

ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

JARRME HORN,)	
)	
Employee,)	
Claimant,)	INTERLOCUTORY
)	DECISION AND ORDER
v.)	
)	AWCB Case No. 202404322
BLACK GOLD EXPRESS, INC.,)	
)	AWCB Decision No. 26-0008
Employer,)	
and)	Filed with AWCB Fairbanks, Alaska
)	on January 30, 2026
AMERICAN INTERSTATE INSURANCE)	
COMPANY,)	
)	
Insurer,)	
Defendants.)	
)	

Jarrme Horn's (Employee) July 25, 2025 claim was heard in Fairbanks, Alaska on November 20, 2025, a date selected on September 17, 2025. An August 15, 2025 affidavit of readiness for hearing (ARH) gave rise to this hearing. Attorney John Franich appeared and represented Employee. Attorney Aaron Sandone appeared and represented Black Gold Express, Inc. and American Interstate Insurance Company (Employer). Witnesses included Employee, who testified on his own behalf; Employee's friend, Angela Johnson, who testified on Employee's behalf; and Employer's adjuster, Jennifer Lorentz, who testified on Employer's behalf. The record was held open to receive Employee's supplemental affidavit of attorney fees and costs, and Employer's objections to Employee's supplemental affidavit of attorney fees and costs and closed on December 5, 2025.

ISSUES

Employee contends he was unable to attend an Employer's medical evaluation (EME) because of circumstances beyond his control and contends he notified Employer in advance of his inability to attend. He denies that he refused to attend the EME and seeks reinstatement of temporary total disability (TTD) benefits that were suspended because of the missed EME.

Employer contends Employee did not inform it that he would be unable to attend the EME nor informed it that he needed any further assistance with travel arrangements. It contends the suspension of benefits under these circumstances is automatic and this panel should exercise its discretion and order Employee's TTD forfeited. Employer also seeks reimbursement of missed examination costs, hotel costs and per diem expense funds previously advanced to Employee.

1) Should Employee's suspended TTD benefits be forfeited?

Employee contends Employer owes interest on TTD benefits not timely paid.

Employer contends it does not owe interest on TTD benefits since those benefits were suspended by law and should be ordered forfeited.

2) Is Employee entitled to interest?

Employee contends he was aided by the services of his attorney, and he seeks an award of reasonable attorney fees and costs.

Employer contends, since Employee is not entitled to an award of benefits, neither is he entitled to attorney fees and costs.

3) Is Employee entitled to attorney fees and costs?

FINDINGS OF FACT

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

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- 1) On March 23, 2024, Employee, a truck driver, reported he was injured a day earlier when he fell from a platform, injuring his left shoulder, neck and bilateral knees. (First Report of Injury, March 29, 2024).
- 2) On May 16, 2024, Employee sought a compensation rate adjustment, interest and attorney fees and costs. (Claim for Workers' Compensation Benefits, May 16, 2024).
- 3) On June 14, 2024, Employee underwent open rotator cuff repair surgery. (Operative Report, June 14, 2024).
- 4) On December 6, 2024, James Schwartz, MD, an orthopedic surgeon, performed an EME in Fairbanks and opined Employee's left rotator cuff tear was causally related to the March 22, 2024 work injury but the surgical result was "fair at best." He thought that Employee was not capable of any strenuous use of his left shoulder or use of his left arm above shoulder height. Dr. Schwartz concluded Employee's left shoulder was not yet medically stable and recommended continued physical therapy and a new MRI because of Employee's limited motion and pain complaints. (Schwartz report, December 6, 2024).
- 5) On December 12, 2024, the parties settled Employee's May 16, 2024 claim for compensation rate adjustment, interest and attorney fees and costs. (Compromise and Release Agreement, December 12, 2024).
- 6) On June 27, 2025, Employer's attorney notified Employee that Employer had scheduled a follow-up EME with Dr. Schwartz on July 10, 2025 in Anchorage. An airline reservation was also provided to Employee. (Sandone letter, June 27, 2025).
- 7) On June 30, 2025, Employee's attorney's office emailed Employer's attorney to request cancellation of Employee's airline reservation because Employee "DOES NOT FLY." The message explained that Employee was going to have a friend drive him to Anchorage and back for the EME appointment and requested that Employer provide Employee with a hotel room the night before the EME so Employee could be rested for the appointment. (DeLauriea email, June 30, 2025).
- 8) On July 2, 2025, Employer's attorney emailed Employee's attorney and notified him that Employee's airline reservation had been cancelled and that Employer had reserved a hotel room for Employee the night before the EME. (Sandone email, July 2, 2025).
- 9) On July 7, 2025, Employee's attorney's office emailed Employer's attorney and stated:

I just received a telephone call from [Employee] that his friend who was to drive him to/from Anchorage for the IME [independent medical evaluation] is unable to.

