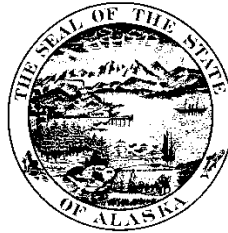


ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

DAVID MITCHELL,)
)
Employee,)
Claimant,) INTERLOCUTORY
) DECISION AND ORDER
v.)
) AWCB Case No. 202304290
BERING STRAIT SCHOOL DISTRICT,)
) AWCB Decision No. 26-0026
Employer,)
and) Filed with AWCB Anchorage, Alaska
) on April 2, 2026
ALASKA PUBLIC ENTITY)
INSURANCE,)
)
Insurer,)
Defendants.)
)

David Mitchell's (Employee) August 16, 2025 petition for modification and Bering Strait School District's and Alaska Public Entity Insurance's (Employer) August 26, 2025 petition for dismissal, were heard in Anchorage, Alaska on March 3, 2026, a date selected on December 5, 2025. A December 5, 2025 stipulation by the parties gave rise to this hearing. Employee appeared, represented himself, and testified on his own behalf. Attorney Colby Smith appeared and represented Employer. Employee's November 4, 2025 petition for disqualification was also scheduled to be heard but he withdrew the petition when the hearing began. The record closed at the hearing's conclusion on March 3, 2026. A previous decision, *Mitchell v. Bering Strait School Dist. (Mitchell I)*, AWCB Dec. No. 25-0008 (February 11, 2025), held the Employer Medical Evaluators' (EME) reports should not be stricken from the record and the Second Independent Medical Evaluation (SIME) panel should include a neurologist.

ISSUES

Employee contends there was a mistake of fact over what records were sent to the EME physicians and contends there is new evidence that Employer deliberately withheld records from the EME physicians. He contends *Mitchell I* should be modified to “hold [Employer] accountable” for its illegal behavior.

Employer contends this case involved one and a half years of civil litigation before it became a workers’ compensation issue, so it had no medical records “banked” and was “playing catch-up” on obtaining medical records when the case began. It acknowledges that faxed dental records were difficult to read and contends that obtaining records from Cedars Sinai Medical Center was delayed because Cedars Sinai required its own release of information form. Regarding modification, Employer contends Employee has not treated with a neurologist since 2022 and has not treated with an orthopedist since January of 2023. It contends, since Employee is not actively undergoing any neurological or orthopedic treatment, and since there are no disputes involving these medical specialties, the SIME should only include a dentist.

1) Should *Mitchell I* be modified?

Employer contends Employee indicated at a prehearing conference that he was not going to attend the SIME, then he contacted SIME physicians even though there are regulations that prohibit such contact. It contends Employee has demonstrated a very strong tendency that, unless things are the way he wants them, he is not going to participate. Employer contends, since Employee’s defiance of attending a Board ordered SIME was clearly intentional, his claims should be dismissed. Alternatively, it contends Employee should be ordered to reimburse it \$7,753.75 for no-show fees it incurred from the missed SIME appointments.

Employee contends he repeatedly tried to contact the SIME scheduler to inform her that he was unable to attend SIME appointments, and he also stated that he was unable to attend the appointments in emails to the Board, so his claims should not be dismissed.

2) Should Employee’s claims be dismissed for not attending the SIME appointments?

