

ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

MAURICIO MORALES,)	
)	
Employee,)	
Claimant,)	
)	FINAL DECISION AND ORDER
v.)	
)	AWCB Case No. 202208063
KEVIN J. MCELHENY & TABITHA A.)	
HUGHES, D/B/A HOWLING BAY)	AWCB Decision No. 26-0023
KENNELS,)	
)	Filed with AWCB Fairbanks, Alaska
Employer,)	on March 23, 2026
and)	
)	
BENEFITS GUARANTY FUND,)	
)	
Insurer,)	
Defendants.)	
)	

Mauricio Morales’s June 27, 2025 claim was heard in Fairbanks, Alaska on February 19, 2026, a date selected on January 8, 2026. An August 5, 2025 hearing request gave rise to this hearing. Attorney Robert Bredesen appeared and represented Mauricio Morales (Employee), who testified on his own behalf. Tabitha Hughes (Hughes) appeared and represented herself and Howling Bay Kennels (Employer). Velma Thomas, Program Coordinator for the Workers’ Compensation Guaranty Fund (Fund), and McKenna Wentworth, the Fund’s adjuster, appeared and represented the Fund. The record closed at the hearing’s conclusion on February 19, 2026. A previous decision, *Morales v. McElheny, et al*, AWCB Dec. No. 24-0054 (September 30, 2024) (*Morales I*), decided Employee was an employee covered under the Alaska Workers’ Compensation Act (Act), and that he was entitled to medical and related transportation costs, temporary total disability (TTD) benefits, interest and attorney fees and costs.

ISSUES

Employee contends that *Morales I* awarded him past TTD but did not specify an amount. He contends this case is unusual because the panel in that decision found his contract of employment did not include specific payment terms, and although the parties attempted to informally resolve this issue, they could not agree on an amount. He contends any statutory formula would result in an unfair compensation rate because of his lack of documented earnings and because his previous earnings were in a different country, with different economic conditions, and doing different work. Therefore, because his wage history would not be an accurate predictor of his losses due to the injury, his compensation rate should be determined by a “*Gilmore*-type fairness evaluation,” referring to *Gilmore v. Alaska Workers’ Compensation Board*, 882 P.2d 922 (Alaska 1994). Employee contends he was promised more than \$500 per week, plus a bonus if the season went well, which it did, and room and board. He notes that \$500 per week is approximately minimum wage for a 40-hour week without overtime, but he sometimes worked 10 hours per day. Employee contends that \$1,000 per week would be an appropriate gross weekly wage, which would result in a compensation rate of \$659.58.

The Fund agrees with Employee that this situation does not fit into any of the statutory formulas because he would not have had any taxable wages at all under his visitor’s visa. It contends it does not oppose an order for the state minimum compensation rate in effect at the time of injury or, under a fairness standard, this panel should use \$500 per week for Employee’s earnings because that amount has been consistently mentioned throughout this litigation.

Employer contends that it did not consider Employee to be an “employee.” He came to Alaska on his own accord, with his own resources and was expected to be able to provide for himself. It is not aware of the \$500 figure that is being “thrown around,” and is also not aware of any tips Employee may have earned.

1) What is Employee’s compensation rate and how much TTD is owed under *Morales I*?

Employee contends the Fund began authorizing treatment through McKinley Orthopedics in January 2023, but treatment stopped because the Fund stopped authorizing it. He contends he has

moved to Anchorage and he seeks an order for Hughes and the Fund to authorize 1) ongoing conservative treatment with a local orthopedist or physiatrist of his choosing, 2) possible nerve testing and evaluation if the new attending physician still considers it necessary, and 3) a permanent partial impairment (PPI) evaluation once his physician determines that he is medically stable.

The Fund opposes an order requiring it to preauthorize treatment because *Morales I* found Employee's injury was compensable, so there is no reason why he should not proceed with treatment.

Employer contends no medical costs should be approved at this point because two years have passed and Employee has been able to carry on with life and perform manual labor.

2)Should Employee be granted a prospective award of medical costs for the treatment he seeks?

Employee contends he has not been reimbursed for medical transportation costs and acknowledges he does not have receipts. He contends he usually rode his bike to his appointments in Fairbanks. However, he had to take a taxi at least twice, which cost \$12 each way, so he is seeking \$48 for cab fare. Employee contends he took a bus to his physical therapy (PT) appointments in North Pole and bus fare was \$2.50 each way. He contends the medical record documents 18 PT visits, so he is seeking \$90 for bus fare. Employee requests a total of \$138 for transportation reimbursement.

The Fund is willing to stipulate to Morales claimed amount.

Employer contends Employee's transportation costs are not its concern or responsibility.

3)Is Employee entitled to transportation costs?

Employee contends he is owed a late-payment penalty on past TTD under AS 23.30.155(f) and this amount should be added to the amount Employer is in default. He does not request penalty for late payment of attorney fees.

The Fund contends it is not liable for penalties assessed against an employer that did not pay timely compensation.

Employer did not state its position on penalty. It is presumed to oppose a penalty award.

4) Is Employee entitled to a penalty?

Employee seeks an award of interest on unpaid TTD as well as unpaid attorney fees and costs from *Morales I.*

The Fund did not state its position on interest.

Employer did not state its position on interest. It is presumed to oppose an interest award.

5) Is Employee entitled to interest?

Employee seeks supplementary default orders on TTD and attorney fees and costs under *Morales I.*

The Fund does not oppose a default order on amounts unpaid by Employer because it does not have any evidence Employer has paid benefits.

Employer contends its outlook on this case has not changed since the last hearing and it does not have any additional information to provide the panel from the past two years and questions the purpose of the hearing. The last case news of which Employer is aware was a “cease and desist type letter” that was sent to Hughes and the Fund that stated Hughes was to pay a lump-sum of \$2,500 “to make this go away” and \$35,000 total was to be paid to Employee. Even though the \$2,500 lump sum does not seem like very much money, the principle of awarding close to \$35,000 to Employee for an “unfounded” incident was such that Hughes could not, in good faith, sign the letter.

6) Is Employee entitled to a supplementary order declaring the amount in default?

Employee seeks to have attorney fees and costs ordered in *Morales I* declared in default. He also seeks an award of additional attorney fees for work on the instant claim.

