ALASKA WORKERS' COMPENSATION BOARD

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

SHANNON FAYE WRIGHT, Employee, Claimant, v. NORTHERN ENERGY SERVICES, LLC, Employer, and UMIALIK INSURANCE COMPANY, Insurer, Defendants.	INTERLOCUTORY DECISION AND ORDER AWCB Case No. 202404442 AWCB Decision No. 25-0090 Filed with AWCB Anchorage, Alaska on December 30, 2025

Northern Energy Services, LLC's, and Umialik Insurance Company's (Employer) September 25, 2025, petition to cancel the Second Independent Medical Evaluation (SIME) was heard on December 3, 2025, in Anchorage, Alaska, a date selected on October 22, 2025. The September 25, 2025, petition gave rise to this hearing. Attorney Lee Goodman appeared and represented Shannon Faye Wright (Employee). Attorney Rebecca Holdiman-Miller appeared and represented Employer. There were no witnesses. The record closed on December 3, 2025.

ISSUE

Employer contends it should be relieved from its stipulation to an SIME. It contends a chiropractor's opinion on a "check the box" letter is not sufficient medical evidence to establish a dispute on causation for an SIME for bilateral shoulder injuries. Employer contends there are no significant medical disputes because the value of the past time loss benefits is under $3,000. It

contends there is sufficient evidence in the record to decide the claim, and an SIME would not assist the panel. Employer requests an order cancelling the SIME process.

Employee contends there are significant disputes regarding causation, medical stability, future bilateral shoulder surgeries and disability benefits between her attending physicians and Employer's medical evaluator (EME). She contends there is not a plethora of medical evidence in this case, and an SIME would assist the panel in deciding it. Employee requests an order denying Employer's petition to cancel the SIME process.

Should this decision relieve Employer from its stipulation to an SIME?

FINDINGS OF FACT

1) On January 24, 2024, Employee fell of a bus while working for Employer while trying to exit the vehicle. (First Report of Injury, April 2, 2024).

2) On March 26, 2024, Kathyn Newberry, PA-C, evaluated Employee for left-shoulder pain after she slipped while getting out of a bus at work on January 24, 2024. She reached out to catch herself and had significant shoulder pain, difficulty with any overhead activities, and difficulty with lifting heavy things secondary to pain. Left-shoulder x-rays were taken. PA-C Newberry stated Employee likely had a rotator cuff tear secondary to the recent fall and recommended an MRI. (Newberry record, March 26, 2024).

3) On March 27, 2024, Employee complained of left- and right-shoulder pain and an neck stiffness and dull aching pain. Michael Hanifen, DC, provided chiropractic manipulative treatments and restricted her from working. (Hanifen record, March 27, 2024).

4) On March 29, 2024, Dr. Hanifen referred Employee for right- and left-shoulder magnetic resonance imaging (MRI); "As the treating physician for Shannon Wright, I am requesting (R) Shoulder and (L) Shoulder MRI without contrast. Ms. Wright fell getting of a bus and hurt her left shoulder, falling on it and her right by holding onto the handrail. Suspecting rotator cuff tears. X-rays showed age-related arthritis present." (Hanifen MRI Referral, March 29, 2024).

5) On March 29, 2024, a left-shoulder MRI showed a high grade full thickness partial tear of the supraspinatus tendon involving the posterior half with anterior displacement of the remaining intact fibers and an retraction of torn fibers with mild to moderate muscle atrophy; high-grade

partial tear of the superior infraspinatus tendon with retraction and mild muscle atrophy; tendinopathy with partial thickness low-grade tear of the superficial fibers of the subscapularis tendon; possible mild tenosynovitis of the long head of the bicep tendon; and mild arthropathy of the glenohumeral and acromioclavicular joints. (MRI report, March 29, 2024).

6) On March 29, 2024, a right-shoulder MRI showed high-grade full thickness incomplete tear of the supraspinatus tendon; a few intact interior fibers; retraction of torn fibers with mild to moderate muscle atrophy; high-grade full thickness near complete acute tear of the infraspinatus tendon with retraction and no significant muscle atrophy; tendinopathy without discrete tear of the subscapular tendon; possible longitudinal split tear; mild tenosynovitis of the long head of the biceps tendon; and moderate arthropathy of the acromioclavicular and mild arthropathy of the glenohumeral joints. (MRI report, March 29, 2024).

7) On April 1, 2024, Dr. Hanifen responded to questions from Employer's nurse case manager. He restricted Employee from returning to full-duty work and stated she was not medically stable. (Hanifen response, April 1, 2024).