FINDINGS OF FACT

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

- 1) On November 14, 2021, Employee slipped and fell, injuring his neck, back, shoulder and leg, during his employment as a teacher in Savoonga, Alaska. (First Report of Injury, March 31, 2023).
- 2) On November 15, 2021, Employee reported his injuries to Employer, including injuries to his right shoulder, neck, back, head, left leg, bilateral elbows, and right ankle. He did not report dental injuries. (Employee email, November 15, 2021).
- 3) After his slip and fall, Employee sought treatment for memory difficulty, dizziness, nausea, occasional blurry vision, headache, right shoulder pain, left leg pain, neck pain, and left leg numbness. (Torres chart notes, November 16, 2021; ED report, November 20, 2021; Stearns chart notes, October 11, 2022). He also sought dental treatment. (Dental chart notes, November 19, 2021; November 21, 2021; November 22, 2021; December 22, 2021; December 28, 2021; March 24, 2022; March 29, 2022; April 1, 2022; May 8, 2022; May 15, 2022; May 29, 2022; June 12, 2022; June 26, 2022; July 17, 2022; July 31, 2022; [month and date illegible], 2022; August 21, 2022; September 4, 2022; September 18, 2022; October 23, 2022; November 6, 2022; November 29, 2022; December 18, 2022; January 15, 2023; January 29, 2023; February 12, 2023; February 26, 2023; March 12, 2023; April 6, 2023; April 23, 2023).
- 4) Employer undertook EMEs with a dentist, an orthopedic surgeon and a neurologist and controverted benefits based on the EME reports. (Klass report, November 30, 2023; Davidson report, December 1, 2023; Bell report, June 17, 2024; Controversion Notices, March 4, 2024; July 1, 2024).
- 5) On December 20, 2024, Employer filed an SIME form that lists both express and implied disputes between its EME physicians, including its orthopedic surgeon, and Employee's medical providers. (SIME Form, December 19, 2024).
- 6) On January 8, 2025, the parties agreed the SIME should be undertaken with a panel including an orthopedist and a dentist. They further agreed to a written records hearing on Employee's contention that the EME reports should be stricken from the medical record and his contention that the SIME panel should include a neurologist. (Prehearing Conference Summary, January 8, 2025).

7) On February 11, 2025, *Mitchell I* addressed Employee's contentions that the EME reports were unreliable because the evaluations were performed too long after the injuries occurred, because the EME physicians had incomplete medical records, and because the EME physicians did not perform thorough physical examinations. It concluded Employee's contentions did not affect the admissibility of the reports but rather the evidentiary weight they should be afforded and encouraged Employee to request opportunities to cross-examine the reports' authors. The decision held the EME reports should not be stricken from the record because they were relevant evidence and held the SIME panel should include a neurologist because of medical disputes between Employer's neurologist, Lynn Bell, MD, and Employee's providers on issues of causation, medical stability, and medical treatment. (*Mitchell I*).

8) *Mitchell I's* factual findings included Employer transmitting additional dental records to the EME dentist on February 9, 2024, and the EME dentist issuing a March 4, 2024 addendum report based on his review of those records. (*Mitchell I*).

9) Between March 12, 2025 and May 20, 2025, Employer served Employee with the SIME medical records. (Affidavits of Service, March 12, 2025; April 8, 2025; May 7, 2025; May 19, 2025; May 20, 2025).

10) On July 11, 2025, the Workers' Compensation Division (Division) notified Employee of his SIME appointments with Leon Barkodar, MD, on August 14, 2025; Ardalan Nourian, MD, on August 15, 2025; and Ori Levy, DDS on August 25, 2025. (Employee Notification Letters, July 11, 2025).

11) On August 4, 2025, Employee wrote a letter to the Board and contended he did not approve the SIME binders, and the SIME dates were not discussed with him prior to scheduling. He also wrote that he had been planning on visiting his daughter in Texas for over a year and he would not be returning until mid-September 2025. (Mitchell letter, undated).

12) An August 6, 2025 prehearing conference summary recorded the following:

Discussions:

The conference's purpose was Employee's July 18, 2025 request for conference.

Employee contended he does not understand why the SIME is moving forward and he does not know what is included in the SIME binders. He also contended that Employer is "not cooperating" and the Fairbanks office does not return his calls.

The designee explained the Fairbanks office is not currently staffed with a workers compensation officer or a workers' compensation technician and suggested Employee consult with the workers' compensation technicians in other offices.

Employee contended when he calls the workers' compensation technician in Juneau, he is told the technician does not want to get involved with his case and when he calls the workers' compensation technician in Anchorage, he is told that his case is a Fairbanks case. The designee asked Employee to confirm his contentions regarding the workers' compensation technicians for the designee's notes, and Employee denied making the above statements concerning the workers' compensation technicians and contended the designee should take better notes.

