

# ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

TERESA L. SPEARS, )  
)  
Employee, )  
Claimant, )  
)  
v. ) INTERLOCUTORY  
) DECISION AND ORDER  
)  
UNIVERSAL HEALTH SERVICES, INC., ) AWCB Case No. 202408180  
)  
Employer, ) AWCB Decision No. 26-0002  
and )  
) Filed with AWCB Anchorage, Alaska  
AIU INSURANCE COMPANY, ) on January 7, 2026  
)  
Insurer, )  
Defendants. )  
)  
\_\_\_\_\_ )

Teresa L. Spears' (Employee) September 30, 2025 petition appealing from a designee's discovery order was heard on the written record in Anchorage, Alaska, on December 9, 2025, a date selected on November 14, 2025. The September 30, 2025 petition gave rise to this hearing. Non-attorney Employee represents herself. Non-attorney Christie Niemann represents Universal Health Services, Inc. and its insurer (Employer). The record closed when the panel met to deliberate on January 5, 2026.

## ISSUE

Employee contends that the designee erred in ordering her to travel over 2,400 miles from her home to attend an employer's medical evaluation (EME). Relying primarily on the *Thoeni* decision, she argues that this travel is "manifestly unreasonable" because a physician could be found to perform an EME nearer to Lansing, Michigan where she lives. Employee offers

numerous reasons why traveling to Portland, Oregon for an EME would be inconvenient or dangerous for her. She seeks an order reversing the designee's decision.

Employer contends that the designee did not abuse her discretion, and followed the law in requiring Employee to travel to its designated EME physician in Portland. It attempts to distinguish *Thoeni* on its facts and states it tried to locate a closer EME physician, but could not find one that was qualified. Employer also relies on the *Miceli* case cited in *Thoeni*, which noted that "there must be a reasonable showing of cause" to justify requiring an injured worker to leave her residence and travel to a different locality for a medical evaluation. Employer argues that its inability to find a qualified physician nearer to Michigan is reasonable cause for the designee's order requiring Employee to travel to Portland. It seeks an order affirming the designee's decision.

**Shall the designee's order denying Employee's request for a protective order against travel from Lansing, Michigan to Portland, Oregon for an EME be reversed?**

#### FINDINGS OF FACT

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

- 1) On May 31, 2024, Employee experienced foot pain that got worse after her 12-hour shift while working for Employer. (First Report of Injury, May 31, 2024).
- 2) On May 22, 2025, Employer's Human Resources Director wrote Employee and said she would be separated from employment effective May 22, 2025, "due to [her] inability to return to work without restrictions after [her] leave of absence period." (Letter, May 22, 2025).
- 3) On September 16, 2025, Employer's adjuster Kristy Donovan sent Employee, who had relocated to Lansing, Michigan after her termination, a letter advising her that an employer's medical evaluation (EME) was scheduled for her with William Bell, MD, with ExamWorks for October 24, 2025, in Beaverton, Oregon. (Donovan letter, September 16, 2025).
- 4) On September 23, 2025, Jeffrey Lin, DPM, in Lansing, Michigan wrote:

To whom it may concern,

I have been seeing and treating a mutual patient of yours, [Employee], since June 25, 2025. She was seen by me for chronic left foot pain that was diagnosed as a combination of plantar fasciitis, Achilles tendinitis, peroneal tendinitis, and anterior tibial tendinitis. It appears that she is required to have an IME (independent medical

exam) for her workers' compensation insurance claim. I am happy to help in any way that is necessary to make this a smooth and fair process for all parties involved. Please let me know if there is anything I can do to help in this matter. (Letter, September 23, 2025).

5) On September 24, 2025, Dr. Lin provided restrictions for Employee regarding her left-foot "sprain" as follows: "Patient is to be non-weight-bearing in CAM boot w/the aid of a knee-scooter until her follow-up appointment." Employee was to wear the CAM boot 16 hours per day. (Note, September 24, 2025).

6) On September 30, 2025, Employee petitioned to "Appeal IME location in Beaverton, Oregon":

9/22/25 I received a letter in the mail from Traveler Insurance adjuster, Kristy Donovan stating I am required to travel to ExamWorks at . . . Beaverton, OR. Beaverton, OR is 2,400 miles from my home in Lansing, MI. Traveling to Beaverton OR alone, while disabled would cause a hardship and it seems unreasonable. I need a location for an IME closer to my home. There are three other IME offices in MI, 60-90 mins from my home (Detroit, Dearborn, & Southfield, MI).

Employee attached Donovan's letter to her petition and served it on Employer's insurer by certified mail and by email. (Petition, September 30, 2025).

7) On October 9, 2025, Dr. Lin saw Employee again and recommended she continue to wear the CAM boot for at least one more week and then weight bear as tolerated for at least three more weeks in the CAM boot. (Lin report, October 9, 2025).

8) In an undated letter, Dr. Lin stated it was necessary for Employee to have a travel companion for her "West Coast trip for evaluation." He based this on her medical condition and the fact that she already had one fall resulting from her symptoms. Employee should not travel alone as this would cause "undue risk for the patient in her road to recovery." (Lin letter, undated).

9) On October 20, 2025, Employer answered Employee's September 30, 2025 petition, and understood that she was seeking a protective order relative to the EME with Dr. Bell in Oregon:

The employer and carrier scheduled an evaluation with [Dr. Bell], who is an orthopedic foot specialist in Beaverton, Oregon. Dr. Bell is familiar with Alaska Workers' Compensation law and is able to rate pursuant to the Sixth Edition of the *AMA Guides to the Evaluation of Permanent Impairment*.

Inquiries have been made by the employer and adjuster in order to ascertain if a physician closer to her home is able and willing to address an Alaska workers'

compensation claim and provide a rating utilizing the American Medical Associations *Guides to the Evaluation of Permanent Impairment*, Sixth Edition. To date, they have been unable to find a physician in the employee's area who is willing and able to conduct such an evaluation.

Online research of the Michigan's Workers' Compensation system provides evidence that they do not utilize the American Medical Associations, *Guides to the Evaluation of Permanent Impairment*, in their workers' compensation claims.

[Employee] has not provided medical documentation indicating that she is unable to travel. The employer and carrier have advised they are willing to arrange for wheelchair assistance during all of her airport travel so that travel may not create a hardship for [Employee].

Given its willingness to make the above-referenced accommodations and the purported and implied lack of an EME closer than Oregon to provide an evaluation and rate according to the applicable *Guides*, Employer contended that Employee's petition for a protective order should be denied. (Answer, October 20, 2025).

10) On October 23, 2025, the parties appeared at a prehearing conference before a Board designee to address Employee's September 30, 2025 petition for a protective order. The designee had before her at the prehearing conference Employee's September 30, 2025 petition and Employer's October 20, 2025 answer, as well as all the information cited above, which is found in Employee's agency file. The designee appears to have summarized the parties' arguments in the Prehearing Conference Summary, first-served on October 29, 2025, as follows:

**ER [Employer]:**

The ER stated that rescheduling the IME is related to the rating. The ER tried to get someone in the Michigan area, but their PPI statutory scheme for rating permanent partial impairment [sic]. The ER did their research; however, that [sic] does not do a 6th edition rating. In addition, the EE had to see a specialist in the ankle, and the ER received an email referring to the same doctor the ER is using in Beaverton, Oregon, who works with the 6th edition rating and is an ankle specialist. The ER stated that the Eastern part of the US is using the AMA [G]uide, 4th or 5th edition, to rate PPI. The ER stated that PPI is an important part of the claim, should they find her medically stable.

The EE asked if ExamWorks is the only platform to seek an IME doctor, and the ER stated that they are nationwide and a good resource. If parties were to call IME networks, that would be an extensive and enormous process. In addition, if the EE were to go to an SIME [second independent medical evaluation], most doctors are

located in the Pacific Northwest, so the EE would more likely have to travel to the West Coast should an SIME be ordered.

The ER noted that the 10/24/25 IME was canceled to allow the EE to have her petition discussed. However, moving forward, the IME would still need to be scheduled with the IME doctor in Beaverton, Oregon, but it would likely be far out, possibly until after the Holidays. The EE [sic] also added that, regardless of any restrictions related to her foot, the ER can accommodate ADA accommodations. The EE [sic] noted that they did diligence in trying to relocate, but were unable to, so once the IME gets rescheduled, it will be in the Beaverton, [sic] Oregon, location.

The ER also noted that releases will be sent to the EE. The designee encouraged the EE to comply and to ask the ER any questions regarding the releases.

**EE [Employee]:**

The EE opposes traveling over 2,400 miles to attend an IME. The EE stated she attempted to have the IME rescheduled to a closer location.

The EE stated that she got on ExamWorks for the location, and they have a US map and can click on an area when she does research. There were closer locations, and also contacted the Michigan IM. They said they only have one Ortho in the 6th edition, located closer to her area; however, it is not a foot specialist. The ER noted that the EE needs a foot specialist for the ankle since she has been unable to work since 2024 and is already seeing a specialist as a result.

The designee asked the EE why she had an issue with the travel location. The EE stated that it creates a hardship.

The flight is long, and there are layovers. It poses a risk after sitting with balance and walking. The designee asked the EE whether she had a travel restriction note from the doctor, and the EE stated she did not. The EE stated that she had a heavy, uncomfortable boot and not enough legroom on the plane. The EE noted that she has pain, and the travel is very long, and she won't be able to elevate her leg when needed. The EE stated she would need a wheelchair service, but had an experience in the past where she had been abandoned when waiting for a connecting flight. The EE noted that she has a companion doctor's note.

After the designee informed parties that the EE was denying the EE's petition and the EE stated that she objected and that she was not being heard, she followed up with the following arguments:

The EE stated that she is relieved to learn that the 10/24/2025 IME was cancelled and is working on Physical therapy work-hardening to get back to work. The EE, in addition, stated that she was worried about traveling due to the government shutdown and the increased delays. She noted her concern about the civil unrest in

the Portland area and feels it is risky and causes her anxiety. The ER stated that she would be traveling outside of that area to ease her concerns. The EE cited the Supreme Court case Seini [sic] vs. Consumer Electric [sic] Services, 2007 citation 151 [P].3d 1249 (2007) emphasizes that the Alaska compensation board must consider the location and any hardship that can cause the injured workers, and the location should be reasonable.