He tried over the weekend to get someone else to drive him but was not able to find anybody.

[Employee] mentioned that the doctor he is scheduled to see, he saw in Fairbanks at his last IME.

Is there anyway [sic] to have the IME changed to the next time the doctor is in Fairbanks?

(DeLauriea email, July 7, 2025). That same day, Employer's attorney emailed a reply that stated: "Unfortunately Dr. Schwartz is not available in Fairbanks for an evaluation around this time." (Sandone email, July 7, 2025).

10) On July 10, 2025, Employee failed to attend the EME with Dr. Schwartz. (Medical Evaluations of Alaska Invoice, July 17, 2025; Controversion Notice, July 23, 2025).

11) Employee does not dispute the July 10, 2025 EME with Dr. Schwartz was properly noticed. (Observations).

12) On July 17, 2025, Employer was billed \$3,706.90 is costs for the missed EME appointment. (Medical Evaluations of Alaska Invoice, July 17, 2025).

13) On July 23, 2025, Employer suspended all benefits after July 10, 2025 based on Employee's failure to attend a properly noticed EME. (Controversion Notice, July 23, 2025).

14) On July 25, 2025, Employee filed a claim seeking reinstatement of benefits, interest and attorney fees and costs. He also requested a board order stating his suspended benefits were not forfeited. (Workers' Compensation Claim, July 25, 2025).

15) On August 8, 2025, Employee attended a follow-up EME with Dr. Schwartz in Fairbanks. (Schwartz report, August 8, 2025).

16) On August 12, 2025, Employer withdrew its July 23, 2025 controversion, effective August 8, 2025. (Notice of Withdrawal of Controversion, August 12, 2025).

17) On September 18, 2025, Employee sought a finding of unfair or frivolous controversion for underpayment of TTD in violation of the parties December 12, 2024 C&R Agreement. He also sought penalty and interest on underpaid amounts as well as attorney fees and costs. (Claim for Workers' Compensation Benefits, September 18, 2025).

18) On November 18, 2025, Employee submitted an affidavit of attorney fees, claiming 5.9 hours of attorney time at a rate of \$520 per hour, and an affidavit of paralegal costs, claiming 1.9 hours of paralegal time at a rate of \$260 per hour, for total claimed fees and costs of \$3,562. His attorney, John Franich, averred that the Alaska Supreme Court awarded him attorney fees at the effective rate of \$600 per hour in the appeal of *Rusch v. Southeast Alaska Regional Health Consortium*, 453 P.3d 784, 798-99 (Alaska 2019); and cited *Martino v. Alaska Asphalt Services, LLC*, AWCB Dec. No. 23-0044 (August 10, 2023), where a Board panel awarded another attorney \$520 per hour, plus ongoing statutory minimum fees under AS 23.30.145(a) on all future benefits. Franich also set forth his 45 years' legal experience, which is extensive, and stated that no unusual time limitations were imposed upon him by the client of circumstances of this case, and that he had no prior professional relationship with Employee prior to this case. (Affidavit of Attorney Fees, November 17, 2025; Affidavit of Paralegal Costs, November 17, 2025; experience).

19) Employer did not object to Employee's claimed attorney fees and costs. (Observations).

20) On November 20 2025, Angela Johnson testified she had agreed to drive Employee to Anchorage for the EME, but due to the nature of the work she was doing at that time, and an issue at work she could not avoid, she notified Employee at least two or three, or perhaps three or four days before the EME that she could not drive him to the appointment. She originally agreed to drive Employee to Anchorage because the driving distance between Fairbanks and Anchorage was "too much for [Employee] to accomplish on his own." Johnson thought it would have been "overwhelming" and a "challenge" for Employee to drive to the appointment from Fairbanks. (Johnson).

21) Johnson did not specify the nature of the work she was doing at the time or describe the unavoidable issue at work. (Observations).