Employee contended the workers' compensation technician in Juneau is reluctant to talk to him and contended he can't get a hold of any workers' compensation technicians, so advising him to call a technician does not make any sense.

Employee contended the SIME should be cancelled and contended the designee had authority to cancel it. The designee advised Employee that a request for board action is made by filing a petition and further advised Employee that the designee did not have authority to cancel an SIME at a prehearing conference, especially based on a petition that had not yet been filed. Employee contended that the designee is not treating him fairly.

Employer contended the SIME is moving forward based on a February 11th board order and contended the SIME will be undertaken at great expense to Employer, so it would like to know if Employee is going to attend the SIME appointments. Employee contended he thinks it is unfair for him to attend the SIME appointments, and he shouldn't have to attend them. Employer repeatedly asked Employee if he was going to attend the SIME appointments and Employee contended that he has made other plans and contended he does not have to answer that question. Employer contended if Employee was not going to attend the SIME appointments, it would be filing a petition to dismiss and contended the December 4, 2025 hearing date should be vacated.

Action:

Employee is cautioned, willful refusal to comply with a board order may result in dismissal of his claim. AS 23.30.135(a); AS 23.30.155(h); AS 23.30.108(c).

Employee is encouraged to seek the assistance of a workers' compensation technician: [Technician's name], 907-465-6048.

....

(Prehearing Conference Summary, August 6, 2025 (bold and underline in original)).

13) On August 6, 2025, Employee called a workers' compensation technician following the prehearing conference because he thought it was not fair. He also contended that he did not know

what records were sent to the SIME physicians. (Incident Claims and Expense Reporting System (ICERS) event entry, August 6, 2025).

14) On August 7, 2025, Employee wrote the Board and contended Employer's attorney was using "bad faith to cover up fraud." He also stated:

I have repeatedly called as instructed in the letter from July 11, 2025. I called [Workers' Compensation Officer] at [telephone number]. She has not returned at least 4 phone calls. The letters instructed me to call 'immediately'. I have left numerous messages starting the day after receiving the ordering of the SIME. I have been ignored. . . .

In the letter I received from the Anchorage office informing me about the 3 SIME appointments I followed all instructions to make workers comp aware that I could not make the appointments based on previous commitments. Now I have no idea what I should have done. . . .

(Employee letter, undated).

15) On August 9, 2025, Employee filed a letter to the Board. The email transmitting his letter stated, "I was instructed to contact the other workers comp offices about the SIME [sic] and not being able to attend the appointments." He also contended the SIME appointments were scheduled without "due process," stated he questioned what documents would be provided to the SIME physicians, stated he questioned whether the SIME binders were complete, contended an affidavit was not signed, contended he was never provided with an affidavit, and contended Employer's attorney "manipulated" the SIME records, committed "criminal actions," committed "fraud," was "lying and withholding records," and "using bad faith." He also wrote:

The Injured [sic] worker cannot attend the scheduled appointments because of prior commitments. . . .

[Employee] has informed, as instructed, three different workers' comp offices he cannot and would not attend the current scheduled SIME.

[Employee] has complied with the instructions about missing an appointment. As stated in the document sent, '[H]owever, if you miss the appointment and do not provide advance notice, you may pay assessed fees for failure to attend.' [Employee] has given lots of notice.

This letter is another record of this notice that he cannot attend the exams. . . .

(Employee letter, August 9, 2025).

16) On August 11, 2025, Employee filed a letter to the Board. His email transmitting the letter stated: “Good morning. Today started very early for me. I need to make sure there is no doubt about not attending the SIME and giving notice” (Employee email, August 11, 2025). In a separate email, he wrote:

I am resending [a letter] on Monday August 11, 2025 to make sure it was received and confirm it has been filled [sic] (matter of record). It also served as another notice that the injured worker cannot attend the SIME scheduled exams. Please file this Matter of Record. It is in PDF. It pertains to the SIME. I am giving notice that I cannot attend the scheduled exams as instructed ion [sic] the documents.

Employee also contended Employer’s attorney withheld “37 blank/manipulated” documents. (Employee email, August 11, 2025).

