# ALASKA WORKERS' COMPENSATION BOARD

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

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| DANIEL K. HOWELL, | ) | |
| | ) | |
| Employee, | ) | INTERLOCUTORY |
| Claimant, | ) | DECISION AND ORDER |
| | ) | |
| v. | ) | AWCB Case No. 202205583 |
| | ) | |
| STATE OF ALASKA, | ) | AWCB Decision No. 26-0021 |
| | ) | |
| Self-Insured Employer, | ) | Filed with AWCB Juneau, Alaska |
| Defendant. | ) | on March 17, 2026 |
| | ) | |

State of Alaska's (Employer) October 28, 2025 petition to dismiss was heard in Juneau, Alaska, on February 24, 2026, a date selected on January 8, 2026. A December 10, 2025 hearing request gave rise to this hearing. Non-attorney Daniel Howell appeared telephonically, represented himself, and testified. Attorney Brent Williams appeared by Zoom and represented Employer. The record closed on February 24, 2026.

## ISSUE

Employer contends Employee failed to request a hearing or an extension of time within two years of its after claim controversion notice. It contends Employee failed to actively prosecute his claim because he filed no evidence, did not contact the claims adjuster after July 2023, failed to attend a prehearing conference, and did not file any evidence or a hearing brief for this hearing. Employer requests an order denying Employee's claim under AS 23.30.110(c).

Employee contends he thought his case was already over and taken care of and he thought his private health insurance was going to pay for his medical treatment. He contends his need for

medical treatment was due to a prior left knee work injury in 2009 while working for Employer and he informed the claims adjuster. Employee says he did not know what he was doing when he filed the claim and tried for the first 12 months after the work injury to do what he needed to do. He contends he is "not sharp" and was "tired of it," being the "little guy against the corporation" and he did not get any help. Employee requests an order denying Employer's petition.

**Should Employee's June 22, 2023 claim be denied under AS 23.30.110(c)?**

FINDINGS OF FACT

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

1) On March 6, 2009, Employee reported he twisted his left knee on February 28, 2009, when running on the MV Taku while working for Employer. (Physician's Report, March 6, 2009).

2) On March 11, 2009, John Schwartz, MD, diagnosed a left knee medial meniscus tear and preexisting early mild degenerative joint disease. He found Employee unfit for duty and recommended a partial medial meniscectomy. (Schwartz record, March 11, 2009).

3) On March 25, 2009, Dr. Schwartz performed a left knee partial medial and partial lateral meniscectomy with debridement of femoral articular chondromalacia and exostosis. (Schwartz Operative Report, March 26, 2009).

4) On July 17, 2009, Dr. Schwartz rated Employee with a four percent whole person impairment for his left knee; the preexisting degenerative chondromalacia was not rated. (Schwartz record, July 17, 2009).

5) On April 14, 2022, Employee reported he stepped off a step and twisted his left knee. Left knee x-rays showed tricompartmental osteoarthritis, most pronounced in the medial compartment and meniscal chondrocalcinosis. (Leslie A Locklear, FNP, record, and x-ray report, April 14, 2022).

6) On April 17, 2022, Employer reported Employee twisted his left knee while going down the stairs on April 6, 2022 while working for Employer as a Steward. (First Report of Injury, April 17, 2022).

7) On May 13, 2022, a left knee magnetic resonance imaging (MRI) showed severe tricompartmental osteoarthritis at the medial femoral tibial joint, substantially progressed

compared to the prior March 11, 2009 MRI, chronic anterior collateral ligament (ACL) tear, posterior medial meniscus was diffusely degenerated and torn, and a central posterior horn lateral meniscus tear. (MRI report, May 13, 2022).

8) On May 26, 2022, Employee said he injured his left knee "back in about 2004," and underwent surgery in either 2008 or 2009; he thought it was a meniscal surgery. He did not think the original surgery was done particularly well as he always had some difficulty with the knee since then. On April 6, 2022, Employee was descending stairs at work and twisted his left knee. Steven Becker, MD, diagnosed left knee end-stage osteoarthritis and wrote, "Given his history I think this is posttraumatic in nature and related to his initial left knee injury." He recommended a total left knee replacement to relieve his symptoms. Dr. Becker found Employee unfit for duty. (Becker record and Unfit/Fit for Duty Form, May 26, 2022).

9) On August 16, 2022, Dr. Becker performed a left knee total replacement. (Becker Operative Report, August 16, 2022).

10) On October 5, 2022, Convergent Revenue Cycle Management, an outside vendor for Peace Health Ketchikan Medical Center, sought $2,590 in medical costs, "Definiti Solutions is not processing our bills correctly per the Critical Access Hospital guidelines. They have issued a partial payment of $1683.50. Total amount due per the Critical Access Hospital guidelines is $2590. Bill is underpaid $906.50." (Claim for Workers' Compensation Benefits, October 5, 2022).

11) On November 22, 2022, Employer denied "Workers Compensation Rx Solutions for DOS 8/15/2022" stating:

> On 11/14/2022 the employer received a medical bill from Workers Compensation RX Solutions for the date of service 8/15/2022 in the amount of $611.42 without the completed medical report. Therefore, the employer is unable to process the provider's medical bill, and the bill is denied until the necessary medical documentation is received.
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> Per AS 23.30.097(d) provides that an employer shall pay an employee's bills for medical treatment related to the work injury upon receipt of the provider's bill and completed report as required under AS 23.30.095(c). (Controversion Notice, November 22, 2022).

12) On March 13, 2023, Employer denied "Benefits related to the 8/16/2022 left knee total Arthroplasty, to include post surgical rehabilitation and treatment, TTD, PTD, PTD and associated PPI. Benefits related to left knee osteoarthritis are denied." It stated:

> On 5/26/2022, the employee was seen by Steven A. Becker MD for evaluation of left knee pain. According to the medical report, Dr. Becker diagnosed the employee with end stage osteoarthritis of the left knee and opined that it was related to the employee's initial left knee injury in 2004. Additionally, Dr. Becker advised an MRI performed on 5/13/2022 showed marked degenerative changes of the knee with complete loss of articular cartilage medially as well as a chronic ACL tear and some significant parameniscal cysts but general absence of the posterior horn of the medial meniscus. A left knee total arthroplasty was recommended and took place on 8/16/2022. Indication for the surgery appears to be due to the osteoarthritis; there is no medical evidence relating the osteoarthritis or the need for surgery to the 4/6/2022 work incident.
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> Evidence received thus far appears to indicate that the 8/16/2022 surgery would likely have occurred regardless of the 4/6/2022 incident and the need for surgery was planned and performed due to preexisting conditions in the knee. The employer has not received any evidence that the need for surgery was substantially caused by the 4/6/2022 work incident.
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> Therefore, based on the current evidence, all benefits related to the 8/16/2022 surgery are denied, to include post-surgical rehabilitation and treatment, TTD, TPD, PTD and associated PPI. Additionally, benefits related to left knee osteoarthritis are denied. (Controversion Notice, March 13, 2023).

13) On March 28, 2023, Employer and PeaceHealth Ketchikan Medical Center (PKMC) filed a mutually signed compromise and release (C&R) stating Employer agreed to pay PKMC $777.00 to resolve, "A bill covering date of service 5/13/2022, for which PKMC contends an additional $906.50 is owed, and which is attached to a prior claim;" "a bill covering a dates of service on 4/14/2022, for which PKMC contends an additional $56.70 is owed, and which is attached as an exhibit;" and "a bill covering a date of service on 4/14/2022, for which PKMC contends an additional $135.10 is owed, and which is attached as an exhibit." (C&R Agreement and Stipulation, March 28, 2023).

14) On April 5, 2023, the Alaska Workers' Compensation Board (Board) approved the March 28, 2023 C&R. (C&R Approved - Board Approval Required, April 5, 2023).

15) On June 1, 2023, Employee called the Workers' Compensation Division (Division) with questions about the controversion notice. Division staff told Employee "[T]hat it was based off

medical opinions from IME physician. [Employee] will try to contact opposing party first before filing [a claim]." (ICERS Phone Call entry, June 1, 2023).