22) On November 20, 2025, Employee testified he suffered a stroke about three and a half weeks after the work injury and got a blood clot in his brain. He does not fly because of his anxiety and having the blood clot is another reason he does not fly. Employee did not drive himself to Anchorage for the EME because it was a long trip and he has "a lot of memory issues" so he did not think it was safe to drive alone. He tried to call other people for a ride, but they were either working or out of town. If Employee had a ride to Anchorage, he would have attended the EME. He did not plan on not attending the EME and tried "all [his] resources" to

find a ride down to Anchorage and back. He has flown once in 20 to 30 years. In response to a question whether he asked Employer to provide other transportation accommodations, he replied that he does not talk to Employer and Employer's adjuster has told him that he is not allowed to talk to her. He communicated with his attorney's office about not being able to fly. Employer has not provided transportation to other appointments because all his other appointments have been in Fairbanks. Employee drives himself to his other appointments because he can drive 20 miles, but 400 miles is too much for him to drive. He received a per diem advance from Employer deposited into his account. Employee does not remember whether he returned Employer's advance because his memory is "not good anymore." Employee's doctors have not restricted him from flying and he is "not positive" on whether they have restricted his driving. (Employee).

23) On November 20, 2025, Jennifer Lorentz testified she is the adjuster who has been handling Employee's workers' compensation matters and is aware of charges related to Employee's missed EME appointment. One charge was \$3,706.90 from the EME company for the no-show that Insurer paid. Another expense Insurer paid was \$256.09 for the hotel room that Employee requested. It also advanced Employee \$98.00 in per diem expenses, which has not been credited back to Insurer. Lorentz was not aware in advance that Employee would not be attending the EME but did receive notice from Employer's attorney that there were some issues with his travel. Employee was originally going to fly to Anchorage but then Employee was going to drive to Anchorage with a friend. This was the last information she received before the EME. Lorentz is not aware why the EME company would have charged for copies. She is not aware of how much was charged on the invoice for reviewing records. Employee's TTD benefits were reinstated August 8, 2025 and are continuing. Lorentz is not aware of any credit from the EME company towards the August 8, 2025 EME for work that was previously done on the July 10, 2025 EME appointment. (Lorentz).

24) At the conclusion of the November 20, 2025 hearing, Employee requested to have until December 1, 2025 to supplement his affidavit of attorney fees and costs, and Employer requested to have until December 5, 2025 to object to Employee's supplemental affidavit of attorney fees and costs. The hearing chair agreed to the parties' proposed dates. (Record). Following the hearing, Employee did not submit a supplemental affidavit of attorney fees and costs, and

Employer did not submit any objections to Employee’s claimed attorney fees and costs. (Observations).

PRINCIPLES OF LAW

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 23.30.095. Medical treatments, services, and examinations.

. . . .

(e) The employee shall, after an injury, at reasonable times during the continuance of the disability, if requested by the employer . . . submit to an examination by a physician or surgeon of the employer’s choice . . . furnished and paid for by the employer. . . . If an employee refuses to submit to an examination provided for in this section, the employee’s rights to compensation shall be suspended until the obstruction or refusal ceases, and the employee’s compensation during the period of suspension may, in the discretion of the board . . . , be forfeited. . . .

AS 23.30.122. Credibility of witnesses. The board has the sole power to determine the credibility of a witness. A finding by the board concerning the weight to be accorded a witness’s testimony, including medical testimony and reports, is conclusive even if the evidence is conflicting or susceptible to contrary conclusions. The findings of the board are subject to the same standard of review as a jury’s finding in a civil action.

The board’s credibility findings and weight accorded evidence are “binding for any review of the Board’s factual finding.” *Smith v. CSK Auto, Inc.*, 204 P.3d 1001; 1008 (Alaska 2009).

AS 23.30.145. Attorney fees. (a) Fees for legal services rendered in respect to a claim are not valid unless approved by the board, and the fees may not be less than 25 percent on the first \$1,000 of compensation or part of the first \$1,000 of compensation, and 10 percent of all sums in excess of \$1,000 of compensation. When the board advises that a claim has been controverted, in whole or in part, the board may direct that the fees for legal services be paid by the employer or carrier in addition to compensation awarded; the fees may be allowed only on the amount of compensation controverted and awarded. . . .

(b) If an employer fails to file timely notice of controversy or fails to pay compensation or medical and related benefits within 15 days after it becomes due or otherwise resists the payment of compensation or medical and related benefits and if the claimant has employed an attorney in the successful prosecution of the claim, the board shall make an award to reimburse the claimant for the costs in the proceedings, including a reasonable attorney fee. The award is in addition to the compensation or medical and related benefits ordered.