17) On August 12, 2025, Employee emailed the Division and wrote:

Good morning. I want to be the first message in WC inbox in hope that this message is not filed and forgotten. I decided time is of the essence. I have made [Employer’s attorney] and workers comp aware in plenty of time that I cannot make the SIME appointments.

He then expressed his dissatisfaction with Employer’s “bad faith” and “lies.” (Employee email, August 12, 2025).

18) On August 14, 2025, Employee emailed the Division and Employer’s attorney and stated he had contacted the SIME physicians to cancel his appointments. (Mitchell email, August 14, 2025). A staff member for Drs. Barkodar and Nourian denied having received any cancellations. (Lopez email, August 14, 2025).

19) Employee failed to attend any of the SIME appointments. (MDpanel Invoices, August 19, 2025; Macaldo letter, August 25, 2025; Williams email, August 25, 2025).

20) Employer was charged \$4,000 in no show fees and record review fees for Employee’s missed SIME appointment with Dr. Nourian, \$3,250 in no show fees and record review fees for Employee’s missed appointment with Dr. Barkodar, and a \$503.75 missed appointment fee for Employee’s missed appointment with Dr. Levy. (MDpanel Invoices, August 19, 2025; Macaldo letter, August 25, 2025; Health Insurance Claim Form, August 26, 2025).

21) On August 18, 2025, Employee filed a petition to modify *Mitchell I*. He contended the petition was based on factual mistakes in *Mitchell I*, specifically, “[t]here was a misunderstanding

on what medical records that [sic] were provided to the EME.” He contended the mistakes were “verified” through “NEW EVIDENCE,” and “put together in the BINDERS.” He also clarified the specific documents that were not provided to the EMEs included dental records and the Emergency Department records from Cedars Sinai Medical Center. (Employee Petition, August 16, 2025).

22) On August 26, 2025, Employer petitioned for dismissal of Employee’s claim based on him not attending the SIME appointments. (Employer Petition, August 26, 2025).

23) On September 15, 2025, Employee petitioned to change venue from Fairbanks to Anchorage. (Employee Petition, September 25, 2025).

24) On November 4, 2025, prior to a prehearing conference that same day, Employee petitioned for the disqualification of Hearing Officer Vollmer. (Employee Petition, November 4, 2025). At a prehearing conference, the parties agreed to change venue from Fairbanks to Anchorage and they discussed hearing issues. Employee contended the SIME panel should not include a dentist. Employer contended that the SIME should include only a dentist because an orthopedist and a neurologist are not needed. Employee’s petition to disqualify Hearing Officer Vollmer was added as a hearing issue and a hearing was scheduled on December 4, 2025. (Prehearing Conference Summary, November 4, 2025).

25) On November 7, 2025, Employee filed documentary evidence that totaled 995 pages. Documents from his workers’ compensation file such as pleadings and other filings, medical records, dental records, Employer and Employee injury reports, prehearing conference notices, prehearing conference summaries, EME reports, emails with Employer’s attorney, information releases, copies of workers’ compensation statutes and regulations, and photographs of his injuries and housing, including the deck where he slipped and fell, were included. Other documents included a complaint to the Professional Teaching Practices Commission, emails with Employer, documents from his civil litigation, a union grievance, communications with school district employees regarding his accident, Federal Express receipts, correspondence with his dentist, and written complaints to Employer about his employment evaluations. (Notice of Intent to Rely, November 7, 2025).

26) Employee’s November 7, 2025 evidentiary filing included many duplicates and documents already contained in the agency file. (Observations).