The designee noted that her decision regarding denying the petition still stood in place, and noted that she did not believe she could even have the discretion in denying an IME attendance. The EE stated that she understands she needs to attend, but she is disputing the location. The designee explained that she is relying on the ER's response that they have already tried to reschedule to a closer location; however, due to the specialist and the PPI issue, they were unable to relocate the IME. The EE stated she had other cases she wanted to include. The designee requested that the EE file her reply to the ER's answer; however, given the arguments in the prehearing, the designee's position will remain the same. The EE noted that she thought it was a predetermined decision.

The EE stated that she would like to respond to the EE's answer to the opposition of her petition, and asked if she could file it at the end of the business day, 10/27/25. The designee noted that the record would remain open and can finalize the summary after receiving the additional information.

**The Designee:**

The designee informed the parties during the prehearing that she is denying the EE's petition to protect the EE from going to an IME far from her home. The designee explained that IMEs are part of the discovery, and the ER gets to choose the IME physician. The designee, in addition, noted that the ER did try to get a doctor closer to home, but with the PPI issue and the specialist needed, they were not able to get anyone closer than Oregon. The EE was in objection to the designee's ruling and stated that she did not feel she was heard. The designee explained that the designee listened to the EE's objection and also asked her if she had a note from the doctor indicating she is unable to travel. The EE stated she did not, and with the other issues that were causing discomfort, the ER noted that she would be arranging ADA travel accommodation. In addition, the EE has a travel companion note; also, the ER canceled the scheduled 10/24/25 IME due to the EE's objection, so the EE would have time to get better and possibly not have the heavy and uncomfortable orthotic boot. In addition, the designee noted that if the IME is not in her favor and her treating physician disagrees with it, she can petition for an SIME and would likely have to travel a long distance from her home.

The designee reviewed the parties' additional information filed on 10/27/25 and 10/28/25. The EE added additional Alaska Supreme Court citation cases regarding unreasonable long-distance travel. The designee would like to add that the IME to Oregon is not unreasonable given the ER did an effort in trying to reschedule it to

a closer location, and due to not having a specialist, and also the physicians not able to use the AMA 6th edition for the necessary PPI in the claim, the ER was not able to reschedule to a closer location. For those reasons, the EE's 9/30/2025 Petition for protective order is denied and orders the EE to attend the IME in Beaverton, Oregon, once the EE [sic] schedules a new date.

The designee's prehearing conference order also advised Employee:

If the Employee does not agree with today's order to comply with the discovery process, she has two options:

1. File a Petition for Reconsideration (8 AAC 45.065) within 10 days of service of this prehearing conference summary, at which time, the designee will review the file and respond in writing to the Petition advising parties of whether or not the order has changed.
2. File a Petition to Appeal today's discovery order (AS 23.30.108) within 10 days of service of this prehearing conference summary, at which time, the AWCB will review the file at a Written Record Hearing and respond in writing to the Petition advising parties of whether or not the designee abused his [sic] discretion by rendering the above order.

"Boilerplate" information on the prehearing conference summary further stated:

Suppose the above summary does not conform to your understanding of the issues raised, or discussions, statements made, agreements or orders entered at the prehearing conference. In that case, you have three choices all of which must be exercised **within 10 days after service of this prehearing summary**:

1. You may ask **the designee** in writing that **the designee modify or amend** the summary to correct a misstatement of fact or to change a prehearing determination, under 8 AAC 45.065(d). If the designee does not modify the prehearing conference summary and you want additional issues to be heard at hearing, you must request another prehearing conference. Otherwise, the hearing will be limited to the issues stated on this summary, under 8 AAC 45.065(c);
2. You may file a petition with the board **appealing** the designee's **discovery order** to the board, under 8 AAC 45.065(h);
- (3) You may file a petition with the board **asking the designee** to **reconsider** the designee's discovery order, under 8 AAC 45.065(i).

If you have any questions about these options, you may call a division office and speak to a workers' compensation technician for assistance. (Prehearing Conference Summary, October 29, 2025).

11) On October 27, 2025, Employer filed and served documents that it intended to rely upon “at hearing” in this case. The attached documents included email correspondence sent between September 30, 2025 and October 23, 2025, between Kayla Nogle of ExamWorks and Donovan regarding locating an EME physician in Michigan in Employee’s case:

- September 30, 2025 from Nogle [n’ee McCain] to herself with an ExamWorks advertisement introducing new EME physicians in Washington and in Oregon.
- October 1, 2025 from Donovan to Nogle asking in relevant part, “Does Dr. William Bell, do IMEs in any other office/state besides OR?”
- October 1, 2025 from Nogle to Donovan responding, “No, he is just in Oregon.”
- October 1, 2025 from Donovan to Nogle asking, “Do you have another foot specialist that does AK that is closer to Lansing MI?”
- October 16, 2025 from Donovan to Nogle asking, “Following up if you responded to my question below [here it is above]. If you did, I misplaced the email.”
- October 17, 2025 from Nogle to Donovan, “So sorry for the delay! I am working on seeing if there are any providers in/near Lansing now. I am waiting on a response from our business unit that handles that area and am hopeful I will hear back soon!”
- October 17, 2025 from Donovan to Nogle, “I will also need to know if the ortho specialist is able to rate under the updated 2024 6<sup>th</sup> edition of the AMA Guides?”
- October 17, 2025 from Nogle to Donovan, “I know! We will only proceed with an orthopedist who addresses 6<sup>th</sup> edition claims. I am hopeful I’ll hear from our MI business until [sic] soon.”
- October 17, 2025 from Donovan to Nogle, “Thank you.”
- October 23, 2025 from Nogle to Donovan, “I so apologize as I’ve been unable to find an option in MI for this claim. Any chance the claimant can travel to Oregon for the exam? If so, I have Dr. William Bell available and he is an orthopedic foot and ankle specialist.” (Notice of Intent to Rely, October 27, 2025).

12) On October 27, 2025, Employer filed and served another pleading with the following explanatory email as a preface, stating in relevant part: “I apologize, the first email was sent prior to my completion of the email tracking and typing the email text. Attached please find a Notice

of Intent to Rely for filing with the Board and for Elizabeth Pleitez’s [the Board designee’s] reference in completing the prehearing conference summary.” There is no obvious difference between this pleading and the previous Notice of Intent to Rely Employer filed on October 27, 2025. (Notice of Intent to Rely, October 27, 2025; observations).

13) On October 28, 2025, Employee filed and served her “rebuttal” to Employer’s answer to her petition, apparently filed as a result of directions given by the Board’s designee at the October 23, 2025 prehearing conference that left the record open. Attachments stated in relevant part:

Date: 10/19/25

....

Dear Board Officers,

Please find enclosed the following documents for consideration in advance of my upcoming pre-hearing on Thursday, October 10/23/2025.

- Numbered rebuttal to the employer’s answer regarding my request for protective order against traveling to Beaverton, Oregon [sic] for IME
- Formal ADA accommodations request
- Checklist of supporting materials to be submitted separately or at the pre-hearing

These materials are also being served to Griffin & Smith v. electronic mail, as per their Entry of Appearance and Answer.

Thank you for your attention and commitment to a fair and accessible process.

[Signed by Employee]

Another, undated, document stated:

**Please see answers and rebuttal to the ANSWER (to my Petition for Protective Order) from [Employer], dated 10/17/2025, below:**

**Answer to Paragraph 1. RE: Protective Order Request for October 24, 2025  
IME in Oregon**

Yes, I am informally requesting a protective order relative to the Employer Independent Medical Exam (EIME) that was scheduled for October 24, 2025, with William Bell, MD, in Beaverton, Oregon.

**Answer to Paragraph 2. RE: injury in Anchorage, Relocation to Michigan, Request for IME to be Scheduled Closer to Home**

Yes, it was necessary for me to relocate to my house in Michigan after my employer terminated my employment. Employment was terminated when I could not return to work without restrictions. (See Exhibits A and B).

Yes, I am requesting that EIME be scheduled closer to my house at [address redacted for privacy].

Requiring travel to the mandated EIME location for ExamWorks at . . . Beaverton, Oregon . . . is *manifestly unreasonable*. The matter of employer's and Alaska State Workers Comp board requiring *manifestly unreasonable* travel to an IME (in or out of state), has already been decided in favor of the claimant, by the Alaska Supreme Court in Thoeni v. Consumer Electopnic [sic] Services (Alaska 2007).

Being required to travel to Beaverton, Oregon, 2,400 miles from my home while disabled and via air travel, during a government shut down, and local civil unrest in Portland, Oregon, imposes medical, logistical, and emotional hardships that violates the principle of *reasonable accommodation* under the Alaska Law, Federal Rule Number 35, and the ADA.

Long distance travel poses a hardship because I was injured at work and I have work-related foot pain and stiffness, limited mobility, and impaired gait and balance. Long distance air travel is difficult because I wear a large cumbersome CAM boot (orthosis) and I use a knee scooter to ambulate (per Dr. Lin's orders), since falling down the stairs on 9/23/2025. (See Exhibits C-H). The clunky CAM boot and knee scooter increases my risk of falling during the course of long distance travel.

My medical conditions -- including ankle/foot sprain, Achilles Tendinitis, Plantar Fasciitis, Anterior Tibial Fibular Ligament (ATFL) tendinitis, posterior tibial tendon dysfunction -- make long-distance travel unsafe. The length of sitting immobile for hours on an airplane or in an airport without being able to change positions frequently, increases my risk of falling when I stand up to walk. The extensive sitting increases my risk for developing potentially life-threatening blood clots, for which I have a strong family history. The knee scooter, clunky, cumbersome CAM boot, and my recent fall down the stairs all contribute to further impairing my mobility and balance, and compounding the impact of the work-related injuries, and further increasing my risk of tripping and falling during the course of long-distance travel to the EIME in Oregon.

I assert that long-distance travel to this IME in Oregon from Michigan imposes undue hardship on me. Pain, unsteady gait, imbalance, stiffness, risk for blood clots, and the inherent inability to ice and elevate my left leg/foot during this trip, make long-distance air travel dangerous, risky, uncomfortable, and very difficult

for me. In addition, I am fearful of going to a state where neither me nor my family have any connections or experience, and we are vastly unfamiliar with; especially during local civil unrest that exists in the Portland, Oregon area. I am fearful of being targeted for violence or arrest/detainment from immigration law enforcement/ICE based solely on the profile they are employing. Traveling to an unfamiliar place while disabled and defenseless is scary all by itself, and when compounded with the threat of injury or profile-related arrest/detainment, it is emotionally paralyzing and causes me to have severe anxiety and distress. This is a lot to be subjected to in an EIME, which can be by its own nature, very intimidating.

