

ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

SHANNON FAYE WRIGHT,)
)
Employee,)
Claimant,) INTERLOCUTORY
v.) DECISION AND ORDER
) ON MODIFICATION
) AND RECONSIDERATION
NORTHERN ENERGY SERVICES, LLC,)
) AWCB Case No. 202404442
Employer,)
and) AWCB Decision No. 26-0007
)
UMIALIK INSURANCE COMPANY,) Filed with AWCB Anchorage, Alaska
) on January 28, 2026
Insurer,)
Defendants.)
_____)

Northern Energy Services, LLC's (Employer) and Umialik Insurance Company's January 14, 2026, petition for reconsideration was heard on the written record on January 28, 2026, in Anchorage, Alaska, a date selected on January 21, 2026. Employer's January 14, 2026, petition gave rise to this hearing. Attorney Lee Goodman appeared and represented Shannon Faye Wright (Employee). Attorney Rebecca Holdiman Miller represented Employer. The record closed at the hearing's conclusion on January 28, 2026.

ISSUE

Employer contends *Wright v. Northern Energy Services, LLC*, AWCB Decision No. 25-0090 (December 30, 2025) (*Wright I*) legally and factually erred. It contends there is no evidence supporting the SIME order in *Wright I*. Employer requests the SIME ordered in *Wright I* be cancelled.

Employee contend that *Wright I* did not factually or legally err. She requests Employer's petition be denied.

Should Employer's petition for reconsideration be granted?

FINDINGS OF FACT

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

- 1) On January 24, 2024, Employee fell off a bus while working for Employer while trying to exit the vehicle. (First Report of Injury, April 2, 2024).
- 2) On March 26, 2024, Kathyn Newberry, PA-C, evaluated Employee for left-shoulder pain after she slipped while getting out of a bus at work on January 24, 2024. She reached out to catch herself and had significant shoulder pain, difficulty with any overhead activities, and difficulty with lifting heavy things secondary to pain. Left-shoulder x-rays were taken. PA-C Newberry stated Employee likely had a rotator cuff tear secondary to the recent fall and recommended magnetic resonance imaging (MRI). (Newberry record, March 26, 2024).
- 3) On March 27, 2024, Employee complained of left- and right-shoulder pain and neck stiffness and dull aching pain. Michael Hanifen, DC, provided chiropractic manipulative treatments and restricted her from working. (Hanifen record, March 27, 2024).
- 4) On March 29, 2024, Dr. Hanifen referred Employee for right- and left-shoulder magnetic MRI; "As the treating physician for Shannon Wright, I am requesting (R) Shoulder and (L) Shoulder MRI without contrast. Ms. Wright fell getting of a bus and hurt her left shoulder, falling on it and her right by holding onto the handrail. Suspecting rotator cuff tears. X-rays showed age-related arthritis present." (Hanifen MRI Referral, March 29, 2024).
- 5) On March 29, 2024, a left-shoulder MRI showed a high-grade full-thickness partial tear of the supraspinatus tendon involving the posterior half with anterior displacement of the remaining intact fibers and an retraction of torn fibers with mild to moderate muscle atrophy; high-grade partial tear of the superior infraspinatus tendon with retraction and mild muscle atrophy; tendinopathy with partial thickness low-grade tear of the superficial fibers of the subscapularis tendon; possible mild tenosynovitis of the long head of the bicep tendon; and mild arthropathy of the glenohumeral and acromioclavicular joints. (MRI report, March 29, 2024).

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

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

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

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

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

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

1. Lumbar strain/sprain and buttock contusion, without evidence of fracture, dislocation, internal derangement, or radiculopathy, substantially caused by the industrial injury of January 24, 2024, long ago resolved and medically stable.

2. Left and right shoulder chronic rotator cuff tears of the supraspinatus and infraspinatus with fatty infiltration of the rotator cuff muscles bellies indicating

significant chronicity, pre-existing, not substantially caused or aggravated by the industrial injury of January 24, 2024, not medically stable.

3. No clear mechanism of shoulder injury to either shoulder is identified occurring during the alleged industrial injury of January 24, 2024, by direct claimant history or review of the medical record.

4. Left shoulder sprain sustained during a fall in approximately 2011 by claimant's history, with likely rotator cuff tear, status post radiographs, MR imaging, and injections, clearly predating and not substantially caused by the industrial injury of January 24, 2024.

5. Right shoulder sprain in 2005 during a snowmachining accident by claimant's history, with unclear internal injury to the shoulder, clearly predating and not substantially caused by the industrial injury of January 24, 2024.

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

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

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

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

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

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

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

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

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

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

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

20) On June 24, 2025, the parties attended a prehearing conference:

This prehearing was scheduled on the EE’s Petition for SIME. During this prehearing, parties agreed to set SIME deadlines. The ER noted that she would like the deadlines far in advance to allow scheduling a deposition with Dr. Paynter.