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- 27) On December 4, 2025, the scheduled hearing was continued because there was not a quorum to decide Employee's November 4, 2025 petition for disqualification. (Record).
- 28) On February 10, 2026, Employee filed documentary evidence totaling 617 pages and containing emails with Employer, documents from his civil litigation, and documents from his workers' compensation file, including the Entry of Appearance for Employer's attorney, a letter from Employer's attorney, a copy of *Mitchell I*, a copy of Employer's hearing brief for the instant hearing, a copy of one of his workers' compensation claims, Employer's pleadings, his pleadings, his hearing briefs for the instant hearing, prehearing conference summaries, letters from the Division, emails with the Division, information releases, his letters to Employer's attorney, a hearing notice, emails with Employer's attorney, and letters from the Division rejecting his filings. (Notice of Intent to Rely, February 10, 2026).
- 29) Employee's February 10, 2026 evidentiary filings included many duplicates and documents already contained in the agency file. (Observations).
- 30) Hardcopies of Employee's November 7, 2025 and February 10, 2026 evidentiary filings were produced in binders for the March 3, 2026 hearing. (Observations).
- 31) At the beginning of the hearing on March 3, 2026, Employee withdrew his November 4, 2025 petition for disqualification. (Record).
- 32) At the March 3, 2026 hearing, Employee contended he thinks the EME reports should be "thrown out" and removed from the SIME medical records and contended Employer's attorney "illegally, fraudulently, did not provide [medical records] to avoid paying me out." (Record).
- 33) At the March 3, 2026 hearing, while testifying, Employee denied he asked for a doctor's note from Dr. Torres so he could leave St. Lawrence Island. (Record). Dr. Torres's November 16, 2021 chart notes state, "Patient would like a note from a doctor so he can leave the island and get further workup." (Torres's chart notes, November 16, 2021).
- 34) At the March 3, 2026 hearing, while testifying, Employee denied he refused to have his vitals taken and denied he refused a physical examination with Dr. Torres. (Record). Dr. Torres's November 16, 2021 chart notes state, "Vitals & Measurements refused," "Physical Exam Gen: well-developed, well-nourished nad [sic] Refused further exam." (Torres chart notes, November 16, 2021 (underlines in original)).
- 35) At the March 3, 2026 hearing, while testifying, Employee denied his head did not show signs of trauma when he presented at Cedars Sinai Medical Center. (Record). The Cedars Sinai

Emergency Department (ED) report states, “HENT: Head: Normocephalic and atraumatic. No racoon eyes or Battle’s sign. Comments: **No external signs of trauma.**” (ED Notes, November 20, 2021 (bold in original)).

36) At the March 3, 2026 hearing, Employee contended the SIME should include a dentist, because his jaw still pops; and an orthopedist, because his shoulder still hurts, and a neurologist, because he hit his head and it changed his sleep patterns. He also contended he is in favor of the panel SIME so he can “get a percentage” for his injuries. (Record).

37) Much of Employee’s time testifying was spent pointing out documents in his evidentiary binders to illustrate “side-by-side” dental records that he contends were not sent to the EME dentist. According to him, this is evidence of Employer’s “fraud” and “bad faith.” (Record).

38) At the March 3, 2026 hearing, while testifying, Employee denied calling the SIME physicians to cancel the appointments and stated that his “representation,” the “other Mr. Mitchell,” the “attorney Mr. Mitchell,” called them. He stated, “It wasn’t me. It wasn’t the injured worker. It was my representation.” (Record).

39) At the March 3, 3026 hearing, during Employee’s testimony, the following exchanges took place:

[Hearing Chair]: So, following up with the Board member’s question here, what does that have to do with the SIME?

[Employee]: What does that have to do with the SIME? The SIME, it needs to be modified. The order needs to be modified, correct?

[Hearing Chair]: I don’t know.

[Employee]: Well, of course it does. If they’re doing an illegal –

[Hearing Chair]: should it be modified?

[Employee]: What?

Hearing Chair]: How should the order –

[Employee]: Well, for one, I think that you guys should go back, and you should look at the evidence, you should go back to when they filed an illegal report, and you should hold them accountable for it. And then we should start over again, because if that’s – if they filed an illegal report, and they filed an illegal – they didn’t even file. They filed an illegal non-report. So if you go back to that, and

you hold them accountable, and then you, 19 months later, you go back to when they filed the illegal report, then you go back to when [Employer's attorney] said he has an entrance of appearance, which is – and you hold him accountable, which is May 4th, and you hold him accountable . . . We'll do another IME if [Employer's attorney] [is] not in jail, and they haven't revoked the license of the insurance provider, because that's what should happen.

