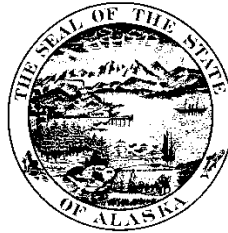


ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

DANIEL K. HOWELL,)	
)	INTERLOCUTORY
Employee,)	DECISION AND ORDER
Claimant,)	ON RECONSIDERATION
)	
v.)	AWCB Case No. 202205583
)	
STATE OF ALASKA,)	AWCB Decision No. 26-0028
)	
Self-Insured Employer,)	Filed with AWCB Juneau, Alaska
Defendant.)	on April 13, 2026
)	

State of Alaska's (Employer) March 20, 2026 petition for reconsideration was heard on the written record on April 7, 2026 in Juneau, Alaska, a date selected on March 27, 2026. The March 20, 2026 petition gave rise to this hearing. Non-attorney Daniel Howell (Employee) represented himself. Attorney Brent Williams represented Employer. *Howell v. State of Alaska*, AWCB Dec. No. 26-0021 (March 17, 2026) (*Howell I*) denied Employer's petition to dismiss under AS 23.30.110(c) and provided Employee until September 14, 2026 to either file an affidavit of readiness for hearing (ARH) requesting a hearing on his claim or to request additional time to prepare for a hearing by filing a petition. The record closed at the hearing's conclusion on April 7, 2026.

ISSUE

Employer contends *Howell I* erred by providing Employee six months to either file an ARH requesting a hearing on his claim or to request additional time to prepare for a hearing by filing a petition. It contended three months was sufficient time. Employer requested *Howell I* be

reconsidered to provide Employee three months to either file an ARH requesting a hearing on his claim or to request additional time to prepare for a hearing by filing a petition.

The time for Employee's opposition to Employer's March 20, 2026 petition has not yet expired. It is presumed Employee opposes the petition.

Should Employer's petition for reconsideration be granted?

FINDINGS OF FACT

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

- 1) On March 6, 2009, Employee reported he twisted his left knee on February 28, 2009, when running on the MV Taku while working for Employer. (Physician's Report, March 6, 2009).
- 2) On March 11, 2009, John Schwartz, MD, diagnosed a left knee medial meniscus tear and preexisting early mild degenerative joint disease. He found Employee unfit for duty and recommended a partial medial meniscectomy. (Schwartz record, March 11, 2009).
- 3) On March 25, 2009, Dr. Schwartz performed a left knee partial medial and partial lateral meniscectomy with debridement of femoral articular chondromalacia and exostosis. (Schwartz Operative Report, March 26, 2009).
- 4) On July 17, 2009, Dr. Schwartz rated Employee with a four percent whole person impairment for his left knee; the preexisting degenerative chondromalacia was not rated. (Schwartz record, July 17, 2009).
- 5) On April 14, 2022, Employee reported he stepped off a step and twisted his left knee. Left knee x-rays showed tricompartmental osteoarthritis, most pronounced in the medial compartment and meniscal chondrocalcinosis. (Leslie A. Locklear, FNP, record, and x-ray report, April 14, 2022).
- 6) On April 17, 2022, Employer reported Employee twisted his left knee while going down the stairs on April 6, 2022 while working for Employer as a Steward. (First Report of Injury, April 17, 2022).
- 7) On May 13, 2022, a left knee magnetic resonance imaging (MRI) showed severe tricompartmental osteoarthritis at the medial femoral tibial joint, substantially progressed compared to the prior March 11, 2009 MRI, chronic anterior collateral ligament (ACL) tear,

posterior medial meniscus was diffusely degenerated and torn, and a central posterior horn lateral meniscus tear. (MRI report, May 13, 2022).

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

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

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

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

On 11/14/2022 the employer received a medical bill from Workers Compensation RX Solutions for the date of service 8/15/2022 in the amount of \$611.42 without the completed medical report. Therefore, the employer is unable to process the provider’s medical bill, and the bill is denied until the necessary medical documentation is received.