The Fund contends Employee's attorney has been "very, very gracious" with his fees considering that this case has been heavily litigated. It does not oppose a fee award.

Employer did not state its position on attorney fees. It is presumed to oppose an attorney fee award.

7) Is Employee entitled to additional attorney fees?

FINDINGS OF FACT

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

- 1) Kevin McElheny (McElheny) and Tabitha Hughes previously testified they were the owners of Howling Bay, a seasonal business operating only in the wintertime that provided dogsledding and aurora viewing tours. (*Morales I*).
- 2) Employee previously testified he is from Chile, where he is a physical therapist. He first came to Alaska in August 2019 and volunteered to help McElheny and Hughes with their dogs. Employee stayed on McElheny's and Hughes's property, helped train their dogs for the tourist season, and returned to Toronto in October 2019. He came to Alaska a second time on March 14, 2022 because he became friends with McElheny while texting and McElheny started talking about him working for the kennel and becoming the first Chilean musher in Alaska. Employee and McElheny discussed a work visa so he would be able to stay longer and help with the kennel. McElheny said they were "really busy," and the kennel had tours every day -- a dog sled tour and a Northern Lights tour. (*Morales I*).
- 3) Employee previously testified that McElheny offered to pay him "at least \$500 per week," and "more than \$500 per week" for his help at Howling Bay. (*Morales I*).
- 4) McElheny and Hughes previously testified there were never any discussions about paying Morales for his work. (*Morales I*).

5) Hughes previously testified she and McElheny decided March was the best month for Employee to return to Alaska and McElheny “took it from there.” McElheny was the person who had conversations with Employee about coming back to Alaska. (*Morales I*).

6) Employee previously described his duties at Howling Bay as feeding the dogs, cleaning the dogs after they ate, getting the dog teams out for dog sled tours, hanging out with the guests after the tours, tending the bonfire and keeping the tourists happy. (*Morales I*).

7) On April 29, 2022, a malamute broke its collar and bit Employee on his left forearm while he was feeding it at work. Employee was transported by ambulance to the Emergency Department, where he was treated with an antibiotic and received a tetanus immunization. A three-centimeter laceration that involved a superficial muscle tear was repaired with three sutures and Employee was discharged with instructions to follow-up with his primary care provider. (*Morales I*).

8) On May 16, 2022, Employee texted Hughes:

I want to ask you this very politely, you are the one to make the decisions in your business so I want to know how much you are willing to pay me for this two months that I spent and worked at your place? Doesn't matter the 3 months back in 2019 when I was helping with Forrest and he had to leave his job with you guys because I was there helping [McElheny]. Look at that pavilion and think about it. We can meet next week in person at [G]allos, lunch is on you because I am BROKE[.]

(*Morales I*).

9) On May 17, 2022, Hughes texted Employee, “Thank you for your assistance when you were helping out at our place. You did a great job. Unfortunately[,] our agreement was verbal[,] and you did not fulfill your portion. We got 1 month and 3 weeks exactly of your time, not three months.” (*Morales I*).

10) Employee previously testified McElheny and Hughes never paid him any wages because he left their property after being bitten by the dog. (*Morales I*).

11) Employee attended 18 PT appointments. (Medical Summary, October 5, 2023).

12) The panel in *Morales I* found Employee’s testimony to be credible for numerous reasons stated in that decision. (*Morales I*).

13) On September 30, 2024, *Morales I* decided Employee was an “employee” covered under the Act. It also found that he was entitled to a prospective determination under *Summers v. Korobkin*, 814 P.2d 1369, 1372 (Alaska 1991), that the medical treatment he sought was compensable and granted his request for authorization to return to McKinley Orthopedics, where he previously

treated, for additional care as his injury may require. The award of medical costs included a neurological consultation and electromyography (EMG) testing because chart notes showed that Employee was unable to attend these appointments since they were not covered under workers' compensation. The decision further determined that Employee was entitled to TTD from May 9, 2022 until June 16, 2022, as well as interest on this compensation, but did not specify a compensation rate or the total compensation owed. *Morales I* also awarded Employee \$8,926.44 in attorney fees and costs. (*Morales I*).

14) Pursuant to Superior Court orders regarding property and debt distributions between McElheny and Hughes, *Morales I* ordered Hughes to pay Employee's benefits, interest, and attorney fees and costs awarded in *Morales I*. (*Morales I*).

15) Following *Morales I*, the parties failed to reach a negotiated settlement. (Record; Morales's Hearing Brief, February 12, 2026; Fund's Hearing Brief, February 12, 2026).

16) On June 27, 2025, Employee filed his instant claim seeking TTD benefits, medical benefits and related transportation costs, a penalty, interest and attorney fees and costs. His reason for filing the claim was to "Authorize medicals and enforce D&O." (Claim for Workers' Compensation Benefits, June 27, 2025).

17) At a January 8, 2026 prehearing conference, Employee clarified his June 27, 2025 claim and stated he was seeking a default order for "past TTD in a specific amount," and a default order for past and current attorney fees and costs. (Prehearing Conference Summary, January 8, 2026).

18) On February 12, 2026, Employee itemized 8.9 hours of attorney time at a rate of \$520 per hour, for total fees of \$4,628. (Fee and Cost Affidavit, February 12, 2026).

19) At the February 19, 2026 hearing, Hughes acknowledged she has not made any benefit payments on Morales's behalf. (Record).

20) At the February 19, 2026 hearing, Employee testified he is from Chile, where he worked as a kinesiologist or physical therapist. When he came to Alaska, he stayed in the upstairs portion of a dome structure on McElheny's and Hughes's property. After Employee left their property, he stayed with a musher in Salcha, Alaska and then at the Rescue Mission for about five months. After staying at the Rescue Mission, he moved to an Alaska Housing Program facility where rent was \$1,300 per month. When Employee was treating in Fairbanks, he rode his bike to his medical appointments most of the time. When there was heavy snow or it was really cold, he used a taxicab a couple of times. The cab cost \$12 or \$15. Employee also had appointments in North Pole and

would ride the bus, which cost \$2.50 each way. It has been 18 months or two years since he was last treated. Employee's arm has not gotten any better since then and he wakes up in the morning and in the middle of the night with radiating pain and a burning sensation. He would love to see a doctor. Employee moved to Anchorage on October 1st of last year to start massage therapy school. He pays \$1,100 in rent. Employee also testified about the various jobs he has held since the injury. In Chile, Employee worked as a kinesiologist, which is like physical therapy in the hospital, helping patients with mobility or respiratory issues. He was paid 2 million Chilean pesos per month, which was about \$2,400 dollars back then and would be around \$1,800 or \$2,000 today. When he can to Alaska, Employee was told everybody gets paid at least \$500 per week and since he works more, he would be paid "way more," perhaps \$700 or even \$1,000. Every now and then, he would also get a \$20 tip. McElheny and Hughes provided him with a place to stay but Employee was on his own for food. (Record).