The parties stipulated to conduct a SIME and the following process and procedures:

A. A mutually signed SIME Form is not in the board’s file at the time. The parties are advised that a SIME will not be scheduled until the form has been filed with the board and is due on or before **08/27/2025**.

B. A physician from the board’s list will be selected to perform the examination unless the board’s designee, at the time of processing, determines that no physician on the board’s list is available and/or qualified to perform the examination under 8 AAC 45.092(e). If there are no available and qualified physicians on the board’s list, the board’s designee will notify the parties and request that they provide the names, addresses, and specialties of physicians in accordance with 8 AAC 45.092(f). **Parties have not stipulated to a specialty nor to a specific physician(s) at this time.**

C. The medical disputes will be listed on the mutually signed SIME form.

.....

Order:

- Parties will proceed in accordance with this prehearing conference summary.

- Employer will make a copy containing all of the employee's medical records (in the manner as described above) and serve the binder(s) on the Employee **on or before 08/15/2025** with an affidavit verifying that the binder(s) contain copies of all the medical records in his/her possession.
- Employee must file all the binder(s), supplemental records, and the mutually signed **SIME Form on or before 08/27/2025**.

....

(Prehearing Conference Summary, June 24, 2025).

21) On June 24, 2025, the Division served the parties with the prehearing conference summary.

(Prehearing Conference Summary Served and Envelopes, June 24, 2025).

22) Neither party requested modification of the June 24, 2025, prehearing conference summary.

(Agency record).

23) On September 23, 2025, Dr. Paynter testified he examined Employee on April 4, 2024, and reviewed her bilateral shoulder MRIs and diagnosed bilateral rotator cuff tears. (Deposition by Video Conference Thomas Brandon Paynter, MD, September 23, 2025, at 5-6). He never saw her again. (*Id.* at 6). Dr. Paynter saw fatty atrophy in both MRI scans; “Basically, if there’s a rotator cuff tear that is existing for some period of time -- usually months, sometimes years -- that the -- the rotator cuff -- the muscle is not attached. Or the tendon’s not attached, so the muscle isn’t used. And so over time, that muscle turns to fat.” (*Id.* at 7). When asked what the fatty atrophy tells him about causation, he stated, “That more than likely, that the fatty atrophy was there prior to and to some -- some degree of rotator cuff tearing was there prior to her injury. It is not uncommon for us to see people that have preexisting issues that are -- may not be symptomatic, but then the injury causes them to be symptomatic.” (*Id.* at 8). After he was informed that “Dr. Youngblood stated that reverse total shoulder procedures were indicated, but he felt that recommending that type of treatment for her condition represented or was an admission that it was chronic and was not due to the work injury,” and asked whether he agreed, Dr. Paynter said, “I think that’s reasonable, yes.” (*Id.* at 11-12). He anticipated medical stability by June of 2024 for the work injury and when asked if Employee needed treatment after June of 2024, would he agree that the substantial cause was a preexisting condition and not the work injury, Dr. Paynter stated, “If she needed surgical treatment, most likely, yes. But acute pain, weakness would be from the work injury. But as far as needing something more significant, like a reverse total shoulder replacement, would - - would be preexisting.” (*Id.* at 12). When asked whether Dr. Youngblood’s one-month time period for resolution of an aggravation was reasonable, Dr. Paynter said, “It’s hard

to predict how somebody's going to respond to treatment. So, I -- I think some people would respond that quickly; other people would have symptoms for a -- for longer. Again, since this was just a one-time visit, it's hard to make a determination of her progress." (*Id.* at 12-13). Reasonable medical treatment for the work injury included medications, PT, and a potential steroid injection dependent upon Employee's pain level. (*Id.* at 13). The surgery would not be due to the work injury. (*Id.*). Because he did not examine Employee since April 2024, he did not have an opinion on her ability to return to work at this time. (*Id.* at 14). When asked to explain his acute on chronic injury description in his medical report, Dr. Paynter stated, "You can have increase in symptoms or new onset of symptoms from an injury." (*Id.* at 14-15). The degree of weakness and pain people have vary; some people improve with medication and activity modification, PT, and occasional injection, other people still have dysfunction. (*Id.* at 15). Employee could have an increase in the tear or an aggravation of the tissues around the rotator cuff, the bursa which is a fluid-filled sac with many nerve endings. (*Id.* at 16). But there is no way to tell if there was an increase in the size of the tear as there was no MRI prior to her work injury. (*Id.* 16-17). The increase in pain and restrictions in Employee's ability to use her shoulder is not an indication that there was a permanent change in anatomy. (*Id.* at 17). The work injury accelerated her need for initial treatment, nonsurgical treatment but not "long-term surgical treatment." (*Id.* at 18). When asked to explain Employee's failure to recover sufficiently to be able to return to work, Dr. Paynter stated, "I can't comment on that since I only saw her one time." (*Id.*). "It's unlikely that the workplace injury caused the significantly large tear and fatty atrophy. In order for you to have that degree of fatty atrophy, there was likely a very large, preexisting, full thickness rotator cuff tear." (*Id.* at 19). When asked what the increase in pain resulted from, Dr. Paynter stated, ". . . you can have bursal tissue with nerve endings. You can also just have pain from the muscles around the shoulder, not necessarily the rotator cuff. But the structural changes -- the large rotator cuff tear resulting in the fatty atrophy -- is very unlikely to be caused by this recent workplace event." (*Id.* at 20). The treatment provided for soft tissue injuries is the same nonoperative treatment he recommended for the work injury. (*Id.* at 21). Had there been edema in the MRI, it would have been "more indicative of an acute, a new, or an extension of the tear. You don't necessarily have to see that. But if there is that degree of fatty atrophy, with that large of a tear, that's preexisting." (*Id.* at 24).

