ALASKA WORKERS' COMPENSATION BOARD

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

FRED MORSE, Employee, Claimant, v. DAVIES CONSTRUCTORS & ENGINEERS, Employer, and NEW HAMPSHIRE INSURANCE CO., LTD., Insurer, Defendants.	)	FINAL DECISION AND ORDER AWCB Case No. 202410309 AWCB Decision No. 26-0033 Filed with AWCB Juneau, Alaska on April 24, 2026

Fred Morse's (Employee) July 5, 2024 and December 30, 2024 claims, March 4, 2026 petition to accept an overlong hearing brief, and March 9, 2026 objection to Employer's hearing brief and argument and Davies Constructors & Engineers and New Hampshire Insurance Co., Ltd.'s (Employer) February 12, 2026 petition to quash Elliot Mann's deposition were heard on March 10, 2026, in Juneau, Alaska, a date selected on January 7, 2026. A December 12, 2025 hearing request gave rise to this hearing. Attorney Robert Bredesen appeared by Zoom and represented Employee, who appeared and testified by Zoom. Attorney Vicki Paddock appeared and represented Employer. Witnesses included Russell Walls, who appeared by Zoom and testified on Employer's behalf. The record was kept open to receive Employee's supplemental fee affidavit, Employer's objections to Employee's attorney fees and costs, and Employee's reply. After the hearing was held, Member Debbie White recused herself from the proceedings under 8 AAC

45.105 and AS 44.62.450(c) to avoid the appearance of impropriety because she inadvertently heard information about a non-party person in the case that was not part of the record. The record closed after deliberations concluded on April 2, 2026.

ISSUES

Employer objected to consideration of Mann's February 18, 2026 deposition transcript, contending Employee's non-party deposition of Mann is contrary to his sworn statement that all necessary discovery is complete and he was fully prepared for hearing in his December 12, 2025 affidavit of readiness for hearing (ARH). It requested an order quashing Mann's deposition transcript.

Employee contended the Act allows witness testimony by deposition, a precedential Alaska Workers' Compensation Appeals Commission (Commission) decision provides a fundamental rule that any relevant evidence is admissible, there is no rule prohibiting testimony by deposition after filing an ARH, and the deposition transcript was timely filed. He requested an order overruling Employer's objection. An oral order denied Employer's petition to quash.

1) Was the oral order denying Employer's February 12, 2026 petition to quash Mann's deposition correct?

Employee requested an oral order granting his petition to accept an overlong hearing brief. He contended Employer's brief demonstrates additional pages were necessary because its hearing brief did not address all of the issues. Employee contended he requested additional pages at a prehearing conference but the designee limited the parties to 15 pages. He contended the regulation does not specify that the remedy for an overlong brief was exclusion. Employee requested his petition be granted and his brief be considered in full. Alternatively, he requested that pages two through 16 be accepted.

Employer contended it would not be fair to consider Employee's overlong brief because Employer was not permitted an overlong hearing brief. It requested an order excluding pages 17-22 of Employee's hearing brief. An oral order denying Employee's petition to accept his overlong hearing brief and limiting consideration to pages one through 16 was issued.

2) Was the oral order denying Employee's overlong hearing brief and limiting consideration to pages one through 16 correct?

Employee contends Employer in the April 16, 2025 prehearing conference stipulated that Michael Lerma was Employee's supervisor and obtained a protective order on that basis. He contends he was prejudiced by Employer withholding Lerma's employment records as he was denied the opportunity to use the documents to cross-examine Employer's witnesses. Employee contends the designee reasonably relied upon Employer's assertion when she made the discovery order. He requests an order enforcing Employer's stipulation and striking Employer's argument that Lerma was not his supervisor or otherwise finding Employer is estopped from making that argument.