16) On June 15, 2023, Employee called Penser and left a voicemail message:

> I have a injury that was disputed. There wasn't that sure he wasn't covered. And right now, I have Michelle Cool as my agent, but I'm not really getting me where I'm not trying to have any problems. But I'm kinda gonna have to draw on this. I'm just trying to get some help, and I was told you might be the one to talk to. My case number is 202210000689. And I don't know if you can help me or not, but I'm just gonna add options here because I just got a bill for forty five thousand plus. Anyway, just trying to get a little help. My phone number is [redacted]. Alright. Thank you. Have a nice day. (Employee Contact Note, June 15, 2023).

17) On June 15, 2023, Employee called the Division asking to file a claim for medical costs that were not covered. Division staff emailed him a claim form. (ICERS Phone Call and Email, June 15, 2023).

18) On June 16, 2023, Michelle Poole with Penser called Employee and left a voicemail "advising I am returning his call, please CB." (Employee Contact Note, June 16, 2023).

19) On June 22, 2023, Employee sought "$45,000+" in medical costs and a finding of unfair or frivolous controversion "working on the MV COL coming down some stairs and twisted left knee." He wrote the following under the reason for filing the claim, "I blew my left knee out at work (same Employer) back in 2009 I reinjured it at work 4-6-22 besides the pain I couldn't do my job. So I did what I thought I was to do. The denial came after the fact. Alls I want is for Penser to cover medical costs. This has bene a lose lose for me. I just want to count my losses and move on." He provided his mailing address as P.O. Box *****, [redacted] Thorne Bay, Alaska 99919, and his phone number. (Claim for Workers' Compensation Benefits, June 22, 2023).

20) On June 23, 2023, the Division served Employee's June 22, 2023 claim:

> A Claim for Workers' Compensation Benefits dated 06/22/2023 was received in the Juneau office on 06/22/2023.
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> The opposing parties have 20 days after the service date in which to file their answer to the issues marked on #21 of the written claim(s.) Per 8 AAC 45.070(b)(2), the Affidavit of Readiness for Hearing cannot be filed until 20 days after the service date or after an answer to the written claim has been filed.

> The service date is the date the Division of Workers' Compensation serves a document. This office served your written claim on 06/22/2023 and the file is being handled by the Juneau office (907) 465-2790.

Employee was served by first-class mail to his mailing address of record; Employer was served by certified mail. (Claim Served Event, Letter, and Envelopes, June 23, 2023).

21) On June 30, 2023, Poole spoke to Employee "and he wanted to know if I received the complaint, advised yes we received the WCC and the matter has been referred to the AGO for recommendation." (Employee Contact Note, June 30, 2023).

22) On July 4, 2023, Employee called Penser and spoke with Chutaya Hatcher, "calling in regards to speak with CE, M.P , call was transferred to CE, M.P . - Late entry call was received on 6/30." (Employee Contact Note, July 4, 2023).

23) On July 5, 2023, Employer filed medical records including the March 6, 11, and 25, and July 17, 2009 and April 14 and 7, May 13 and 26, and August 16, 2022 records; it served Employee to his mailing address of record by certified flat rate priority mail. (Medical Summary, July 5, 2023).

24) On July 10, 2023, Poole spoke to Employee:

> He is very stressed because he is receiving bills and it is keeping him up at night. Advised I am waiting for the AG recommendation and then we will go from there. Advised it is within his rights to pay medical bills with his personal insurance and if determined to be work related in the future, we can have the bills rebilled to WC Claim. EE advised he will follow up with me in a week as he doesn't receive his mail regularly and has spotty phone reception. (Employee Contact Note, July 10, 2023).

25) On July 12, 2023, Justin Tapp entered his appearance on behalf of Employer. (Entry of Appearance, July 12, 2023).

26) On July 12, 2023, Employer denied medical costs and a finding of unfair or frivolous controversion because the medical records indicate the substantial cause for the medical treatment was Employee's long-standing degenerative osteoarthritis in the knee rather than the acute injury on April 6, 2022. It served Employee with the answer to his mailing address of record by first class mail. (Employer's Answer, July 12, 2023).

27) On July 14, 2023, Poole left Employee a voicemail "advising I have received the go ahead to schedule him an IME and am procuring dates now and will follow up with him the beginning of next week to schedule." (Employee Contact Note, July 14, 2023).

28) On July 17, 2023, Employer denied, "All Benefits related to the 8/16/2022 left knee total Arthroplasty, to include post surgical rehabilitation and treatment, TTD, PTD, PTD and associated PPI. Benefits related to left knee osteoarthritis are denied." It contended:

> On 5/26/2022, the employee was seen by Steven A. Becker MD for evaluation of left knee pain. According to the medical report, Dr. Becker diagnosed the employee with end stage osteoarthritis of the left knee and opined that it was related to the employee's initial left knee injury in 2004. Additionally, Dr. Becker advised an MRI performed on 5/13/2022 showed marked degenerative changes of the knee with complete loss of articular cartilage medially as well as a chronic ACL tear and some significant parameniscal cysts but general absence of the posterior horn of the medial meniscus. A left knee total arthroplasty was recommended and took place on 8/16/2022. Indication for the surgery appears to be due to the osteoarthritis; there is no medical evidence relating the osteoarthritis or the need for surgery to the 4/6/2022 work incident.
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> Evidence received thus far appears to indicate that the 8/16/2022 surgery would likely have occurred regardless of the 4/6/2022 incident and the need for surgery was planned and performed due to preexisting conditions in the knee. The employer has not received any evidence that the need for surgery was substantially caused by the 4/6/2022 work incident.
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> Therefore, based on the current evidence, all benefits related to the 8/16/2022 surgery are denied, to include post-surgical rehabilitation and treatment, TTD, TPD, PTD and associated PPI. Additionally benefits related to left knee osteoarthritis are denied.

Employer served Employee with the controversion notice to his mailing address of record by first-class mail. The second page of the controversion notice provided the following information:

> **TO EMPLOYEE (OR OTHER CLAIMANTS IN CASE OF DEATH): READ CAREFULLY**
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> This notice means the insurer/employer has denied payment of the benefits listed on the front of this form for the reasons given. **If you disagree with the denial, you must file a timely written claim (see time limits below). The Alaska Workers' Compensation Board (AWCB) provides the "Workers' Compensation Claim" form for this purpose. You must also request a timely**

**hearing before the AWCB (see time limits below). The AWCB provides the "Affidavit of Readiness For Hearing" form for this purpose. Get forms from the nearest AWCB office listed below.**

The insurer/employer must have valid legal grounds or evidence to support denying payment of the benefits listed on the front of this form. If the insurer/employer did not have valid legal grounds or evidence to support the denial and the benefits denied are due, you may be entitled to additional compensation (a penalty) of 25 percent of the benefits due. To get this additional compensation, you must ask for a penalty when you complete and file your Workers' Compensation Claim.

Also, if you believe the insurer did not have valid legal grounds or evidence to support the denial of benefits, when you file your claim, you may ask the AWCB to decide whether the insurer frivolously or unfairly controverted the benefits. If the AWCB decides the denial was frivolous or unfair, the AWCB will notify the State of Alaska, Division of Insurance. The Division of Insurance will decide if the insurer committed an unfair claim settlement practice.

**TIME LIMITS**

1. When must you file a written claim (Workers' Compensation Claim form)?
a. Compensation Payments.
You will lose your right to compensation payments unless you file a written claim within two years of the date you know the nature of your disability and its connection with your employment and after disablement. If the insurer/employer voluntarily paid compensation, you must file a written claim within two years of the last payment.
. . . .

c. Medical Benefits.
There is no time limit for filing a claim for medical benefits. If the insurer/employer stops medical payments, and if you believe you need more treatment, you must make a written claim to request additional medical payments. The law permits the insurer/employer to stop medical payments two years after your injury date, but the AWCB can authorize additional medical payments if treatment is needed for the process of recovery.

2. When must you request a hearing?

If the insurer/employer filed this controversion notice after you filed a claim, you must request a hearing before the AWCB within two years after the date of this controversion notice. You will lose your right to the benefit denied on the front of this form if you do not request a hearing within two years.

> **IF YOU ARE UNSURE WHETHER IT IS TOO LATE TO FILE A CLAIM OR REQUEST A HEARING, CONTACT THE NEAREST AWCB OFFICE.** (Controversion Notice, July 17, 2023).