24) On September 25, 2025, Employer requested an order halting the SIME:

Employer petitions for an order amending any SIME order. The parties recently deposed the employee's treating physician, Dr. Paynter. Employer asserts the medical evidence changed with Dr. Paynter's testimony. As such, there no longer remains a dispute pursuant to AS 23.30.095 to warrant the scheduling of an SIME. Employer requests the SIME process be halted and the pending SIME cancelled. The employer opposes an SIME. (Petition, September 25, 2025).

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

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

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

28) At hearing, Employer contended there is only a minor dispute regarding 62 days of TTD benefits, totaling \$2,878.66. It contended it is unreasonable to rely upon a "check the box" opinion from a chiropractor when the need for surgery is not a chiropractic issue. Employer argued that zero weight or value should be afforded the chiropractic "check the box" opinion. It contended there was sufficient evidence in the case to decide the claim, and an SIME would be an unreasonable cost to Employer. (Record).

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

30) On December 30, 2025, *Wright I* denied Employer's petition to cancel the SIME. It found the parties stipulated to an SIME at the June 24, 2025, prehearing conference and that there were significant disputes regarding causation and medical treatment between Drs. Hanifen and Youngblood, and medical stability, medical treatment, and causation between Drs. Paynter and Youngblood. *Wright I* relied upon *Betts* and *Geister* to reject Employer's argument that Dr. Hanifen's letter is insufficient evidence supporting an SIME because the "check the box" response is being used to establish a medical dispute, and the panel is not weighing competing evidence in an SIME hearing. It distinguished *Phillips* from this case, noting the employer in *Phillips* argued and prevailed on the argument that there was an unlawful physician change and no such change was made in this case. *Wright I* also held a chiropractor is an attending physician under the Act and that "check the box" opinions can be considered when deciding whether there are conflicting medical opinions under *Geister*. It considered the benefits at issue, medical costs for bilateral shoulder surgery, TTD benefits during recovery, and PPI benefits, which is more than just 52 days of TTD benefits, to conclude the medical disputes were significant. *Wright I* held there was no good cause to relieve Employer from its stipulation. It ordered an SIME with an orthopedic surgeon and set SIME deadlines. (*Wright I*).

31) On January 14, 2026, Employer requested *Wright I* be reconsidered, contending there was no SIME stipulation as the parties agreed to schedule SIME deadlines at the June 24, 2025, prehearing conference to allow time to obtain Dr. Paynter's deposition. It contended this agreement did not

amount to a stipulation for an SIME and Employer retained its right to deny the SIME based upon Dr. Paynter's deposition. Employer contended the agreement to allow time to obtain Dr. Paynter's deposition when setting SIME deadlines:

. . . supports the understanding that there was no stipulation; rather, the parties agreed that more information was needed to support a dispute before moving forward with an SIME seeking a new orthopedic opinion. The employer's response was necessary based on the new SIME petition rules. The Board sets an automatic hearing with every ask/petition for the SIME. The employer's reserved response to the SIME petition and the parties' actions/statements about the need for Dr. Paynter's deposition at the prehearing supported the assumed reasoning behind the new SIME rules, which is to move the SIME process forward. The parties proceeded in this case and in this matter so as to not incur the costs of the now automatic SIME hearing. The parties' actions support an agreement that discovery was incomplete and evidence was lacking; thus, the agreement to move forward knowing the pending orthopedic physician deposition could halt the SIME process.

There was not a stipulation for an SIME and the Board cannot rely on that finding to move the SIME forward at this point in the case. Instead, there was a stipulation to cancel the automatic SIME hearing, a stipulation to move the SIME process along pending more evidence, and a stipulation that more medical evidence was needed to support an orthopedic SIME dispute. There was not a stipulation for an SIME as the Board concluded in the D&O.