Per AS 23.30.097(d) provides that an employer shall pay an employee’s bills for medical treatment related to the work injury upon receipt of the provider’s bill and completed report as required under AS 23.30.095(c). (Controversion Notice, November 22, 2022).

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

On 5/26/2022, the employee was seen by Steven A. Becker MD for evaluation of left knee pain. According to the medical report, Dr. Becker diagnosed the employee with end stage osteoarthritis of the left knee and opined that it was related to the employee's initial left knee injury in 2004. Additionally, Dr. Becker advised an MRI performed on 5/13/2022 showed marked degenerative changes of the knee with complete loss of articular cartilage medially as well as a chronic ACL tear and some significant parameniscal cysts but general absence of the posterior horn of the medial meniscus. A left knee total arthroplasty was recommended and took place on 8/16/2022. Indication for the surgery appears to be due to the osteoarthritis; there is no medical evidence relating the osteoarthritis or the need for surgery to the 4/6/2022 work incident.

Evidence received thus far appears to indicate that the 8/16/2022 surgery would likely have occurred regardless of the 4/6/2022 incident and the need for surgery was planned and performed due to preexisting conditions in the knee. The employer has not received any evidence that the need for surgery was substantially caused by the 4/6/2022 work incident.

Therefore, based on the current evidence, all benefits related to the 8/16/2022 surgery are denied, to include post-surgical rehabilitation and treatment, TTD, TPD, PTD and associated PPI. Additionally, benefits related to left knee osteoarthritis are denied. (Controversion Notice, March 13, 2023).

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

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

15) On June 1, 2023, Employee called the Workers' Compensation Division (Division) with questions about the controversion notice. Division staff told Employee "[T]hat it was based off medical opinions from IME physician. [Employee] will try to contact opposing party first before filing [a claim]." (ICERS Phone Call entry, June 1, 2023).

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

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

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

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

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

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

A Claim for Workers' Compensation Benefits dated 06/22/2023 was received in the Juneau office on 06/22/2023.

The opposing parties have 20 days after the service date in which to file their answer to the issues marked on #21 of the written claim(s). Per 8 AAC 45.070(b)(2), the Affidavit of Readiness for Hearing cannot be filed until 20 days after the service date or after an answer to the written claim has been filed.

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

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

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

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

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

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

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

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

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

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

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

On 5/26/2022, the employee was seen by Steven A. Becker MD for evaluation of left knee pain. According to the medical report, Dr. Becker diagnosed the employee with end stage osteoarthritis of the left knee and opined that it was related to the employee's initial left knee injury in 2004. Additionally, Dr. Becker advised an MRI performed on 5/13/2022 showed marked degenerative changes of the knee with complete loss of articular cartilage medially as well as a chronic ACL tear and some significant parameniscal cysts but general absence of the posterior horn of the medial meniscus. A left knee total arthroplasty was recommended and took place on 8/16/2022. Indication for the surgery appears to be due to the osteoarthritis; there is no medical evidence relating the osteoarthritis or the need for surgery to the 4/6/2022 work incident.

Evidence received thus far appears to indicate that the 8/16/2022 surgery would likely have occurred regardless of the 4/6/2022 incident and the need for surgery was planned and performed due to preexisting conditions in the knee. The employer has not received any evidence that the need for surgery was substantially caused by the 4/6/2022 work incident.

Therefore, based on the current evidence, all benefits related to the 8/16/2022 surgery are denied, to include post-surgical rehabilitation and treatment, TTD, TPD, PTD and associated PPI. Additionally benefits related to left knee osteoarthritis are denied.

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

**TO EMPLOYEE (OR OTHER CLAIMANTS IN CASE OF DEATH):
READ CAREFULLY**

This notice means the insurer/employer has denied payment of the benefits listed on the front of this form for the reasons given. **If you disagree with the denial, you must file a timely written claim (see time limits below). The Alaska Workers' Compensation Board (AWCB) provides the "Workers' Compensation Claim" form for this purpose. You must also request a timely hearing before the AWCB (see time limits below). The AWCB provides the "Affidavit of Readiness For Hearing" form for this purpose. Get forms from the nearest AWCB office listed below.**

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

compensation, you must ask for a penalty when you complete and file your Workers' Compensation Claim.