29) On July 17, 2023, Poole left Employee a voicemail advising, "I am trying to reach him to set up the IME and have multiple dates. If I cant get ahold of him, I am going to choose one of the latter dates for the end of August and continue trying to make contact with him." (Employee Contact Note, July 17, 2023).

30) On July 18, 2023, Poole left Employee a voicemail advising, "I am still trying to get a hold of him to set up an IME for him. Please CB when he is able." (Employee Contact Note, July 18, 2023).

31) On July 18, 2023, Employee returned Poole's call:

> He retires on 7/28 and will be free after that. Advised IME dates of 8/22, 8/25. 8/31 that I will try to book and he can attend any of those. He will have to take the ferry to Ketchikan from Thorne Bay and then fly from Ketchikan to Anchorage. The ferry leaves daily at 12pm. Sometimes delays cause the ferry to be late in which case he may have to spend the night in Ketchikan. Advised EE I will set up travel from Ketchikan to Anchorage RT, overnight hotel stay with cab and per diem and I will reimburse him for ferry, mileage and if he has to stay in Ketchikan overnight due to weather or unforeseen circumstances. Advised him all info will be coming in the mail. (Employee Contact Note, July 18, 2023).

32) On July 26, 2023, Poole left Employee a voicemail "to please send in signed releases and CB regarding IME travel arrangements." (Employee Contact Note, July 26, 2023).

33) On August 14, 2023, Poole spoke with Employee:

> He wanted to know why he has to go to the IME and what exactly it is for since it is related to his total knee replacement from a year ago. He wants to know how the doctor will make a determination from a surgery a year ago. Advised EE that the doctor reviews all of his records and does a thorough exam on him and will make a determination as to if the Total knee replacement was related to his WC Injury. He is not happy about having to come into Anchorage. He knows that he blew out his knee on the first injury and then he had a bad surgery. Advised no one is disputing that EE was injured on the DOI we are only disputing the total knee replacement surgery. and the only way to make that determination is by the IME. EE understands, he is not happy but he will attend the IME. Advised EE to keep any receipts related to travel as it was difficult to schedule due to his location and the ferry travel involved. (Employee Contact Note, August 14, 2023).

34) On August 23, 2023, Ryan Moore, MD, examined Employee for an employer's medical evaluation (EME). He opined the work injury was not the substantial cause of Employee's current disability or need for medical treatment, rather his chronic degenerative knee osteoarthritis led to the need for total knee arthroscopy. Dr. Moore stated, "Causes of knee osteoarthritis in this individual are elevated age, elevated BMI, an active lifestyle including high school football, and recreational basketball into adulthood. He has enjoyed physically demanding recreation including deer hunting on Prince of Wales Island. Mr. Howell's degenerative osteoarthritis represents a lifetime of occupational and nonoccupational activities." Had the 2022 work injury not occurred, he said Employee would have required a knee arthroplasty due to his chronic intermittent knee pain. The 2022 work injury caused a temporary aggravation of Employee's preexisting degenerative osteoarthritis as the MRI did not indicate "any signs of significant acute trauma or acute contusions or other findings" that indicated that the 2022 work injury caused anything more than what would be considered a temporary aggravation. The 2022 work injury was no longer the substantial cause of his ongoing pain and disability as of June 1, 2022; at that point, it was due to chronic degenerative knee osteoarthritis, which led to his total left knee arthroplasty. Dr. Moore agreed the surgery was reasonable and necessary treatment and he reached medical stability on November 16, 2022. He calculated an eight percent whole person impairment and stated it was not substantially caused by the 2022 work injury. Employee was able to work in the very heavy category and had no restrictions for the 2022 work injury. (Moore EME report, August 23, 2023).

35) On September 15, 2023, Employer denied, "Benefits related to the 8/16/2022 left knee total Arthroplasty, to include post surgical rehabilitation and treatment, TTD, PTD, PTD and associated PPI. Benefits related to left knee osteoarthritis are denied." It contended:

> On 8/23/2023 Mr. Howell attended and IME performed by Dr. Ryan Moore. Dr. Moore gave the following diagnosis: Diagnosis is degenerative osteoarthritis of the left knee status post total knee arthroplasty.
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> Dr. Moore further opined the following:
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> "Looking at the apportionment of causation, I believe that the 04/06/2022 was not the substantial cause of Mr. Howell's current disability or need for medical treatment. The need for a total knee arthroplasty was due to chronic preexisting osteoarthritic changes and had the work injury not occurred, Mr. Howell would have required a knee arthroplasty due to his chronic intermittent knee pain."

> "I believe that the 04/06/2022 work injury caused a temporary aggravation of the preexisting degenerative osteoarthritis. The MRI did not indicate any signs of significant acute trauma or acute contusions or other findings that indicated that the 04/06 work injury caused anything more than what would be considered a temporary aggravation of the preexisting condition."
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> "The work injury was the substantial cause of a temporary aggravation of the chronic non-industrial left knee degenerative osteoarthritis."
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> "Due to there being no signs of any acute trauma or knee damage found on the May 2022 MRI, it is my opinion that the aggravation due to the 04/06/2022 work injury would no longer be expected to be the substantial cause of Mr. Howell's disability as of 06/01/2022. It is my opinion at that point that the ongoing pain and disability was due to chronic degenerative knee osteoarthritis and that it was the chronic degenerative knee osteoarthritis that led to the knee for total knee arthroplasty."
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> "The cause of the current disability, which is status post total knee arthroplasty, and the need for the total knee arthroplasty was due to chronic degenerative knee osteoarthritis."
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> "The injured worker has reached medical stability for his total knee arthroplasty. The date of medical stability is 11/16/2022 which was approximately three months after his total knee arthroplasty was performed."
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> Therefore, based on the IME Report of 8/23/2023, the Controversion of 3/13/2023 stating "Benefits related to the 8/16/2022 left knee total Arthroplasty, to include post surgical rehabilitation and treatment, TTD, PTD, PTD and associated PPI and Benefits related to left knee osteoarthritis are denied" has been substantiated and remains in effect.

Employer served Employee with a copy of the controversion notice by mailing it to his mailing address of record by first-class mail. It provided the same information on the second page as the July 17, 2023 controversion notice. (Controversion Notice, September 15, 2023).

36) On September 12, 2023, Employee left Poole a voicemail stating, "He wanted to know if I had received the IME report. He cannot receive phone calls where he is at so he will call me back tomorrow." (Employee Contact Note, September 12, 2023).

37) On September 15, 2023, Poole left Employee a voicemail advising, "I did get the IME report and I have issued a Controversion that he will be getting in the mail. Please feel free to follow up with me." (Employee Contact Note, September 15, 2023).

38) On September 20, 2023, Poole spoke to Employee, "He retired from the SOA on 7/27/2023. He wanted to know what the IME report said and I explained the report and the Contro." (Employee Contact Note, September 20, 2023).

39) On September 25, 2023, Employer filed Dr. Moore's EME report; it served Employee by United States Postal Service mail to his mailing address of record. (Medical summary, September 25, 2023).

40) On May 30, 2025, Employer filed a substitution of counsel for Williams. It served Employee with a copy to his mailing address of record by first-class mail. (Substitution of Counsel, May 30, 2025).

41) On October 28, 2025, Employer requested Employee's June 22, 2023 claim be dismissed, "The Board approved a C&R on 04/05/2023. Over two years have passed since the employer filed a controversion on 09/15/2023, but the employee has not requested a hearing. Per 23.30.110(c), the claim is denied. Please see attached Memorandum in Support of the Petition to Dismiss." It served Employee with a copy of the petition to his mailing address of record. (Petition, October 28, 2025). Employer contended it filed a substitution of counsel on May 30, 2025, and "That could have reminded Employee that the case was still ongoing and could have prompted him to act by filing a request for hearing. But Mr. Howell did not act." It served Employee with a copy of the memorandum to his mailing address of record by first-class mail. (Memorandum in Support of Employer's Petition to Dismiss, October 28, 2025).

42) On October 29, 2025, the Division served parties with notice of the November 26, 2025 prehearing conference. It served Employee by first-class mail to his mailing address of record. (Prehearing Notice and Prehearing Conference Noticed Served, October 29, 2025).