8) On April 4, 2024, Employee stated she did not have significant shoulder pain the in past; now she had pain with lifting, reaching, and pulling after a work-related injury "approximately 2 weeks ago." After reviewing the MRIs, Thomas Paynter, MD, diagnosed bilateral full-thickness rotator cuff tears stating, "She appears to have an acute on chronic injury. Given the degree of fatty atrophy in the supraspinatus muscle belly she likely had some pre-existing disease prior to her recent work-related injury." Dr. Paynter recommended she continue taking Tylenol, complete physical therapy (PT), and consider injections in the future. (Paynter record, April 4, 2024).

9) On April 4, 2024, Dr. Paynter responded to questions from Employer's nurse case manager. He diagnosed bilateral rotator cuff tears and recommended Employee take Tylenol and complete physical therapy. Dr. Paynter restricted her from returning to full-duty work and stated Employee had not reached medical stability. He estimated she would be able to return to modified-duty work on May 15, 2024, and to full-duty work on June 15, 2024. (Paynter response, April 4, 2024).

10) On April 10, 2024, Dr. Hanifen referred Employee to PT, "As the treating physician for Shannon Wright, I am requesting you evaluate and treat her for severe shoulder pain with MRI results showing tears." (Hanifen Physical Therapy Referral, April 10, 2024).

11) On May 15, 2024, Scot Youngblood, MD, orthopedist, examined Employee for an EME and diagnosed:

> 1. Lumbar strain/sprain and buttock contusion, without evidence of fracture, dislocation, internal derangement, or radiculopathy, substantially caused by the industrial injury of January 24, 2024, long ago resolved and medically stable.
> 2. Left and right shoulder chronic rotator cuff tears of the supraspinatus and infraspinatus with fatty infiltration of the rotator cuff muscles bellies indicating significant chronicity, pre-existing, not substantially caused or aggravated by the industrial injury of January 24, 2024, not medically stable.
> 3. No clear mechanism of shoulder injury to either shoulder is identified occurring during the alleged industrial injury of January 24, 2024, by direct claimant history or review of the medical record.
> 4. Left shoulder sprain sustained during a fall in approximately 2011 by claimant's history, with likely rotator cuff tear, status post radiographs, MR imaging, and injections, clearly predating and not substantially caused by the industrial injury of January 24, 2024.
> 5. Right shoulder sprain in 2005 during a snowmachining accident by claimant's history, with unclear internal injury to the shoulder, clearly predating and not substantially caused by the industrial injury of January 24, 2024.

Dr. Youngblood stated the bilateral shoulder MRIs showed chronic tears that were preexisting and did not occur during the alleged work injury. There was "at least moderate fatty infiltration (atrophy) of the supraspinatus muscle bellied bilaterally" and "at least fatty infiltration of the infraspinatus muscle bellies bilaterally," which are chronic findings that take years to develop after a full-thickness tear occurred. Dr. Youngblood also noted "a fair amount of retraction to the torn tendon ends" indicating that over time the tendons have contracted. He also said the MRIs did not show significant effusion and had Employee torn her rotator cuffs on January 24, 2024, "there would more likely than not have been persistent swelling and a large effusion in the shoulder joints," which is also consistent with chronic shoulder findings. Dr. Youngblood found the clinical history did not support that Employee sustained rotator cuff tears to either shoulder because Employee was not sure of the mechanism of injury, "but just knows that she bounced on her buttocks down the stairs of the bus while holding items in her hands. It is unclear how any injury to either shoulder could have been sustained." Because an acute rotator cuff tear is a remarkable and immediately debilitating injury, it was doubtful that Employee would have been able to continue working that day or for the next several weeks had an acute rotator cuff tear occurred. Dr. Youngblood opined it was more likely than not that Employee's bilateral shoulders would have been symptomatic prior to her work with Employer and, "The idea that this level of chronic rotator cuff tearing and joint incongruity would have somehow been asymptomatic is close to impossible." He said that at most a mild shoulder sprain could have occurred, but there was no fracture,

dislocation, internal derangement, or any temporary and permanent aggravation of her preexisting and symptomatic bilateral shoulder conditions, and Employee would have been medically stable by February 24, 2024. Dr. Youngblood said:

> Regardless of causation, I do agree with Dr. Paynter initiating a course of physical therapy. If she does not adequately improve, then she would likely benefit from reverse total shoulder arthroplasties. Interestingly, the very fact that Dr. Manion and Dr. Paynter agreed that a standard rotator cuff repair would not be indicated for this examinee and that reverse total shoulder arthroplasties are indicted, is an admission that her rotator cuff tears are chronic and irreparable.

The need for treatment was not substantially caused by the work injury. Employee was restricted from no overhead reaching or work, and no lifting greater than 20 pounds and the need for the restrictions was not the work injury but rather the preexisting and symptomatic chronic rotator cuff tears. (Youngblood EME report, May 15, 2024).