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

TIME LIMITS

1. When must you file a written claim (Workers' Compensation Claim form)?

a. Compensation Payments.

You will lose your right to compensation payments unless you file a written claim within two years of the date you know the nature of your disability and its connection with your employment and after disablement. If the insurer/employer voluntarily paid compensation, you must file a written claim within two years of the last payment.

....

c. Medical Benefits.

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

2. When must you request a hearing?

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

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

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

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

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

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

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

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

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

34) On August 23, 2023, Ryan Moore, MD, examined Employee for an employer’s medical evaluation (EME). He opined the work injury was not the substantial cause of Employee’s current disability or need for medical treatment, rather his chronic degenerative knee osteoarthritis led to the need for total knee arthroscopy. Dr. Moore stated, “Causes of knee osteoarthritis in this individual are elevated age, elevated BMI, an active lifestyle including high school football, and recreational basketball into adulthood. He has enjoyed physically demanding recreation including deer hunting on Prince of Wales Island. Mr. Howell’s

degenerative osteoarthritis represents a lifetime of occupational and nonoccupational activities.” Had the 2022 work injury not occurred, he said Employee would have required a knee arthroplasty due to his chronic intermittent knee pain. The 2022 work injury caused a temporary aggravation of Employee’s preexisting degenerative osteoarthritis as the MRI did not indicate “any signs of significant acute trauma or acute contusions or other findings” that indicated that the 2022 work injury caused anything more than what would be considered a temporary aggravation. The 2022 work injury was no longer the substantial cause of his ongoing pain and disability as of June 1, 2022; at that point, it was due to chronic degenerative knee osteoarthritis, which led to his total left knee arthroplasty. Dr. Moore agreed the surgery was reasonable and necessary treatment and Employee reached medical stability on November 16, 2022. He calculated an eight percent whole person impairment and stated it was not substantially caused by the 2022 work injury. Employee was able to work in the very heavy category and had no restrictions for the 2022 work injury. (Moore EME report, August 23, 2023).

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

On 8/23/2023 Mr. Howell attended and IME performed by Dr. Ryan Moore. Dr. Moore gave the following diagnosis: Diagnosis is degenerative osteoarthritis of the left knee status post total knee arthroplasty.

Dr. Moore further opined the following:

“Looking at the apportionment of causation, I believe that the 04/06/2022 was not the substantial cause of Mr. Howell’s current disability or need for medical treatment. The need for a total knee arthroplasty was due to chronic preexisting osteoarthritic changes and had the work injury not occurred, Mr. Howell would have required a knee arthroplasty due to his chronic intermittent knee pain.”

“I believe that the 04/06/2022 work injury caused a temporary aggravation of the preexisting degenerative osteoarthritis. The MRI did not indicate any signs of significant acute trauma or acute contusions or other findings that indicated that the 04/06 work injury caused anything more than what would be considered a temporary aggravation of the preexisting condition.”

“The work injury was the substantial cause of a temporary aggravation of the chronic non-industrial left knee degenerative osteoarthritis.”

“Due to there being no signs of any acute trauma or knee damage found on the May 2022 MRI, it is my opinion that the aggravation due to the 04/06/2022 work injury would no longer be expected to be the substantial cause of Mr. Howell’s disability as of 06/01/2022. It is my opinion at that point that the ongoing pain and disability was due to chronic degenerative knee osteoarthritis and that it was the chronic degenerative knee osteoarthritis that led to the knee for total knee arthroplasty.”

“The cause of the current disability, which is status post total knee arthroplasty, and the need for the total knee arthroplasty was due to chronic degenerative knee osteoarthritis.”