43) On November 26, 2025, Employer attended a prehearing conference. The designee called Employee at the phone number on his claim and left a voicemail. Employee did not attend the prehearing conference. The designee advised Employee:

> To avoid possible dismissal of Employee's claim, per AS.23.30.110(c), the deadline to file an Affidavit of Readiness (ARH) for hearing or a Petition to extend the AS.23.30.110(c) deadline is on/or before **07/17/2025.**
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> . . . .
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> Employee's claim will be denied unless Employee requests a hearing on (his or her or its) claim, by filing an Affidavit of Readiness for Hearing (ARH) Form 07-6107, within two years of the date the board received the first post-claim

> controversion. If Employee needs more time for additional discovery prior to filing an ARH, the Employee must file a petition to extend this deadline on or before the date the two years expire. The board received a post-claim controversion on 07/17/2023; therefore, to prevent claim denial, the Employee must either file an ARH or a petition to extend this deadline no later than **07/17/2025**.

Another prehearing conference was scheduled for January 8, 2026. (Prehearing Conference Summary, November 26, 2025). The Division served Employee with the November 26, 2025 prehearing conference and a notice for the January 8, 2026 prehearing conference to his mailing address of record. (Prehearing Conference Summary, Prehearing Conference Summary Served, Envelope, November 26, 2026).

44) On December 10, 2025, Employer requested an oral hearing on its October 28, 2025 petition. It served Employee with the ARH at his mailing address of record by first-class mail. (ARH, December 10, 2025).

45) On January 8, 2026, the parties attended a prehearing conference:

> Since this is the first prehearing that the Employee attended, the designee confirmed the Employee's Contact information. The designee explained to the Employee the reason for the prehearing was to schedule a hearing on the Employer's Petition to dismiss his case per the 23.30.110(c) deadlines. The designee also noted that when the Employee filed his claim on 6/22/23 and a prehearing should have been scheduled then. The Employee stated that a prehearing would have been helpful then, but at this point all he wants to make sure happens is that his medical bills get paid.
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> The Employer noted that there was a prehearing in November 2025 that the Employee did not attend. The designee asked the Employee if he received the prehearing summary from the 11/26/25 prehearing with the packet and the Employee stated that he did.
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> The designee explained to the Employee that he will have the opportunity at the hearing to discuss his concerns and the designee apologized on behalf of the board for not having a prehearing scheduled. The designee confirmed that the venue for his case is Juneau, and the designee is out of the Anchorage office. The Employee noted that he wanted to schedule a hearing on his petition, and the Employee asked if he could attend telephonic. The designee confirmed that he can attend via telephone, but that a technician would call him the day before the hearing to confirm how he would be attending.
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> The designee explained that he can file a brief with his concerns about the case and the benefits he is seeking and would like to add that he can explain reasons why his claim should not dismiss should he wish to do so.

> The designee scheduled a 4-hour oral hearing for February 24, 2026. The issue for the hearing is on the Employers Petition to dismiss.
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> The parties are ordered to serve and file witness lists and hearing briefs by close of business on **02/17/2026** and to serve and file evidence by close of business on **02/04/2026** in accordance with 8 AAC 45.060, 8 AAC 45.112, 8 AAC 45.114, and 8 AAC 45.120. Briefs, exhibits, documentary evidence, and witness lists may be sent by e-mail to workerscomp@alaska.gov.
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> **Evidence:**
> Any documents that the parties intend to rely upon at hearing should be filed with the Board and served upon the opposing parties 20 calendar days prior to the hearing. A Medical Summary form is available on the Board's website: https://www.labor.akaska.gov/wc/pdf_list.htm. The deadline to file evidence for is **02/04/2026.**
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> **Briefs:**
> A brief is a document submitted by the parties prior to a hearing which outlines the issues in dispute, the party's positions on those issues, as well as why they believe their position is correct. Important supporting evidence referred to in a brief is often attached at the end of the brief. These supporting documents are called exhibits. Briefs may not exceed 15 pages, excluding exhibits. Briefs must be filed with the Board and served upon the opposing parties at least five working days prior to a hearing. The deadline to file briefs is **02/17/2026.**
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> **Witness Lists:**
> If a party intends to rely upon witness testimony, they must file a witness list that includes any possible witnesses that they may call at hearing. According to 8 AAC 45.112 "A witness list must indicate whether the witness will testify in person, by deposition, or telephonically, the witness's address and phone number, and a brief description of the subject matter and substance of the witness's expected testimony." Witness lists must be filed with the Board and served upon the opposing parties at least five working days prior to a hearing. The deadline to file witness lists is **02/17/2026.** (Prehearing Conference Summary, January 8, 2026).

46) On January 9, 2026, the Division served the parties with the January 8, 2026 prehearing conference summary and the February 24, 2026 hearing notice. It served Employee with the January 8, 2026 prehearing conference summary and the February 24, 2026 hearing notice by certified mail, return receipt requested to his mailing address of record. (Prehearing Conference Summary, Prehearing Conference Summary Served, Hearing Notice, Hearing Notice Served, and Envelopes, January 9, 2026).

47) On February 17, 2026, Employer filed its hearing brief, contending that while the Board failed to provide Employee with the actual deadline, Employee failed to actively prosecute his claim. It contended that after Employee filed his claim, Employer sent him for an EME with Dr. Moore and Employer filed its September 15, 2023 controversion based upon Dr. Moore's EME. Employer contended Employee took no further on his claim until he attended the January 8, 2025 prehearing conference and did not call Penser in 2024, 2025 or 2026. It contended that *Davis* emphasized the claimants continuing actions to prosecute his claim and the Board's failure to properly inform him of the actual date to file an ARH. Employer contended *Davis* found the claimant did not "sit on his hands, but was pursuing his claim, and he likely would have requested a hearing had the Board informed him of the ARH date. It contended that a person vigorously pursuing a claim would check their mail regularly. Employer contended granting Employee a hearing on his claim "would be moot because a medical dispute does not exist" since Dr. Moore's opinion is the only medical opinion in the record. It contended granting a hearing on his claim would contravene the legislative intent that the workers' compensation process is quick, efficient, fair, and predictable. (Brief Supporting Employer's Petition to Dismiss, February 17, 2026).

48) Employer reiterated its hearing brief arguments at hearing. It contended Employee did not pursue his claim at all. Employee contended Employee had access to Poole and she explained the controversion notice to him and the two year rule. It contended Employee was "put on notice" about the two-year requirement, he knew about it, and did not vigorously pursue his claim. Employer requested its petition be granted and Employee's claim dismissed. (Employer).

49) Employee testified he believes his need for knee surgery was caused by his previous 2009 work injury when he worked for Employer. He received about $6,000 from Employer and elected not to settle his case because he thought he may need additional medical treatment in the future. Employee told Poole that he thought his previous work injury was the cause of his need for knee surgery. He could not recall whether or not he discussed the ARH requirement with Poole. Employee said he thought the medical treatment "was taken care of." Poole told him that his need for left knee surgery was not related to the 2022 work injury after he got out of the hospital. He last spoke with Poole before he retired from the State of Alaska around July 2023. Employee did not file an ARH. He does not know the "rules and the laws" and "there was no help." Employee thought his case was "already over" and assumed his private health insurance

would pick up the medical costs, "he was done with it." He does not know what he was doing; he tried hard for the first 12 months to get this taken care of, and he was not going to pay to get a lawyer. Employee is "not sharp" and was "tired of it," being the "little guy against the corporation." He already knows he is not going to win his case; he just wanted to "have a say." Employee probably received the controversion notices, he recalled receiving paperwork but did not recall whether or not he received the controversion notices. His private insurance did not pay for the surgery, and he was "turned into creditors." Employee sent things in and thought the medical bills were taken care of. He was unsure whether or not he received the November 26, 2025, prehearing conference summary. Employee moved recently and most of his paperwork is in a box somewhere. (Employee).

50) Poole testified she is an employee of Penser North America and is a senior time loss adjuster. She has worked for Penser since January 2023, and in her current position since January 2024. She communicated with Employee by phone call or by mail. At first, there was a lot of back-and-forth contact with Employee while he was working and had issues with phone reliability while on the ship. The last contact she had with Employee was in July 2023. Poole explained the controversion to Employee, including the EME opinion that Employee's need for knee replacement was due to end stage osteoarthritis, and told him if he disagreed with it, to follow the instructions on the second page. She informed Employee that Employer only had to restore Employee to the same condition that he was in the day before the work injury, with end stage osteoarthritis, and Employer did pay for initial medical treatment but not for treatment for his end stage osteoarthritis. Poole remembered discussing the two-year deadline on the second page of the controversion notice with Employee. (Poole).