In *Harnish Group, Inc. v. Moore*, 160 P.3d 146 (Alaska 2007), the Court discussed how and under which statute attorney’s fees may be awarded in workers’ compensation cases. A controversion, actual or in-fact, is required for the board to award fees under AS 23.30.145(a). “In order for an employer to be liable for attorney’s fees under AS 23.30.145(a), it must take some action in opposition to the employee’s claim after the claim is filed.” *Id.* at 152. Fees may be awarded under AS 23.30.145(b) when an employer “resists” payment of compensation and an attorney is successful in the prosecution of the employee’s claims. *Id.* In this latter scenario, reasonable fees may be awarded. *Id.* at 152-53.

In *Wise Mechanical Contractors v. Bignell*, 718 P.2d 971, 974-75 (Alaska 1986), the Court held attorney fees awarded should be reasonable and fully compensatory. Recognizing attorneys only receive fee awards when they prevail on a claim’s merits, the contingent nature of workers’ compensation cases should be considered to ensure competent counsel is available to represent injured workers. *Id.* The nature, length, and complexity of services performed, the employer’s resistance, and the benefits resulting from the services obtained, are considerations when determining reasonable attorney fees for a claim’s successful prosecution. *Id.* at 973, 975. Since a claimant is entitled to full reasonable attorney fees for services on which the claimant prevails, it is reasonable to award one-half the total attorney fees and costs where the claims on which the claimant did not prevail were worth as much money as those on which he did prevail. *Bouse v. Fireman’s Fund Ins., Co.*, 932 P.2d 222; 242 (Alaska 1997).

In *Rusch v. Southeast Alaska Regional Health Consortium*, 453 P.3d 784 (Alaska 2019), the Court clarified its holding in *Bignell*, and held “the Board must consider of the factors set out in Alaska Rules for Professional Conduct 1.5(a) when determining a reasonable attorney fee.” *Id.* at 798-99. It emphasized, “. . . the Board must consider each factor and either make findings

related to that factor or explain why that factor is not relevant.” *Id.* at 799. The Court simultaneously noted:

Alaska Rule of Professional Conduct 1.5(a) sets out eight non-exclusive ‘factors to be considered in determining the reasonableness of a fee,’ specifically:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal services properly;
- (2) the likelihood, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily shared in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

Id. at n. 51. An attorney fee award will only be reversed if it is “manifestly unreasonable” – this differs from the “substantial evidence” test used for review of factual determinations. *Id.* at 803.

AS 23.30.155. Payment of compensation.

....

- (p) An employer shall pay interest on compensation that is not paid when due. . . .

A workers’ compensation award accrues legal interest from the date it should have been paid. *Land and Marine Rental Co. v. Rawls*, 686 P.2d 1187, 1192 (Alaska 1984).

8 AAC 45.090. Additional Examination.

....

- (g) If an employee does not attend an examination . . .

(1) the employer will pay the physician's fee, if any, for the missed examination; and

(2) upon petition by a party and after a hearing, the board will determine whether good cause existed for the employee not attending the examination; in determining whether good cause existed, the board will consider when notice was given that the employee would not attend, the reason for not attending, the willfulness of the conduct, any extenuating circumstances, and any other relevant facts for missing the examination; if the board finds

(A) good cause for not attending the examination did not exist, the employee's compensation will be reduced . . . to reimburse the employer the physician's fee and other expenses for the unattended examination; or

(B) good cause for not attending the examination did exist, the physician's fee and other expenses for the unattended examination is the employer's responsibility.

ANALYSIS

1) Should Employee's suspended TTD benefits be forfeited?

If an employee refuses to participate in an EME, his right to compensation is suspended as a matter of law until his refusal ceases. AS 23.30.095(e). Suspended compensation may later be ordered forfeited at the discretion of the Board. *Id.* On July 10, 2025, Employee failed to attend a properly noticed EME with Dr. Schwartz. Shortly thereafter, Employer controverted Employee's benefits based on the missed appointment. Employee seeks reinstatement of his suspended TTD as well as an order declaring his compensation is not forfeited. Employer, on the other hand, seeks an order stating Employee's compensation is forfeited, as well as reimbursement of costs it incurred for the missed evaluation.