21) Employee is credible because his testimony here was consistent with his testimony in *Morales I* and other facts independently established in the record. (Experience, judgment, observations, facts of the case and inferences drawn therefrom).

22) At the February 19, 2026 hearing, the parties were asked about the usual wage for services similar to those Employee provided. Employee and the Fund could not provide a usual wage and Employer contended that such services are typically provided by volunteers. (Record).

23) At the February 19, 2026 hearing, Employee's attorney supplemented his fees and stated he had incurred an additional 3.0 hours for hearing preparation and hearing attendance. At his rate of \$520 per hour, additional attorney fees amounted to \$1,560. (Record).

PRINCIPLES OF LAW

The Board may base its decisions not only on direct testimony 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 23.30.001. Legislative intent. It is the intent of the legislature that

(1) this chapter be interpreted so as to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of this chapter;

....

AS 23.30.020. Chapter part of contract of hire. This chapter constitutes part of every contract of hire, express or implied, and every contract of hire shall be construed as an agreement on the part of the employer to pay and on the part of the employee to accept compensation in the manner provided in this chapter for all personal injuries sustained.

AS 23.30.030. Required policy provisions. A policy of a company insuring the payment of compensation under this chapter is considered to contain the provisions set out in this section.

(1) The insurer assumes in full all the obligations to pay . . . transportation charges . . . imposed upon the insured under the provisions of this chapter.

(2) The policy is made subject to the provisions of this chapter and its provisions relative to the liability of the insured employer to pay . . . transportation charges . . . and the liability of the insurer to pay the same are considered a part of this policy contract.

....

(4) The insurer will promptly pay . . . the benefits conferred by this chapter, including . . . transportation charges. . . . The policy is a direct promise by the insurer to the person entitled to . . . transportation charges . . . and is enforceable in the name of that person. . . .

....

(6) All claims for . . . transportation charges . . . may be made directly against either the employer or the insurer, or both, and the order or award of the board may be made against either the employer or the insurer or both. . . .

AS 23.30.045. Employer's liability for compensation. (a) An employer is liable for and shall secure the payment to employees of the compensation payable under AS 23.30.041, 23.30.050, 23.30.095, 23.30.145, and 23.30.180 - 23.30.215. . . .

AS 23.30.082. Workers' compensation benefits guaranty fund.

....

(c) Subject to the provisions of this section, an employee employed by an employer who fails to meet the requirements of AS 23.30.075 and who fails to pay compensation and benefits due to the employee under this chapter may file a claim

for payment by the fund. In order to be eligible for payment, the claim form must be filed within the same time, and in the same manner, as a workers' compensation claim. The fund may assert the same defenses as an insured employer under this chapter.

(d) If the fund pays benefits to an employee under this section, the fund shall be subrogated to all of the rights of the employee to the amount paid, and the employee shall assign all right, title, and interest in that portion of the employee's workers' compensation claim . . . to the fund. Money collected by the division on the claim or recovery shall be deposited in the fund. . . .

The Fund is not liable for payment of compensation or benefits until three conditions are satisfied: 1) the employer fails to pay compensation or benefits, 2) a claim for payment by the Fund is filed, and 3) the employer has no defenses that the Fund can assert. *Workers' Comp. Benefits Guaranty Fund v. West*, AWCAC Decision No. 145 at 19 (January 20, 2011). The Fund may be liable for interest and attorney fees; it is not liable for penalties assessed against the employer. *Id.* at 15-16.

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 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. . . .

(c) A claim for medical or surgical treatment, or treatment requiring continuing and multiple treatments of a similar nature, is not valid and enforceable against the employer unless, within 14 days following treatment, the physician or health care provider giving the treatment or the employee receiving it furnishes to the employer and the board notice of the injury and treatment, preferably on a form prescribed by the board. . . .

Injured workers must weigh many variables when deciding whether to pursue a certain course of medical or related treatment. An important treatment consideration in many cases is whether a physician's recommended treatment is compensable under the Act. *Summers v. Korobkin*, 814 P.2d 1369, 1372 (Alaska 1991). Thus, an injured worker is entitled to a hearing and a prospective determination on whether medical treatment for his injury is compensable. *Id.* at 1373-74.

AS 23.30.097. Fees for medical treatment and services.

. . . .

(d) An employer shall pay an employee's bills for medical treatment under this chapter, excluding prescription charges or transportation for medical treatment, within 30 days after the date that the employer receives the provider's bill or a completed report as required by AS 23.30.095(c), whichever is later.

....

(f) An employee may not be required to pay a fee or charge for medical treatment or service provided under this chapter.

(g) Unless the employer controverts a charge, the employer shall reimburse an employee's prescription charges under this chapter within 30 days after the employer receives the health care provider's completed report and an itemization of the prescription charges for the employee. Unless the employer controverts a charge, an employer shall reimburse any transportation expenses for medical treatment under this chapter within 30 days after the employer receives the health care provider's completed report and an itemization of the dates, destination, and transportation expenses for each date of travel for medical treatment. . . .

AS 23.30.120. Presumptions. (a) In a proceeding for the enforcement of a claim for compensation under this chapter it is presumed, in the absence of substantial evidence to the contrary, that

(1) the claim comes within the provisions of this chapter

It is presumed an injury is work-connected in the absence of substantial evidence to the contrary. *Beauchamp v. Employers Liability Assurance Corp.*, 477 P.2d 993; 997 (Alaska 1970). "The text of AS 23.30.120(a)(1) indicates that the presumption of compensability is applicable to *any* claim for compensation under the workers' compensation statute." *Meek v. Unocal Corp.*, 914 P.2d 1276, 1279 (Alaska 1996) (emphasis in original). Medical benefits, including continuing care, are covered by the AS 23.30.120(a) presumption of compensability. *Municipality of Anchorage v. Carter*, 818 P.2d 661, 664-65 (Alaska 1991). The Court in *Sokolowski v. Best Western Golden Lion*, 813 P.2d 286, 292 (Alaska 1991) held a claimant "is entitled to the presumption of compensability as to each evidentiary question."