51) It is the Division's regular practice to conduct prehearing conferences after an unrepresented injured worker files a claim to inform the injured worker of the important facts in their case and how to pursue their claim. (Experience, judgment, and observations).

## PRINCIPLES OF LAW

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

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

> (2) workers' compensation cases shall be decided on their merits except where otherwise provided by statute;
> . . . .
>
> (4) hearings in workers' compensation cases shall be impartial and fair to all parties and . . . all parties shall be afforded due process . . . an opportunity to be heard . . . and . . . their arguments and evidence . . . fairly considered.

The Board may base its decision on direct testimony, medical findings, tangible evidence and 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 23.30.005. Alaska Workers' Compensation Board**. . . .
>
> (h) . . . Process and procedure under this chapter shall be as summary and simple as possible.
>
> **AS 23.30.008. Powers and duties of the commission.** (a) . . . On any matter taken to the commission, the decision of the commission is final and conclusive, unless appealed to the Alaska Supreme Court, and shall stand in lieu of the order of the board from which the appeal was taken. Unless reversed by the Alaska Supreme Court, decisions of the commission have the force of legal precedent.
>
> **AS 23.30.010. Coverage**. (a) . . . [C]ompensation or benefits are payable under this chapter for disability . . . or the need for medical treatment of an employee if the disability . . . or the employee's need for medical treatment arose out of and in the course of the employment. To establish a presumption under AS 23.30.120(a)(1) that the disability . . . or the need for medical treatment arose out of and in the course of the employment, the employee must establish a causal link between the employment and the disability . . . Or the 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, not exceeding two years from and after the date of injury to the employee. . . . It shall be additionally provided that, if continued treatment or care or both beyond the two-year period is indicated, the injured employee has the right of review by the board. The board may authorize continued treatment or care or both as the process of recovery may require. . . .

> **AS 23.30.105. Time for filing of claims.** (a) The right to compensation for disability under this chapter is barred unless a claim for it is filed within two years after the employee has knowledge of the nature of the employee's disability and its relation to the employment and after disablement. . . .
>
> **AS 23.30.110. Procedure on claims**. . . .
>
> (c) Before a hearing is scheduled, the party seeking a hearing shall file a request for a hearing together with an affidavit stating that the party has completed necessary discovery, obtained necessary evidence, and is prepared for the hearing. . . . If the employer controverts a claim on a board-prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied.

Certain "legal" grounds may excuse noncompliance with §.110(c), such as mental incapacity or incompetence, and equitable estoppel against a governmental agency by a self-represented claimant. *Tonoian v. Pinkerton Security*, AWCAC Dec. No. 029 (January 30, 2007). In *Tonoian*, the injured worker had two attorneys over the course of her case and was served with controversion notices that included Board-approved language informing her of the two-year time bar. She contacted the Division and told staff she did not want to go through with a settlement she had signed while represented by an attorney. Division staff scheduled and held a prehearing conference where her claim against Pinkerton was joined with a claim against a successor employer, but staff did not tell her to file an ARH.

*Tonoian* held the Division's "obligation to give notice was satisfied by mailing the Board-approved controversion forms," to the injured worker and "[t]he obligation to inform and instruct self-represented litigants on how to pursue their claims did not require division staff to seek out [the claimant] and urge her to file paperwork on time or to volunteer information that it may have reasonably assumed she has been told." *Id.* at 12, 14. It also held, "Silence in these circumstances is not conduct amounting to an assertion of position" for a claim of equitable estopped against a governmental agency. *Id*. at 14. *Tonoian* relied on, *Bohlmann v. Alaska Construction and Engineering Inc.*, AWCAC Dec. No. 023 (December 8, 2006) (*Bohlmann I*), a previous Commission decision which was reversed by the Alaska Supreme Court.

*Bohlmann I* had found the injured worker's *pro se* status was not a sufficient excuse to excuse a late filing when he was "adequately informed of the consequences of failure to file a request for hearing within two years of the date a claim is controverted." The workers' compensation officer had provided him with the ARH form and informed the claimant of the need to file a request for hearing within two years of the controversion in writing. The employer had controverted using the Board-approved controversion form "which firmly warns the recipient of the consequences of failing to file a request for hearing within two years." It affirmed the Board's dismissal of the injured workers' claims.

In *Richard v. Fireman's Fund*, 384 P.2d 445, 449 (Alaska 1963), the Alaska Supreme Court (Court) said:

> We hold to the view that a workmen's compensation board or commission owes to every applicant for compensation that duty of fully advising him as to all the real facts which bear upon his condition and his right to compensation, so far as it may know them, and of instructing him on how to pursue that right under the law.

In *Bohlmann v. Alaska Construction & Engineering*, 205 P.3d 316, 319-21 (Alaska 2009) (*Bohlmann II*), the Court addressed this same issue and reversed *Bohlmann I*:

> A central issue inherent to Bohlmann's appeal is the extent to which the board must inform a *pro se* claimant of the steps he must follow to preserve his claim. . . .
>
> In *Richard* . . . we held that the board must assist claimants by advising them of the important facts of their case and instructing them how to pursue their right to compensation. We have not considered the extent of the board's duty to advise claimants. . . .
>
> . . . Alternatively, the designee or the board should at least have told Bohlmann specifically how to determine whether, as AC&E asserted, the [§110(c)]deadline had already run and how to determine the actual deadline. This minimal information would have made it clear to the claimant both the correct deadline and that he still had more than two weeks in which to submit the required affidavit.
> . . . .
>
> Given AC&E's incorrect statement about the timeliness of the . . . claim and Bohlmann's request to include a . . . claim in the later claim, the prehearing officer should have told Bohlmann in more than general terms how he might still

> preserve the claim. . . . This requirement is similar to our holdings about the duty a court owes to a pro se litigant.
>
> We have held that a trial court has a duty to inform a pro se litigant of the "necessity of opposing a summary judgment motion with affidavits or by amending the complaint." We likewise have held that a trial court must tell a pro se litigant that he needs an expert affidavit in a medical malpractice case and must inform him of deficiencies in his appellate paperwork, giving him an opportunity to correct them. When a pro se litigant alerted a trial court that the opposing party had not complied with her discovery requests, we held that the court should have informed her of the basic steps she could take, including the option of filing a motion to compel discovery. In evaluating the accuracy of notice of procedural rights by an opposing party, we have noted that pro se litigants are not always able to distinguish between "what is indeed correct and what is merely wishful advocacy dressed in robes of certitude." The board, as an adjudicative body with a duty to assist claimants, has a duty similar to that of courts to assist unrepresented litigants.
>
> Here, the board at a minimum should have informed Bohlmann how to preserve his claim. . . . Its failure to recognize that it had to do so in this case was an abuse of discretion. . . .
>
> . . . Because there is no indication in the appellate record that the board or its designee informed Bohlmann of the correct deadline or at least how to determine what the correct deadline was, the board should deem his affidavit of readiness for hearing timely filed. This is the appropriate remedy because the board's finding that Bohlmann "had proved himself capable of filing claims and petitions even absent having counsel" is consistent with a presumption that Bohlmann would have filed a timely affidavit of readiness had the board or staff satisfied its duty to him.

AS 23.30.110(c) requires an injured worker to timely prosecute a claim once the employer controverts. *Jonathan v. Doyon Drilling, Inc.*, 890 P.2d 1121 (Alaska 1995). *Tipton v. ARCO Alaska, Inc.*, 922 P.2d 910, 912-13 (Alaska 1996) noted a statute of limitations defense is "generally disfavored," and neither "the law [n]or the facts should be strained in aid of it."

AS 23.30.110(c)'s objective is not for a claimant to "generally pursue" the claim; it is to bring a claim to the Board for a decision quickly so speed and efficiency in Board proceedings are met. The claimant bears the burden to establish with substantial evidence a legal excuse from the §.110(c) deadline. *Providence Health System v. Hessel*, AWCAC Dec. No. 131 (March 24, 2010). A claimant who bears the burden of proof must "induce a belief" in the minds of the

factfinders the facts being asserted are probably true. *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964).