The present dispute is governed by regulation and is dependent on whether Employee had "good cause" for not attending the EME. 8 AAC 45.050(g)(2). The regulation also sets forth various considerations in deciding whether good cause existed, including when notice was given that Employee would not attend, his reason for not attending, the willfulness of his conduct, any extenuating circumstances, and any other relevant facts for missing the evaluation. *Id.*

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Three days before the scheduled EME, the parties communicated through their attorneys. Employee's attorney's office notified Employer's attorney that Employee no longer had a ride to Anchorage. However, it did not notify Employer that Employee was unable to drive himself or explicitly state that Employee would not be attending the EME and neither did it request Employer's help with alternative travel arrangements. Rather, Employee's attorney's office inquired about the possibility of attending an EME with Dr. Schwartz in Fairbanks and Employer's attorney replied that such an appointment was unavailable. A subsequent and definitive message from Employee's attorney's office should have been forthcoming to have afforded Employer an opportunity to cancel the evaluation and potentially avoid no show fees. Though communication with Employer was handled by his attorney's office, on these counts, Employee may be faulted. Yet Employee's reason for not attending the EME and the willfulness of his conduct point in another direction.

Though Employee does not have medical restrictions on flying or driving, he credibly testified that he does not fly because of anxiety and concern over a blood clot in his brain and he does not drive long distances because of memory problems following his stroke. AS 23.30.122; *Smith*. Hence, this panel cannot conclude it was unreasonable for him to have requested that the flight reservation Employer initially provided be cancelled or for him to have sought a ride with Johnson to the EME in Anchorage. *Rogers & Babler*. As for her part, even though Johnson did not specify the nature of the work she was doing at the time or describe the unavoidable issue at work that prevented her from driving Employee to Anchorage, she nevertheless notified Employee that she was unable to go and Employee was left without a ride. Thus, Employee's and Johnson's testimony demonstrate that Employee's reason for not attending the EME was beyond his control and his conduct was not willful. 8 AAC 45.050(g)(2). These conclusions are only further reinforced by Employee's uneventful attendance at an EME with Dr. Schwartz in Fairbanks one month later. Accordingly, Employee's TTD should not be forfeited but rather reinstated for the period between July 10, 2025 and August 8, 2025. Relatedly, Employer's requests for reimbursement of missed examination costs, hotel costs and per diem expense funds previously advanced to Employee are denied. 8 AAC 45.090(g)(2)(B).

2) Is Employee entitled to interest?

Interest is awarded as a matter of course in workers' compensation cases, so Employee is entitled to interest. *Rawls*.

3) Is Employee entitled to attorney fees and costs?

Since Employer resisted paying benefits by suspending and controverting Employee's TTD, requiring Employee to file the instant claim and litigate his entitlement to compensation, an award of reasonable attorney fees is appropriate. *Moore*. Pursuant to the Alaska Supreme Court's prescription in *Rusch*, the factors set forth under Rule 1.5(a) of the Alaska Rules of Professional Conduct are consulted to arrive at a reasonable, fully compensatory attorney fee award. *Id.*; *Bignell*.

Employee's attorney has billed his time at \$520 per hour, and his paralegal's time at \$260 per hour, and Employer did not object to those hourly rates. Employee's attorney is well known among both the workers' compensation bar and workers' compensation hearing officers, and his extensive legal experience is set forth in his attorney fee affidavit. Rule 1.5(a)(7). Employee's hourly billing rate is identical to the rate awarded to another attorney in *Martino*, and less than the effective rate his attorney was awarded in for the appellate work in *Rusch*. Rule 1.5(a)(3). Virtually all fees in workers' compensation cases are contingent, and Employee's hourly billing rate, though lofty, are appropriate given the contingent nature of representation. Rule 1.5(a)(8).

According to Employee's attorney, no unusual time limitations were imposed upon him by the client or circumstances of this case, and he had no prior professional relationship with Employee prior to this case. Rule 1.5(a)(5); Rule 1.5(a)(6). Employee's claim sought a single benefit for a relatively small timeframe, and as pointed out above, the issue is governed by a single regulation. Therefore, the complexity of litigation, including the time and skills required for prosecution of Employee's claim was less than average. Rule 1.5(a)(1). Claimants' attorneys are rarely, if ever, precluded from other employment due to conflicts of interest or because they represent notoriously unpopular clients; and neither was Employee's attorney precluded from other employment due to the complexity of the issue presented here. Rule 1.5(a)(2). Employee prevailed in obtaining the benefit sought by his claim. He secured the TTD Employer had