The presumption's application involves a three-step analysis. *Louisiana Pacific Corp. v. Koons*, 816 P.2d 1379, 1381 (Alaska 1991). First, an employee must establish a "preliminary link" between the claim and her employment, *Burgess Construction Co. v. Smallwood*, 623 P.2d 312, 316 (Alaska 1981), and needs to only adduce "some" relevant evidence to do so. *Cheeks v. Wismer & Becker/G.S.*

Atkinson, J.V., 742 P.2d 239, 244 (Alaska 1987). A mere showing that the injury occurred at work will often suffice to make the employment connection. *Smallwood*. When a claim is based on “highly technical medical considerations,” medical evidence is often necessary to make the connection. *Id.*; e.g., *Thornton v. Alaska Workmen’s Compensation Bd.*, 411 P.2d 209; 211 (Alaska 1966) (cause of heart attack). Witness credibility is not examined at this first step. *Excursion Inlet Packing Co. v. Ugale*, 92 P.3d 413, 417 (Alaska 2004).

Second, once an employee attaches the presumption, the employer must rebut it with “substantial” evidence that either, (1) provides an alternative explanation excluding work-related factors as a substantial cause of the disability (“affirmative-evidence”), or (2) directly eliminates any reasonable possibility that employment was a factor in causing the disability (“negative-evidence”). *Huit v. Ashwater Burns, Inc.*, 372 P.3d 904; 919 (Alaska 2016). “Substantial evidence” is the amount of relevant evidence a reasonable mind might accept as adequate to support a conclusion in light of the record as a whole. *Miller v. ITT Arctic Services*, 577 P.2d 1044, 1046 (Alaska 1978). The mere possibility of another injury is not “substantial” evidence sufficient to rebut the presumption. *Huit* at 920, 921. The employer’s evidence is viewed in isolation, without regard to an employee’s evidence. *Miller* at 1055. Therefore, credibility questions and weight accorded the employer’s evidence are deferred until it is decided if the employer produced a sufficient quantum of evidence to rebut the presumption. *Norcon, Inc. v. Alaska Workers’ Compensation Board*, 880 P.2d 1051, 1054 (Alaska 1994).

If an employer produces substantial evidence work is not the substantial cause, the presumption drops out and the employee must prove all elements of the “claim” by a preponderance of the evidence. *Louisiana Pacific Corp. v. Koons*, 816 P.2d 1381 (citing *Miller*). The party with the burden of proving asserted facts by a preponderance of the evidence must “induce a belief” in the factfinders’ minds the asserted facts are probably true. *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964). The presumption does not apply if there is no factual dispute. *Rockney v. Boslough Construction Co.*, 115 P.3d 1240 (Alaska 2005).

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

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

Continuing jurisdiction over a compensation matter is conferred by law upon the Board. *Fischback & Moore of Alaska, Inc. v. Lynn*, 407 P.2d 174, 176 (Alaska 1965). The Alaska Supreme Court discussed AS 23.30.130(a) in *Sulkosky v. Morrison-Knudsen*, 919 P.2d 158, 162 (Alaska 1996), and said "under this statute, the Board 'is granted broad discretion to modify its prior decisions and findings'" (citations omitted).

AS 23.30.135. Procedure before the board. (a) . . . The board may make its investigation or inquiry or conduct its hearing in the manner by which it may best ascertain the rights of the parties. . . .

AS 23.30.145. 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 controversy, 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.

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.

Rule 1.5(a)(2) considers whether a lawyer undertaking specific representation might not be able to take on other work. There is no detriment to a lawyer who takes on a case and because of this does not have time to take on a different case that would involve the same amount of work and similar fees. Instead, the rule considers situations such as a lawyer’s inability to take on other clients in the present or future because of conflicts of interests, taking “one off” cases that hold no promise of long-term future employment, and taking on unpopular clients who might significantly negatively impact the lawyer’s practice, such as a terrorist. *Lawyer Fee Basics: Reasonableness*, 3 Legal Ethics and Malpractice Reporter (Michael Hoeflich, ed. 2022).

AS 23.30.150. Commencement of Compensation. Compensation may not be allowed for the first three days of the disability

AS 23.30.155. Payment of compensation. (a) Compensation under this chapter shall be paid periodically, promptly, and directly to the person entitled to it, without an award, except where liability to pay compensation is controverted by the employer. To controvert a claim, the employer must file a notice, in a format prescribed by the director, stating

- (1) that the right of the employee to compensation is controverted;
- (2) the name of the employee;
- (3) the name of the employer;

(4) the date of the alleged injury or death; and

(5) the type of compensation and all grounds on which the right to compensation is controverted.

(b) The first installment of compensation becomes due on the 14th day after the employer has knowledge of the injury or death. On this date all compensation then due shall be paid. Subsequent compensation shall be paid in installments, every 14 days, except where the board determines that payment in installments should be made monthly or at some other period.

....

(e) If any installment of compensation payable without an award is not paid within seven days after it becomes due, as provided in (b) of this section, there shall be added to the unpaid installment an amount equal to 25 percent of the installment. This additional amount shall be paid at the same time as, and in addition to, the installment, unless notice is filed under (d) of this section or unless the nonpayment is excused by the board after a showing by the employer that owing to conditions over which the employer had no control the installment could not be paid within the period prescribed for the payment. The additional amount shall be paid directly to the recipient to whom the unpaid installment was to be paid.

(f) If compensation payable under the terms of an award is not paid within 14 days after it becomes due, there shall be added to that unpaid compensation an amount equal to 25 percent of the unpaid installment. The additional amount shall be paid at the same time as, but in addition to, the compensation, unless review of the compensation order making the award as provided under AS 23.30.008 and an interlocutory injunction staying payments is allowed by the court. The additional amount shall be paid directly to the recipient to whom the unpaid compensation was to be paid.

....

