

ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

SONG H. YU,)
)
Employee,)
Claimant,) INTERLOCUTORY
) DECISION AND ORDER
v.)
) AWCB Case No. 202206989
LOUISE KIM & HYUNG KIM,)
) AWCB Decision No. 26-0005
Employer,)
and) Filed with AWCB Fairbanks, Alaska
) on January 14, 2026
EMPLOYERS PREFERRED INSURANCE)
COMPANY,)
)
Insurer,)
Defendants.)
)

Louise and Hyung Kim's and Employers Preferred Insurance Company's (Employer) October 20, 2025 petition seeking a Second Independent Medical Evaluation (SIME) was heard on the written record in Fairbanks, Alaska on November 20, 2025, a date selected on October 22, 2025. Employer's October 20, 2025 petition gave rise to this hearing. Attorney Adam Sadoski represented Employer. Song H. Yu (Employee) represented himself. The record closed at the conclusion of the hearing on November 20, 2025.

ISSUE

Employer contends that there are significant disputes between its medical evaluators and Employee's treating physicians on the issues of causation, treatment and medical stability such that an SIME should be ordered.

Employee did not file a hearing brief, so his position is unknown. He is presumed to oppose an SIME.

Should an SIME be ordered?

FINDINGS OF FACT

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

- 1) On March 11, 2022, Employee presented to the Emergency Department (ED) complaining of constant, significant left forearm pain and swelling after he was assaulted by a coworker wielding a wooden stick. He explained that he was at work on March 8, 2022, when he got in a “bit of an argument” with a coworker. The coworker tried to strike him on the head with a wooden stick but he managed to throw his left arm up to block the blows. Employee thought his pain and swelling would improve so he did not seek immediate medical attention. However, the pain and swelling had worsened over the previous three days, so he decided to go to the ED. Left wrist x-rays showed a distal ulnar fracture, and a splint was placed on Employee’s left arm. (ED Notes, March 11, 2022).
- 2) On April 14, 2022, Employee sought temporary total disability (TTD) and medical benefits for a work injury that occurred on March 8, 2022. He explained, “[a] Korean coworker was trying to hit [Employee’s] head. [Employee] tried to protect his head with left arm. Left arm was hit and broken” (Claim for Workers’ Compensation Benefits, April 14, 2022).
- 3) On April 18, 2022, Employee completed an injury report that indicated his wrist, neck, arm and head were injured. (Employee report of Occupational Injury or Illness, April 18, 2022).
- 4) On April 22, 2022, Employee sought treatment for neck pain that he attributed to the March 8, 2022 altercation at work. He described the incident as his attacker trying to hit him with a hammer but stated he was able to get the hammer away from his attacker, then another attacker hit him in the left arm with a shovel. Cervical spine x-rays showed no obvious fractures or bony disruptions, and a cervical strain was diagnosed. Employee was advised to aggressively ice and heat his neck and he was referred for spinal further spinal care. (Ellis chart notes, April 22, 2022).
- 5) On May 19, 2022, Employee followed up for neck pain that he again attributed to the March 8, 2022 altercation at work. He stated a follow employee assaulted him with a 2 x 4 and described

being knocked up against a wall and striking his head. A cervical spine magnetic resonance imaging (MRI) study showed disc herniations at C3-4 and C5-6. The plan was to treat Employee's neck with steroid injections and physical therapy. (Ellis chart notes, May 19, 2022).

6) On June 20, 2022, Employee attended a cervical spine surgery consultation with Mark Flanum, MD, and described the workplace assault as being attacked with a stick "about the size of his wrist." Dr. Flanum decided to refer Employee to physical therapy and cervical steroid injections. (Flanum chart notes, June 20, 2022).

7) On July 13, 2022, after a recent moved from Alaska to Washington, Employee sought to establish care with Jessica Sawyer, PA-C, for an assault he sustained at work. He gave this account of the incident:

He was assaulted by a coworker who initially bear hugged him and threw him against the wall. He was then struck by the same coworker with a hammer to his left forearm and sustained a whiplash effect to his neck as he tried to avoid, but was unsuccessful, another strike by handle of hammer to the left side of neck. He ended up falling and bumping into wall a second time, striking wall with left side of body, with shoulder hitting first.