12) On October 7, 2024, Dr. Hanifen responded to questions from Employee and answered it was more likely than not the work injury was the substantial cause of the injuries he treated Employee for and he noted, "Although there was some preexisting issues, the fall was the last straw and is the direct result of the fall." The work injury aggravated, combined with, or accelerated the need for treatment of Employee's preexisting bilateral shoulder condition. Dr. Hanifen disagreed with Dr. Youngblood's EME report, "Dr. Youngblood is flat wrong in his assessment and is twisting the findings of the OPA Dr.'s to fit a denial of care, which is reckless and outside of professional standards of care." (Hanifen response, October 7, 2024).

13) On November 26, 2024, Employee sought temporary total disability (TTD) and permanent partial impairment (PPI) benefits, medical and transportation costs, interest, and attorney fees and costs for bilateral shoulders. (Claim for Workers' Compensation Benefits, November 26, 2024).

14) On December 18, 2024, Employer denied TTD and PPI benefits, medical and transportation costs, interest, and attorney fees and costs based upon Dr. Youngblood's EME report. She attached Dr. Hanifen's April 1, 2024 response, Dr. Paynter's April 4, 2024 and October 7, 2024 responses and Dr. Youngblood's EME report. (Controversion Notice and Answer to Employee's Workers' Compensation Claim, December 18, 2024).

15) On April 24, 2025, Employee requested an SIME with an orthopedic surgeon regarding disputes on causation, medical treatment, and medical stability between Drs. Hanifen and Paynter versus Dr. Youngblood. (Petition and SIME Form, April 24, 2025).

16) On April 29, 2025, the Division served the parties with notice of a May 28, 2025 written-record hearing on Employee's April 24, 2025 petition for an SIME. (Hearing Notice Written Record Served, April 29, 2025).

17) On May 13, 2025, Employer did "not oppose the employee's April 25, 2025 petition for SIME at this time based on the current evidence. The employer reserves its right to a future opposition should the evidence or denial status change in the case." It requested the May 28, 2025 written record hearing be cancelled and a prehearing scheduled to set SIME deadlines. (Response to Petition for SIME, May 14, 2025).

18) On May 15, 2025, Employee amended her claim and sought a compensation rate adjustment in addition to the TTD and PPI benefits, medical and transportation costs, interest, and attorney fees and costs. (Amended Claim for Workers' Compensation Benefits, May 15, 2025).

19) On June 3, 2025, Employer denied TTD and PPI benefits, medical and transportation costs, interest, and attorney fees and costs based upon Dr. Youngblood's EME report, and denied the compensation rate adjustment. (Controversion Notice and Answer to Employee's Workers' Compensation Claim, June 3, 2025).

20) On June 24, 2025, the parties stipulated to conduct an SIME. The mutually-signed SIME form was due on or before August 27, 2025. (Prehearing Conference Summary, June 24, 2025).

21) On September 23, 2025, Dr. Paynter testified at deposition he examined Employee on April 4, 2024, and reviewed her bilateral shoulder MRIs and diagnosed bilateral rotator cuff tears. (Deposition by Video Conference Thomas Brandon Paynter, MD, September 23, 2025, at 5-6). He never saw her again. (*Id*. at 6). Dr. Paynter saw fatty atrophy in both MRI scans, "Basically, if there's a rotator cuff tear that is existing for some period of time -- usually months, sometimes years -- that the -- the rotator cuff -- the muscle is not attached. Or the tendon's not attached, so the muscle isn't used. And so over time, that muscle turns to fat." (*Id*. at 7). When asked what the fatty atrophy tells him about causation, he stated, "That more than likely, that the fatty atrophy was there prior to and to some - - some degree of rotator cuff tearing was there prior to her injury. It is not uncommon for us to see people that have preexisting issues that are -- may not be symptomatic, but then the injury causes them to be symptomatic." (*Id*. at 8). After he was informed that "Dr. Youngblood stated that reverse total shoulder procedures were indicated, but he felt that recommending that type of treatment for her condition represented or was an admission that it was chronic and was not due to the work injury," and asked whether he agreed, Dr. Paynter