(h) The board may upon its own initiative at any time . . . cause the medical examinations to be made, or hold the hearings, and take the further action which it considers will properly protect the rights of all parties.

....

(p) An employer shall pay interest on compensation that is not paid when due. Interest required under this subsection accrues at the rate specified in AS 09.30.070 (a) that is in effect on the date the compensation is 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).

AS 23.30.170. Collection of defaulted payments. (a) In case of default by the employer in the payment of compensation due under an award of compensation for a period of 30 days after the compensation is due, the person to whom the compensation is payable may, within one year after the default, apply to the board making the compensation order for a supplementary order declaring the amount of the default. After investigation, notice, and hearing, as provided in AS 23.30.110, the board shall make a supplementary order declaring the amount of the default. The order shall be filed in the same manner as the compensation order.

(b) If the payment in default is an installment of the award, the board may, in its discretion, declare the whole of the award as the amount in default. The applicant may file a certified copy of the supplementary order with the clerk of the superior court. The supplementary order is final. The court shall, upon the filing of the copy, enter judgment for the amount declared in default by the supplementary order if it is in accordance with law. Any time after a supplementary order by the board, the attorney general, when requested to do so by the commissioner, shall take appropriate action to assure collection of the defaulted payments.

(c) Review of the judgment may be had as in a civil action for damages. Final proceedings to execute the judgment may be had by writ of execution. The court shall modify the judgment to conform to a later compensation order upon presentation of a certified copy of it to the court.

AS 23.30.175. Rates of compensation. (a) The weekly rate of compensation for disability or death may not exceed the maximum compensation rate, may not be less than the 22 percent of the maximum compensation rate, and initially may not be less than \$110. . . .

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

AS 23.30.190. Compensation for permanent partial impairment; rating guides. (a) In case of impairment partial in character but permanent in quality, and not resulting in permanent total disability, the compensation is \$177,000 multiplied by the employee's percentage of permanent impairment of the whole person. . . .

AS 23.30.220. Determination of spendable weekly wage. (a) Computation of compensation under this chapter shall be on the basis of an employee's spendable weekly wage at the time of injury. An employee's spendable weekly wage is the

employee's gross weekly earnings minus payroll tax deductions. An employee's gross weekly earnings shall be calculated as follows:

(1) if at the time of injury the employee's earnings are calculated by the week, the weekly amount is the employee's gross weekly earnings;

....

(5) if at the time of injury the employee's earnings have not been fixed or cannot be ascertained, the employee's earnings for the purpose of calculating compensation are the usual wage for similar services when the services are rendered by paid employees;

....

In *Gilmore v. Alaska Workers' Compensation Board*, 882 P.2d 922; 929 (Alaska 1994) (superseded by statute as stated in *Dougan v. Aurora Elec., Inc.*, 50 P.3d 789; 797 (Alaska 2002), a former version of the statute was held unconstitutional as applied because it created large differences in compensation between similarly situated injured workers, bore no relationship to the goal of accurately calculating an injured employee's lost wages for the purposes of determining his or her compensation, and was unfair to workers whose past history does not accurately reflect their future earning capacity. An amended version of the statute corrected those problems by providing a variety of formulas for differing employment situations. *Dougan* at 797. The Alaska Supreme Court later stated, "[T]he first question under *Gilmore* is not whether an award calculated according to [the statute] is 'fair.' Rather, it is whether a worker's past employment history is an accurate predictor of losses due to the injury." *Thompson v. United Parcel Service*, 975 P.2d 684; 688 (Alaska 1999).

A primary purpose of workers' compensation is to accurately predict what a worker's wages would have been but for the injury. *Thompson* at 689; *Bauder v. Alaska Airlines, Inc.*, 52 P.3d 166 (Alaska 2002) (citing *Thompson*). The statutory formulas based on historical earnings must be applied when past earnings are an accurate predictor of future wage loss due to an injury. *Id.* A party must show substantial evidence that past wages are inaccurate predictors of future earning capacity in order to deviate from the statutory formula based on historical earnings. *Id.* at 688. The statutory formula that should be applied is the one that best fits an employee's circumstances. *Wasser & Winters Co., Inc., v. Linke*, AWCAC Dec. No. 09-033 (September 7, 2010).

Penalty assessment against an employer, for failure to pay compensation “payable without an award,” was improper when the employer was paying a lower compensation rate in good faith and the Board subsequently calculated a higher compensation rate. *Phillips v. Nabors Alaska Drilling, Inc.*, 740 P.2d 457 (Alaska 1987).

8 AAC 45.084. Medical travel expenses. (a) This section applies to expenses to be paid by the employer to an employee who is receiving or has received medical treatment.

(b) Transportation expenses include

....

(2) the actual fare for public transportation if reasonably incident to the medical examination or treatment

8 AAC 45.142. Interest. (a) If compensation is not paid when due, interest must be paid at the rate established in AS 45.45.010 for an injury that occurred before July 1, 2000, and at the rate established in AS 09.30.070(a) for an injury that occurred on or after July 1, 2000. If more than one installment of compensation is past due, interest must be paid from the date each installment of compensation was due, until paid. If compensation for a past period is paid under an order issued by the board, interest on the compensation awarded must be paid from the due date of each unpaid installment of compensation.

(b) The employer shall pay the interest

(1) on late-paid time-loss compensation to the employee or, if deceased, to the employee's beneficiary or estate;

(2) on late-paid death benefits to the widow, widower, child or children, or other beneficiary who is entitled to the death benefits, or the employee's estate;

(3) on late-paid medical benefits to

(A) the employee or, if deceased, to the employee's beneficiary or estate, if the employee has paid the provider or the medical benefits;

(B) to an insurer, trust, organization, or government agency, if the insurer, trust, organization, or government agency has paid the provider of the medical benefits; or

(C) to the provider if the medical benefits have not been paid.

8 AAC 45.177. Claims against the workers' compensation guaranty fund.

....

(c) A workers' compensation claim shall be filed against the fund within the same time and in the same manner as a claim filed against the employer in accordance with AS 23.30.105, AS 23.30.110, and 8 AAC 45.050. The division shall serve the claim upon the fund's administrator and advise the parties that copies of all future documents filed with the division are also to be served upon the fund's administrator.

(d) The fund is subject to the same claim procedures under the Act as all other parties.