“The injured worker has reached medical stability for his total knee arthroplasty. The date of medical stability is 11/16/2022 which was approximately three months after his total knee arthroplasty was performed.”

Therefore, based on the IME Report of 8/23/2023, the Controversion of 3/13/2023 stating “Benefits related to the 8/16/2022 left knee total Arthroplasty, to include post surgical rehabilitation and treatment, TTD, PTD, PTD and associated PPI and Benefits related to left knee osteoarthritis are denied” has been substantiated and remains in effect.

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

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

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

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

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

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

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

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

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

To avoid possible dismissal of Employee's claim, per AS.23.30.110(c), the deadline to file an Affidavit of Readiness (ARH) for hearing or a Petition to extend the AS.23.30.110(c) deadline is on/or before **07/17/2025**.

....

Employee's claim will be denied unless Employee requests a hearing on (his or her or its) claim, by filing an Affidavit of Readiness for Hearing (ARH) Form 07-6107, within two years of the date the board received the first post-claim controversion. If Employee needs more time for additional discovery prior to filing an ARH, the Employee must file a petition to extend this deadline on or before the date the two years expire. The board received a post-claim controversion on 07/17/2023; therefore, to prevent claim denial, the Employee must either file an ARH or a petition to extend this deadline no later than **07/17/2025**.

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

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

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

Since this is the first prehearing that the Employee attended, the designee confirmed the Employee's Contact information. The designee explained to the Employee the reason for the prehearing was to schedule a hearing on the Employer's Petition to dismiss his case per the 23.30.110(c) deadlines. The designee also noted that when the Employee filed his claim on 6/22/23 and a prehearing should have been scheduled then. The Employee stated that a prehearing would have been helpful then, but at this point all he wants to make sure happens is that his medical bills get paid.

The Employer noted that there was a prehearing in November 2025 that the Employee did not attend. The designee asked the Employee if he received the prehearing summary from the 11/26/25 prehearing with the packet and the Employee stated that he did.

The designee explained to the Employee that he will have the opportunity at the hearing to discuss his concerns and the designee apologized on behalf of the board for not having a prehearing scheduled. The designee confirmed that the venue for his case is Juneau, and the designee is out of the Anchorage office. The Employee noted that he wanted to schedule a hearing on his petition, and the Employee asked if he could attend telephonic. The designee confirmed that he can attend via telephone, but that a technician would call him the day before the hearing to confirm how he would be attending.

The designee explained that he can file a brief with his concerns about the case and the benefits he is seeking and would like to add that he can explain reasons why his claim should not dismiss should he wish to do so.

The designee scheduled a 4-hour oral hearing for February 24, 2026. The issue for the hearing is on the Employers Petition to dismiss.

The parties are ordered to serve and file witness lists and hearing briefs by close of business on **02/17/2026** and to serve and file evidence by close of business on

02/04/2026 in accordance with 8 AAC 45.060, 8 AAC 45.112, 8 AAC 45.114, and 8 AAC 45.120. Briefs, exhibits, documentary evidence, and witness lists may be sent by e-mail to workerscomp@alaska.gov.

Evidence:

Any documents that the parties intend to rely upon at hearing should be filed with the Board and served upon the opposing parties 20 calendar days prior to the hearing. A Medical Summary form is available on the Board's website: https://www.labor.akaska.gov/wc/pdf_list.htm. The deadline to file evidence for is **02/04/2026**.

Briefs:

A brief is a document submitted by the parties prior to a hearing which outlines the issues in dispute, the party's positions on those issues, as well as why they believe their position is correct. Important supporting evidence referred to in a brief is often attached at the end of the brief. These supporting documents are called exhibits. Briefs may not exceed 15 pages, excluding exhibits. Briefs must be filed with the Board and served upon the opposing parties at least five working days prior to a hearing. The deadline to file briefs is **02/17/2026**.