said, "I think that's reasonable, yes." (*Id*. at 11-12). He anticipated medical stability by June of 2024 for the work injury and when asked if Employee needed treatment after June of 2024, would he agree that the substantial cause was a preexisting condition and not the work injury, Dr. Paynter stated, "If she needed surgical treatment, most likely, yes. But acute pain, weakness would be from the work injury. But as far as needing something more significant, like a reverse total shoulder replacement, would - - would be preexisting." (*Id*. at 12). When asked whether Dr. Youngblood's one-month time period for resolution of an aggravation was reasonable, Dr. Paynter said, "It's hard to predict how somebody's going to respond to treatment. So, I -- I think some people would respond that quickly; other people would have symptoms for a -- for longer. Again, since this was just a one-time visit, it's hard to make a determination of her progress." (*Id*. at 12-13). Reasonable medical treatment for the work injury included medications, PT, and a potential steroid injection dependent upon Employee's pain level. (*Id*. at 13). The surgery would not be due to the work injury. (*Id*.). Because he did not examine Employee since April 2024, he did not have an opinion on her ability to return to work at this time. (*Id*. at 14). When asked to explain his acute on chronic injury description in his medical report, Dr. Paynter stated, "You can have increase in symptoms or new onset of symptoms from an injury." (*Id*. at 14-15). The degree of weakness and pain people have vary; some people improve with medication and activity modification, PT, and occasional injection, other people still have dysfunction. (*Id*. at 15). Employee could have an increase in the tear or an aggravation of the tissues around the rotator cuff, the bursa which is a fluid-filled sac with many nerve endings. (*Id*. at 16). But there is no way to tell if there was an increase in the size of the tear as there was no MRI prior to her work injury. (*Id*. 16-17). The increase in pain and restrictions in Employee's ability to use her shoulder is not an indication that there was a permanent change in anatomy. (*Id*. at 17). The work injury accelerated her need for initial treatment, nonsurgical treatment but not "long-term surgical treatment." (*Id*. at 18). When asked to explain Employee's failure to recover sufficiently to be able to return to work, Dr. Paynter stated, "I can't comment on that since I only saw her one time." (*Id*.). "It's unlikely that the workplace injury caused the significantly large tear and fatty atrophy. In order for you to have that degree of fatty atrophy, there was likely a very large, preexisting, full thickness rotator cuff tear." (*Id*. at 19). When asked what the increase in pain resulted from, Dr. Paynter stated, ". . . you can have bursal tissue with nerve endings. You can also just have pain from the muscles around the shoulder, not necessarily the rotator cuff. But the structural changes

-- the large rotator cuff tear resulting in the fatty atrophy -- is very unlikely to be caused by this recent workplace event." (*Id*. at 20). The treatment provided for soft tissue injuries is the same nonoperative treatment he recommended for the work injury. (*Id*. at 21). Had there been edema in the MRI, it would have been "more indicative of an acute, a new, or an extension of the tear. You don't necessarily have to see that. But if there is that degree of fatty atrophy, with that large of a tear, that's preexisting." (*Id*. at 24).

22) On September 25, 2025, Employer requested an order halting and cancelling the SIME. It contended the medical evidence changed with Dr. Paynter's deposition testimony and a medical dispute no longer existed under AS 23.30.095(k). (Petition, September 25, 2025).

23) On October 25, 2025, Employee opposed Employer's September 25, 2025 petition and contended a medical dispute still existed between Drs. Hanifen and Youngblood. (Opposition to Employer's Petition for an Order Amending SIME order, October 25, 2025).

24) On November 25, 2025, Employee filed a hearing brief contending a medical dispute between Drs. Hanifen and Youngblood remains the basis for the SIME. She contended Dr. Paynter's opinion only related to a medical stability dispute and she relied upon Dr. Hanifen's opinion to demonstrate a medical dispute regarding causation. Employee contended nothing in Dr. Paynter's deposition changed his April 4, 2024, medical stability opinion, which stated she had not reached medical stability, while Dr. Youngblood opined she reached medical stability by February 24, 2024. Therefore, a medical stability dispute exists. (Hearing Brief, November 25, 2025).

25) On November 26, 2025, Employer filed a hearing brief, contending there was no dispute over the need for shoulder surgery. It contended Dr. Hanifen's chiropractic "check the box letter secured for litigation purposes is not sufficient, significant or relevant evidence supporting an order for a costly SIME to address the need for surgery." Employer cited *Phillips* to contend the Board cannot consider evidence obtained for litigation purposes only, and it should not rely upon "Dr. Hanifen's check the box letter at all, but especially when the issue is the compensability of surgery." It contended there is no dispute about the need for surgery and there is sufficient evidence to decide Employee's claim for surgery, and another SIME would unnecessarily delay the case and unduly burden Employer with an unreasonable cost. (Hearing Brief of Northern Energy Services and Umialik Insuranc[e] Company, November 26, 2025).

26) At hearing, Employer contended there is only a minor dispute regarding 62 days of TTD benefits, totaling $2,878.66. It contended it is unreasonable to rely upon a "check the box" opinion

from a chiropractor when the need for surgery is not a chiropractic issue. Employer argued that zero weight or value should be afforded the chiropractic "check the box" opinion. It contended there was sufficient evidence in the case to decide the claim, and an SIME would be an unreasonable cost to Employer. (Record).

27) At hearing, Employee contended there is not a plethora of medical evidence to decide the claim. She contended Dr. Paynter disagreed with Dr. Youngblood on the medical stability date and also on the mechanism of injury as Dr. Youngblood essentially stated there was no injury and Dr. Paynter stated there was an aggravation, so his deposition did not resolve the dispute on causation. Employee contended that Dr. Hanifen also disagreed with Dr. Youngblood's opinion on causation and need for medical treatment. She also contended there were significant benefits in dispute, including future bilateral shoulder surgeries and time-loss benefits for her recovery, and a PPI rating and retraining benefits depending on her recovery. Employee contended that Dr. Paynter only saw Employee once and incorrectly stated in his medical report that the shoulder injuries occurred two weeks prior to the appointment, when it occurred over two months before. She contended an SIME would assist the factfinders with deciding causation and medical stability. (Record).