Employer contended *Wright I* erroneously found a medical dispute existed between Dr. Hanifen and Drs. Youngblood and Paynter. It contended there was no qualifying medical dispute regarding causation or the need for surgery and there is no orthopedic dispute. Employer contended Dr. Hanifer's check the box letter was created for litigation purposes, he did not reference any medical records, exams or diagnostic testing, was advocacy driven and conclusory and it cannot be used to justify an SIME on an undisputed orthopedic issue. It contended Dr. Hanifen was no longer the treating doctor and is similar to Dr. Gritza in the *Phillips* case. Employer contended there was no dispute regarding causation for the surgery as Dr. Hanifen did not address it and his opinion cannot be used to address the need for surgery at an SIME. It contended *Wright I* made a significant factual error when it found a significant dispute existed between Drs. Paynter and Youngblood regarding causation because both physicians indicated Employee's need for bilateral surgery was not work-related and both opined PT and injections could be used to treat her pain symptoms. Employer contended the medical stability dispute of only 62 days between Drs. Paynter and Youngblood is not a significant dispute justifying a costly SIME. It contended there is enough

medical evidence to decide the claim with Drs. Paynter’s and Youngblood’s opinions, similar to *Rasmuson*, and AS 23.30.001 does not support the current SIME order. Employer contended Employee needs to provide a new treating orthopedic provider opinion to support an orthopedic SIME and she failed to do so. It contends *Wright I* made no reasonable cost or fairness analysis. (Petition and Memorandum in Support of Petition for Reconsideration, January 14, 2026).

32) On January 16, 2026, Employee opposed Employer’s January 14, 2026, petition, contending the parties agreed to an SIME and, “Nowhere was it stated that the decision to move forward was predicated on any explicit agreement to obtain more orthopedic evidence before the SIME (as Employer claims). She contended the stipulation issue was moot because *Wright I* found a medical dispute existed and, presumably, it would have determined the same in a written-record hearing. Employee contended Dr. Paynter’s opinion was never invoked on causation, and Dr. Hanifen, firmly opined causation existed. She contended Dr. Paynter endorsed an “acute on chronic” injury occurred which is contrary to Dr. Youngblood’s opinion. She contended Employer implied she “squandered her opportunity to seek further orthopedic care, ignoring the fact that medicals were controverted in this case by the adjuster soon after the claim was filed.” Employee contended Dr. Hanifen was Employee’s treating physician and *Wright I* correctly applied the *Phillips* case. She contended there is not sufficient expert medical opinions in the record to decide the claim and her case is distinguishable from *Rasmuson* because the orthopedic record amounts to little more than one EME report and a two-page clinic note by Dr. Paynter, who was consulted once to opine on an MRI but did not further treat Employee. (Opposition to Employer’s Petition for Reconsideration, January 16, 2026).

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. . . .

The Board may base its decision on not only 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 23.30.095. Medical treatments, services, and examinations. . . .

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

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

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

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

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

Based on the commission's experience of the workers' compensation system, there are reasons why a board panel may exercise its discretion not to grant a request for an SIME, even when there is a medical dispute. After weighing the expense of the evaluation, delay, need for extended travel and associated costs, significance of the medical dispute to the material and contested issues in the claim, quantity of medical evidence already in the record, likelihood of new and useful information, and the board panel's familiarity with the subject area of the dispute (footnote omitted), the board may decide that it is "more doubtful" that an SIME would assist the board in reaching a decision on the material and contested issues before it and therefore it will not grant a request for an SIME. *Id.* at 7.

....

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

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

Ms. Betts' position that the EMEs do not rebut the presumption of compensability is a legal issue to be addressed by the Board at a hearing on the merits. The procedure is that the Board, at that time, will decide if Ms. Betts raised the presumption, then whether Greenling rebutted it and, if so, then Ms. Betts must prove her claim by a preponderance of the evidence. However, a hearing on the issue of whether to order an SIME is not a hearing on the merits and the issue of

sufficiency and credibility of the EME reports is not addressed. Among the concerns addressed by the Board at the hearing on the SIME is whether an SIME will be of assistance to the Board in resolving the issues of the claim at a hearing on the merits. The Board has a right to order an SIME to assist it in understanding the medical issues involved in the claim and this right is independent of the issue of the presumption of compensability. . . .

. . . .

This right to require an SIME arises prior to a hearing on the merits. The presumption analysis is not relevant where the Board is making a determination as to whether an SIME would assist it. . . .

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

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

. . . .