In *Kim v. Alyeska Seafoods, Inc*., 197 P.3d 193, 197-98 (Alaska 2008), an injured worker filed a claim for benefits, which his employer controverted in December 2003. Two days before the "second anniversary" of the controversion, the employee through counsel filed a motion for a continuance supported by his lawyer's declaration stating he was not ready for hearing and needed more time to prepare. In early 2006 the employer petitioned to deny the employee's claim under §.110(c). In response to the employer's petition, the employee answered explaining his attorney could not honestly sign an ARH because he was not ready and asked for his continuance request to be considered a "constructive hearing request." The Board denied the claim under §.110(c).

On appeal, the Alaska Workers' Compensation Appeals Commission (Commission) affirmed, finding §.110(c) required claim denial, and found substantial evidence supported the Board's implicit finding that the employee failed to present evidence justifying "equitable relief." The employee appealed.

The Court construing §.110(c) stated in *Kim*:

> But because a statutory dismissal results from failing to *request* a hearing, rather than from failing to *schedule* one, it was error to conclude that an affidavit of readiness was required to request a hearing and toll the time-bar. We conclude that strict compliance with the affidavit requirement is unnecessary because subsection .110(c) is directory, not mandatory (*id*. at 196). . . .
> . . . .
>
> Subsection .110(c) is a procedural statute that 'sets up the legal machinery through which a right is processed' and 'directs the claimant to take certain action following controversion.' A party must strictly comply with a procedural statute only if its provisions are mandatory; if they are directory, then 'substantial compliance is acceptable absent significant prejudice to the other party.'

Rejecting arguments about situations that could render §.110(c) null and void, *Kim* said:

> Yet the Commission has noted that "the board is not without power to excuse failure to file a request for hearing on time when the evidence supports application of a recognized form of equitable relief." In *Tonoian v. Pinkerton Security*, the Commission suggested several "legal reasons" why delay by a pro se litigant might be excused. And in *Omar v. Unisea, Inc.*, the Commission remanded the case to the Board to consider whether, among other things, the "circumstances as a whole constitute compliance with the requirements of 23.30.110(c) sufficient to excuse any failures . . . to comply with the statute." From these decisions, it appears that the Commission and the Board already exercise some discretion and do not always strictly apply the statutory requirements. This approach is consistent with the notion that a statute of limitations defense is disfavored.

In *Pruitt v. Providence Extended Care*, 207 P.3d 891 (Alaska 2013), an injured worker's attorney filed a claim on her behalf. The attorney withdrew and mailed his withdrawal notice to the injured worker. The employee later confirmed the mailing address on the withdrawal notice's service certificate was her mailing address. Subsequently, her employer filed and served on the employee a controversion denying all benefits. A prehearing conference summary said, "The chair directed Ms. Pruitt to call our office and make an appointment with a Workers' Compensation Technician for assistance in filing an ARH, if she decides that she wants to continue with the case." The summary also advised the employee she had to file an affidavit requesting a hearing within §.110(c)'s time limits; the statute's relevant part was cut and pasted into the prehearing conference summary. The Division served the summary on the employee in 2006; she failed to file a hearing request within two years of the insurer's controversion; the employer petitioned to dismiss.

At hearing on the employer's petition to dismiss, the employee testified she had not received her prior attorney's withdrawal notice. She then said she thought her attorney would submit or had submitted a hearing request. The employee disavowed having ever received notice about the necessity of filing an ARH, and denied she ever received prehearing conference summaries. The Board found the employee had tried to resurrect her workers' compensation claim only because her long-term disability benefits expired in 2008. It noted many inconsistencies in her testimony and determined she was not credible. Finding the claimant had not established a legal excuse for failing to file a timely ARH, the Board denied her claim under §.110(c). The Commission affirmed, and she appealed.

On appeal, *Pruitt* reviewed prior decisions addressing §.110(c) and stated:

> Here, Pruitt failed to file anything within the allotted time. She filed a written application for benefits in February 2005. Providence filed two controversions: one in February 2005, shortly after she filed her written application, and one in July 2005, after her deposition. Pruitt needed to request a hearing by July 1, 2007, at the latest, to avoid the time bar of AS 23.30.110(c). She did not file anything indicating she wanted to prosecute the 2005 written claim until August 2009, well after the statutory deadline expired. *Id*. at 985.
> . . . .
>
> The Board found that Pruitt's 'assertion she was unaware her attorney withdrew and was relying upon him to file the necessary paperwork lacks credibility.' The Board 'has the sole power to determine the credibility of a witness.' Its credibility findings are binding on the Commission. The Board's credibility determination disposes of Pruitt's argument that her reliance on her attorney excused her from complying with the statute. If Pruitt was not truthful in asserting that she relied on her attorney to file the affidavit of readiness for hearing, this purported reliance cannot excuse her noncompliance. The Commission thus correctly concluded that substantial evidence in the record supported the Board's determination that Pruitt did not substantially comply with AS 23.30.110(c). *Id*.

*Roberge v. ASRC Construction Holding Co*., AWCAC Dec. No. 19-001 (September 24, 2019) (reversed on other grounds, *Roberge v. ASRC Construction Holding Co*., 503 P.3d 102 (Alaska 2022)), held the Board is obliged to find a way around the §.110(c) deadline because statute of limitations defenses are generally disfavored.

In *Davis v. Wrangell Forest Products*, AWCAC Dec. No. 256 (January 2, 2019), the employee's claim was controverted. He requested a second independent medical evaluation (SIME). He did not timely file an ARH and the Board dismissed his claim. On appeal the AWCAC stated:

> . . . He was provided with an ARH form. However, the prehearing officer did not tell Mr. Davis the date by which he needed to file an ARH.
> . . . .
>
> . . . If the Board, at any time, had given Mr. Davis a firm date by which he needed to request a hearing, and he did not then timely request a hearing, the Board would have fulfilled its obligation to Mr. Davis.

> . . . Mr. Davis never was given a date by which he needed to request a hearing. . . . In the future, the Board could avoid this kind of situation by establishing a practice of advising a claimant at the first prehearing after a claim and controversion have been filed, of the date by which a hearing needed to be requested, absent any extensions of time. It would also be prudent for anyone at the Board assisting a self-represented litigant to know the date by which an ARH needs to be filed. If the date changes for any reason, such as tolling during the SIME process, the new date for requesting a hearing should be clearly communicated to the self-represented litigant. . . .

After *Davis* issued, the Division Director filed a notice to intervene and a petition for reconsideration. In its petition, the Division argued that the Commission had failed to properly consider a relevant Court case as well as conclusions the Commission had reached in one of its own prior §.110(c) decisions. Subsequently, the employer also petitioned for reconsideration to correct "misapplications of law" among other things.

In the Commission's subsequent order in *Davis v. Wrangell Forest Products*, AWCAC Order on Motions for Reconsideration, (March 1, 2019), the Commission stated:

> The Board's decision itself is strong evidence as to the difficulty for anyone, not just a *pro se* claimant, to calculate the precise date by which a hearing must be requested, or face the possibility of the claim being dismissed for lack of prosecution.
>
> [The employer] is likewise correct that the Alaska Supreme Court (Court) has never held the Board has an obligation to inform a claimant of the exact date by which an affidavit of readiness for hearing (ARH) is required. [The employer] further contends the Court specifically declined to do so in *Bohlmann*. . . . However, the Court, in *Bohlmann*, declined to decide whether the Board had a duty to inform the claimant of an exact date for an ARH because it did not need to do so, choosing to decide *Bohlmann* on the failure of the Board to correct a misstatement of the date by which an ARH was due. . . .

Citing extensively from *Bohlmann*, the *Davis* order stated:

> <u>It may be arguable in such a case that the board had a duty to tell the claimant that the two-year period was running; it may also be arguable that it had a duty to tell him when the period began running, or even the specific date on which the deadline would expire. But we do not need to consider the full extent of the duty here</u>. (Emphasis in original). . . .
> . . . .

> In holding that subsection .110(c) is directory, we do not suggest that a claimant can simply ignore the statutory deadline and fail to file anything. A determination that a statute is directory instead permits substantial compliance with statutory requirements, rather than strict compliance.
>
> . . . .
>
> As noted above, the Court, in *Bohlmann*, raised the proposition the Board has a duty to advise a *pro se* claimant of an actual date by which to file an ARH, although it declined to decide that issue at that time. . . .