PRINCIPLES OF LAW

AS 23.30.001. Legislative intent. It is the intent of the legislature that

> (1) this chapter be interpreted . . . to ensure . . . quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers. . . .

The Board may base its decision not only on direct testimony and other tangible evidence, but also on its "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 23.30.095. Medical treatments, services, and examinations. . . .

> (k) In the event of a medical dispute regarding . . . causation, medical stability . . . degree of impairment, functional capacity, the amount and efficacy of the continuance of or necessity of treatment, or compensability between the employee's attending physician and the employer's independent medical

> evaluation, the board may require that a second independent medical evaluation be conducted by a physician or physicians selected by the board from a list established and maintained by the board. . . .

The Alaska Workers' Compensation Appeals Commission in *Bah v. Trident Seafoods Corp.,* AWCAC Dec. No. 073 (February 27, 2008) addressed the Board's authority to order an SIME. *Bah* stated in *dicta,* that before ordering an SIME it is necessary to find the medical dispute is significant or relevant to a pending claim or petition. *Bah* said when deciding whether to order an SIME, the Board considers three criteria, though the statute does not require it:

> 1) Is there a medical dispute between Employee's physician and an EME?
> 2) Is the dispute significant? and
> 3) Will an SIME physician's opinion assist the board in resolving the disputes?

Section .095(k) is procedural, not substantive . *Deal v. Municipality of Anchorage*, AWCB Dec. No. 97-0165 (July 23, 1997). Wide discretion exists to consider any evidence available in deciding to order an SIME to assist in investigating and deciding medical issues in claims, to best "protect the rights of the parties." *Bah*. An SIME's purpose is for an independent medical expert to provide an opinion about contested issues. *Seybert v. Cominco Alaska Exploration*, 182 P.3d 1079, 1097 (Alaska 2008). An SIME is not a discovery tool for parties; it is an investigative tool for the Board to assist it by providing a disinterested opinion. *Olafson v. State Depart. of Transp.*, AWCAC Dec. No. 06-0301 (October 25, 2007). The decision to order an SIME rests in the discretion of the Board, even if jointly requested by the parties. *Id*. Although a party has a right to request an SIME, a party does not have a right to an SIME if the Board decides one is not necessary for the Board's purposes. *Id*.

Geister v. Kid's Corps, Inc., AWCAC Dec. No. 045 (June 6, 2007) involved a Board decision denying a requested SIME. On appeal, *Geister* stated:

> Based on the commission's experience of the workers' compensation system, there are reasons why a board panel may exercise its discretion not to grant a request for an SIME, even when there is a medical dispute. After weighing the expense of the evaluation, delay, need for extended travel and associated costs, significance of the medical dispute to the material and contested issues in the claim, quantity of medical evidence already in the record, likelihood of new and useful information, and the board panel's familiarity with the subject area of the dispute (footnote

> omitted), the board may decide that it is "more doubtful" that an SIME would assist the board in reaching a decision on the material and contested issues before it and therefore it will not grant a request for an SIME. *Id*. at 7.
> . . . .
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> . . . If the board *weighed* and chose to rely on Dr. Klassen over Dr. Dramov in deciding a dispute did not exist, instead of merely comparing competing opinions to identify conflicts, or if the board did not consider Dr. Dramov's letters because they were the subject of an unsatisfied request for cross-examination, then we believe the board erred. It is enough that the parties present evidence of a medical dispute to request an SIME. The board is not asked to decide which physician's opinion is more persuasive when deciding if there is a qualifying conflict in opinions -- it will only do that when deciding the merits of the claim. The parties are not offering competing opinions to persuade the board of the truth of their substance; the opinions are offered solely to establish that a difference of medical or scientific expert opinion exists. Therefore, the documents containing the opinions are not hearsay evidence (footnote omitted; emphasis in original). *Id*. at 9.

Betts v. Greenling Enterprises, LLC, AWCAC Appeal No. 22-013, Order on Petition for Review (November 30, 2022), addressed an employee's petition for review from a Board order granting an employer's request for an SIME. The Board had found a medical dispute, "especially as to the kind and nature of proposed medical treatment." *Id*. at 9. Addressing the employee's argument, *Betts* said "even if the EMEs' opinions did not rebut the presumption of compensability, there remained a substantial and significant question as to future medical treatment." *Id*.