(e) The fund may not be obligated to pay the injured worker's claim unless the (1) employee and employer stipulate to the facts of the case, including that the employee's claim is compensable, which has the effect of an order under 8 AAC 45.050(f), or the board issues a determination and award of compensation; and (2) the employer defaults upon the payment of compensation for a period of 30 days after the compensation is due.

(f) In case of default by the employer in the payment of compensation due under an award and payment of the awarded compensation by the fund, the board shall issue a supplementary order of default. The fund shall be subrogated to all the rights of the employee and may pursue collection of the defaulted payments under AS 23.30.170. . . .

ANALYSIS

1) What is Employee's compensation rate and how much TTD is owed under *Morales I*?

Statutory formulas based on historical earnings must be applied when past earnings are an accurate predictor of future wage loss due to an injury. *Thompson*. Here, however, both Employee and the Fund agree that Employee's compensation rate cannot or should not be calculated using a statutory formula. Meanwhile, Hughes still disputes Employee's employee status, an issue that was decided in *Morales I*, and contends it is not aware of the \$500 figure that is being "thrown around," and is also not aware of any tips Employee may have earned. Since Employee has testified that McElheny offered to pay him more than \$500 per week for his help at Howling Bay, there exists an initial factual dispute between Employer and Employee about the amount of his pay. This dispute was not previously resolved in *Morales I* and is one to which the presumption of compensability applies. *Sokolowski*.

Without regard to credibility, Employee attached the presumption with his own testimony in *Morales I* and here that McElheny promised to pay him more than \$500 per week. *Cheeks*. Again, without regard to credibility, Employer rebutted the presumption with Hughes's and McElheny's testimony in *Morales I* that there were never any discussions about paying Employee for his work. *Miller*. Employee is now required to prove the amount McElheny offered to pay him for his help at Howling Bay by a preponderance of the evidence. *Koons*.

Little weight is afforded to Hughes's contention that she is not aware of the \$500 rate of pay often mentioned during this litigation or her testimony in *Morales I* that there were never any discussions about Employee's pay because, according to her other testimony in *Morales I*, McElheny was the person who had conversations with Employee about coming back to Alaska, not her. Therefore, it is understandable that she would not have been aware of the amount of money McElheny offered to pay Employee. *Rogers & Babler*. Also, as in *Morales I*, the text exchanges between Employee and Hughes on May 16-17, 2022, are revealing. In Hughes's message, she acknowledged that she and Employee had a verbal agreement and contended that Employee did not fulfill his portion of it. Meanwhile, Employee's message shows that he was expecting to be paid for his work at Howling Bay. These messages diminish the credibility of her testimony that there were never any discussions about paying Employee. AS 23.30.122; *Smith*.

In contrast, the panel in *Morales I* deemed Employee's testimony credible at that hearing, and his testimony at this one is credible as well, in part because of its consistency with *Morales I*, including on the issue of the amount of pay. AS 23.30.122; *Smith*. Based on this credibility, Employee has met his burden and proven that McElheny offered to pay him more than \$500 for his work at Howling Bay. *Saxton*. Incidentally, Hughes's contention that she is not aware of any tips Employee may have earned is not the same as her contending that Employee did not earn any tips. Therefore, her contention in this regard does not create a factual dispute even if it had been made as a statement while testifying. *Rockney*. The issue of Employee's compensation rate will now be examined.

Employee, who came to work for McElheny and Hughes from Chile, does not have an earnings history with Howling Bay because McElheny and Hughes never paid him. He also contends his

prior earnings from Chile should not be used because they were earned in a different country, with different economic conditions, and doing different work. Indeed, Employee's testimony regarding his work as a kinesiologist in Chile versus feeding and cleaning sled dogs in Alaska, and the significant changes to his relative Chilean earnings in US dollars over time due to currency rate fluctuations, show his wages in Chile would not be an accurate predictor of his future wage loss in Alaska. *Thompson*. Thus, statutory formulas that rely on historical earnings, such as § .122(a)(1), are not useful in this instance. The statute's catch-all provision at § .122(a)(5), which determines a spendable weekly wage based on the "usual wage for similar services when the services are rendered by paid employees," is not useful either because neither Employee nor the Fund are aware of a usual wage for the type of work Employee performed at Howling Bay, and Employer contends that similar services are typically provided by volunteers, not paid employees.

Employee proposes factors he thinks would be fair to consider in determining his compensation rate, which he contends should be calculated based on a \$1,000 gross weekly wage. However, as the Fund observes, the only consistent and reliable evidence of a wage amount in the record is Employee's testimony that McElheny offered to pay him \$500 per week. The fact that McElheny may have couched his offer by stating "at least \$500 per week," or "more than \$500 per week," does not increase the \$500 weekly amount since such statements would have been puffery rather than promises to pay a specific amount greater than \$500. Employee also testified he would occasionally get a \$20 tip. Though he was not specific on the frequency of his tips, given that some of his duties included hanging out with the guests after the dogsled tours, tending the bonfire and keeping the tourists happy, and given that there were two tours per day, it is not unreasonable to conclude that he would get at least one tip per week. *Rogers & Babler*.

The only other compensation reliably supported by the evidentiary record is the provision of Employee's room. When he left Howling Bay after the injury, Employee was required to pay \$1,300 monthly rent in Fairbanks and he now pays \$1,100 monthly rent in Anchorage. Splitting the difference between these two amounts results in \$1,200 per month for room, or \$276.92 per week. Consequently, Employee's compensation rate will be calculated based on a \$796.92 gross weekly wage, which includes Employee's weekly pay, his tip and his room. Not only is this

amount based on factors that Employee considers fair, but it is also the best predictor of his losses due to the injury that can be derived from the evidentiary record. *Gilmore; Thompson*.

Morales I determined that Employee was entitled to TTD from May 9, 2022 until June 16, 2022, a period of 37 days. This amounts to 5.29 weeks of TTD. With a gross weekly wage of \$796.92, the Workers' Compensation online "Benefit Calculator" shows Morales's weekly TTD benefit is 531.44. Therefore, he is owed \$2,811.32 in TTD compensation.

2)Should Employee be granted a prospective award of medical costs for the treatment he seeks?