After noting that the claimant in *Davis* had not been "sitting on his hands" but pursuing his claim, the *Davis* order held:

> The Commission, following the reasoning raised by the Court in *Bohlmann*, now holds that in cases involving a *pro se* claimant, the Board shall advise the claimant at the first prehearing, following a WCC [Workers' Compensation Claim], employer's answer, and employer's controversion, when and how to request a hearing. The Board designee in the first prehearing needs not only to advise the *pro se* claimant as to how to calculate the timeline in AS 23.30.110(c) for requesting a hearing, but must also provide the claimant with an actual date by which an ARH must be filed in order to preserve the claim. . . .
>
> . . . Informing a *pro se* claimant of the date for requesting a hearing at the first prehearing provides the *pro se* claimant with the tools needed to pursue the claim and meets the requirements of the process being "quick, efficient, fair, and predictable" as well as "impartial and fair to all." Such a requirement at the first prehearing is not onerous to the Board designee and will help ensure that all parties or on a more even playing field.

Neither *Davis* nor the *Davis* order on reconsideration addressed administrative regulations for adding days to a prescribed period to act when a document was served by mail, or otherwise computing time prescribed by the Act or the administrative regulations.

> **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 findings." *Smith v. CSK Auto, Inc.*, 204 P.3d 1001, 1008 (Alaska 2009).

> **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 3.30.145. 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. When the board advises that a claim has not been controverted, but further advises that bona fide legal services have been rendered in respect to the claim, then the board shall direct the payment of the fees out of the compensation awarded. In determining the amount of fees the board shall take into consideration the nature, length, and complexity of the services performed, transportation charges, and the benefits resulting from the services to the compensation beneficiaries.
>
> (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 reasonable attorney fees. The award is in addition to the compensation or medical and related benefits ordered.
>
> **3 AAC 26.100. Additional standards for prompt, fair, and equitable settlements of workers' compensation claims.** Any person transacting a business of insurance who participates in the investigation, adjustment, negotiation, or settlement of a workers' compensation claim:
>
> (1) may not require a claimant to travel unreasonably for medical care, rehabilitation services, or any other purpose;
> (2) shall provide necessary claim forms, written instructions, and assistance that is reasonable so that any claimant not represented by an attorney is able to comply with the law and reasonable claims handling requirements;
> (3) shall promptly make all payments or denials of payments as required by statute or regulation.

In *Seybert v. Comico Alaksa Exploration*, 182 P.3d 1079 (Alaska 2008), the Supreme Court held the workers' compensation system is an adversarial system, and there is no

fiduciary relationship between a claimant and an insurer. Although 3 AAC 26.100 imposes some duties on a workers' compensation insurer, it does not impose a fiduciary relationship. The regulation requires an insurer to provide a claimant with "assistance that is reasonable" so an unrepresented claimant can "comply with the law and reasonable claims handling requirements." It also prohibits an insurer from requiring a claimant to "travel unreasonably for medical care, rehabilitation services, or any other purpose." These requirements do not impose duties of loyalty and the disavowal of self-interest that are hallmarks of a fiduciary's role.

> **8 AAC 45.060. Service**. . . .
>
> (b) A party may file a document with the board, other than the annual report under AS 23.30.155(m), personally, by mail, or by electronic filing through facsimile transmission or electronic mail in compliance with 8 AAC 45.020(d). Except for a claim, a party shall serve a copy of a document filed with the board upon all parties or, if a party is represented, upon the party's representative. Service must be done personally, by facsimile, by electronic mail, or by mail, in accordance with due process. Service by mail is complete when deposited in the mail if mailed with sufficient postage and properly addressed to the party at the party's last known address. If a right may be exercised or an act is to be done, three days must be added to the prescribed period when a document is served by mail.
>
> (c) A party shall file proof of service with the board. Proof of service may be made by
>
> > (1) affidavit of service; if service was electronic or by facsimile, the affidavit must verify successfully sending the document to the party;
> > (2) written statement, signed by the person making the statement upon the document served, together with proof of successfully sending the document to the party if served by facsimile or electronically; or
> > (3) letter of transmittal if served by mail.
>
> (d) A proof of service must set out the names of the persons served, method and date of service, place of personal service or the address to which it was mailed or sent by facsimile or electronically, and verification of successful sending if required. The board will, in its discretion, refuse to consider a document when proof of its service does not conform to the requirements of this subsection. . . .
>
> **8 AAC 45.063. Computation of time**. (a) In computing any time period prescribed by the Act or this chapter, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period is included, unless it is a Saturday, Sunday or a legal holiday, in

> which case the period runs until the end of the day which is neither a Saturday, Sunday nor a holiday.

## ANALYSIS

**Should Employee's June 22, 2023 claim be denied under AS 23.30.110(c)?**

Employer contends Employee's claim should be dismissed because he failed to request a hearing by the two year deadline in §.110(c) and did not vigorously pursue his claim. It contends Employee took no action after he filed his claim and attended an EME, as he failed to file evidence, contact a claims adjuster since 2023, and attend the November 26, 2025 prehearing conference. Employer contends that this case is distinguishable from *Davis* because Employee failed to vigorously pursue his claim after Poole, the claims adjuster, informed Employee of the two year deadline on the back of the controversion notices in July 2023. Employee contends he is not an attorney, he does not know the rules and laws, and he did not get any help. He thought his medical bills were taken care of and that his case was already over.

Strict compliance with §.110(c) is not required. *Kim*. However, a claimant may not ignore the statutory deadline and fail to file anything. *Pruitt*. The law required Employee to prosecute his claim timely once Employer controverted it. *Jonathan*. Statute of limitations-style defenses are "generally disfavored," and neither the law nor the facts should be twisted to aid them. *Tipton*; *Roberge*. The panel has an obligation to determine if there is a way around the §.110(c) defense as hearings on the merits are required except where otherwise provided by statute. *Roberge*; AS 23.30.001(2). Employee has the burden to establish with substantial evidence a legal excuse from the §.110(c) statutory deadline. *Hessel*.

Employee filed a claim on June 22, 2023 after contacting Penser and the Division regarding the medical bills received. He was able to properly fill out and file a claim after Division staff discussed the form with him and provided him with a copy.

Employer controverted the claim on July 17, 2023. When counting time, July 17, 2023 was not included as it was the triggering event. Adding two years in §110(c) and three days because Employer mailed the July 17, 2023 controversion notice to Employee, and moving the deadline

to the first day which was not a holiday, Employee had until Monday, July 21, 2025 to request a hearing or additional time to prepare for a hearing to avoid claim denial (starting on but not counting July 17, 2023 + 2 years and 3 days = Sunday, July 20, 2025 = Monday, July 21, 2025). 8 AAC 45.060(b); 8 AAC 45.063(a); *Kim*. After Employee filed his claim, there is no record he called or emailed the Division for assistance. The next contact the Division had with Employee was on January 8, 2026, when he attended the prehearing conference where this hearing was scheduled. Therefore, he has not strictly complied with his duty to request a hearing timely or ask for more time to request a hearing after Employer controverted his claim. AS 23.30.110(c); *Kim*.

Employee testified he did not file an ARH; he also did not request more time to prepare for hearing. There is no record he contacted the Division for assistance after he filed a claim. Employee acknowledged receiving paperwork but could not recall whether or not he received Employer's controversion notices. He did not substantially comply with §.110(c); he was noncompliant. *Kim*; *Pruitt*.

Certain "legal" grounds may excuse noncompliance with §.110(c), including mental incapacity, incompetence, or equitable estoppel against the Division. *Tonoian*. There is nothing in the record demonstrating Employee was mentally incapacitated or incompetent. Neither mental incapacity nor incompetence will excuse Employee's noncompliance with §.110(c). *Id*.
Employer contended Employee was "put on notice" about the two-year requirement by Poole and the controversion notices containing the approved language. However, *Bohlmann II* reversed the Commission's holding in *Bohlmann I* that found the injured worker's *pro se* status was not sufficient excuse to excuse a late filing when the workers' compensation officer provided him with the ARH form and informed him of the need to file a request for hearing within two years of the controversion in writing and verbally and employer controverted using the approved controversion form. *Bohlmann II* found there was no indication in the record that the designee informed the injured worker of the correct deadline or how to determine what the correct deadline was. It held the designee had a duty to assist unrepresented litigants and should have informed the injured worker how to preserve his claim and its failure to do so was an abuse of discretion.