[Hearing Chair]: So, the modification you seek is to hold Employer accountable?

[Employee]: No, no, don't put words into my mouth. . . . I can see where this is going, and you can play your system and play things. Let me give you the evidence. I don't want to – I don't want to get into a back and forth with you. . . . I think you guys have the ability to do what you're supposed to do, and use your checks and balances, and hold them accountable. . . .

[Hearing Chair]: You just said it again; you want us to hold them accountable.

[Employee]: Yeah.

[Hearing Chair]: So that's the modification?

[Employee]: No, no, no, the modification is here. Okay, dude, this is – like I said, this is pretty complex. You want to make it simple, and you want to save your money, because that's what it looks like to me. Okay, that's what it looks like to me. And based on your other thing, I don't like it. I'll be honest about it. And when I'm done, I'm done. Whatever you guys do, I don't care. You three people have to make up your mind. I do not care what you do. But I do want the modification, because that's my rights, isn't it? My rights is due process, which you're trying to deny part of it now, but that's okay. You want me to wait for a claim so we can push through the SIME. [Employer's attorney] [is] trying to get a dismissal, and you put the dismissal on the same agenda as an SIME modification. How much sense does that make?

[Hearing Chair]: But I'm still not tracking you on what you want modified.

[Employer's Attorney]: I think he wants me in jail.

[Employee]: I think you should go to jail. I think that – I think that you should go to jail. I absolutely think you should go to jail. If I was an injured worker, and I lied and did what you did, and you guys have prevented me from \$55,000 to \$75,000, and I should be repaid for my dental work. That is a felony. A Class B felony.

(Record).

PRINCIPLES OF LAW

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

....

(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 that all parties shall be afforded due process and an opportunity to be heard and for their arguments and evidence to be fairly considered.

AS 23.30.005. Alaska Workers' Compensation Board.

....

(h) The department shall adopt rules for all panels, and procedures for the periodic selection, retention, and removal of both rehabilitation specialists and physicians under AS 23.30.041 and 23.30.095, and shall adopt regulations to carry out the provisions of this chapter. The department may by regulation provide for procedural, discovery, or stipulated matters to be heard and decided by the commissioner or a hearing officer designated to represent the commissioner rather than a panel. If a procedural, discovery, or stipulated matter is heard and decided by the commissioner or a hearing officer designated to represent the commissioner, the action taken is considered the action of the full board on that aspect of the claim. Process and procedure under this chapter shall be as summary and simple as possible. The department, the board or a member of it may for the purposes of this chapter subpoena witnesses, administer or cause to be administered oaths, and may examine or cause to have examined the parts of the books and records of the parties to a proceeding that relate to questions in dispute. The superior court, on application of the department, the board or any members of it, shall enforce the attendance and testimony of witnesses and the production and examination of books, papers, and records.

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).

The Board has limited jurisdiction and can only adjudicate in the context of a workers' compensation case. *Alaska Public Interest Research Group v. State*, 167 P.3d 27; 36 (Alaska

2007). Delegation to an administrative agency is upheld as long as the administrative tribunal stays within the bounds of its authority. *Id.*

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 23.30.250. Penalties for fraudulent or misleading acts; damages in civil actions. (a) A person who (1) knowingly makes a false or misleading statement, representation, or submission related to a benefit under this chapter; (2) knowingly assists, abets, solicits, or conspires in making a false or misleading submission affecting the payment, coverage, or other benefit under this chapter; (3) knowingly misclassifies employees or engages in deceptive leasing practices for the purpose of evading full payment of workers' compensation insurance premiums; or (4) employs or contracts with a person or firm to coerce or encourage an individual to file a fraudulent compensation claim is civilly liable to a person adversely affected by the conduct, is guilty of theft by deception as defined in AS 11.46.180, and may be punished as provided by AS 11.46.120 - 11.46.150.

. . . .

(c) To the extent allowed by law, in a civil action under (a) of this section, an award of damages by a court or jury may include compensatory damages and an award of three times the amount of damages sustained by the person, subject to AS 09.17. Attorney fees may be awarded to a prevailing party as allowed by law.