Injured workers must weigh many variables when deciding whether to pursue a certain course of medical treatment. An important treatment consideration in many cases is whether recommended treatment is compensable under the Act. Thus, an injured worker is entitled to a hearing and a prospective determination on whether medical treatment for his injury is compensable. *Summers*. Employee sought and was granted prospective medical costs in *Morales I*, which included his request for authorization to return to McKinley Orthopedics where he previously treated, and a neurological consultation and EMG testing. In the meantime, Employee moved to Anchorage and desires to pursue medical treatment there. Though he does not specifically state, Employee is requesting modification of *Morales I*.

Continuing jurisdiction over a compensation matter is conferred by law upon this panel, and the panel has broad authority to modify previous decisions. *Lynn; Sulkosky*. Here, Employee seeks an order for Employer, specifically Hughes, and the Fund to authorize 1) ongoing conservative treatment with a local orthopedist or physiatrist of his choosing, 2) possible nerve testing and evaluation if the new attending physician still considers it necessary, and 3) a PPI evaluation once his physician determines that he is medically stable. His first two requests were previously granted in *Morales I* while he was treating in Fairbanks. Since a change in conditions, such as moving to Anchorage, is a basis for modification, it is logical that Employee should now be able to pursue the same treatment in Anchorage that he was previously granted in Fairbanks. *Rogers & Babler*. The only new medical cost he seeks is a PPI evaluation once he is medically stable.

In most litigated workers' compensation cases, an employer medical evaluation (EME) is performed that includes a PPI rating. *Rogers & Babler*. Here, however, due to Employer being uninsured, one has not been. PPI is a valuable benefit to which Employee may be entitled and he should receive a PPI evaluation once he is medically stable. AS 23.30.190(a); AS 23.30.135(a); AS 23.30.155(h). The cost of the PPI evaluation, when performed, shall be paid by Hughes. AS 23.30.020; AS 23.30.045; AS 23.30.095(a); AS 23.30.097(f).

As a concluding note, although the Fund opposes preauthorizing Employee's medical treatment because it was found compensable in *Morales I*, there are practical obstacles to Employee obtaining his long-delayed treatment. Specifically, medical providers, who are unaware of this case's litigation status, including what medical treatments may have been controverted or adjudicated as compensable or not, desire assurances that they will be paid for their services prior to rendering them. In fact, it was the lack of such assurances that led to Employee being unable to attend a neurological consultation and EMG testing when he was in Fairbanks. Therefore, Hughes and the Fund will be ordered to preauthorize the medical treatment granted in this decision, including a PPI evaluation. AS 23.30.155(h); AS 23.30.020; AS 23.30.045; AS 23.30.095(a). As Hughes will likely refuse to preauthorize treatment, given her history of ignoring her responsibilities under *Morales I*, the Fund is ordered to preauthorize the treatment awarded in *Morales I* and this decision regardless of what Hughes may or may not do.

3)Is Employee entitled to transportation costs?

Employee contends he has not been reimbursed for medical transportation costs and acknowledges he does not have receipts. He seeks \$138 as a reasonable transportation reimbursement. The Fund is willing to stipulate to Employee's claimed amount, but Hughes is not and contends Employee's transportation costs are not her concern or responsibility. Her objection raises a legal issue rather than a factual one.

Contrary to Hughes's assertions, she is responsible for Employee's medical transportation costs. AS 23.30.020; AS 23.30.030; AS 23.30.045(a); AS 23.30.097(g); 8 AAC 45.084(b)(2). Employee established his entitlement to medical benefits and related transportation costs under the

presumption analysis in *Morales I* and has proven his claimed amount of \$138 here. Therefore, he will be awarded the reimbursement he seeks.

4) Is Employee entitled to penalty?

Employee specifically contends he is owed a late-payment penalty on past TTD benefits under AS 23.30.155(f) and this amount should be added to the amount Employer and Hughes are in default. That subsection provides, if compensation payable under the terms of an award is not paid within 14 days, a 25 percent penalty is imposed. *Morales I* ordered Hughes to pay TTD from May 9, 2022 until June 16, 2022. Hughes acknowledged she has not made any benefit payments to Employee.

A penalty shall be added when compensation payable under the terms of an award is not paid within 14 days. AS 23.30.155(f). It is undisputed that Hughes did not pay TTD within 14 days of *Morales I*. Since Employee's compensation rate is only now being determined, *Phillips* is consulted for guidance. In that case, the Court held that a penalty was improper under AS 23.30.155(e) when the employer was paying a lower compensation rate in good faith and a panel subsequently awarded a higher compensation rate. Here, Hughes did not pay Employee any compensation, even minimum compensation under AS 23.30.175(a), which might have potentially shielded her from a penalty under *Phillips*. Since she failed to pay Employee at least minimum compensation, a penalty of \$702.83 ($\$2,811.32 \times .25$) will be awarded. Although Hughes is obligated to pay this penalty, this obligation does not extend to the Fund. *West*.

5) Is Employee entitled to interest?

Employee seeks an award of interest on unpaid TTD benefits as well as unpaid attorney fees and costs from *Morales I*. An employer is required to pay interest on compensation that is not paid when due. AS 23.30.155(p). *Morales I* previously ordered interest on TTD benefits from May 9, 2022 to June 16, 2022, and interest will be ordered here on the attorney fees awarded in *Morales I. Rawls*.

6) Is Employee entitled to a supplementary order declaring the amount in default?

If an employer defaults in the payment of compensation due under an award of compensation for 30 days after the compensation is due, an employee may, within one year after the default, apply for a supplementary order declaring the amount in default. AS 23.30.170. Compensation payable under *Morales I*, dated September 30, 2024, was due on that date. Thirty days from that date is October 30, 2024. Hughes acknowledged she has not paid any benefits to Employee. On June 27, 2025, Employee filed a claim to “enforce D&O,” which he later clarified was a claim for a supplementary order declaring the amount in default, well within one year of September 30, 2024. Accordingly, Employee’s request was timely, and he is entitled to a supplementary order declaring the amount of Hughes’s default, which will issue as a separate decision and order (D&O).

7) Is Employee entitled to additional attorney fees?

Employee seeks awards of a reasonable attorney fee and costs. Since Hughes resisted providing benefits by not paying those ordered in *Morales I*, which necessitating this hearing, an award of a reasonable attorney fee is appropriate. *Moore*. Pursuant to *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. *Bignell*. Similarly, Employee’s attorney entered his appearance on May 25, 2022, and no evidence was presented that would indicate that the nature and length of Employee’s professional relationship with his attorney warrants any consideration in the determination of a reasonable fee. Rule 1.5(a)(6).