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

Rasmuson v. Mat-Su Regional Medical Center, AWCB Dec. No. 25-0072 (October 29, 2025) denied an injured worker's request for an SIME where medical disputes existed and the disputes were significant. The Board found there was enough expert medical opinions and evidence in the file with which a panel could render a considered decision and order at a merits hearing as the

employee had two treating physicians supporting her position that thoroughly explained their opinions in addition to an EME who set forth his medical opinions with clarity.

AS 23.30.130. Modification of awards. (a) Upon . . . the application of a party in interest on the ground of a change in conditions . . . or because of a mistake in its determination of a fact, the board may, before one year after the date of the last payment of compensation benefits under AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, whether or not a compensation order has been issued, or before one year after the rejection of a claim, review a compensation case under the procedure prescribed in respect of claims in AS 23.30.110. Under AS 23.30.110 the board may issue a new compensation order which terminates, continues, reinstates, increases, or decreases the compensation, or award compensation. . . .

The Alaska Supreme Court discussed §.130(a) in *Interior Paint Company v. Rodgers*, 522 P.2d 164, 168 (Alaska 1974) stating: “The plain import of this amendment [adding ‘mistake in a determination of fact’ as a ground for review] was to vest a deputy commissioner with broad discretion to correct mistakes of fact whether demonstrated by wholly new evidence, cumulative evidence, or merely further reflection on the evidence initially submitted.” An examination of all previous evidence is not mandatory whenever there is an allegation of mistake in determination of fact under §.130(a). “The concept of ‘mistake’ requires careful interpretation. It is clear that an allegation of mistake should not be allowed to become a back-door route to retrying a case because one party thinks he can make a better showing on the second attempt.” *Id.* at 169.

In the case of a factual mistake or a change in conditions, a party “may ask the board to exercise its discretion to modify the award at any time until one year” after the last compensation payment is made, or the board rejected a claim. *George Easley Co. v. Lindekugel*, 117 P.3d 734, 743 (Alaska 2005). Section 130 confers continuing jurisdiction over workers’ compensation matters. *Id.* By comparison and contrast, a petition for reconsideration has a fifteen day time limit for the request and the board’s power to reconsider “expires thirty days after the decision has been mailed . . . and if the board takes no action on a petition, it is considered denied.” *Id.* at n. 36. *See also Williams v. Safeway Stores*, 525 P.2d 1087, 1088 (Alaska 1974) (modification request must be made before one year after the date of last payment of compensation).

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 23.30.395. Definitions. In this chapter,

. . . .

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

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

. . . .

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

AS 44.62.540. Reconsideration. (a) The agency may order a reconsideration of all or part of the case on its own motion or on petition of a party. To be considered by the agency, a petition for reconsideration must be filed with the agency within 15 days after delivery or mailing of the decision. The power to order a reconsideration expires 30 days after the delivery or mailing of a decision to the respondent. If no action is taken on a petition within the time allowed for ordering reconsideration, the petition is considered denied.

(b) The case may be reconsidered by the agency on all the pertinent parts of the record and the additional evidence and argument that are permitted. . . .

AS 44.62.540 limits authority to reconsider and correct a decision under this section to 30 days. *Lindekugel*, 117 P.3d at 743 n. 36 (Alaska 2005). A request for reconsideration, not a request for modification, is the appropriate remedy when a party alleges a legal error. *Id.*

8 AAC 45.050. Pleadings.

(f) For stipulations under this subsection,

. . . .

(2) stipulations between the parties may be made in writing at any time before the close of the record or may be made orally in the course of a hearing or a prehearing;

8 AAC 45.065. Prehearings. (a) After a claim or petition has been filed, a party may file a written request for a prehearing, and the board or designee will schedule a prehearing. Even if a claim, petition, or request for prehearing has not been filed, the board or its designee will exercise discretion directing the parties or their representatives to appear for a prehearing. At the prehearing, the board or designee will exercise discretion in making determinations on

....

(3) accepting stipulations, requests for admissions of fact, or other documents that may avoid presenting unnecessary evidence at the hearing;

....

(c) After a prehearing the board or designee will issue a summary of the actions taken at the prehearing, the amendments to the pleadings, and the agreements made by the parties or their representatives. The summary will limit the issues for hearing to those that are in dispute at the end of the prehearing. Unless modified, the summary governs the issues and the course of the hearing.

(d) Within 10 days after service of a prehearing summary issued under (c) of this section, a party may ask in writing that a prehearing summary be modified or amended by the designee to correct a misstatement of fact or to change a prehearing determination. The party making a request to modify or amend a prehearing summary shall serve all parties with a copy of the written request. If a party's request to modify or amend is not timely filed or lacks proof of service upon all parties, the designee may not act upon the request.