The issue of *manifestly unreasonable* travel over excessive distances for an EIME has already been addressed and decided in the Alaska Supreme Court and Federal Rule 35; see Citations below,

1. Alaska Supreme Court: Thoeni v. Consumer Electronic Services (Alaska 2007). Citation 151 P.3d 1249 (Alaska 2007) Docket number: S-11897. The Alaska Supreme [C]ourt emphasized that the Alaska Workers' Compensation Board must consider the reasonableness of the location and the hardship imposed on the claimant, especially when the claimant resides far from the proposed IME site. "*The Board must consider weather [sic] the location of the examination is reasonable in light of the claimant's circumstances.*" In this case, the Alaska Supreme Court determined that the Board abused its statutory discretion when it determined that Thoeni should forfeit benefits for refusing to attend an EIME 2,500 miles from her home -- Miami, FL to Utah. I assert that the travel distance (from Lansing, MI to Beaverton, OR), I am being mandated to endure while disabled and recovering from work-related injuries, is *manifestly unreasonable*.
2. Alaska Supreme Court precedent (Amos v. Tidwell, 2024) affirms that relocation does not negate claimants right to reasonable IME logistics.
3. Alaska Supreme Court: Smith v. Radecki (2010, Alaska Supreme Court)[.] The Alaska Supreme Court acknowledge[d] the importance of balancing medical necessity with claimant accessibility regarding the location of the IME scheduled far from the claimant's home. Whether the location of the IME imposes undue hardship on the claimant is strongly taken into consideration.
4. Shirsat v. Mutual Pharmaceutical Co[.] (E.D. Pa. 1995) Federal District Court ruling: Courts may order IMEs under Rule 35 of the Federal Rules of Civil Procedure, but they must consider the examinee's location and hardship. This Federal ruling [means] that IMEs must be reasonable and location in logistics. Federal Rule 35 and Alaska practice require that IMEs be conducted at a *reasonable time and place*, with consideration for the claimant's health and travel burden.

5. Terry M. Parsons v. Craig City School District (2023). Alaska Supreme [C]ourt (MOJ No. 1957). The Alaska Supreme Court acknowledged the importance of considering claimant hardship when scheduling IMEs. It implicitly affirmed that the location and accessibility are relevant factors in evaluating fairness.
6. Bustamante v. Alaska Worker's [sic] Compensation Board (2002)[.] Citation S-100003. It affirms the Board's duty to ensure fair procedures and reasonable accommodations for claimants.
7. Jeffrey B. Townsend v. Princess Tours (2021, AWCB Decision No. 21-0045): the board's consideration of claimant hardship and procedural fairness is supported in this case.
8. Mark Sayre v. Arctic Slope Regional Corporation (2024, AWCB Decision No. 24-0057): the Board's openness to supplemental briefing and claimant testimony regarding logistical burdens.
9. Alaska Workers' Compensation bulletin No. 20-02 (2020) discourages nonessential travel for IMEs, especially when imposes health risks. It encourages insurers to act in good faith and accommodate claimants.

The above cited cases affirm that relocation does not negate or preclude claimant's right to reasonable IME logistics. *IMEs must be scheduled at a reasonable time* (which encompasses travel time and time zone changes) *and place* (location). *Insurers must act in good faith when scheduling IMEs.*

For me, extensive air travel and sitting will impact my limited mobility and stiffness related to my left foot injury, increase my risk of fall and further injury, and increase my risk of blood clots from sitting for hours with very little room for movement. This form of long-distance travel imposes hardship due to pain, discomfort when sitting/standing/walking for long periods and inability to change positions, ice, elevate, and stand when needed, and the inability to remove the clunky, cumbersome, orthotic boot when needed.

I assert that my medical conditions -- including Achilles Tendinitis, Plantar Fasciitis, Interior Tibial Fibular Ligament (ATFL) inflammation, and a sprained foot/ankle -- make long-distance travel unsafe, and the length of sitting without being able to change positions increases my risk for developing potentially life-threatening blood clots and increase my risk of falling after sitting immobile for hours on an airplane. In addition, I use a knee scooter, wear a clunky orthotic boot, and recently fell down the stairs, worsening my mobility and balance an increasing my risk of tripping and falling during extensive and exhausting travel 2,400 miles from my home, while disabled.

**Answer to Paragraph 3, RE: Selection of Dr. Beld [sic] in Oregon**

While Dr. Beld [sic] may be *willing to address an Alaska workers' compensation case and rate impairment using the Sixth Edition of the AMA Guides*, Dr. Beld [sic] is not licensed to practice medicine in Alaska or Michigan, and seems to be an outlier option in Beaverton, Oregon, 2,400 miles away from my home.

The assertion that only Dr. William Bell, M.D., in Beaverton, Oregon can apply Alaska law is unsupported. Physicians nationwide routinely apply jurisdiction-specific standards when provided with proper instructions and support. [ExamWorks] is a national chain with the ability to co-consult among the experts within the organization. The IME could be a hybrid of a Michigan IME provider conducting the exam and the Oregon provider applying the Sixth Edition of the AMA Guides to their network's MI colleague's [sic] findings. [ExamWorks] is not the only organization offering access to EIME providers. Other resources can and should be explored to provide easy access for me closer to my home in Lansing, MI.

Alaska Supreme Court in *Thoeni v. Consumer Electronic Services*, 151 P.3d 1249 (2007) ruled that IME location must be reasonable, and refusal is justified when extensive travel imposes hardship.

**Answer to Paragraph 4, RE: Alleged Inability to Find a Michigan Physician**

The burden of proof lies with the employer to show that no qualified physician in Michigan is willing or able to conduct the IME. The employer/insurer has not provided documentation of refusals of IME providers they contacted. Given the national scope of ExamWorks and other available resources/agencies, and the availability of board-certified orthopedic specialists and podiatrists in or near Michigan, the employer/insurer's claim that there are no qualified IME providers in MI, is unsubstantiated.

**Answer to Paragraph 5, RE: Michigan Worker's [sic] Compensation System and AMA Guides**

Michigan's use of different impairment rating systems is irrelevant. The IME is being conducted for an Alaska claim, and the evaluating physician -- regardless of location -- can be instructed to apply the sixth edition of the AMA [G]uides, by an Alaska-qualified reviewer. This [i]s standard practice in multi-jurisdictional evaluations and does not require the physician to be licensed in Alaska, or have prior knowledge of the Sith [sic] Edition of the AMA Guides.

....

**VI. Answer to Paragraph 6, Lack of Medical Documentation and Wheelchair Assistance.**

The physician letter from Dr. Jeffrey Lin states "Theresa Spears to have a travel companion for her West Coast trip for evaluation[:]. Due to the patient's multiple

diagnoses that have *already caused one fall and sprain of that left foot including, plantar fasciitis, Achilles tendinitis, posterior tibial tendon disfunction, [sic] and tibialis anterior tendinitis. I believe that traveling such a long-distance by herself will cause undo (undue) risk for the patient in her road to recovery.*” (See Exhibit J). I assert that the *undue (unnecessary) risk of long distance travel* exists independent of having a travel companion.

The undue risk of long-distance travel to Oregon for EIME Dr. Lin denotes is present whether I have a travel companion or not. My disabled husband would have to be my travel companion, and he cannot stop me from falling, nor can he catch me if I fall, or help me get up after a fall. He also cannot prevent any of the other inherent risk[s] of long-distance air travel, such as left foot pain, stiffness, swelling, poor circulation, and thrombosis (blood clots). There is an inherent risk of poor blood flow (circulation) while sitting for extended periods in the airport and on the plane, particularly in persons my age, and with a family history of blood clots, like I have. This type of travel poses increased risk for loss of balance when standing or walking after prolonged sitting, and there is significant[] data-supported risk of blood clots (thrombosis) in persons over 40 with impaired mobility, especially in persons with [a] family history of thrombosis. My ankle is stiff, swollen, much of the time, I wear a large clunky orthotic boot that is heavy, awkward and cumbersome in design and movement. The boot makes it difficult to share tight airplane leg room space with other passengers and further restricts my options for comfort. The large boot and tight area under the seat with limited leg-space, restricts the ability to stretch out or achieve a comfortable position for my left leg/foot. Extended use of the boot in tight spaces and poor positioning increases the risk of heel blisters and balance and gait issues when I stand to walk.

In Dr. Jeffrey Lin’s letter ordering a companion to travel with me, Dr. Lin states that he believes that traveling such a long-distance by myself will cause undue risk for me in my road to recovery. Dr. Lin advises that if I must travel to Oregon for this EIME on 10/24/2025, then I should have a companion for safety. I assert that while traveling with a companion will make it easier to get help if I experience complications or fall[] having a companion will not prevent me from falling due to the inherent risks of long-distance travel, including prolonged sitting for hours, and given my debilitating conditions and orthosis of my left foot. My husband is my only companion who can travel to Oregon with me, and he is disabled.

Limited wheelchair service is available on a first come-first serve basis in airports. Although airport wheelchair service is free, tipping is expected. It is expensive to get wheelchair service because a \$5 dollar to \$10 tip is expected for each leg of the journey to and from the gate. Often, the attendant leaves me alone at the gate and another attendant comes back sometimes an hour or two later depending on the length of the layover. It is customary/expected to tip the new attendant that comes to wheel me from the gate and then backwards down the jet-bridge to the door of the airplane. It is frightening and seems unsafe when the wheelchair attendants wheel me backwards, bearing the weight of me, my carry-ons, and the wheelchair

while they are walking backwards down steep inclines on [a] jet bridge with gravity pushing me and my chair into their body down a ramp backwards. Factoring in all these variables, tipping can cost the traveler up to \$50 one-way, depending on how many bags and equipment the traveler has. I will have a knee scooter and 1 bag.

Generally the wheelchair service transports me from the check-in counter to the gate and leaves me there alone until the plane boards. Staffing issues are common under normal conditions, and even more profound when the government [is] shut down, stretching even non-federal staff thin. Wheelchair transport is not as smooth and easy as it sounds. There is nobody to help me when they leave me unattended at a gate for hours during a layover. The wheelchairs are pushed from behind and do not have self-propelling capabilities, for safety. When left unattended, the traveler has no way to get to the bathroom or to get something to eat or drink unless they walk. Pain, unsteady gait, imbalance, stiffness, risk for blood clots, and inability to ice and elevate my left leg/foot make this type of travel dangerous, risky, uncomfortable, and very difficult. Wheelchair service does not mitigate the cumulative total of long-distance air travel, layovers, prolonged sitting, and exposure to civil unrest in Oregon, particularly the Portland Metro area. These factors pose serious risk [of] increased left foot pain, swelling, reinjury, severe anxiety and emotional distress. This is a lot to be subjected to for an EIME.