Both Employee and Poole testified they last spoke in July 2023. Poole testified that she discussed the second page of the controversion notice with the approved language with Employee and told him to follow its instructions if he disagreed with the controversion. However, the claim adjuster note states that on September 20, 2023, Poole spoke to Employee and "explained the [EME] report and the Contro." There is no statement in the claim adjuster note stating the two year deadline was discussed with Employee. There is also no indication Poole informed him of the correct deadline or how to determine what the correct deadline was. *Bohlmann II*.

The workers' compensation system is an "adversarial process" once benefits are denied; Employer looks after its best interest and Employee looks after his. *Seybert*. Considering the adversarial process and the lack of a fiduciary relationship between an injured worker and an insurer, Poole's discussion of the approved language on the second page of the controversion notice with Employee, if it happened at all, did not satisfy the designee's duty to "fully advis[e] him as to all the real facts which bear upon his condition and his right to compensation, so far as it may know them, and of instructing him on how to pursue that right under the law." *Richard*; *Bohlmann II*; *Seybert*; 3 AAC 26.100.

Furthermore, the *Davis* order expressly stated that the Commission "now holds that in cases involving a *pro se* claimant, the designee shall advise the claimant at the first prehearing, following a WCC, employer's answer, and employer's controversion, when and how to request a hearing." The designee at the first prehearing must not only advise the *pro se* claimant how to calculate the timeline under §.110(c), the designee "must also provide the claimant with an actual date" by which a hearing must be requested "to preserve the claim." It is the Division's regular practice to conduct at least one prehearing conference after an unrepresented injured worker files a claim to inform the injured worker of the important facts in their case and how to pursue their claim. *Rogers & Babler*. At the first prehearing conference on November 26, 2025, which Employee did not attend after he was properly noticed, the designee informed Employee he had until July 17, 2025 to either request a hearing with an ARH form or file a petition to request more time. It did so in the summary the Division properly served on him the same day. The

Division did not conduct a prehearing conference in this case until after the July 21, 2025 §.110(c) deadline had already passed and after Employer requested Employee's claim be denied for his failure to request a hearing. The designee provided an incorrect date of July 17, 2025, in the November 26, 2025 prehearing conference summary. The designee failed to inform Employee how to preserve his claim by providing an incorrect date by which he needed to file an ARH in a prehearing conference held after the actual §.110(c) deadline. *Richard.* The designee's failure was an abuse of discretion. *Bohlmann II.*

Employee credibly testified he did not pursue his claim because he thought his case was already over as he does not know the law and he had no help. AS 23.30.122; *Smith*; *Pruitt.* He testified he tried but he was "not sharp" and was "tired of being the little guy against the corporation." Employee's expectation that he would lose at hearing and that he felt like he was disadvantaged in the adversarial process, does not lead the panel to believe he is not credible. *Id.* Employee contacted the Division and Penser many times when he filed his claim. He was able to properly fill out and file a claim after Division staff discussed the form with him and provided him with a copy. And he followed up with Employer to understand why his claim was denied.

The Division failed to help Employee by failing to instruct him how to pursue his claim once it was denied, including instructing him how to file evidence to support his claim and to file an ARH or request more time, until after the §.110(c) deadline had passed. Employee's testimony that he tried but got no help is credible. AS 23.30.122; *Smith.* Employee's past behavior is consistent with a presumption that Employee would have also timely filed either an ARH or a request for more time had the designee or Division staff satisfied their duty to inform him of the correct deadline. Employee's failure to either file an ARH or request additional time to prepare for a hearing should be excused. *Tonoian; Richard; Bohlmann II.* Employee's June 22, 2023 claim should not be denied under §.110(c). *Richard*; *Bohlmann II.*

As Employee's failure is excused, a new §.110(c) deadline must be set. AS 23.30.135(a). Employee is advised he has until September 14, 2026, to either file an ARH requesting a hearing on his June 22, 2023 claim or request additional time to prepare for hearing by filing a petition.

If Employee believes his 2009 work injury is the cause of his need for left knee surgery, he is advised he retains the right to file a claim for medical benefits under his 2009 case because there is no time limit for filing a claim for medical benefits. AS 23.30.105(a). He is advised that the work injury while employed with Employer must have been the substantial cause of his need for medical treatment. AS 23.30.010(a); AS 23.30.095(a).

Employee is advised he may file medical evidence supporting his claim by using a Medical Summary form. He is advised he may file nonmedical evidence supporting his claim by using a Notice of Intent To Rely form. Employee may rely on evidence filed by Employer on a Medical Summary form and Notice of Intent To Rely form, and he does not need to re-file the evidence.

Employee is advised he has the right to hire an attorney. AS 23.30.145(a), (b). If he prevails on his claim, the panel will order the insurer to pay his attorney's fees and legal costs. An attorney cannot collect a fee of more than $300 from Employee for one-time advice on his case; most attorneys charge nothing. If Employee loses, his attorney gets no attorney fees. However, he may have to pay his legal costs.

Employee is advised AS 23.30.097(f) bars collection of a fee or charge for medical treatment or service in a pending workers' compensation claim from an injured worker. Should Employee provide the Division with the names and addresses of the medical providers that "turned him into creditors" for medical treatment for his claim, the Division can issue a letter to his providers informing them of the law. Employee is also advised he may contact the State of Alaska, Department of Law, Consumer Protection Unit, Commercial and Fair Business Practices Section, at (907) 269-5200, which investigates unfair or deceptive business practices and files legal action on behalf of the State of Alaska to stop such practices.

Employee is advised he must serve any petition, evidence, and any other document he files on Employer, and provide proof of service on all parties. 8 AAC 45.060(b), (c), (d). If he fails to do so, the Division and a hearing panel may refuse to consider his arguments and evidence, which may result in lost benefits. If Employee needs a copy of his case file to see the evidence Employer has filed, he may request a copy of his file using a records request form.

Employee is encouraged to seek the assistance of a Workers' Compensation Technician at (907) 465-2790 (Juneau), (907) 269-4980 (Anchorage) or toll free at (877) 783-4980, for assistance with Division forms, proof of service, and questions about his claim. He is advised the petition, claim, medical summary, notice of intent to rely, records request, and ARH forms are available on the Division's website http://www.labor.alaska.gov/wc/pdf_list.htm.

## CONCLUSION OF LAW

Employee's June 22, 2023 claim should not be denied under AS 23.30.110(c).

## ORDER

1) Employer's October 28, 2025 petition to dismiss is denied.

2) Employee is advised he has until September 14, 2026, to either file an ARH requesting a hearing on his June 22, 2023 claim or to request additional time to prepare for hearing by filing a petition.

Dated in Juneau, Alaska on March 17, 2026.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Kathryn Setzer, Designated Chair

/s/
Debbie White, Member

/s/
Brad Austin, Member

## PETITION FOR REVIEW

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

service of the board's decision and order. If a petition for reconsideration is timely filed with the board, a petition for review must be filed within 15 days after the board serves the reconsideration decision, or within 15 days from date the petition for reconsideration is considered denied absent Board action, whichever is earlier.

## RECONSIDERATION

A party may ask the board to reconsider this decision by filing a petition for reconsideration under AS 44.62.540 and in accordance with 8 AAC 45.050. The petition requesting reconsideration must be filed with the board within 15 days after delivery or mailing of this decision.

## MODIFICATION

Within one year after the rejection of a claim, or within one year after the last payment of benefits under AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, a party may ask the board to modify this decision under AS 23.30.130 by filing a petition in accordance with 8 AAC 45.150 and 8 AAC 45.050.

## CERTIFICATION

I hereby certify the foregoing is a full, true, and correct copy of the Interlocutory Decision and Order in the matter of Daniel K. Howell, employee / claimant v. State of Alaska, self-insured employer / defendant; Case No. 202205583; dated and filed in the Alaska Workers' Compensation Board's office in Juneau, Alaska, and served on the parties by certified U.S. Mail, postage prepaid, on March 17, 2026.

/s/
Trisha Palmer, Workers' Compensation Technician