Employee reported left wrist, neck, left shoulder and low back pain. Additional diagnostic testing was ordered and additional consultations were requested. (Sawyer chart notes, July 13, 2022).

8) On July 27, 2022, Employee returned to PA-C Sawyer, who assessed cervical foraminal stenosis at C3-4, C5-6, C6-7, "likely pre-existing, but aggravated by the injury," and lumbar strain, a "new condition that needs to be added to the claim given it does correlate with mechanism of injury." (Sawyer chart notes, July 27, 2022).

9) From August 12, 2022 until September 13, 2022, Employee undertook a course of occupational therapy. (Initial Evaluation, August 12, 2022; Daily Notes, August 18, 2022 through September 13, 2022).

10) On September 20, 2022, John Wendt, MD, a neurologist, and Curtis Rodin, MD, an orthopedic surgeon, performed an Employer Medical Evaluation (EME) where Employee reported his neck pain started three to four weeks after the workplace incident, and all the pain indicated on his pain diagram, which involved his entire back and all four extremities, began seven to 10 days after the incident. Drs. Wendt's and Rodin's diagnoses and opinions included: 1) Left ulnar fracture, substantially caused by the workplace incident; 2) Cervical spondylosis with disc protrusions and herniations at multiple levels, preexisting and not substantially caused by the

workplace incident; 3) Lumbar spondylosis, age related, preexisting and not substantially caused by the workplace incident; and 4) Subsequent development of multifocal pain, numbness, and tingling, unknown etiology, not substantially caused by the workplace incident. Employee's left ulnar fracture was medically stable by mid-June 2022 and without a ratable permanent partial impairment, according to Dr. Rodin, and both physicians thought the development of Employee's multifocal symptoms were too remote to have been substantially caused by the workplace incident. No further curative treatment was required for the March 8, 2022 work injury, according to Drs. Wendt and Rodin. They further commented that cervical and lumbar imaging findings were "not surprising for a 67-year-old man with or without a history of any prior injury" and opined Employee had the physical capacities to return to work as a delivery driver. Drs. Rodin and Wendt did not think any further medical treatment was necessary for the March 8, 2022 injury. They concluded by writing that it appeared Employee's providers were making additional diagnoses in reliance on Employee's "retrospective history" and suspected that they did not have the original emergency department report, which focused solely on the ulnar fracture, in formulating their diagnoses with respect to Employee's neck and low back. (Wendt and Rodin report, September 20, 2022).

11) On October 14, 2022, Employer controverted benefits based on Drs. Wendt's and Rodin's September 20, 2022 EME report. (Controversion Notice, October 14, 2022).

12) There is a gap in the medical records between December 14, 2022 until April 9, 2024. (Observations).

13) From April 9, 2024 until June 14, 2024, Employee undertook a course of physical therapy. (Initial Evaluation, April 9, 2024; Discharge Summary, June 14, 2024).

14) On August 14, 2024, a cervical spine MRI showed multilevel cervical degeneration most notable at C5-6. (MRI report, August 14, 2024).

15) On November 21, 2024, Employee underwent an epidural steroid injection at C5-6. (Procedure Note, November 21, 2024).

16) On February 10, 2025, Employee sought permanent total disability (PTD) benefits, medical costs, a compensation rate adjustment and a finding of unfair or frivolous controversion arising from the March 8, 2022 workplace incident, to which Employee attributed his neck and lower back pain. (Claim for Workers' Compensation Benefits, February 10, 2025).

17) On April 8, 2025, Employer answered Employee's February 10, 2025 claim and controverted medical benefits after June 15, 2022, a compensation rate adjustment, and an unfair or frivolous controversion, based on Drs. Wendt's and Rodin's September 20, 2022 EME report as well as statute of limitations defenses. (Answer, April 8, 2025; Controversion Notice, April 8, 2025).