Employee’s lawyer has billed his attorney time at \$520 per hour. His attorney has previously been awarded fees based on that hourly rate by both a hearing panel and the Commission, and neither Hughes nor the Fund objected to that rate, or to the hours billed. Employee’s attorney is well-known among both the workers’ compensation bar and workers’ compensation hearing officers. He has successfully represented both employers and injured workers for two decades. Rule 1.5(a)(7). Bredesen’s hourly billing rate is comparable to billing rates customarily awarded to similarly experienced attorneys in workers’ compensation cases. Rule 1.5(a)(3). Virtually all fees in workers’ compensation cases are contingent, and here, Employee first had to prevail on the employer-employee relationship issue, the Fund’s statutory defense contending that he was part-time or transient help, and McElheny’s defense based on his immigration status, before the merits of his claim could be decided. Employee’s success on each of these issues was not certain. His

attorney's hourly billing rate, though lofty, is not inappropriate given the contingent nature of the representation. Rule 1.5(a)(8).

Issues such as medical costs, penalty, interest and attorney fees are often litigated. Controlling law and relevant decisional authorities for issues concerning the benefits awarded here are well known among workers' compensation practitioners and can be readily ascertained by other attorneys. However, other issues litigated, such as departure from the statutory formulas for a compensation rate and pursuing a supplemental order declaring the amount of a default are seldom litigated and required additional preparation and briefing by Employee's attorney. The complexity of litigation, including the time and skills required for prosecution of Employee's claim, was slightly above average as reflected by these additional issues. Rule 1.5(a)(1). Additionally, nearly a year and a half have passed since the issuance of *Morales I*, and benefits ordered by that decision have yet to be paid. This necessitated the filing of an additional claim and an additional hearing being conducted. Thus, the circumstances of this case have imposed extra time limitations on Employee's attorney. Rule 1.5(a)(5). On the other hand, claimant attorneys are rarely, if ever, precluded from other employment due to conflicts of interest, and Employee is not the type of unpopular client that would permit charging a higher fee. Rule 1.5(a)(2). Neither would taking Employee on as a client have deprived his attorney of long-term future employment since, unfortunately, workers are continuously being injured on the job. *Id.*

Employee was successful in obtaining a "fair" compensation rate and in securing modification of previously ordered medical costs. These are obviously valuable benefits under the Act. He also secured a modest award of transportation costs, a penalty and interest awards, and a supplemental order declaring the amount of a default. In short, Employee successfully obtained every benefit he sought at hearing. Rule 1.5(a)(4). Considering the amounts involved and the results obtained, along with the other previously discussed factors under Rule 1.5, Employee should be awarded all his claimed attorney fees and costs. *Id.*; *Bignell*.

CONCLUSIONS OF LAW

1) Employee's compensation rate and the amount of TTD benefits owed under *Morales I* are set forth above.

- 2) Employee should be granted a prospective award of medical costs for the treatment he seeks.
- 3) Employee is entitled to transportation costs.
- 4) Employee is entitled to a penalty.
- 5) Employee is entitled to interest.
- 6) Employee is entitled to a supplementary order declaring the amount in default.
- 7) Employee is entitled to additional attorney fees.

ORDERS

- 1) Hughes shall pay Employee's medical providers directly for all properly documented medical costs awarded by this decision.
- 2) Hughes and the Fund shall preauthorize medical costs awarded by this decision with Employee's providers in accordance with this decision.
- 3) Hughes shall pay Employee \$138 in transportation costs.
- 4) Hughes shall pay Employee a penalty of \$702.83 on late-paid TTD benefits.
- 5) Hughes shall pay Employee's attorney interest on attorney fees ordered in *Morales I*.
- 6) Hughes shall pay Employee's additional attorney fees of \$6,188.
- 7) The Fund shall pay TTD ordered in *Morales I* in the amount of \$2,811.32, plus interest from the dates the installments were due.
- 8) The Fund shall pay Employee's attorney fees ordered in *Morales I*.
- 9) Should Employer fail to pay the above amounts within 30 days of this decision, the Fund shall pay transportation costs, interest on attorney fees ordered in *Morales I*, and additional attorney fees ordered by this decision.

Dated in Fairbanks, Alaska on March 23, 2026.

ALASKA WORKERS' COMPENSATION BOARD

_____/s/
Robert Vollmer, Designated Chair

unavailable for signature
Sarah Lefebvre, Member

_____/s/
Lake Williams, Member

If compensation is payable under terms of this decision, it is due on the date of issue. A penalty of 25 percent will accrue if not paid within 14 days of the due date, unless an interlocutory order staying payment is obtained in the Alaska Workers' Compensation Appeals Commission.

If compensation awarded is not paid within 30 days of this decision, the person to whom the awarded compensation is payable may, within one year after the default of payment, request from the board a supplementary order declaring the amount of the default.

APPEAL PROCEDURES

This compensation order is a final decision. It becomes effective when filed in the office of the board unless proceedings to appeal it are instituted. Effective November 7, 2005 proceedings to appeal must be instituted in the Alaska Workers' Compensation Appeals Commission within 30 days of the filing of this decision and be brought by a party in interest against the boards and all other parties to the proceedings before the board. If a request for reconsideration of this final decision is timely filed with the board, any proceedings to appeal must be instituted within 30 days after the reconsideration decision is mailed to the parties or within 30 days after the date the reconsideration request is considered denied due to the absence of any action on the reconsideration request, whichever is earlier. AS 23.30.127.

An appeal may be initiated by filing with the office of the Appeals Commission: 1) a signed notice of appeal specifying the board order appealed from and 2) a statement of the grounds upon which the appeal is taken. A cross-appeal may be initiated by filing with the office of the Appeals Commission a signed notice of cross-appeal within 30 days after the board decision is filed or within 15 days after service of a notice of appeal, whichever is later. The notice of cross-appeal shall specify the board order appealed from and the ground upon which the cross-appeal is taken. AS 23.30.128.

RECONSIDERATION

A party may ask the board to reconsider this decision by filing a petition for reconsideration under AS 44.62.540 and in accord 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.