#### **VII. Answer to Paragraph 7,RE: Employer's Position That Protective Order Should Be Denied**

Given the accessibility of IME agencies and providers in and around Michigan, including but not limited to, the national chain of ExamWorks facilities, with locations closer than Beaverton, Oregon; combined with documented medical disability, hardships imposed by long-distance air travel, and Alaska Supreme Court and Federal rulings (Thoeni, Amos, Smith v. Radecki, Federal Rule 35, etc.), the employer's position is legally and ethically unsupportable, as determined in Thoeni v. Consumer Electronic Services (Alaska 2007), the employer's mandate for EIME in Oregon, 2400 miles from my home, is *manifestly unreasonable*.

In this same document, Employee offered her requested remedy:

- Deny the mandate for out-or-state [sic] travel to Beaverton, Oregon for IME, or
- Require the employer/carrier to arrange an IME within a reasonable distance from my home (ExamWorks is in Michigan), or conduct the evaluation remotely if medically appropriate, or
- Require the employer/insurer to bring the physician to Michigan to perform IME, or
- Require a hybrid resolution where a local provider does the exam and collaborates with an expert in 6<sup>th</sup> Edition AMA guides.
- Require the employer/insurer to adhere to ADA guidelines and avoid *manifestly unreasonable* travel, or travel causing undue hardships, and negatively impacting my overall well-being and exacerbating my disabling, work-related, medical conditions. (All emphasis in original).

Employee also attached an October 19, 2025 letter to the Board which, in summary, re-stated much of the above and requested “reasonable accommodations” under the Americans with Disabilities Act (ADA) in respect to the subject EME. She also mentioned that she had “stumbled, fallen, or both three times (1/3/2025, 2/18/2025, and 09/23/2025)” due to her left-foot pain and instability that she contends arose from her May 31, 2024 work injury with Employer. Employee’s attachments to this document included many of the medical records cited above, with Dr. Lin’s opinions and recommendations as well as other documents mentioned in the body of her other attachments. (Email with attached “answer and rebuttal,” October 28, 2025).

14) On October 28, 2025, Employer filed and served a reply to Employee’s “October 27, 2025 rebuttal.” Employer took issue with Employee’s “rebuttal” of its October 17, 2025 answer and contended that she made “many statements” that were not substantiated by medical or other evidence. Specifically, Employer contended Employee had provided no medical evidence stating she was physically unable to travel to an EME in Oregon or that such travel would constitute a hardship. (Reply to Employee’s October 27, 2025 Rebuttal, October 28, 2025).

15) Employer also reiterated its position given at the October 23, 2025 prehearing conference that it was willing to arrange for wheelchair assistance during airport travel, ADA accessible ground transportation and an ADA accessible hotel room. It also said it would arrange airplane seating so that no one would be seated in front of Employee, thus giving her enough room for her boot, and so she could move around. Employer disputed Employee’s recitation of alleged issues with airport wheelchair assistance and stated that this was a “regular occurrence at airports.” It also noted that Employee had traveled post-injury from Alaska and Michigan in February 2025, and in March 2025, was advised to use a scooter for long-distances as needed. Employee also told her adjuster that in March 2025 she was taking her pets back to Michigan for her husband to care for. Employer believed Employee successfully used her scooter on this occasion. It cited at least three times post-injury when Employee flew between Anchorage and Michigan, which contradicted her concerns about flying to Portland from Michigan and all its attendant risks. (Reply to Employee’s October 27, 2025 Rebuttal, October 28, 2025).

16) Employer also stated it would retain a qualified nurse to accompany and assist Employee while traveling to and from the EME. It noted any Portland protests and the ICE facility were not near the Portland International Airport or Beaverton where the EME was scheduled. (Reply to Employee’s October 27, 2025 Rebuttal, October 28, 2025).

17) Employer attempted to distinguish Employee's case from *Thoeni* on its facts: It noted that there was no forfeiture of benefits issues in Employee's case, and she was not being asked to travel unassisted or unaccompanied. Employer further cited that Employee's trips between Anchorage and Michigan were approximately 2,915 miles each way, which it asserted was roughly 1,000 miles more each way than the distance between Lansing, Michigan and Portland. It further argued that in the event an SIME was required, Employee would likely need to fly from Michigan to the West Coast, because most SIME physicians on the Board's list are located on the West Coast. Employer reiterated that it had not been able to locate a closer orthopedics foot and ankle specialist than Portland who was familiar with Alaska law and able to rate under the applicable guides. It attached copies of Donovan's emails with an ExamWorks representative. Thus, Employer contended that *Thoeni* was "not applicable." It also distinguished *Amos*, *Radecki*, *Parson*, *Bustamante*, *Sayre* and *Townsend* because they did not address EME travel. (Reply to Employee's October 27, 2025 Rebuttal, October 28, 2025).

18) Employer rejected Employee's suggestion regarding a "hybrid" evaluation where a Michigan physician performed the evaluation and took measurements, and Employer then asked a physician familiar with the applicable *Guides* to provide a PPI rating. It contended this suggestion is "not likely to be workable" because a "hands-on evaluation" is needed for an accurate PPI rating. Employer also argued that if the consulting physician provided his report more than five days after the evaluating physician's report, this would constitute a change of Employer's physician, which it "would not wish to exercise." It again asked that the designee deny the petition for protective order. (Reply to Employee's October 27, 2025 Rebuttal, October 28, 2025).

19) On October 29, 2025, the Board's designee first-served the parties with the initial October 23, 2025 Prehearing Conference Summary. (Agency file: Judicial, Prehearings and Hearings, Prehearing Conference Summary Served tabs, October 29, 2025).

20) On November 6, 2025, in a document dated November 5, 2025, Employee timely filed and served a request to "amend" the October 23, 2025 Prehearing Conference Summary:

I respectfully submit this request to amend the Summary of Pre-Hearing Conference dated 10/23/2025. Upon review, I identified several typographical errors and factual inaccuracies that might misrepresent the content and tone of the discussion and promote unfair bias. These include:

1. 3<sup>rd</sup> paragraph under heading “Discussions:” AWCB Designee stated[,] **“If parties were to call IME networks, that would be an extensive and enormous process.”** This claim is unilateral, unsubstantiated, and speculative, with no supporting evidence. This claim does not negate the Alaska Supreme Court ruling in *Thoeni v. Consumer Electronic Services* (2007), 151 P. 3d 1249, which ruled against *manifestly unreasonable* travel that causes claimant hardship. I am requesting this unsubstantiated claim/opinion be:

- A) Amended as appropriate to accurately reflect the discussion, OR
- B) Represented correctly as speculation or opinion, not a fact, OR
- C) Removed/stricken altogether, for accuracy and to reduce bias.

a. **“The EE also added, that regardless of any restrictions related to her foot, the ER can accommodate ADA accommodations.”** This statement is inaccurate because it was not **“added”** by me. Accommodation was offered by ER representative, Christie Niemann, and I was simply repeating what she said. I did not add this information; I was clarifying what was said to me. The **ER** representative (not the EE) stated they were willing to provide accommodation. I’m requesting this verbiage be amended to change designation of “EE” to “ER,” or remove/strike this statement altogether, for accuracy and to reduce bias.

**“The EE noted that they did diligence in trying to relocate, but were unable to, so once the IME gets rescheduled, it will be in Beaverton, Oregon.”** This statement is erroneous because it was the **ER** representative (not the EE) who stated they were not able to find an appropriate IME provider in MI, and the ER stated they plan to reschedule the IME in Beaverton, Oregon with Dr. William Brown [sic], likely, in January. It was the Designee who stated during the prehearing conference that the employer did their “due diligence” in trying to find an IME provider in Michigan. The wording in this part of the summary imposes bias against EE and in favor of the ER, and it overall does not accurately convey the wording or context of what I said during the prehearing conference.

In addition, the Designee’s statement seems incomplete[:] “The EE noted that they did diligence in trying to relocate. . . .” Relocate where/what? I did not do diligence in trying to relocate anything/anywhere. Those were not my words and they should not be represented in the summary as coming from me.

I do not agree due diligence was undertaken by the employer/insurer to find an IME provider in MI. Only one resource, ExamWorks, was explored by the employer. The Designee acknowledged in the 3<sup>rd</sup> paragraph of the summary that there are “IME networks.” I believe those “IME networks” should be contacted and documented, to demonstrate due diligence. It appears the employer is accustomed to using one IME provider, ExamWorks, and has explored no other options for IME providers in MI and surrounding states.

I am requesting that the Designee's statements in 4<sup>th</sup> paragraph be amended to read, **ER** instead of EE, because [i]t was not me who "added" that information and I never stated diligence was undertaken when exploring IME options in MI. In fact, at the time of the Pre-hearing, there was no proof submitted by the employer/insurer that contact with MI providers had been made.

The undeniable fact remains that the requirement to travel 2,400 miles from my home, causing undue hardship, for EIME has already been determined to be *manifestly unreasonable*, by the Alaska Supreme Court in *Thoeni v. Consumer Electronic Services* (2007), 151 P. 3d 1249.

**3. Paragraph 5: "The ER also noted that releases will be sent to the EE. The designee encouraged the EE to comply and to ask ER any questions regarding releases."**

I request that this paragraph be removed/stricken from the summary because it has nothing to do with my petition and it implies bias against me and in favor of the employer. Releases were mentioned by the employer's representative, and one side of this discussion is presented in the summary, as if employee noncompliance was anticipated; "designee encouraged EE to comply." I had to assure them I had no intention of not signing the releases. Releases have nothing to do with my petition for protective order against traveling to Beaverton, Oregon, and it should be amended/stricken out of the summary. In addition, I have already signed and sent releases twice to this employer/insurer this year with no problems at all. I mailed consents/releases to the insurer twice this year when she said she did not receive them the first time.

When I asked ER for clarification after she mentioned the releases, the ER confirmed that the releases would be very specific (focused) and request only medical records related to the work-related injuries. Designee disclosure about that part of the discussion (my part) does not appear in the summary, and therein lies further bias against EE, and in favor of ER. Please remove/amend the existing irrelevant "release" related discussion from the prehearing summary, especially given the information presented is unilateral, and omits questions EE posed for clarification, and omits any content discussing employer responsibility to provide EE with focused (not general) "releases."