Employer contends the designee granted Employee's petition to compel in part and ordered Employer to produce documents that did not exist. It contends it never disputed the role Lerma played in Employee's injury as he is the man who punched Employee in the bar. Employer contends it relied on testimony of two superintendents to support its position that Lerma was not Employee's supervisor. It contends there was no prejudice to Employee as both superintendents were deposed and cross-examined. Employer contends Employee pursued this information well after the prehearing conference discovery order. It contends Employee's pursuit of information by deposition is inconsistent with and cannot be characterized as reliance inducing conduct. Employer contends Employee's reliance was not reasonable as a party who advances discovery on a subject cannot positively claim that they reasonably relied on a representation that purportedly caused them to act differently. It requests an order overruling Employee's objection.

3) Should Employee's objection to Employer's hearing brief and argument that Lerma was not Employee's supervisor be sustained?

Employee contends the presumption of compensability applies because his intoxication did not cause his injury and because he informed Employer of the work injury the next day. He contends his injuries arose out of and in the course of employment when he was punched by a coworker at a bar on his day off. Employee contends the bar is a short distance away from the employer-provided hotel and he had been discussing work-related plans with his supervisor at the bar because his supervisor invited him to the bar for the discussion. He contends non-work-related topics were discussed after the work-related discussion and Lerma attacked him without warning. Employee

contends using local bars and restaurants for business meetings and social activities was an employer-sanctioned activity because his supervisor invited him out for a meal and drinks to discuss the project and to socialize. He contends Employer allowed its employees to go to bars and drink and it supported employees going to bars and restaurants by furnishing transportation. Employee contends Employer made the bar a reasonable recreational facility because none of the employees had a say in where the work would occur and where Employer's provided hotel was located. He contends he was injured because his employment with Employer put him in Sitka, at the bar, with Lerma. Employee contends the coworker who struck him had assaulted Employer's contractor in a prior incident and had been fired. He contends Employer increased his risk of assault by having him work and socialize with a violent coworker. Employee requests medical and related transportation costs, and temporary total disability (TTD) benefits.

Employer contends the presumption did not apply because Employee did not timely report the incident as a work injury and Employee's injuries were caused by his intoxication. It contends Employee's injuries did not arise out of and in the course of employment. Employer contends Employee was engaged in personal recreational activities away from an employer-provided facility on his day off. It contends Sitka is not a remote worksite and the bar where the assault took place is not an employer-provided facility. Employer contends the activities were not Employer-sanctioned because Lerma was not a foreman, supervisor, or crew lead. It contends the incident falls under the traveling employee doctrine and Employee was on a personal errand at the time of injury and had not returned to the course and scope of employment. Employer contends the assault occurred when Employee and Lerma were discussing non-work-related topics and Employee provoked Lerma. It contends it was not reasonable for Employer to have foreseen that Employee would drink, use CBD and marijuana, and make fun of Lerma's alleged gang affiliation. It requests Employee's claim for medical and related transportation costs and TTD benefits be denied.

4) Is Employee entitled to medical and related transportation costs and TTD benefits?

Employee contends Employer unfairly and frivolously controverted benefits because it lacked a legal argument that his injuries were outside the course and scope of employment. It requests an order finding Employer unfairly and frivolously controverted benefits.

Employer contends its controversion notice was supported by the law and the facts. It requests an ordering finding it did not unfairly or frivolously controvert benefits.

5) Did Employer unfairly or frivolously controvert benefits?

Employee contends he is entitled to interest on benefits awarded in this decision. He contends he is entitled to penalties for Employer's unfair and frivolous controversion and for its failure to timely report the work injury. Employee requests interest and penalties be awarded.

Employer contends Employee is not entitled to interest and penalties as he is not entitled to benefits, it did not unfairly or frivolously controvert benefits, and it reported the work injury once Employee informed it the assault was work related. It requests interest and penalties be denied.

6) Is Employee entitled to interest and penalty?

Employee contends he is entitled to attorney fees and costs for obtaining benefits. He requests full fees and costs and *Wozniak* fees be awarded.

Employer contends Employee is not entitled to attorney fees and costs because he is not entitled to benefits. It requests attorney fees and costs be denied.

7) Is Employee entitled to attorney fees and costs?