Witness Lists:

If a party intends to rely upon witness testimony, they must file a witness list that includes any possible witnesses that they may call at hearing. According to 8 AAC 45.112 "A witness list must indicate whether the witness will testify in person, by deposition, or telephonically, the witness's address and phone number, and a brief description of the subject matter and substance of the witness's expected testimony." Witness lists must be filed with the Board and served upon the opposing parties at least five working days prior to a hearing. The deadline to file witness lists is **02/17/2026**. (Prehearing Conference Summary, January 8, 2026).

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

47) On February 17, 2026, Employer filed its hearing brief, contending that while the Board failed to provide Employee with the actual deadline, Employee failed to actively prosecute his claim. It contended that after Employee filed his claim, Employer sent him for an EME with Dr. Moore and Employer filed its September 15, 2023 controversion based upon Dr. Moore's EME.

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

48) On February 24, 2026, Employer reiterated its hearing brief arguments at hearing. It contended Employee did not pursue his claim at all. Employer contended Employee had access to Poole and she explained the controversion notice to him and the two year rule. It contended Employee was "put on notice" about the two-year requirement, he knew about it, and did not vigorously pursue his claim. Employer requested its petition be granted and Employee's claim dismissed. (Employer).

49) On February 24, 2026, Employee testified he believes his need for knee surgery was caused by his previous 2009 work injury when he worked for Employer. He received about \$6,000 from Employer and elected not to settle his case because he thought he may need additional medical treatment in the future. Employee told Poole that he thought his previous work injury was the cause of his need for knee surgery. He could not recall whether or not he discussed the ARH requirement with Poole. Employee said he thought the medical treatment "was taken care of." Poole told him that his need for left knee surgery was not related to the 2022 work injury after he got out of the hospital. He last spoke with Poole before he retired from the State of Alaska around July 2023. Employee did not file an ARH. He does not know the "rules and the laws" and "there was no help." Employee thought his case was "already over" and assumed his private health insurance would pick up the medical costs, "he was done with it." He does not know what he was doing; he tried hard for the first 12 months to get this taken care of, and he was not going to pay to get a lawyer. Employee is "not sharp" and was "tired of it," being the "little guy

against the corporation.” He already knows he is not going to win his case; he just wanted to “have a say.” Employee probably received the controversion notices, he recalled receiving paperwork but did not recall whether or not he received the controversion notices. His private insurance did not pay for the surgery, and he was “turned into creditors.” Employee sent things in and thought the medical bills were taken care of. He was unsure whether or not he received the November 26, 2025 prehearing conference summary. Employee moved recently and most of his paperwork is in a box somewhere. (Employee).

50) On February 24, 2026, Poole testified she is an employee of Penser North America and is a senior time loss adjuster. She has worked for Penser since January 2023, and in her current position since January 2024. She communicated with Employee by phone call or by mail. At first, there was a lot of back-and-forth contact with Employee while he was working and had issues with phone reliability while on the ship. The last contact she had with Employee was in July 2023. Poole explained the controversion to Employee, including the EME opinion that Employee’s need for knee replacement was due to end stage osteoarthritis, and told him if he disagreed with it, to follow the instructions on the second page. She informed Employee that Employer only had to restore Employee to the same condition that he was in the day before the work injury, with end stage osteoarthritis, and Employer did pay for initial medical treatment but not for treatment for his end stage osteoarthritis. Poole remembered discussing the two-year deadline on the second page of the controversion notice with Employee. (Poole).

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

52) On March 17, 2026, *Howell I* denied Employer’s petition to dismiss under AS 23.30.110(c) and advised Employee he had until September 14, 2026 to either file an ARH requesting a hearing on his claim or to request additional time to prepare for a hearing by filing a petition. (*Howell I*).