8 AAC 45.150. Rehearings and modification of board orders. . . .

(d) A petition for a rehearing or modification based on an alleged mistake of fact by the board must set out specifically and in detail

- (1) the facts upon which the original award was based;
- (2) the facts alleged to be erroneous, the evidence in support of the allegations of mistake, and, if a party has newly discovered evidence, an affidavit from the party or the party's representative stating the reason why, with due diligence, the newly discovered evidence supporting the allegation could not have been discovered and produced at the time of the hearing; and
- (3) the effect that a finding of the alleged mistake would have upon the existing board order or award.

Phillips v. Bilikin Investment Group, Inc., AWCB Dec. No. 14-0020 (February 19, 2014), addressed the employer's contention the employee made an unlawful physician change when his attorney expressly selected Thomas Gritzka, MD, as a non-treating expert witness, and therefore, he was not a "change," "referral" or "substitution" physician. The employee admitted he paid Dr.

Gritzka for his examination and reports. The employee contended his due process rights were violated by the employer's silence on the issue "until the last minute." Dr. Gritzka's report created a dispute warranting an SIME. However, the employer objected to Dr. Gritzka eight days before hearing. The Board heard the employer's objection as a preliminary matter and advised the employee he had the burden to demonstrate Dr. Gritzka was a valid physician under the Act and regulations. The employee failed to show such and conceded Dr. Gritzka was a hired medical expert. *Phillips* rejected the employee's argument that he had a right to hire an independent expert outside the Act's limitations and held:

The Act and regulations contain no suggestion a party has a right, apart from those provided under AS 23.30.095(a) and (e), to obtain additional opinions or evaluations from medical experts. Such practice would contravene the statutes and revert back to 'doctor shopping,' which the legislature eliminated years ago. In some cases, parties have procured medical experts without objection from opposing parties and these experts' opinions have been considered. This is not one of those cases. Employer objected to Dr. Gritzka's participation alleging he was an unlawful change in Employee's choice of attending physician. Regulation 8 AAC 45.082(c) codifies decisional law disallowing reliance by a party on unlawfully obtained medical opinions. If a party makes an unlawful change of physician in violation of AS 23.30.095(a) or (e), or 8 AAC 45.082, the panel 'will not consider the reports, opinions, or testimony of the physician in any form, in any proceeding, or for any purpose.' The panel has no discretion. Employee stipulated the evaluation with Dr. Gritzka was arranged and paid for solely by his attorney. Employee failed to show any exception applied to his situation. He also failed to demonstrate Dr. Gritzka was a valid change, referral or substitution physician.

ANALYSIS

Should Employer's petition for reconsideration be granted?

Employer's timely January 14, 2026, petition expressly seeks reconsideration. Reconsideration is used to allege a legal mistake. AS 44.62.540; *Lindekugel*. Employer contended *Wright I* erroneously found a medical dispute existed between Dr. Hanifen and Drs. Youngblood and Paynter. It contends there was no dispute regarding causation for the surgery as Dr. Hanifen did not address it and his opinion cannot be used to address the need for surgery at an SIME. Employer contends *Wright I* made a significant factual error when it found a significant dispute existed between Drs. Paynter and Youngblood regarding causation because both physicians indicated Employee's need for bilateral surgery was not work-related and both opined PT and injections

could be used to treat her pain. It also contends *Wright I* erred when it found Employer stipulated to conduct an SIME. Employer's contentions contain a mix of legal and factual errors and will be addressed as both a request for reconsideration and modification. AS 23.30.130; AS 44.62.540; *Lindekugel*.

Employer contends *Wright I* erred when it found Employer stipulated to conduct an SIME. It contended its May 13, 2025 answer to Employee's April 24, 2025 petition for an SIME reserved its right to a future opposition and there was only a stipulation to cancel the automatic SIME hearing, a stipulation to move the SIME process along pending more evidence, and a stipulation that more medical evidence was needed to support an orthopedic SIME dispute. Employer is alleging a factual error for modification rather than a legal error. AS 23.30.130; *Lindekugel*.

This is the first time Employer contended there was no stipulation to conduct an SIME. Employer's September 25, 2025, petition admitted there was an SIME order because it requested, "an order amending any SIME order." Employer's error contention will be rejected because it failed to initially raise the issue and it will not be allowed a back-door route to retry the case because it believes this is a better argument. *Rodgers*. The June 24, 2025, Prehearing Conference Summary clearly stated, "The parties stipulated to conduct a SIME and the following process and procedures." There was no qualification of the stipulation "to conduct an SIME" in the June 24, 2025, Prehearing Conference Summary. Instead, the June 24, 2025, summary stated parties agreed to set SIME deadlines, Employer wanted to set the SIME deadlines "far in advance to allow scheduling a deposition with Dr. Paynter," and, "The parties stipulated to conduct a SIME."