18) On February 22, 2025, Employee sought treatment from Suah Park, ARNP, for neck and back pain following a "recent injury." ARNP Park referred Employee for a surgical consultation. (Park chart notes, February 22, 2025).

19) On April 10, 2025, Employee returned to ARNP Park and reported the steroid injection had provided him with some initial relief, but the pain returned after 10 days. ARNP Park wrote a "To whom it may concern" letter on Employee's behalf to provide an "overview of ongoing care and management plans to address [Employee's] medical needs." The letter was written "for attorney review," and stated that Employee "had a recent back and neck injury documented by MRI." (Park chart notes, April 10, 2025).

20) On May 16, 2025, Employee sought TTD and PTD benefits, medical and transportation costs, a compensation rate adjustment, attorney fees and costs, and penalty and interest for injuries to his arm and spine. (Claim for Workers' Compensation Benefits, May 16, 2025).

21) On June 5, 2025, Employer answered Employee's May 16, 2025 claim and denied medical costs, TTD and transportation costs after June 15, 2022, PTD benefits, a compensation rate adjustment, attorney fees and costs, and penalty and interest. (Answer, June 5, 2025).

22) On July 7, 2025, Katie Krouse, MD, performed an anterior cervical discectomy and disc replacement at C5-6 and C6-7. (Operative Report, July 7, 2025).

23) On August 6, 2025, Employee reported that his arm numbness had resolved following the cervical surgery but was concerned about significant leg pain that was worse at night. Although Dr. Krouse had recommended spine surgery for his leg symptoms, Employee wanted to pursue physical therapy instead. (Park chart notes, August 6, 2025).

24) On August 25, 2025, Employee began physical therapy. (Initial Evaluation, August 25, 2025).

25) On October 2, 2025, because conservative treatment had not provided Employee with significant relief, he underwent an epidural steroid injection at L3-4. (Litzenberger chart notes, October 2, 2025).

26) On October 6, 2025, Employee followed up with ARNP Park and reported that his leg pain was unchanged, and if his recent injection was not effective, he may require surgery. He also requested his medical records for “legal purposes” related to a workplace injury case. ARNP Park diagnosed chronic pain and ordered Employee to continue with oxycodone and physical therapy and to follow up with a neurosurgeon. (Park chart notes, October 6, 2025).

27) On October 20, 2025, Employer petitioned for an SIME “to address the parties’ ongoing medical disputes in accordance with AS 23.30.095(k).” It also filed an SIME form setting forth purported differences of opinions between its medical evaluators and Employee’s medical providers on the issues of causation, treatment, and medical stability, and requested a panel SIME by an orthopedic surgeon and a neurologist. (Petition, October 20, 2025; SIME Form, October 20, 2025).

PRINCIPLES OF LAW

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

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

AS 23.30.005. Alaska Workers’ Compensation Board.

. . . .

(h) Process and procedure under this chapter shall be as summary and simple as possible. . . .

The Board may base its decision not only on direct testimony, medical findings, and other tangible evidence, but also on the Board’s “experience, judgment, observations, unique or peculiar facts of the case, and inferences drawn from all of the above.” *Fairbanks North Star Borough v. Rogers & Babler*, 747 P.2d 528, 533-34 (Alaska 1987).

AS 23.30.010. Coverage. (a) . . . [B]enefits are payable under this chapter for disability or death or the need for medical treatment of an employee if the disability or death of the employee or the employee’s need for medical treatment arose out of and in the course of the employment. . . . When determining whether or not the death or disability or need for medical treatment arose out of and in the course of the employment, the board must evaluate the relative contribution of different

causes of the disability or death or the need for medical treatment. Compensation or benefits under this chapter are payable for the disability or death or the need for medical treatment if, in relation to other causes, the employment is the substantial cause of the disability or death or need for medical treatment.