**4. Paragraph 6 - 2<sup>nd</sup> sentence: "The EE stated she attempted to have the IME rescheduled to a closer location."** This sentence is erroneous. I assert that during the prehearing, the ER stated the adjuster attempted to find an IME provider in MI.

I personally never attempted to schedule anything related to an IME. In preparation for the prehearing, I called the Michigan branch of ExamWorks and the Michigan IME, LCC [sic], and I asked for a list of providers. I never "attempted to have the IME rescheduled to a closer location." To my knowledge, I have no authority to "reschedule" an IME scheduled by the employer, nor did it ever cross mind.

I request that this erroneous information be stricken from the summary, or the designation of EE be changed to **ER**, for accuracy and to reduce bias.

**5. Paragraph 10 – 5<sup>th</sup> sentence: “The EE cited the Supreme Court case Seini vs. Consumer Electric Services, 2007 citation 151p3d 1249 (2007) emphasizes that the Alaska compensation board must consider the location and any hardship that can cause the injured workers, and the location should be reasonable.”**

I request this case citation be amended to read: Alaska Supreme Court case **Thoeni** v. Consumer **Electronic** Services, 151 P.3d 1249 (Alaska 2007).

**6. Paragraph 12: “The EE stated that she would like to respond to the EE’s answer to the opposition of her petition, and asked if she could file it at the end of the business day, 10/27/2025.**

I request this sentence be amended to read, “The EE stated that she would like to respond to the **ER’s** answer to the opposition of her petition. . . .” Please change the 2<sup>nd</sup> “EE” in the sentence to read, “ER’s answer,” as I would not be responding to my own answer.

7. All the remedies I requested, except one (relocation of EIME to Michigan), were never addressed in the Pre-hearing summary. Bias is shown in completely disregarding and not addressing my request for remedies other than my request for relocation of EIME to Michigan.

Please provide an addendum to address the following remedies I proposed in [my] pre-hearing petition and my rebuttal to employer’s 10/17/25 answer to my petition for protective order.

The proposed remedies are as follows:

**I respectfully request that the Board:**

- **Deny the mandate for out-of-state travel to Beaverton, Oregon for IME, or**
- **Require the employer/carrier to arrange an IME within a reasonable distance from my home (ExamWorks is in Michigan), or conduct the evaluation remotely if medically appropriate, or**
- **Require the Employer/Insurer to bring the physician to Michigan to perform IME, or**
- **Require a hybrid resolution where a local provider does the exam and collaborates with an expert in 6<sup>th</sup> edition AMA [G]uides.**
- **Require the Employer/Insurer to adhere to ADA guidelines and 2007 Alaska Supreme court ruling in Consumer Electronic Services (2007), 151 P. 3d 1249, to avoid *manifestly unreasonable* travel, or travel causing undue**

**hardships, and negatively impacting my overall wellbeing, and exacerbating my disabling, work-related, medical conditions.**

**8.** Designee served a copy of the Pre-hearing summary to **Sedgwick Claims Management Services**. Please note that Sedgwick Claims Management Services stopped servicing my claim on December 31, 2024. Constitution State Services is the workers['] compensation servicing company of record. (Request To Amend the Summary of Pre-Hearing Conference dated 10/23/2025, November 5, 2025).

21) On November 10, 2025, Employer also timely filed and served a request asking the designee modify the October 23, 2025 prehearing conference summary:

In the “Discussions” portion of the Prehearing Conference Summary, under the caption “ER:” it states: “The ER stated rescheduling the IME is related to the rating. The ER tried to get someone in the Michigan area, but their PPI statutory scheme for rating permanent partial impairment. In addition, the EE had to see a specialist in the ankle, and the ER received an email referring to the same doctor the ER is using in Beaverton, Oregon who works with the 6<sup>th</sup> edition rating and is an ankle specialist. The ER stated that the Eastern part of the US is using the AMA guide, 4<sup>th</sup> of 5<sup>th</sup> edition, to rate PPI.”

I believe that the above summary does not fully and accurately represent the information I provided in the prehearing. I indicated that the EIME had been scheduled with an orthopedic foot and ankle specialist William Bell, M.D., in Beaverton, Oregon to address multiple issues including PPI. One reason for scheduling with Dr. Bell was his ability to rate PPI using the Sixth Edition of the AMA Guides. After [Employee] objected to traveling to the EIME in Oregon, the adjuster contacted ExamWorks, the same group used to coordinate the EIME with Dr. Bell. She requested that they inquire if there was an orthopedic foot/ankle specialist through ExamWorks who was closer in proximity to the employee and was qualified and willing to perform an Alaska workers’ compensation IME and a Sixth Edition rating. They responded they were unable to locate a closer physician who met these criteria and referred the adjuster back to Dr. William Bell. I advised that I had conducted internet research to determine the rating scheme used for permanent impairment in Michigan workers’ compensation cases and it appeared that they use a different methodology for rating permanent impairment than the *AMA Guides to the Evaluation of Permanent Impairment*. I indicated that many jurisdictions do not use the 6<sup>th</sup> Edition of the AMA Guides.

In paragraph 2 under “ER:” it states, “if parties were to call IME networks, that would be an extensive and enormous task.” I do not recall making this statement. I did indicate that it would be a time consuming task to research, locate, and call/email multiple EIME groups in the Michigan area to locate an orthopedic foot and ankle specialist who was willing and able to evaluate an employee in an Alaska

workers['] compensation claim and competent to rate using the Sixth Edition of the AMA Guides, 2024 update.

In the last line of paragraph 3 under “ER:” it states: The EE noted that they did due diligence in trying to relocate, but were unable to, so once the IME gets rescheduled, it will be in the Beaverton, Oregon location. This statement was made by me, not the employee.

Under “EE:” paragraph four it states: “after the designee informed the parties that EE was denying the EEs petition. . . .” I believe that this paragraph was intended to read “After the designee informed the parties that **she** was denying the EEs petition. . . .” (Letter, November 10, 2025).

22) On November 10, 2025, Employer also filed and served a “response” to Employee’s November 5, 2025 request to amend the October 23, 2025 Prehearing Conference Summary that the designee had served on the parties on October 29, 2025. Employer contended that to the extent Employee was rearguing her position or “making rhetorical comment” about information or decisions set forth in the October 23, 2025 prehearing conference summary, “this should be disregarded as this evidence has already been heard and addressed in the October 23, 2025 prehearing.” However, Employer agreed there were typographical errors in the summary, but offered for “clarity sake,” that the typographical error suggesting that Employee had done due diligence in trying to relocate the EME but was unable to do so, was mentioned after the designee had already verbally denied Employee’s petition for a protective order. (Response to Employee’s November 5, 2025 Amendment to Prehearing Conference Summary, November 10, 2025).

23) On November 12, 2025, the designee issued and served on the parties by mail an amended October 23, 2025 Prehearing Conference Summary, with relevant changes as follows:

**AMENDED 10/23/25 PREHEARING SUMMARY**

This is being issued to correct some typographical errors and correct a statement from the 10/23/25 prehearing summary. Please see the EE’s 11/5/25 request to amend the prehearing summary and the ER’s 11/10/25 request to correct the summary. After the amended information below, the Summary will remain the same and no other amendments will be made.

. . . .

**ER:**

The ER stated that **the IME has been rescheduled with an Orthopedic foot and ankle specialist William Bell, MD, in Beaverton, Oregon to address multiple**

issues including PPI. One reason for rescheduling with Dr. Bell was his ability to rate PPI using the sixth edition of the AMA Guides. After the EE objected to traveling to the IME in Oregon, the adjuster contacted ExamWorks, the same group used to coordinate the EIME with Dr. Bell. She requested that they inquire if there was an orthopedic foot/ankle specialist through ExamWorks who was closer in proximity to the EE and was qualified and willing to perform an Alaska Workers' Compensation IME and a sixth edition rating. They responded they were unable to locate a closer physician who met these criteria and referred the adjuster back to Dr. Bell. The ER advised that she had conducted internet research to determine the rating scheme used for permanent impairment in Michigan workers['] compensation cases and it appeared that they used a different methodology for rating permanent impairment [sic] the AMA Guides to the evaluation of Permanent Impairment, in addition, many jurisdictions do not use the 6th edition of the AMA guides. The ER stated that PPI is an important part of the claim, should they find her medically stable.

The EE asked if ExamWorks is the only platform to seek an IME doctor, and the ER stated that they are nationwide and a good resource. If parties were to call IME networks, that would be an extensive and **time-consuming task to research, locate, and call/email multiple EIME groups in the Michigan area to locate an orthopedic foot and ankle specialist who was willing and able to use the sixth edition of the AMA [G]uides, 2024 update.** In addition, if the EE were to go to an SIME, most doctors are located in the Pacific Northwest, so the EE would more likely have to travel to the West Coast should an SIME be ordered.

The ER noted that the 10/24/25 IME was canceled to allow the EE to have her petition discussed. However, moving forward, the IME would still need to be scheduled with the IME doctor in Beaverton, Oregon, but it would likely be far out, possibly until after the Holidays. The **ER** also added that, regardless of any restrictions related to her foot, the ER can accommodate ADA accommodations. The **ER** noted that they did diligence in trying to relocate, but were unable to, so once the IME gets rescheduled, it will be in the Beaverton [sic], Oregon, location.

....

**EE:**

The EE opposes traveling over 2,400 miles to attend an IME. The EE stated she attempted to have the **adjuster** reschedule **the IME** to a closer location.

....

After the designee informed parties that the **designee** was denying the EE's petition and the EE stated that she objected and that she was not being heard, she followed up with the following arguments:

The EE stated that she is relieved to learn that the 10/24/2025 IME was cancelled and is working on Physical therapy work-hardening to get back to work. The EE, in addition, stated that she was worried about traveling due to the government shutdown and the increased delays. She noted her concern about the civil unrest in the Portland area and feels it is risky and causes her anxiety. The ER stated that she would be traveling outside of that area to ease her concerns. The EE cited the Supreme Court case **Thoeni** vs. Consumer Electric Services, 2007 citation 151 [P].3d 1249 (2007) emphasizes that the Alaska compensation board must consider the location and any hardship that can cause the injured workers, and the location should be reasonable.

....

The EE stated that she would like to respond to the **ER's** answer to the opposition of her petition, and asked if she could file it at the end of the business day, 10/27/25. The designee noted that the record would remain open and [she] can finalize the summary after receiving the additional information. . . . (Amended Prehearing Conference Summary, October 23, 2025, served on November 12, 2025; all emphasis in original).