A stipulation may be made during the course of a prehearing conference. 8 AAC 45.050(f)(2); 8 AAC 45.065(a). Employer failed to request modification of the June 24, 2025, Prehearing Conference Summary. 8 AAC 45.065(d). The June 24, 2025, summary clearly states the parties stipulated to conduct an SIME. Therefore, *Wright I* did not factually err when it found the parties stipulated to conduct an SIME at the June 24, 2025, prehearing conference. AS 23.30.130; *Rogers & Babler; Lindekugel*.

Employer contends there was no qualifying medical dispute regarding causation or the need for surgery. It argues Dr. Hanifen's October 7, 2024, response to Employee's "check the box" letter cannot be used to justify an SIME on an undisputed orthopedic issue because it did not reference any medical records, exams or diagnostic testing, was advocacy driven, and conclusory. *Wright I* relied upon *Betts* and *Geister* to reject Employer's argument that Dr. Hanifen's letter is not sufficient evidence supporting an SIME because Dr. Hanifen's "check the box" response was being used to establish a medical dispute, and the panel was not weighing competing evidence in an SIME hearing. Employer continues to offer the same argument. Its contention is again rejected because Dr. Hanifen's response is being used to establish a medical dispute, and the panel is not weighing competing evidence on this SIME issue. *Geister; Betts*. It would not be fair to allow Employer to rely upon Dr. Paynter's opinions to argue there is no medical dispute at an SIME hearing, when he shared his opinion in response to questions from Employer's nurse case manager on April 4, 2024, and to not allow Employee to rely upon her physician's opinion in response to questions from her. AS 23.30.001(1). Furthermore, the panel has wide discretion to consider any available evidence in deciding to order an SIME to assist in investigating and deciding medical issues in claims, to best "protect the rights of the parties." *Bah*.

Employer contends Dr. Hanifen's response to "check the box" letter was created for litigation purposes and cannot be used to establish a medical dispute. It contends Dr. Hanifen was no longer the treating doctor, and this case is similar to Dr. Gritza in the *Phillips* case. Employee contends Dr. Hanifen is her treating physician and *Wright I* correctly decided the issue. *Wright I* distinguished *Phillips* from this case, noting the employer in *Phillips* prevailed on the argument that there was an unlawful physician change; no such change was made in this case. *Wright I* also held a chiropractor, like Dr. Hanifen, is an attending physician under the Act and that "check the box" opinions can be considered when deciding whether there are conflicting medical opinions, under *Geister*. Unlike Dr. Gritza in *Phillips* whose examination, as a non-treating expert witness, was arranged by his attorney, Dr. Hanifen treated Employee's work injury before providing his "check the box" opinion upon Employee's request; he was not hired as a non-treating medical expert. Employer failed to prove *Wright I* legally or factually erred by considering Dr. Hanifen's responses to the "check the box" letter to decide whether there were conflicting medical opinions under *Bah*. AS 23.30.130; AS 44.62.540; *Lindekugel*.

Wright I found there were disputes regarding causation and medical treatment between Drs. Hanifen and Youngblood and a dispute remained between Drs. Paynter and Youngblood regarding medical stability, medical treatment, and causation. Dr. Paynter first opined Employee sustained an acute on chronic injury, diagnosed bilateral rotator cuff tears, recommended conservative treatment, including Tylenol, PT, and possible injections, and estimated she would reach medical stability on June 15, 2024. At deposition, Dr. Paynter attributed Employee's need for her need for bilateral reverse total shoulder procedures to the chronic injuries, not the work injury, and reaffirmed his recommendations for conservative treatment for the aggravation of her chronic condition and the June 2024 medical stability date. Dr. Youngblood stated there was no clear mechanism of injury to either of Employee's shoulders from the work injury and her need for bilateral shoulder treatment was due to chronic, preexisting rotator cuff tears. He opined the work injury did not aggravate her preexisting rotator cuff tears.

There remain clear disputes between Drs. Paynter and Youngblood regarding whether the work injury aggravated Employee's preexisting rotator cuff tears and was the cause of Employee's need for treatment before Employee became medically stable. Even if Dr. Paynter testified that the medical condition that required surgery was mostly preexisting, that does not mean that the work injury did not aggravate, combine with, or accelerate the need for surgery. Dr. Hanifen opined the work injury aggravated, combined with, or accelerated the need for treatment of Employee's preexisting bilateral shoulder condition and he disagreed with Dr. Youngblood's EME report. There remain clear medical disputes between Drs. Hanifen and Youngblood regarding the cause of Employee's need for medical treatment. Employer failed to prove *Wright I* factually and legally erred when it found medical disputes existed between Drs. Hanifen and Paynter versus Youngblood. AS 23.30.130; AS 44.62.540; *Lindekugel*.