> Ms. Betts' position that the EMEs do not rebut the presumption of compensability is a legal issue to be addressed by the Board at a hearing on the merits. The procedure is that the Board, at that time, will decide if Ms. Betts raised the presumption, then whether Greenling rebutted it and, if so, then Ms. Betts must prove her claim by a preponderance of the evidence. However, a hearing on the issue of whether to order an SIME is not a hearing on the merits and the issue of sufficiency and credibility of the EME reports is not addressed. Among the concerns addressed by the Board at the hearing on the SIME is whether an SIME will be of assistance to the Board in resolving the issues of the claim at a hearing on the merits. The Board has a right to order an SIME to assist it in understanding the medical issues involved in the claim and this right is independent of the issue of the presumption of compensability. . . .
> . . . .
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> This right to require an SIME arises prior to a hearing on the merits. The presumption analysis is not relevant where the Board is making a determination as to whether an SIME would assist it. . . .

The Board's ordering of the SIME does not impair a legal right of Ms. Betts, because the Board has its own right to order an SIME. The Board is entitled to have a full understanding of the medical issues it is deciding, as are the parties to the claim.

Furthermore, there is no unnecessary expense for Ms. Betts because the examination is paid, per statute, by the employer. While there is delay in the Board holding a hearing on the merits, it is better for the delay to occur prior to that hearing than to occur part-way through such a hearing. If the Board were to find it necessary to halt the proceedings in order to exercise its right to order an SIME to help this decision-making process, the cost of the parties would be substantially greater. That is, at hearing the parties usually have one or more medical experts lined up to testify. If the Board stays the hearing to conduct an SIME, there is greater expense due to the need for the experts to be called again to testify after the SIME.

. . . .

. . . Ms. Betts contends that the EME reports do not rebut the presumption of compensability and, therefore, should not be a basis for ordering an SIME. However, the issue of the presumption of compensability comes into play at hearing on the merits. To decide this issue when deciding whether to order an SIME deprives the parties of a full and fair hearing because not all evidence will be heard or considered at the preliminary hearing on the issue of the SIME. The question Ms. Betts raises as to whether the EME reports are sufficient to rebut the presumption of compensability is an important question, but it is a question for the board at a hearing on the merits of her claim. . . .

AS 23.30.395. Definitions. In this chapter,

. . . .

(3) "attending physician" means one of the following designated by the employee under AS 23.30.095(a) or (b):

(A) a licensed medical doctor;
(B) a licensed doctor of osteopathy;
(C) a licensed dentist or dental surgeon;
(D) a licensed physician assistant acting under supervision of a licensed medical doctor or doctor of osteopathy;
(E) a licensed advanced practice registered nurse; or
(F) a licensed chiropractor;

. . . .

(32) "physician" includes doctors of medicine, surgeons, chiropractors, osteopaths, dentists, and optometrists;

> **8 AAC 45.050. Pleadings**. . . .
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> (f) **For stipulations under this subsection**,
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> (2) stipulations between the parties may be made in writing at any time before the close of the record or may be made orally in the course of a hearing or a prehearing;
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> (3) stipulations of fact or to procedures are binding upon the parties named in the stipulation and have the effect of an order unless the board, for good cause, relieves a party from the terms of the stipulation; . . .
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> **8 AAC 45.195. Waiver of procedures.** A procedural requirement in this chapter may be waived or modified by order of the board if manifest injustice to a party would result from a strict application of the regulation. However, a waiver may not be employed merely to excuse a party from failing to comply with the requirements of law or to permit a party to disregard the requirements of law.

Phillips v. Bilikin Investment Group, Inc., AWCB Dec. No. 14-0020 (February 19, 2014), addressed the employer's contention the employee made an unlawful physician change when his attorney expressly selected Thomas Gritzka, MD, as an expert, and therefore, he was not a "change," "referral" or "substitution" physician. The employee stipulated he paid Dr. Gritzka for his examination and reports. The employee contended his due process rights were violated by the employer's silence on the issue "until the last minute." Dr. Gritzka's report created a dispute warranting a second independent medical evaluation (SIME). However, the employer objected to Dr. Gritzka eight days before hearing. The Board heard the employer's objection as a preliminary matter and advised the employee he had the burden to demonstrate Dr. Gritzka was a valid physician under the Act and regulations. The employee failed to show such and conceded Dr. Gritzka was a hired medical expert. *Phillips* rejected the employee's argument that he had a right to hire an independent expert outside the Act's limitations and held:

> The Act and regulations contain no suggestion a party has a right, apart from those provided under AS 23.30.095(a) and (e), to obtain additional opinions or evaluations from medical experts. Such practice would contravene the statutes and revert back to 'doctor shopping,' which the legislature eliminated years ago. In some cases, parties have procured medical experts without objection from opposing parties and these experts' opinions have been considered. This is not one of those cases. Employer objected to Dr. Gritzka's participation alleging he was an unlawful

> change in Employee's choice of attending physician. Regulation 8 AAC 45.082(c) codifies decisional law disallowing reliance by a party on unlawfully obtained medical opinions. If a party makes an unlawful change of physician in violation of AS 23.30.095(a) or (e), or 8 AAC 45.082, the panel 'will not consider the reports, opinions, or testimony of the physician in any form, in any proceeding, or for any purpose.' The panel has no discretion. Employee stipulated the evaluation with Dr. Gritzka was arranged and paid for solely by his attorney. Employee failed to show any exception applied to his situation. He also failed to demonstrate Dr. Gritzka was a valid change, referral or substitution physician.