- 24) Tens day from November 12, 2025, was Saturday, November 22, 2025. Three days added to that date, because the Workers' Compensation Division (Division) served the amended Prehearing Conference Summary by mail, was November 25, 2025. (Observations).
- 25) On November 14, 2025, the Division served on the parties a hearing notice for a December 9, 2025 written-record hearing. (Hearing Notice, November 14, 2025).
- 26) On November 18, 2025, Employee filed and served a November 10, 2025 "response" to Employer's October 28, 2025 response regarding her petition for a protective order:

Please see my response to the 10/28/2025 reply from employer's attorney, below:

In response to the employer's statement, "The employee has filed a Rebuttal regarding the October 17, 2025 Answer filed by the employer to her September 30, 2025 Petition requesting that the Board order that she need not attend an Employer Independent Medical Evaluation with Dr. William Bell in Beaverton, Oregon," is not an accurate representation of the nature of my petition. I requested a protective order because the EIME was scheduled for 10/24/2025 by my employer 2,400 miles from my home. The distance and extensive travel creates difficulty and emotional, logistic, and physical hardships (as described in my petition) due to my work-related injuries. My petition was not a request that I need not attend the IME. The issue of *manifestly unreasonable* travel mandates has already been decided in favor of the claimant in the 2007 Alaska Supreme Court Case Thoeni v. Consumer Electronic Services (Alaska 2007). Citation 151 P.3d 1249 (Alaska 2007) Docket number: S-11897. Requesting the IME be scheduled in MI was only

one of the remedies I proposed. I offered numerous options for remedies, not solely relocation of IME to MI. I requested the following:

- a. **Deny the mandate for out-of-state travel to Beaverton, Oregon for IME, or**
- b. **Require the employer/carrier to arrange an IME within a reasonable distance from my home (Exam Works is in Michigan), or conduct the evaluation remotely if medically appropriate, or**
- c. **Require the Employer/Insurer to bring the physician to Michigan to perform IME, or**
- d. **Require a hybrid resolution where a local provider does the exam and collaborates with an expert in 6<sup>th</sup> edition AMA guides.**
- e. **Require the Employer/Insurer to adhere to ADA guidelines and avoid manifestly unreasonable travel, or travel causing undue hardships, and negatively impacting my overall wellbeing and exacerbating my disabling, work-related, medical conditions.**

In response to the employer's statement, "**The employee makes many statements which are unsubstantiated by medical or other evidence:**" All the claims and concerns I disclosed verbally and in writing for the pre-hearing conference are substantiated by medical records and provider notes. During the pre-hearing conference, the employer's representative (Christie Niemann) stated she had not obtained or read my medical records. The absence of a records review, by employer/insurer's counsel, does not negate the existence of the medical records and clear evidence substantiating my claims. In addition, I submitted a note from my provider stating his belief that traveling such a long distance by myself will cause undue risk for me in my road to recovery.

***Regarding EIME Travel Assistance and Prior Travel Post Injury:***

Traveling to Michigan from Alaska in February 2025 due to a family crisis; traveling to Michigan from Alaska in March 2025 to transfer the care of my pets to my husband in MI to support a successful post-procedure recovery; and traveling to Michigan from Alaska after employer termination were all crisis-related, unavoidable circumstances. This travel cannot be equitably compared to thousands of miles of mandated round trip travel far from my home for a brief appointment. This manifestly unreasonable travel requires a quick turn around (after the brief appointment) across several time zones, back home, with little rest and recovery time between the round trip travel.

During previous travel, I had ready access to, and use of, the knee scooter, except when on the plane or in the airport. I used wheelchair service in the airport and was left alone at the gate until boarding time. Staffing ratios of wheelchair/transport attendants and travelers do not allow for one-on-one attendance during extended layovers before boarding. It's common knowledge that the porters must leave travelers at the gate when there is a time gap between arrival at the gate and

boarding. The porters must leave the traveler at the gate to help other travelers needing wheelchair service. Staffing is more strained now due to the government shutdown and numerous flights are being delayed and canceled.

Travel post-injury has been extremely difficult physically, emotionally, and logistically, and it has been undertaken only when necessary, and there is no alternative. Mandated travel to Beaverton, Oregon for the employer's convenience is *manifestly unreasonable*. Traveling due to crisis and out of necessity and crisis does not equate to *manifestly unreasonable* mandated travel to an EIME brief appointment, for employer convenience. Also note, I did not travel alone with the pets to Michigan in March 2025, so navigating the knee scooter did not involve the pets, as previously implied in the employer's 10/28/25 response.

Employer's counsel stated "Ms. Spears' claim is distinguishable from the facts in Thoeni. No forfeiture of benefits is at issue." In Thoeni v. Consumer Electronic Services (2007), the Alaska Supreme Court stated that "Other jurisdictions have held that even intra-state travel can be unreasonable depending on the circumstances in the case. The Alaska Supreme court determined that mandating Mary Thoeni to travel 2,500 miles from her home was *manifestly unreasonable*. The board's decision that Thoeni's refusal was unreasonable is not supported by substantial evidence. Accordingly, the board abused its statutory discretion when it determined that Thoeni should for [sic] forfeit her benefits for the period during which she refused to attend an examination." The Alaska Supreme court reversed the board's determination. Unlike Mary Thoreni [sic], I should not have to refuse to go to an IME appointment in Beaverton, Oregon, for common sense to be employed in scheduling the appointment closer to my home. All resources in scheduling this appointment closer to my home should be employed to avoid *manifestly unreasonable* travel.

In addition, Alaska Workers' Compensation Board's decision in Grossman v. State of Alaska, AWBC [sic] Decision No. 21-0023 (2021), [] addresses limits on travel burdens for IMEs. In this case, Annalise Grossmann objected to traveling from Fairbanks to Anchorage for an IME. She filed a protective order, arguing the travel was unreasonable. The Alaska Worker's Compensation Board ruled in favor of Grossman, finding that requiring her to travel to Anchorage was unreasonable under the circumstances. The Board emphasized the importance of considering the employee's medical condition, the availability of local providers, and the burden of travel. "The Board finds that requiring Employee to travel to Anchorage for an IME, when qualified physicians are available in Fairbanks, imposes an unreasonable burden given her medical condition and the ongoing pandemic-related travel risks." Although the pandemic is over, there is a government shut down causing tremendous difficulties in air travel, including a new FAA flight reductions, recently resulting in more than 1,000 flights being canceled. Mandated travel to Beaverton, Oregon from Lansing, MI for EIME is *manifestly unreasonable and imposes unreasonable burden*. Independent of the government shutdown,

which might be intermittent, the unreasonable burden of travel to Beaverton, Oregon and the availability of local providers in or around Michigan, prevails.

The other cases I cited in my October 27, 2025 rebuttal clearly indicate that employee travel to EIME must be reasonable and not cause undue hardship to the claimant.

Although circumstances differ in each of the cases cited in my October 27, 2025 rebuttal, the common thread in the rationale and rulings regarding travel to EIME in all these cases, affirmed the distance and difficulty of the travel for EIME must be considered and that scheduling closer to employee's home is advised, to avoid imposing *manifestly unreasonable* travel and hardship on the employee.

For these reasons, and because it has already been upheld in Alaska Supreme court and in previous AWBC [sic] decisions, I request that the Petition for Protective Order regarding traveling to Oregon for EIME should be granted. (Response, November 18, 2025; all emphasis in original).

27) On November 26, 2025, Employee untimely filed and served a request for the designee to modify the October 23, 2025 Amended Prehearing Conference Summary:

I received the Amended 10/23/25 prehearing summary on 11/17/2025. The following is a request for modification of the amended prehearing conference summary, for accuracy.

In the "Discussions" portion of the amended prehearing conference summary, under the caption "ER," It states: "The ER stated that the IME has been rescheduled. . . ." The ER has not "rescheduled" the IME. The ER canceled the IME with plans to schedule it in the future.

In the "Discussions" portion of the amended prehearing conference summary, under caption "EE," it states: "The EE stated that she is relieved to learn that the 10/24/2025 IME was cancelled and is **working on physical therapy work-hardening to get back to work.**" My current foot specialist has not ordered physical therapy or work-hardening to date. I believe I stated I am hoping to get physical therapy and work-conditioning/work-hardening soon to help me get back to work. The recent fall and orthotic boot delayed PT orders.

Thank you for taking these modifications in account to ensure a clear, accurate record of the October 23, 2025 prehearing conference. (Modification letter, November 26, 2025; all emphasis in original).

In the agency file, the designee recorded in respect to this request, “Modifications will not happen, it is past the date.” (Agency file: Judicial, Prehearings and Hearings, Request for Prehearing Conference Summary Modification/Amendment, November 26, 2025).

28) On November 26, 2025, Employer objected to Employee’s untimely filed November 26, 2025 request to modify the October 23, 3025 Amended Prehearing Conference Summary served on December 12, 2025. (Letter, November 26, 2025).

29) On December 2, 2025, Employee filed and served a hearing brief. In it, she reiterated all her previous arguments but added that an EME trip to Oregon would also require her to board her five pets, which would also entail her paying for boarding vaccines. Her main argument was that the trip Employer proposed was “manifestly unreasonable” because it is too far away, pursuant to *Thoeni*. (Employee’s Legal Memorandum, December 2, 2025).

30) On December 2, 2025, Employer filed and served its hearing brief. It contended that at the October 23, 2025 prehearing conference, the “record was held open to allow time for the parties to submit additional evidence” for the designee’s review. Employer argued that the designee’s summary states that she considered the parties’ October 27, 2025 filings, “prior to issuing the Prehearing Conference Summary.” The brief reiterated Employer’s previous arguments and argued the law, but cited some case law not found in the material presented to the designee at the prehearing conference on or before October 27, 2025. Employer also attached Dr. Bell’s resume, which does not appear to have been presented to the designee or in the agency file on October 23, 3025, or on October 27, 2025. The brief’s main argument was that there is no factual or legal basis to reverse the designee’s denial of Employee’s request for a protective order. (Employer’s Hearing Brief, December 2, 2025).

31) Lansing, Michigan is in the south-central part of the state, and is close to large cities in Illinois, Indiana and Pennsylvania, all of which use the *AMA Guides*, Sixth Edition to rate permanent impairment. Chicago, Illinois is 179 air miles from Lansing. There are 115 air miles between South Bend, Indiana and Lansing. Pittsburgh, Pennsylvania is only 275 air miles from Lansing. These cities have prestigious medical universities, and abundant specialists. (*AMA Guides* website, Usage: State-by-State Charts; observations; experience).