8 AAC 45.050. Pleadings.

....

(f) For stipulations under this subsection,

....

(2) stipulations between the parties . . . may be made orally in the course of a hearing or a prehearing;

(3) stipulations of fact or to procedures are binding upon the parties named in the stipulation and have the effect of an order unless the board, for good cause, relieves a party from the terms of the stipulation

8 AAC 45.090. Additional examination.

....

(g) If an employee does not attend an examination scheduled in accordance with AS 23.30.095(e), AS 23.30.095(k), AS 23.30.110(g), or this section,

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

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

(A) good cause for not attending the examination did not exist, the employee's compensation will be reduced in accordance with AS 23.30.155(j) to reimburse the employer the physician's fee and other expenses for the unattended examination; or

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

8 AAC 45.092. Second independent medical evaluation.

....

(i) The report of the physician who is serving as a second independent medical examiner must be done not later than 14 days after the evaluation ends. . . . Until the parties receive the second independent medical examiner's written report, communications by and with the second independent medical examiner are limited, as follows:

- (1) a party or a party's representative and the examiner may communicate as needed to schedule or change the scheduling of the examination;

....

8 AAC 45.150. Rehearings and modification of board orders. (a) The board will, in its discretion, grant a rehearing to consider modification of an award only upon the grounds stated in AS 23.30.130.

(b) A party may request a rehearing or modification of a board order by filing a petition for a rehearing or modification and serving the petition on all parties in accordance with 8 AAC 45.060.

(c) A petition for a rehearing or modification based upon change of conditions must set out specifically and in detail the history of the claim from the date of the injury to the date of filing of the petition and the nature of the change of conditions. The petition must be accompanied by all relevant medical reports, signed by the preparing physicians, and must include a summary of the effects which a finding of the alleged change of conditions would have upon the existing board order or award.

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

- (1) the facts upon which the original award was based;

- (2) the facts alleged to be erroneous, the evidence in support of the allegations of mistake, and, if a party has newly discovered evidence, an affidavit from the party or the party's representative stating the reason why, with due diligence, the newly discovered evidence supporting the allegation could not have been discovered and produced at the time of the hearing; and

- (3) the effect that a finding of the alleged mistake would have upon the existing board order or award.

(e) A bare allegation of change of conditions or mistake of fact without specification of details sufficient to permit the board to identify the facts challenged will not support a request for a rehearing or a modification.

(f) In reviewing a petition for a rehearing or modification the board will give due consideration to any argument and evidence presented in the petition. The board, in its discretion, will decide whether to examine previously submitted evidence.

ANALYSIS

1) Should *Mitchell I* be modified?

Employee vaguely contends there was a mistake of fact over what records were sent to the EME physicians. A petition for modification based on an alleged mistake of fact must set out specifically and in detail the facts upon which the original order was based, the facts alleged to be erroneous, and the effect that a finding of the alleged mistake would have upon the existing order. 8 AAC 45.150(d). As an initial observation, Employee’s petition should be summarily denied because it fails to meet any of these requirements. AS 23.30.005(h). Instead, Employee is simply attempting to re-litigate an issue already decided by *Mitchell I* because he is dissatisfied with the result.

Mitchell I addressed Employee’s contentions that the EME reports were unreliable because the EME physicians had incomplete medical records and it concluded his contentions did not affect the admissibility of the reports but rather the evidentiary weight they should be afforded. The decision encouraged Employee to request opportunities to cross-examine the reports’ authors and held the EME reports should not be stricken from the record because they were relevant evidence. *Mitchell I*’s factual findings included Employer transmitting additional dental records to the EME dentist on February 9, 2024, and the EME dentist issuing a March 4, 2024 addendum report based on his review of those records. Nowhere did *Mitchell I* find that the EMEs were undertaken with a complete set of medical records, so there was no mistake of fact on this point, let alone a mistake that would influence the decision’s conclusion that the EME reports should not be stricken from the record.