AS 23.30.095. Medical treatments, services, and examinations. (a) The employer shall furnish medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus for the period which the nature of the injury or the process of recovery requires

(k) In the event of a medical dispute regarding . . . causation, medical stability, ability to enter a reemployment plan, degree of impairment, functional capacity, the amount and efficacy of the continuance of or necessity of treatment, or compensability between the employee’s attending physician and the employer’s independent medical evaluation, the board may require that a second independent medical evaluation be conducted by a physician or physicians selected by the board from a list established and maintained by the board. The cost of an examination and medical report shall be paid by the employer. . . .

AS 23.30.110. Procedure on claims. (g) An injured employee claiming or entitled to compensation shall submit to the physical examination by a duly qualified physician which the board may require. . . .

Considering the broad procedural discretion granted in AS 23.30.135(a) and AS 23.30.155(h), wide discretion exists under AS 23.30.095(k) and AS 23.30.110(g) to consider any evidence available when deciding to order an SIME to “properly protect the rights of all parties.”

The Alaska Workers’ Compensation Appeals Commission (Commission) in *Bah v. Trident Seafoods Corp.*, AWCAC Dec. No. 073 (February 27, 2008) addressed the Board’s authority to order an SIME under AS 23.30.095(k) and AS 23.30.110(g). Regarding AS 23.30.095(k), the Commission referred to its decision in *Smith v. Anchorage School District*, AWCAC Dec. No. 050 (January 25, 2007) at 8, in which it confirmed:

[t]he statute clearly conditions the employee’s right to an SIME . . . upon the existence of a medical dispute between the physicians for the employee and the employer.

The Commission further stated in *dicta*, before ordering an SIME it is necessary to find the medical dispute is significant or relevant to a pending claim or petition and the SIME will assist the Board in

resolving the dispute. *Bah* at 4. The Commission outlined the Board’s authority to order an SIME under AS 23.30.110(g), as follows:

[T]he board has discretion to order an SIME when there is a significant gap in the medical or scientific evidence and an opinion by an independent medical examiner or other scientific examination will help the board in resolving the issue before it. . . . Ordering an SIME is not proper if it serves no purpose to the board by advancing its understanding of the medical evidence or by filling in gaps in the medical evidence, where that gap in evidence, or lack of understanding of the medical evidence, prevents the board from ascertaining the rights of the parties.

Id. at 5. Accordingly, an SIME pursuant to AS 23.30.095(k) may be ordered when there is a medical dispute, or under AS 23.30.110(g) when there is a significant gap in the medical evidence or a lack of understanding of the medical evidence.

AS 23.30.135. Procedure before the board. (a) In making an investigation or inquiry or conducting a hearing the board is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this chapter. The board may make its investigation or inquiry or conduct its hearing in the manner by which it may best ascertain the rights of the parties. . . .

AS 23.30.155. Payment of compensation. . . .

(h) The board may upon its own initiative at any time in a case in which payments are being made with or without an award, where right to compensation is controverted, or where payments of compensation have been increased, reduced, terminated, changed, or suspended, upon receipt of notice from a person entitled to compensation, or from the employer, that the right to compensation is controverted, or that payments of compensation have been increased, reduced, terminated, changed, or suspended, make the investigations, cause the medical examinations to be made, or hold the hearings, and take the further action which it considers will properly protect the rights of all parties.

Under §.135(a) and §.155(h), wide discretion exists to consider any evidence available when deciding whether to order an SIME to assist in investigating and deciding medical issues in claims, to best “protect the rights of the parties.” Under §.110(g) the Board may order an SIME when there is a significant “gap” in the medical evidence, or a lack of understanding of the medical or scientific evidence prevents the Board from ascertaining the rights of the parties and an SIME opinion would help. *Bah*.

AS 23.30.185. Compensation for temporary total disability. In case of disability total in character but temporary in quality, 80 percent of the injured employee's spendable weekly wages shall be paid to the employee during the continuance of the disability. Temporary total disability benefits may not be paid for any period of disability occurring after the date of medical stability.

8 AAC 45.092. Second independent medical evaluation.

....