32) Employer, with effort, can find a qualified EME physician either in Michigan, or in a nearby state. (Observations; experience; judgment, and inferences drawn from above).

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 . . . to ensure . . . quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to . . . employers. . . .

The Board may base its decision on testimony, evidence, the Board’s “experience, judgment, observations, unique or peculiar facts of the case, and inferences drawn from all of the above.”

*Fairbanks North Star Borough v. Rogers & Babler*, 747 P.2d 528, 533-34 (Alaska 1987).

**AS 23.30.095. Medical treatments, services, and examination. . . .**

(e) The employee shall, after an injury, at reasonable times during the continuance of the disability, if requested by the employer or when ordered by the board, submit to an examination by a physician or surgeon of the employer’s choice authorized to practice medicine under the laws of the jurisdiction in which the examination occurs, furnished and paid for by the employer. The employer may not make more than one change in the employer’s choice of a physician or surgeon without the written consent of the employee. Referral to a specialist by the employer’s physician is not considered a change in physicians. An examination requested by the employer not less than 14 days after injury, and every 60 days thereafter, shall be presumed to be reasonable, and the employee shall submit to the examination without further request or order by the board. . . . If an employee refuses to submit to an examination provided for in this section, the employee’s rights to compensation shall be suspended until the obstruction or refusal ceases, and the employee’s compensation during the period of suspension may, in the discretion of the board or the court determining an action brought for the recovery of damages under this chapter, be forfeited. . . .

**AS 23.30.108. Prehearings On Discovery Matters; Objections to Requests For Release of Information; Sanctions For Noncompliance. . . .**

(c) . . . If a discovery dispute comes before the board for review of a determination by the board’s designee, the board may not consider any evidence or argument that was not presented to the board’s designee, but shall determine the issue solely on the basis of the written record. . . . The board shall uphold the designee’s decision except when the board’s designee’s determination is an abuse of discretion.

**AS 44.62.460. Evidence rules. . . .**

(d) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of a common law or statutory rule that makes improper the admission of the evidence over objection in a civil action. Hearsay evidence may be used to supplement or explain direct evidence but is not sufficient by itself to support a finding unless it would be admissible over objection in a civil action. . . .

**AS 44.62.570. Scope of Review. . . .**

(b) . . . Abuse of discretion is established if the agency has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.

An agency’s failure to apply properly controlling law may be an abuse of discretion. *Manthey v. Collier*, 367 P.2d 884 (Alaska 1962). A substantial evidence standard is applied to review the Board’s designee’s discovery determinations. A designee’s decision on discovery matters must be upheld, absent “an abuse of discretion.” *Sheehan v. University of Alaska*, 700 P.2d 1295, 1297 (Alaska 1985).

In *Leigh v. Alaska Children’s Services*, 467 P.3d 222, 228-29 (Alaska 2020), the Board, hearing the employee’s appeal from a Board designee’s discovery order, considered post-discovery-order briefs and arguments, without objection from any party. *Leigh* in persuasive *dicta* said:

Under AS 23.30.108(c) the Board “may not consider any evidence or argument that was not presented to the board’s designee, but shall determine the issue solely on the basis of the written record.” Neither party mentioned the procedural deviation here, and we do not discuss it further. *Id.* at 226, n. 2.

*Fletcher v. Pike’s on the River, Inc.*, Memorandum Opinion and Judgment (Alaska 2025) (unpublished but available on Westlaw) also addressed an appeal from a Board designee’s discovery order. *Fletcher* said in *dicta* in a footnote:

Workers’ compensation discovery disputes are first decided at a prehearing conference; the decision of the prehearing conference officer can be appealed to the Board, but hearings on discovery disputes are limited to the same written record that was before the prehearing conference officer. *Id.* at 3, n. 6.

In *Thoeni v. Consumer Electronic Services*, AWCB Dec. No. 02-0215 (October 17, 2002) (*Thoeni III*) the claimant was injured in Alaska and moved to Florida in 2000. Thereafter, the employer in 2001 scheduled an EME with its selected physician in Utah.

On December 28, 2001 the employee sent a letter to the employer's attorney and the Alaska Workers' Compensation Board stating she would not attend the scheduled EIME in Utah because round trip travel between Miami, Florida and Utah would result in an unreasonable and unnecessary level of pain; would require she bathe and dress without assistance should her knee fail; would require that she handle luggage either at the airport or the hotel while she is still under treatment for costochondritis; would require she traverse roads and/or walkways under winter conditions while experiencing instability of her left knee, exposing her to unreasonable and unnecessary risk of additional injury to her knee; and would interrupt her medical treatment. The employee also claimed travel to Utah from Florida for an EIME was unreasonable and unnecessary due to the abundance of physicians available in Florida. *Id.* at 4.

The employer contended the claimant was not entitled to temporary disability (TTD) benefits for the period she refused to attend an EME in Utah, and controverted her rights partly on that ground. *Id.* Shortly thereafter, Employee's notice to the employer that she had moved from Florida to Alabama crossed in the mail with the employer's notice that it had scheduled another EME in Miami, Florida. Her employer controverted again, based on the employee's failure to attend that EME. *Id.* The employer then scheduled an EME in Alabama, which the claimant attended. She subsequently attended an SIME with a psychiatrist in April 2002, but the decision does not disclose the location. In April 2002 she also attended an SIME with Neil Pitzer, MD, who was an SIME physician who at that time was located near Denver, Colorado.

The employee eventually moved from Alabama back to Alaska in June 2002. At hearing on the employee's claim, the employer argued that the claimant was not entitled to TTD benefits for several months in part because "she did not attend the EIME in Utah pursuant to AS 23.30.108." *Thoeni III* stated, "Her benefits were also controverted because she failed to attend and fully cooperate with an EIME. We have examined the controversion notices filed by the employer, and find a rational basis exists for each of them in this case." *Thoeni III* explained:

The employer controverted the employee's benefits for failing to attend and fully cooperate with EIMes. The employee's refusal to attend the EIME in Utah is not excusable. The employee had recently made a trip by herself from Anchorage,

Alaska, to Miami, Florida. No physician had stated the employee was unable to fly due to her knee or chest condition. Although the employer would not provide a companion for the flight from Florida to Utah, certainly the employee could have sought the assistance of the airlines, cab drivers, and hotel personnel in handling her luggage at the various locations. Fear that there may be snowy or icy conditions in Utah also was not a sufficient basis to refuse to attend the EIME. We agree with the employee that the employer could have found a physician in Florida to conduct the EIME. In fact, they eventually did so, but the employee had moved to Alabama. Regardless, the employer is permitted under AS 23.30.095(e) to select its physician for an EIME. An employer does not have to select their EIME physician based on what is the most convenient location for the employee. *Id.* at 21.

Notwithstanding the above findings, *Thoeni III* awarded the employee TTD benefits including during the period she refused to attend the EME in Utah, when she lived in Florida. *Id.*

The employer requested Board reconsideration on various grounds including the Board's award of TTD benefits during the time the employee refused to attend the Utah EME. In *Thoeni v. Consumer Electronic Services*, AWCB Dec. No. 02-0236 (November 14, 2002) (*Thoeni IV*) the employer contended, "First, the employer claims the Board did not take into consideration the fact the employee refused to attend an EIME on January 25, 2001." In response, the employee argued, "she was within her rights to refuse to attend the EIME. . . ." *Id.* at 2. *Thoeni IV* reasoned:

The employee argued her TTD benefits should not be forfeited because the employer could have scheduled the January 25, 2001 EIME in Florida where she was living at the time, rather than Utah where there may have been icy and snowy conditions which would put her at danger due to the fragile nature of her knee at that time. We previously found the employee did not have a valid excuse for her refusal to attend the January 25, 2001 EIME in Utah. The employee has presented nothing to cause us to reconsider our prior decision on that issue. As a result, we will use our discretion and find the employee has forfeited her right to TTD benefits from January 25, 2001 until February 21, 2001. *Id.* at 6.

The employee appealed to the superior court. *Thoeni v. Consumer Electronic Services*, Ruling on Appeal from the Decisions of the Alaska Workers' Compensation Board Dated October 17, 2002 and November 14, 2002 (March 17, 2005) (*Thoeni VII*) held:

After an independent review of the evidence, the Board's finding that [Employee's] refusal to attend the EIME in Utah was inexcusable is supported by substantial evidence. . . . The employer scheduled another EIME for February 21, 2001, which was attended by [Employee]. . . . The Board's decision that [Employee] forfeited

her right to TTD benefits from January 25, 2001 until February 21, 2001 is supported by substantial evidence. *Id.* at 12.

The employee then appealed to the Alaska Supreme Court. *Thoeni v. Consumer Electronic Services*, 151 P.3d 1249, 1254-55 (Alaska 2007) (*Thoeni VIII*) on the EME issue cited the Board's findings, including the employee's arguments, and the law:

Thoeni argues that the board erred in determining, and the superior court in affirming, that she had no excuse for her refusal to travel from her home in Miami to attend the examination in Utah in January 2001. The examination was cancelled after her refusal. Under Alaska law, CES had a right to require the examination, and the board had the discretionary authority to order forfeiture of benefits (citation omitted). The board found that Thoeni had recently traveled by herself when she moved from Anchorage to Miami, and held that her refusal to travel unassisted was unwarranted. The board stated that "certainly the employee could have sought the assistance of the airlines, cab drivers, and hotel personnel in handling her luggage at the various locations." The board found that "the employer could have found a physician in Florida to conduct the EIME" but that the employer's statutory ability to select its physician for the examination meant that the selection did not have to be "based on what is the most convenient location for the employee." Thoeni distinguishes the two trips on the basis that the trip to Utah would "require an overnight stay in a hotel," whereas she was met by and lodged with a relative upon her arrival in Miami. Thus, while Thoeni made the trip to Miami alone, she was not alone once she arrived in Miami.