53) On March 20, 2026, Employer requested reconsideration of *Howell I* for allowing Employee six months to either file an ARH requesting a hearing or to request additional time penalizes both Employee and Employer. It contended this case is similar to *Garoutte*, which provided an employee three months to request a hearing when the Division failed to inform the employee the specific date by which she had to file a hearing request or ask for more time to file

on and the employee had a poor track record of pursuing her claim. Employer requested *Howell I* be amended to provide Employee three months instead of six months to either file an ARH requesting a hearing on his claim or to request additional time to prepare for a hearing by filing a petition. (Petition and Memorandum Supporting Employer’s Petition for Reconsideration, March 20, 2026)

PRINCIPLES OF LAW

AS 23.30.110. Procedure on claims. . . .

(c) Before a hearing is scheduled, the party seeking a hearing shall file a request for a hearing together with an affidavit stating that the party has completed necessary discovery, obtained necessary evidence, and is prepared for the hearing. . . . If the employer controverts a claim on a board-prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied.

In *Garoutte v. State of Alaska*, AWCB Dec. No. 25-0027 (April 19, 2025), the injured worker filed a claim and filed a medial summary form with records attached. A prehearing conference was held where the injured worker was provided a courtesy attorney list and an ARH, and she was referred to the “Employee’s Guide to Workers’ Compensation” and provided the following information:

“If the employer controverts a claim on a board-prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied.” In other words, when Employee files a workers’ compensation claim and Employer controverts the claim, to avoid possible dismissal of Employee’s claim, Employee must file with the board and serve on all opposing parties an affidavit of readiness for hearing within two years of the controversion. The board has an affidavit of readiness for hearing form Employee can complete and file. If Employee has not completed all discovery and cannot file the affidavit of readiness for hearing within two years of Employer’s controversion, but still wants a hearing, Employee should provide written notice to the board and serve the notice upon all opposing parties.

The employee was not provided the specific date upon which she had to file her ARH or ask for more time to file one. The Board denied the employer’s petition to deny her claim under AS 23.30.110(c) and provided the employee three months to request a hearing on her claim.

AS 44.62.540. Reconsideration. (a) The agency may order a reconsideration of all or part of the case on its own motion or on petition of a party. To be considered by the agency, a petition for reconsideration must be filed with the agency within 15 days after delivery or mailing of the decision. The power to order a reconsideration expires 30 days after the delivery or mailing of a decision to the respondent. . . .

AS 44.62.540 limits authority to reconsider and correct a decision under this section to 30 days. *George Easley Co. v. Lindekugel*, 117 P.3d at 743 n. 36 (Alaska 2005). A request for reconsideration is the appropriate remedy when a party alleges a legal error. *Id.*

ANALYSIS

Should Employer's petition for reconsideration be granted?

Employer timely filed a petition contending *Howell I* legally erred when it provided Employee six months to either file an ARH requesting a hearing on his claim or to request additional time to prepare for a hearing by filing a petition. AS 44.62.540(a); *Lindekugel*. It contended the facts in this case are similar to *Garoutte* which provided the employee three months. Employer requested *Howell I* be reconsidered to provide Employee three months.

This case is distinguishable from *Garoutte*. In *Garoutte*, the employee filed medical evidence after filing her claim and attended an initial prehearing conference after she filed her claim where she was provided some instruction on how to pursue her claim, although she was not provided the AS 23.30.110(c) deadline. In this case, Employee filed his claim and the initial prehearing conference was not held until after the AS 23.30.110(c) deadline was passed, he was not provided any instruction on how to pursue his claim until after the deadline passed, and he did not file any evidence. Six months provides Employee time to review the evidence Employer filed and to obtain and file any additional evidence he may wish the Board to consider on his claim. *Howell I* did not legally err, and it should not be reconsidered. Employer's petition for reconsideration will be denied.

CONCLUSIONS OF LAW

Employer's petition for reconsideration should not be granted.

ORDER

1) Employer's March 20, 2026 petition for reconsideration is denied.

Dated in Juneau, Alaska on April 13, 2026.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Kathryn Setzer, Designated Chair

/s/
Debbie White, Member

/s/
Brad Austin, Member

PETITION FOR REVIEW

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

RECONSIDERATION

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

MODIFICATION

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

CERTIFICATION