(h) In an evaluation under AS 23.30.095(k), the board or the board's designee will identify the medical disputes at issue and prepare and submit questions addressing the medical disputes to the medical examiners selected under this section. The board may direct

(1) a party to make a copy of all medical records, including medical providers' depositions, regarding the employee in the party's possession, put the copy in chronological order by date of treatment with the initial report on top, number the records consecutively, and put the records in a binder;

(2) the party making the copy to serve the binder of medical records upon the opposing party together with an affidavit verifying that the binder contains copies of all the medical reports relating to the employee in the party's possession;

(3) the party served with the binder to review the copies of the medical records to determine if the binder contains copies of all the employee's medical records in that party's possession; the party served with the binder must file the binder with the board not later than 10 days after receipt and, if the binder is

(A) complete, the party served with the binder must file the binder upon the board together with an affidavit verifying that the binder contains copies of all the employee's medical records in the party's possession; or

(B) incomplete, the party served with the binder must file the binder upon the board together with a supplemental binder with copies of the medical records in that party's possession that were missing from the binder and an affidavit verifying that the binders contain copies of all medical records in the party's possession; the copies of the medical records in the supplemental binder must be placed in chronological order by date of treatment, with the initial report on top, and numbered consecutively; the party must also serve the party who prepared the first binder with a copy of the supplemental binder together with an affidavit verifying that the binder is identical to the supplemental binder filed with the board;

(4) the party, who receives additional medical records after the binder has been prepared and filed with the board, to make two copies of the additional medical

records, put the copies in two separate binders in chronological order by date of treatment, with the initial report on top, and number the copies consecutively; the party must file one binder with the board not later than seven days after receiving the medical records; the party must serve the other additional binder on the opposing party, together with an affidavit stating the binder is identical to the binder filed with the board, not later than seven days after receiving the medical records

ANALYSIS

Should an SIME be ordered?

Employer petitioned for an SIME under AS 23.30.095(k) “to address the parties’ ongoing medical disputes.” An SIME is appropriate under AS 23.30.095(k) when there is a medical dispute between Employee’s and Employer’s physicians. *Smith*. It is further provided that the dispute must be significant or relevant to a pending claim before an SIME is ordered. *Bah*.

In their September 20, 2022 report, Employer’s medical evaluators, Drs. Wendt and Rodin, opined Employee’s neck and low back symptoms were age-related, preexisting conditions not caused by the March 8, 2022 work incident. Meanwhile, one of Employee’s providers, PA-C Park, expressly attributes Employee’s neck and low back symptoms to the March 8, 2022 work incident in his July 27, 2022 chart notes, and another of Employee’s providers, ARNP Park, opined in her April 10, 2025 “To whom it may concern” letter that an MRI “documented” a recent back and neck injury. While ARNP Park does not describe the “recent” injury as a work injury, given that her letter was written for “attorney review,” and given that Employee and his other providers, such as PA-C Sawyer, attribute his neck and back symptoms to the March 8, 2022 work incident, it is fair to conclude that ARNP Park does as well. *Rogers & Babler*. Thus, medical disputes exist over the cause of Employee’s need for treatment. AS 23.30.010(a).

Similarly, Drs. Wendt and Rodin did not think any further treatment was necessary for the March 8, 2022 work incident. Yet, over three years later, Employee underwent anterior cervical disc replacement surgery with Dr. Krouse, and ARNP Park recently recommended Employee to continue with Oxycodone and physical therapy, and to follow up with a neurosurgeon. Thus, disputes exist over necessary medical treatment for the March 8, 2022 work incident. AS 23.30.095(a). Furthermore, Drs. Wendt and Rodin opined Employee’s injury from the March 8,

2022 work incident was medically stable by mid-June 2022, while Employee's providers, such as Dr. Krouse and ARNP Park, continue to recommend ongoing treatment. Thus, implied disputes exist over medical stability as well. AS 23.30.185.