*Thoeni VIII* evaluated these facts, arguments and the law and held, in a brief analysis:

The board erred when it found Thoeni's refusal to attend the Utah examination to be unexcused. The board acknowledged that a physician could have been found in Florida. Even though, as the board states, the employer does not have to select the examining physician to be the "most convenient" for the employee, this does not mean that the employee's convenience should be completely discounted. The statute provides that the employer may request examinations "at reasonable times" (footnote omitted). Although the statute does not make any comment on where the examination takes place, its requirement of a "reasonable time" indicates that the legislature intended some consideration of the employee's ease in attending the examination. Furthermore, the board's regulations on selection of physicians for a second independent medical evaluation . . . explicitly direct that "the proximity of the physician to the employee's geographic location" be taken into account (citation omitted). Other jurisdictions have held that even intra-state travel can be unreasonable depending on the circumstances of the case. Requiring Thoeni to travel 2,500 miles from her home was manifestly unreasonable. The board's decision that Thoeni's refusal was unreasonable is not supported by substantial evidence. Accordingly, the board abused its statutory discretion when it determined

that Thoeni should forfeit her benefits for the period during which she refused to attend an examination. We reverse the board's determination that Thoeni should forfeit benefits for the period from January 25 to February 21, 2001.

**Alaska R. Evid. 801. Definitions.** The following definitions apply under this article:

....

(c) **Hearsay.** Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(d) **Statements Which Are Not Hearsay.** A statement is not hearsay if

....

(2) *Admission by Party-Opponent.* The statement is offered against a party and is (A) the party's own statement, in either an individual or a representative capacity, or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (E) a statement by a co-conspirator or of a party during the course and in furtherance of the conspiracy. . . .

#### ANALYSIS

#### **Shall the designee's order denying Employee's request for a protective order against travel from Lansing, Michigan to Portland, Oregon for an EME be reversed?**

The primary relevant statutes applicable in this appeal include §.095(e) (which grants Employer the right to send Employee to an EME), and §.108(c) (which limits evidence and argument that can be considered on an appeal from a designee's discovery order). Employee does not dispute Employer's right to send her to an EME. She has not objected to attending an EME. Rather, Employee contends that §.095(e), as interpreted by the Court in *Thoeni VIII*, prevents Employer from requiring her to travel a distance that is "manifestly unreasonable."

The first task is to determine what evidence is available for the panel to consider in rendering its decision on Employee's appeal. AS 23.30.108(c) states that when a designee's discovery order is on review, the reviewing panel may not consider "any evidence or argument that was not

presented” to the designee, but “shall determine the issue solely on the basis of the written record.” The Court has twice weighed in on this in *dicta*. *Leigh* noted that an appeal panel’s consideration of evidence not presented to the designee was a “procedural deviation.” *Fletcher* expressly stated, “hearings on discovery disputes are limited to the same written record that was before the prehearing conference officer.”

Here the designee in an unconventional process left the record open at the October 23, 2025 prehearing conference until October 27, 2025, to give Employee an opportunity to respond to Employer’s answer opposing her petition for a protective order. The designee also orally told the parties on October 23, 2025 that she was denying Employee’s petition for protection against going to the Portland EME. On October 29, 2025, after reviewing the parties’ “10/27/25 and 10/28/25” “additional information,” the designee first-served the summary, stating in writing, that she denied Employee’s petition. Employer apparently believed the record remained open for it to provide additional information as well. The designee did not give Employer additional time to file more evidence and argument. Technically, Employee’s October 28, 2025 filings were untimely. There was no objection from either party. The panel will consider evidence and argument included in the October 23, 2025 summary served on October 29, 2025, as well as timely modifications and corrections made to it, which resulted in the “Amended” October 23, 2025 summary served on November 12, 2025. The panel will not consider any evidence or argument not presented to the designee during this time period. AS 23.30.108(c); *Leigh*; *Fletcher*.

On her appeal’s merits, Employee repeatedly argued her main point, in reliance on *Thoeni VIII*. That is, in her view, the designee’s order requiring her to travel from Lansing, Michigan to Portland, Oregon for an EME was “manifestly unreasonable.” Her numerous reasons are cited in the factual findings above, which are incorporated here by reference. Employer attempts to distinguish *Thoeni VIII* from this case on its facts. There are some similarities and some differences between Employee’s situation and *Thoeni VIII*. However, a careful examination of *Thoeni III*, which ultimately led to the Court’s opinion in *Thoeni VIII*, and the Court’s brief analysis in *Thoeni VIII*, illustrates that *Thoeni VIII* controls this issue.

The Court's discussion in *Thoeni VIII* on the EME travel issue was limited, at best. It cited the employee's physical reasons for objecting to the EME, but did not focus on any physical objection, many of which mirror Employee's arguments here, as the dispositive basis for its decision. Both Employee and the claimant in *Thoeni VIII* had lower extremity issues that made travel difficult. Indeed, the Court did not consider the employee's various physical objections to attending an EME in Utah relevant at all. Rather, *Thoeni VIII* cited §.095(e) and stated as a legal matter:

Although the statute does not make any comment on where the examination takes place, its requirement of a "reasonable time" indicates that the legislature intended some consideration of the employee's *ease in attending the examination* (emphasis added).

The Court further cited the SIME statute, which requires "the proximity of the physician to the employee's geographic location" be considered. *Thoeni VIII* simply stated that requiring the claimant to "travel 2,500 miles from her home was manifestly unreasonable." The Court further noted that *Thoeni III* found the employer in that case could have found an EME physician in Florida. It concluded the "decision that Thoeni's refusal was unreasonable is not supported by substantial evidence." In short, the Court primarily considered "the employee's ease in attending the examination" and held, for reasons not otherwise specified, that traveling "2,500 miles" from the claimant's home was simply "manifestly unreasonable."

Employee raises many of the same physical objections to long-distance travel as did the claimant in *Thoeni VIII*. On appeal, the Court would have known from the appellate record that Thoeni, while objecting to long-distance travel to an EME, had traveled a long distance by herself for personal reasons, and subsequently attended two SIMEs, one of which was performed in Denver, Colorado, which was about the same distance from her home as Utah. But those factors did not enter into the Court's analysis. Here, while Employer offered to provide Employee with a comfortable airline seat with leg-room, a nurse traveling companion, and a wheelchair for the nurse companion to ferry Employee around to her various airport, hotel and examination stops, among other perks, it is still a long way from Lansing, Michigan to Portland, Oregon.

Employer justifies its position by offering emails between the adjuster and ExamWorks. Based on those emails it argues that Nogle with ExamWorks tried to no avail to find a qualified foot

specialist who knows Alaska law and the appropriate AMA *Guides*, “closer” to Michigan. In its briefing on November 10, 2025, Employer stated, “They [ExamWorks] responded they were *unable to locate a closer physician* who met these criteria and referred the adjuster back to Dr. William Bell (emphasis added).” This argument implies that Employer or its agent ExamWorks searched far and wide and could not locate a qualified EME closer to Lansing, Michigan than the one Employer selected in Portland, Oregon. That is how the designee understood it.

But Employer’s arguments are not supported by its evidence. Assuming those emails are the “sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs,” they do not constitute “substantial evidence” to justify requiring Employee to travel from Michigan to Oregon for an EME. *Sheehan*. When all was said and done, on October 23, 2025, Nogle told Donovan, “I so apologize as I’ve been *unable to find an option in MI* for this claim. Any chance the claimant can travel to Oregon for the exam? If so, I have Dr. William Bell available and he is an orthopedic foot and ankle specialist (emphasis added).” Employer offered this as evidence that it tried to find an EME physician nearer Employee’s home. But all this email states is that ExamWorks could not find a qualified EME *in Michigan*. This email would be admissible over objection in a civil action as an admission of a party-opponent under Alaska R. Evid. 801(c), (d)(2); §.460(d). Employer failed to make a reasonable effort to find a “closer” EME.

As Employee noted, there are likely more than one EME arranging company that does business in the Michigan area. Nogle contacted only one. How much effort did Nogle put forward? Not much. Employer will be directed to make a thorough search for a qualified EME physician in Michigan first, and then if unsuccessful, “closer” to Employee’s home state.

Experience shows that Lansing, Michigan is in the south-central part of the state, making it relatively close to large cities in Illinois, Indiana and Pennsylvania. For example, Chicago, Illinois is approximately 179 air miles from Lansing. There are approximately 115 air miles between South Bend, Indiana and Lansing. Even Pittsburgh, Pennsylvania is only 275 air miles from Lansing. These (and other) cities all have prestigious medical universities and abundant orthopedic specialists. *Rogers & Babler*. All three states use the AMA *Guides*, Sixth Edition to rate impairment, in the event Employer cannot find an orthopedic foot specialist with ability to

rate under the Sixth Edition in Michigan. *AMA Guides*, Usage: State-by-State Charts. That Michigan does not use the *AMA Guides* to rate permanent impairment does not mean that there is no EME in Michigan who could perform a Sixth Edition rating on Employee's foot. Employer can find a qualified EME physician within a 275 air mile radius of Lansing, Michigan. A closer EME will likely enable Employee to attend an examination and return home on the same day, thus saving time and expenses to Employer. It will also make the EME process quicker and fairer at a more reasonable cost to Employer. AS 23.30.001(1).

"Abuse of discretion is established if the agency has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence" under §.570(b). The designee failed to apply the law as stated in *Thoeni VIII. Manthey*. She also relied on Employer's representations that it tried but could not find a qualified EME closer to Lansing, Michigan than the one Employer selected in Portland, Oregon. The designee's findings are not supported by the evidence, and her decision was an abuse of discretion. Consequently, the designee's decision is not supported by substantial evidence. *Sheehan*.

#### CONCLUSION OF LAW

The designee's order denying Employee's request for a protective order against travel from Lansing, Michigan to Portland, Oregon for an EME will be reversed.

#### ORDER

- 1) The designee's October 23, 2025 order denying Employee's September 30, 2025 petition for a protective order is reversed.
- 2) Employee's September 30, 2025 petition for a protective order is granted and she is not required to travel from Lansing, Michigan to Portland, Oregon to attend an EME.
- 3) Employer is directed to first make a thorough search for an orthopedic foot specialist who can perform a Sixth Edition PPI rating for Employee's work injury, in Michigan.
- 4) If it is unable to locate a qualified physician in Michigan, Employer is directed to locate a qualified EME within a 275 mile radius of Lansing, Michigan.

Dated in Anchorage, Alaska on January 7, 2026.

ALASKA WORKERS' COMPENSATION BOARD

\_\_\_\_\_/s/  
William Soule, Designated Chair

\_\_\_\_\_/s/  
Randy Beltz, Member

\_\_\_\_\_/s/  
Brian Zematis, 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 Teresa L. Spears, employee / claimant v. Universal Health Services, Inc., employer; AIU Insurance Company, insurer / defendants; Case No. 202408180; 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 January 7, 2026.

\_\_\_\_\_/s/  
Rochelle Comer, Workers' Compensation Technician