ANALYSIS

Should this decision relieve Employer from its stipulation to an SIME?

The parties stipulated to conduct an SIME at a prehearing conference on June 24, 2025. 8 AAC 45.050(f)(2). Such stipulations are binding on the parties and have the effect of an order unless there is "good cause" to relieve a party from that stipulation. 8 AAC 45.050(f)(3). Employer's September 25, 2025 petition seeks relief from the stipulation by requesting the SIME be cancelled. It relies on Dr. Paynter's deposition testimony to argue that the only remaining medical dispute is medical stability, which has a value of less than $3,000 so the remaining dispute is not significant, and an SIME would be unreasonably expensive. Employee contends there is also a dispute about causation between Dr. Hanifen and Paynter, her physicians, and Dr. Youngblood, the EME, and that her claim seeks more than $3,000 for past TTD; she is also seeking medical costs for bilateral shoulder surgeries, disability benefits after the surgeries, and PPI benefits.

Dr. Paynter first opined Employee sustained an acute on chronic injury, diagnosed bilateral rotator cuff tears, recommended conservative treatment, including Tylenol, PT, and possible injections, and estimated she would reach medical stability on June 15, 2024. At deposition, he testified that the fatty atrophy present in Employee's MRIs shows there was rotator cuff tearing before the work injury and attributed her need for bilateral reverse total shoulder procedures to the chronic injuries, not the work injury. Dr. Paynter still opined he anticipated Employee would reach medical stability for the work injury, an aggravation of her chronic condition, in June of 2024, and that the conservative treatment he recommended was for the work injury. Employer contends Dr. Paynter's opinion changed at the deposition. However, Dr. Paynter did not address Employee's need for bilateral shoulder surgery in his April 4, 2024 response. He reaffirmed his recommendations for

conservative treatment for the aggravation of her chronic condition and the June 2024 medical stability date; he provided a new opinion regarding the need for bilateral shoulder surgery at deposition.

Employer contends Dr. Hanifen's opinion should be given less weight than Dr. Youngblood's because he is a chiropractor and Dr. Youngblood is an orthopedist and because Dr. Hanifen provided his opinion in a response to a "check the box" letter. It cited *Phillips* to contend that evidence obtained for litigation purposes only may not be considered in an SIME issue. However, in *Phillips* the employer argued and prevailed on the argument that there was an unlawful physician change. No such argument has been made in this case. A chiropractor is an "attending physician" and Dr. Hanifen's chiropractic opinion can be considered when deciding if a medical dispute exists. AS 23.30.395(3), (32). While performing bilateral shoulder surgery may be beyond the scope of a chiropractor's practice, chiropractors do treat and assess shoulder pain and are responsible for referring patients to medical providers who can provide necessary treatments.

Geister states the panel "is not asked to decide which physician's opinion is more persuasive when deciding if there is a qualifying conflict in opinions" and it should not weigh competing reports, letters, and testimony against each other in an SIME hearing. The opinions are offered "solely to establish that a difference of medical . . . opinion exists. Therefore, the documents containing the opinions are not hearsay evidence." *Geister*. Thus, the "check the box" opinions can be considered when deciding whether there are conflicting medical opinions. Dr. Hanifen's opinion will not be given less weight than Dr. Youngblood's when determining whether a medical dispute exists. *Betts*.

Dr. Hanifen opined that the work injury was the substantial cause of Employee's injuries; the fall was the "last straw" and was "the direct result" of the work injury; the work injury aggravated, combined with, or accelerated the need for treatment of Employee's preexisting bilateral shoulder condition; and he disagreed with Dr. Youngblood's EME report on October 7, 2024. Dr. Youngblood stated there was no clear mechanism of injury to either of Employee's shoulders for the work injury and her need for bilateral shoulder treatment was due to chronic, preexisting rotator cuff tears. He opined the work injury did not aggravate her preexisting rotator cuff tears. Both

Drs. Hanifen and Paynter agree that the work injury caused injuries to Employee's bilateral shoulders while Dr. Youngblood doubted that the described fall resulted in any injury to her shoulders. There are disputes regarding causation and medical treatment between Dr. Hanifen and Dr. Youngblood and a dispute remains between Dr. Paynter and Dr. Youngblood regarding medical stability, medical treatment, and causation. *Bah*.