Employee has claimed he is entitled to numerous benefits, including medical costs and TTD. The disputes above are significant because their resolution will determine Employee's entitlement to, and Employer's liability for, these valuable benefits. *Bah.* To ensure that process and procedure is as summary and simple as possible, and since an SIME will serve to quickly, efficiently and fairly address the parties' disputes so that their rights may be ascertained and protected, one will be ordered. AS 23.30.105(h); AS 23.30.001(1); AS 23.30.135(a); AS 23.30.155(h). Employer requests a panel SIME by an orthopedic surgeon and a neurologist. Given Employee's course of treatment thus far, which has included epidural steroid injections and cervical discectomy and disc replacement surgery, and his pain diagram from the September 20, 2022 EME, which shows pain involving his entire back and all four extremities, Employer's requested medical specialties are appropriate and will conduct the SIME. *Rogers & Babler.*

CONCLUSION OF LAW

An SIME should be ordered.

ORDERS

- 1) Employer's October 20, 2025, 2025 petition for an SIME is granted.
- 2) An panel SIME will be performed by an orthopedic surgeon and a neurologist. SIME physicians from the Board's list will be selected to perform the examination. If, at the time of processing, the Board's designee determines that no physicians on the Board's list are available and/or qualified to perform the examination under 8 AAC 45.092(e), the Board's designee will notify the parties and request that they provide the names, addresses, and curriculum vitae of physicians in accordance with 8 AAC 45.092(f).
- 3) The medical disputes are causation, medical treatment and medical stability arising from the March 8, 2022 workplace incident.

- 4) All filings regarding the SIME must be sent to workerscomp@alaska.gov and served on opposing parties.
- 5) Employer will make two copies of Employee's medical records in its possession, including medical providers' depositions, a written job description or the written physical demands of Employee's job as described in the United States Department of Labor's *Selected Characteristics of Occupations Defined in the Dictionary of Occupational Titles*, put the copies in chronological order by treatment date, starting with the first medical treatment and proceeding to the most recent medical treatment, number the pages consecutively, put the copies in two binders. This must be done on or before February 4, 2026. Employer must serve one binder on Employee and file one with the Division, with an affidavit verifying the binders contain copies of all medical records in his/her possession no later than 5:00 PM on **February 4, 2026**.
- 6) The binders may be returned for reorganization if not properly Bates stamped and prepared in accordance with this prehearing summary.
- 7) Not later than 10 days after receipt of the binders, Employee must review the binder to determine if it contains all his medical records in Employee's possession. If the binder is complete, Employee must file an affidavit with the Division verifying the binder contains copies of all medical records in Employee's possession. If the binder is incomplete, Employee must make two copies of the additional medical records missing from the first set of binders. Each copy must be put in a separate binder (as described above). Then one supplemental binder, and an affidavit verifying the medical records completeness, must be filed with the Board. The remaining supplemental binder must be served upon Employer together with an affidavit verifying that it is identical to the binder filed with the Board. Employee is directed to file with the Division and serve the binders on opposing parties within 10 days of receipt.
- 8) Any party who receives additional medical records or physicians' depositions after the binders have been prepared and filed with the Division, is directed to make two supplemental binders as described above with copies of the additional records and depositions. Within seven days after receiving the records or depositions, the party must file one supplemental binder with the Division, and serve one supplemental binder on opposing party, together with an affidavit verifying that it is identical to the binder filed with the Division.
- 9) A complete set of the Board's SIME questions shall be sent to the SIME physician.

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

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

12) SIME physicians are often located outside of Alaska and long-distance travel may be required. If Employee requires travel accommodations, he must request an accommodation from the Employer. The accommodation request must be accompanied by a letter from Employee's attending physician in his workers' compensation case, pursuant to and within the constraints of AS 23.30.095(a) and 8 AAC 45.082(b), detailing the necessary accommodation.

Dated in Fairbanks, Alaska on January 14, 2026.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Robert Vollmer, Designated Chair

/s/
Sarah Lefebvre, Member

/s/
Lake Williams, 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.