Employee also contends there is “new evidence” that Employer deliberately withheld records from the EME physicians. He spent much of his time testifying by pointing out documents in his evidentiary binder to illustrate “side-by-side” dental records that he contends were not sent to the

EME dentist. According to him, these documents are evidence of Employer's "fraud" and "bad faith." However, as noted in this decision's factual findings, Employee's evidentiary filings include many duplicates and documents already in the agency file. Just because previously filed documents were rearranged in a binder for a hearing does not make them "new evidence," let alone evidence that could not have been discovered and produced at hearing in *Mitchell I*. 8 AAC 45.150(d)(2).

Employee further seeks to hold Employer accountable for its "illegal" behavior. A workers' compensation panel only has authority to adjudicate in the context of a workers' compensation case. *Alaska Public Interest Research Group*; AS 23.30.005(h). It is an administrative body that does not have authority to act as a civil or criminal court of law. *Id.*; AS 23.30.250. Consequently, the remedy Employee seeks, such as jailing Employer's attorney, cannot be imposed, even if Employee could show "fraud" and "bad faith," as he contends. Therefore, because Employee has not shown a factual mistake or new evidence such that *Mitchell I* should be modified, and because this panel lacks the authority to grant Employee the relief he seeks, his August 16, 2025 petition for modification will be denied.

There remains Employer's contention that the SIME ordered in *Mitchell I* should be modified to only include a dentist and not an orthopedist or a neurologist. On December 20, 2024, Employer filed an SIME form that listed express and implied disputes between its EME physicians, including its orthopedic surgeon, and Employee's medical providers. Then, on January 8, 2025, the parties agreed an SIME should be undertaken with a panel including an orthopedist and a dentist. Their agreement in this regard was a stipulation that is binding upon them and has the effect of a Board order. 8 AAC 45.050(f)(2), (3). They also agreed that a written record hearing should be held to decide whether the SIME panel should include a neurologist. After identifying disputes between Employer's neurologist and Employee's providers on the issues of causation, medical stability and medical treatment, *Mitchell I* decided the SIME panel should include a neurologist. Because medical disputes have been identified involving all three EME specialties, and because Employer's controversies are based on its EME reports, *Mitchell I* should not be modified to include only a dental SIME.

2) Should Employee's claims be dismissed for not attending the SIME appointments?

Regulations provide, if an employee does not attend an SIME, upon petition by a party and after a hearing, a panel will determine whether good cause existed for the employee not attending the examination. In determining whether good cause existed, the panel will consider when notice was given that the employee would not attend, the reason for not attending, the willfulness of the conduct, any extenuating circumstances, and any other relevant facts for missing the examination. If the panel finds good cause for not attending the examination did not exist, the employee's compensation will be reduced to reimburse the employer the physician's fee and other expenses for the unattended examination. If the panel finds good cause for not attending the examination did exist, the physician's fee and other expenses for the unattended examination is the employer's responsibility. 8 AAC 45.090(g).

Employee suffers real credibility infirmities that are set forth in this decision's factual findings and include making statements while testifying which contradict the medical records, and making statements while testifying, then immediately denying he had made the statements. AS 23.30.122; *Smith*. A few examples include him denying he wanted a doctor's note from Dr. Torres so he could leave St. Lawrence Island; denying he refused to have his vitals taken and refused a physical examination with Dr. Torres; denying his head showed no signs of trauma at Cedars Sinai; and repeatedly denying he had testified that he wanted to hold Employer accountable. Employee has also repeatedly made representations that he did not know what records were being sent to the SIME physicians even though he was served with the records.

Nevertheless, this panel finds Employee credible on his stated reason for not attending the SIME appointments – because he had previous plans to visit his daughter. AS 23.30.122; *Smith*. Not only does Employee's testimony in this regard comport with his letter to the Board on August 4, 2025, but Employee's visit with his daughter was also the type of trip that would have required advance planning given that Employee lived in California and his daughter lived in Texas, and his daughter was an registered nurse who would have needed to take time off work. *Rogers & Babler*. Moreover, in the weeks leading up to the SIME appointments, the agency record contains many examples of Employee attempting to notify Division staff of his unavailability in both his transmittal emails and in his letters to the Board. Additionally, Employee's acts of contacting the