Employee's claim seeks medical costs for bilateral shoulder surgery, TTD benefits during recovery, and PPI benefits. Employer denied TTD and PPI benefits and medical costs based upon Dr. Youngblood's opinion. If Employee prevails at a merits hearing, Employer will have to pay for bilateral shoulder surgeries and for related disability periods and partial impairment. The medical disputes are therefore significant. *Rogers & Babler*; *Bah*. An SIME physician's opinion will assist the panel in resolving the claim. *Deal*; *Bah*; *Seybert*; *Olafson*. An SIME with an orthopedic surgeon will be ordered on Employee's bilateral shoulders. *Bah*. Therefore, there is no good cause to relieve Employer from its stipulation to an SIME. 8 AAC 45.050(f)(3). Employer's September 25, 2025 petition to cancel the SIME will be denied.

CONCLUSION OF LAW

This decision should not relieve Employer from its stipulation to an SIME.

ORDER

1) Employer's September 25, 2025 petition is denied.
2) An SIME will be performed by an orthopedic surgeon selected from the authorized list. If, at the time of processing, the designee determines that no physician on the Board's list is available or qualified to perform the examination under 8 AAC 45.092(e), the designee will notify the parties and request that they provide the names, addresses, and curriculum vitae of physicians in accordance with 8 AAC 45.092(f).
3) The medical disputes are causation, treatment, and medical stability on Employee's bilateral shoulders.
4) All filings regarding the SIME must be sent to workerscomp@alaska.gov and served on opposing parties.

5) Employer will make two copies of Employee's medical records in its possession, including medical providers' depositions, put the copies in chronological order by treatment date, starting with the first medical treatment and proceeding to the most recent medical treatment, number the pages consecutively, put the copies in two binders. This must be done on or before **January 20, 2026. Employer must serve one binder on Employee and one with the Division, with an affidavit verifying the binders contain copies of all medical records in her possession no later than 5:00 PM on January 20, 2026.**

6) The binders may be returned for reorganization if not properly Bates stamped and prepared in accordance with this prehearing summary.

7) **Not later than 10 days after receipt of the binders, Employee must review the binder to determine if it contains all Employee's medical records in Employee's possession.** If the binder is complete, Employee must file an affidavit with the Division verifying the binder contains copies of all medical records in Employee's possession. If the binder is incomplete, Employee must make two copies of the additional medical records missing from the first set of binders. Each copy must be put in a separate binder (as described above). Then one set of supplemental binders, and an affidavit verifying the medical records completeness must be filed with the Board. The remaining supplemental binder must be served upon Employer together with an affidavit verifying that it is identical to the binder filed with the Board. Employee is directed to file with the Division and serve the binders on opposing parties within 10 days of receipt.

8) Any party who receives additional medical records or physicians' depositions after the binders have been prepared and filed with the Division, is directed to make two supplemental binders as described above with copies of the additional records and depositions. Within seven days after receiving the records or depositions, the party must file one of the supplemental binders with the Division and serve one supplemental binder on opposing party together with an affidavit verifying that it is identical to the binder filed with the Division.

9) The assigned workers' compensation officer will review, prepare, and submit to the SIME physician questions in accordance with 8 AAC 45.092(h).

10) The parties may review their rights under 8 AAC 45.092(j) to question an SIME physician after the parties receive the physician's report.

11) The parties are advised that a failure to comply with the above orders may result in the SIME going forward notwithstanding the party's noncompliance.

12) SIME physicians are often located outside of Alaska and long-distance travel may be required. If Employee requires travel accommodations, she must request an accommodation from the Workers' Compensation Director. The accommodation request must be accompanied by a letter from Employee's treating physician detailing the necessary accommodation.

Dated in Anchorage, Alaska on December 30, 2025.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Kathryn Setzer, Designated Chair

/s/
Anthony Ladd, Member

PETITION FOR REVIEW

A party may seek review of an interlocutory or other non-final Board decision and order by filing a petition for review with the Alaska Workers' Compensation Appeals Commission. Unless a petition for reconsideration of a Board decision or order is timely filed with the board under AS 44.62.540, a petition for review must be filed with the commission within 15 days after service of the board's decision and order. If a petition for reconsideration is timely filed with the board, a petition for review must be filed within 15 days after the board serves the reconsideration decision, or within 15 days from date the petition for reconsideration is considered denied absent Board action, whichever is earlier.

RECONSIDERATION

A party may ask the board to reconsider this decision by filing a petition for reconsideration under AS 44.62.540 and in accordance 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 accordance 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 Interlocutory Decision and Order in the matter of Shannon Faye Wright, employee / claimant v. Northern Energy Services,

LLC, employer; Umialik Insurance Company, insurer / defendants; Case No. 202404442; 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 30, 2025.

/s/
Rochelle Comer, Workers' Compensation Officer