is not exclusively due to the actions of one party or the other, this factor will not be considered.

Barnett considered the financial hardship the employee would suffer as result of withholding at a higher rate. Employee testified that she is living with her parents and paying for food, along with a share of rent and utilities. She was unclear as to the exact dollar amounts she pays every month. With the current reduction of 20 percent, Employee's biweekly TTD amount of \$1,336.60 is reduced to \$1,069.28 or roughly \$2,138.56 per month. A reduction of 40 percent would mean she would receive \$801.96 biweekly, or roughly \$1,603.92 per month. Employee did not provide any bills, or other costs to determine if increasing the amount Employer can withhold would cause hardship. Employee over the past four years received unfettered use and time value (interest) on an additional \$98,576.96 that she was not entitled to. Employer cannot recover interest from her. Employee is not currently working, and recently underwent a procedure to have a pain pump installed. However her recovery time is short and she testified she could perform sedentary or light duty work. Increasing the recoupment to 40 percent will not cause Employee to suffer a serious financial hardship, and will allow Employer to recover more than it currently is.

Decker considered the length of time the employee was expected to be disabled and whether the overpayment could be recouped within that time at 20 percent. Employee was deemed medically stable in June of 2025; no additional indemnity benefits were expected after that date. Employer requested a stay of Employee's PPI payment because it was unlikely, due to the amount of overpayment, Employer would be able to ever recoup the entire amount it was owed. However, Employee recently received an off work note effective from October 29, 2025, through November 11, 2025, restarting her indemnity benefits for that period of time. She was only entitled to disability through November 11, 2025. AS 23.30.185. It is unclear at this time if Employee would be entitled to any indemnity payments in the future. Employer is entitled to recoup an overpayment, only through future indemnity payments. AS 23.30.155(j). If Employee is no longer entitled to future benefits Employer has no remedy to recoup its \$98,576.96 overpayment. If this decision permits Employer to withhold the entire PPI payment of \$19,470.00, Employer still has an overpayment of \$79,106.96. At a 40 percent reduction of weekly indemnity payments (\$267.32) it would take Employer 296 weeks or roughly five and a half years of weekly payments to recoup its overpayment. If Employer were entitled to withhold 100 percent of future indemnity benefits (\$668.30) it would still take 119 weeks or roughly over two years for Employer to recoup its overpayment. Neither scenario is favorable for Employer, as Employee is currently not entitled to any additional indemnity benefits.

In summary, Employer has demonstrated it has met the criteria previously considered in determining whether it should be allowed to recoup the overpayment amount at greater than 20 percent. *Barnett; Decker*. Since both parties bear some responsibility for the overpayment, withholding 40 percent of Employee's future TTD benefits, if any, will not cause Employee serious economic hardship. *Barnett*. Employer likely will not be able to recover the full overpayment even if allowed to withhold from future TTD, and the PPI payment. *Decker*. Therefore, Employer will be allowed to increase its withholding to 40 percent on any future indemnity payments, and withhold the entirety of the PPI payment. AS 23.30.001(1); AS 23.30.155(h).

CONCLUSION OF LAW

Employer should be allowed to withhold the PPI payment and more than 20 percent of future compensation to recover its overpayment.

ORDER

- 1) Employer's July 28, 2025 petition to increase its recovery of an overpayment is granted.
- 2) Employer may withhold 100 percent of the PPI payment, and 40 percent of future disability or stipend payments to Employee until its overpayment is recouped.

Dated in Anchorage, Alaska on December 10, 2025.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Kyle Reding, Designated Chair

/s/
Pam Cline, Labor Member

/s/
Sara Faulkner, Industry Member

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 LAURIE ZUBIA, employee / claimant v. HOPE COMMUNITY RESOURCES, INC., employer; BERKSHIRE HATHAWAY HOMESTATE INSURANCE C, insurer / defendants; Case No. 201911816; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties by certified U.S. Mail, postage prepaid, on December 10, 2025.

/s/

Rochelle Comer, Workers' Compensation Technician