Employer contends it was error for *Wright I* to order an orthopedic SIME because there is no orthopedic dispute. It contends Employee needs to provide a new treating orthopedic provider opinion to support an orthopedic SIME and she failed to do so. As stated before, Drs. Paynter and Youngblood, who are both orthopedists, disagreed on whether the work injury occurred and aggravated Employee's preexisting bilateral rotator cuff tears and caused her need for medical

treatment before June 2024. There remain orthopedic disputes in this case. The SIME is the panel's tool for an independent medical expert to provide an opinion on the contested issues, and the panel has wide discretion in deciding to order an SIME, including selecting which disputes and specialist should perform the SIME, to best "protect the rights of the parties." AS 23.30.135(a); *Seybert; Bah*. Because there are orthopedic disputes in this case, in addition to the disputes between Drs. Hanifen and Youngblood regarding causation and medical treatment, an SIME with an orthopedist would best protect the rights of the parties. *Id. Wright I* did not legally or factually error when it ordered an orthopedic SIME. AS 23.30.130; AS 44.62.540; *Lindekugel*.

Employer also contends there is enough medical evidence to decide the claim with Drs. Paynter's and Youngblood's opinions, similar to *Rasmuson*. *Rasmuson* found there was enough expert medical opinions and evidence in the file from which to render a considered decision and order at a merits hearing when the employee had two, supporting treating physicians who thoroughly explained their opinions, in addition to an EME who set forth his medical opinions with clarity. In this case, Employee only saw Dr. Paynter once and he testified it was hard to make determinations regarding Employee's recovery from the work-related aggravation with one visit. He could not explain Employee's failure to recover sufficiently to be able to return to work. This case is distinguishable from *Rasmuson*. Employer failed to prove *Wright I* erred in ordering an SIME. AS 23.30.130; AS 44.62.540; *Lindekugel*.

Employer contends there was no consideration of reasonable cost or fairness in *Wright I*. It contends the medical stability dispute of only 62 days between Drs. Paynter and Youngblood is not a significant dispute justifying a costly SIME. *Wright I* considered the benefits at issue, medical costs for bilateral shoulder surgery, TTD benefits during recovery, and PPI benefits, which is more than just 52 days of TTD benefits. It concluded the medical disputes were significant. These disputed benefits justify the cost of an SIME. *Wright I* found an SIME physician's opinion will assist the panel in resolving the claim. Employer failed to prove *Wright I* failed to consider whether an SIME was reasonable or fair. AS 23.30.130; AS 44.62.540; *Lindekugel*. Because Employer failed to prove *Wright I* legally or factually erred, its petition will be denied. *Wright I* set SIME deadlines and they have already passed. The SIME deadlines will be extended in the order below. AS 23.30.135(a).

CONCLUSION OF LAW

Employer's petition for reconsideration should be denied.

ORDER

- 1) Employer's January 14, 2026, petition for reconsideration is denied.
- 2) An SIME will be performed by an orthopedic surgeon selected from the authorized list. If, at the time of processing, the designee determines that no physician on the Board's list is available or qualified to perform the examination under 8 AAC 45.092(e), the designee will notify the parties and request that they provide the names, addresses, and curriculum vitae of physicians in accordance with 8 AAC 45.092(f).
- 3) The medical disputes are causation, treatment, and medical stability on Employee's bilateral shoulders.
- 4) All filings regarding the SIME must be sent to workerscomp@alaska.gov and served on opposing parties.
- 5) Employer will make two copies of Employee's medical records in its possession, including medical providers' depositions, put the copies in chronological order by treatment date, starting with the first medical treatment and proceeding to the most recent medical treatment, number the pages consecutively, put the copies in two binders. This must be done on or before **February 20, 2026. Employer must serve one binder on Employee and one with the Division, with an affidavit verifying the binders contain copies of all medical records in her possession no later than 5:00 PM on February 20, 2026.**
- 6) The binders may be returned for reorganization if not properly Bates stamped and prepared in accordance with this prehearing summary.
- 7) **Not later than 10 days after receipt of the binders, Employee must review the binder to determine if it contains all Employee's medical records in Employee's possession.** If the binder is complete, Employee must file an affidavit with the Division verifying the binder contains copies of all medical records in Employee's possession. If the binder is incomplete, Employee must make two copies of the additional medical records missing from the first set of binders. Each copy must be put in a separate binder (as described above). Then one set of supplemental binders,

and an affidavit verifying the medical records completeness must be filed with the Board. The remaining supplemental binder must be served upon Employer together with an affidavit verifying that it is identical to the binder filed with the Board. Employee is directed to file with the Division and serve the binders on opposing parties within 10 days of receipt.

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

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

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

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

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

Dated in Anchorage, Alaska on January 28, 2026.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Kathryn Setzer, Designated Chair

/s/
Anthony Ladd, Member

PETITION FOR REVIEW

A party may seek review of an interlocutory or other non-final Board decision and order by filing a petition for review with the Alaska Workers' Compensation Appeals Commission. Unless a