FINDINGS OF FACT

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

1) On March 15, 2024, Employee signed a "Safety Orientation" policy stating, "All information in this orientation checklist was explained to me, and I agree to comply with Davis Constructors Safety Policies." Under "Acts That Are Grounds For Immediate Dismissal," it stated, "1. The use of alcohol or narcotics on the job or arrival on the job under the influence of these substances. 2. No fighting, inciting riots, practical joking, horseplay, or sexual/racial harassment." (Safety Orientation, March 15, 2024). He also signed a "Statement of Understanding" acknowledging receiving the "Safety Program and Policy" and "Drug and Alcohol Policy Procedures." (Statement of Understanding, March 25, 2024).

2) On May 19, 2024, the Sitka Fire Department was dispatched for a patient that had collapsed and reported walking away from the scene at the bar:

> EMS was told by individual at scene that the pt was walking towards Totem Hotel, EMS located pt in the parking lot of the hotel. Patient was bleeding from the left side of his face, with swelling on the right side of face.
>
> Patient initially declined assistance but quickly accepted the offer to be assessed in the rig and entered unassisted. . . . Pt presented as anxious and unable to focus. Pt reported that he was hit, but did not specify by what or whom. . . .
>
> . . . . Pt admits to using marijuana, smoking CBD, drinking several Bloody Marys [sic] in the morning and then drinking several beers just prior to the assault.
>
> EMS transported pt to MEMC ED, did hand off report and transferred to care of ED staff. (Sitka Fire Department record, May 19, 2024).

3) On May 19, 2024, Employee was "present[ed] by EMS after falling at Ernie's bar with evidence of facial injury and bleeding. Per report there was concerned as the patient was stumbling and found on the ground. Here in the ED the patient appear[ed] intoxicated and state[d] he only had a minor amount of alcohol." Employee appeared to be "altered and acting erratically" and intoxicated. He tried to punch the nurse and radiology technician during the computed tomography (CT) scan; he was redirected and took a nap. When Employee woke up, he was belligerent to staff and complained of pain. He was diagnosed with a closed left orbit fracture and prescribed Tylenol, ibuprofen, and oxycodone. An eye exam was recommended when Employee was no longer intoxicated. His blood alcohol was .203 mg/dL. (Travis Polston, MD, record, May 19, 2024).

4) On May 19, 2024, a head CT showed a displaced fracture on the anterior wall of the left maxillary sinus, fracture floor of the left orbit, minimally displaced fracture of the medial wall of the left orbit, and soft tissue swelling in the left periorbital/maxillary. (CT report, May 19, 2024).

5) On May 29, 2024, Employee said he thought he was struck with a beer bottle multiple times on May 19, 2024. His jaw, teeth, and eyes hurt; his neck hurt. Employee's vision was blurry, he had problems with peripheral vision, he had occasional twitching and watering OS, and he had some face numbness. Carl Rosen, MD, diagnosed left side orbital floor and medial orbit wall fracture. He discussed the risks, benefits, and alternatives to a left-sided open reduction and internal fixation with canthoplasty under general anesthesia with Employee. Employee was on

blood thinners and needed to obtain medical clearance to hold all blood thinners from his cardiologist prior to surgery. (Rosen record, May 29, 2024).

6) On July 5, 2025, Employee came into the Anchorage office to report his injury:

> EE came in to report his injury. He was assigned to a job in Sitka & went out w/ coworkers to discuss the project & there was an altercation. EE was struck over the head w/ a beer bottle, lacerating his left eye & chipped teeth. EE did report the injury to ER, no paperwork was completed/filed. I started to prefill the FROI out for him & he stated he has an appointment elsewhere & just needs the form. I provided a blank FROI, WCC, WC & You packet w/ attorney list. EE then asked for a pen & proceeded to fill out the forms at my desk. I attempted to explain the various benefits on the WCC, EE interrupted & said "I'll just mark them all." Forms completed & submitted. EE was told to give a copy of the FROI to the ER & I gave him copies for his own files. (ICERS Walk In, July 5, 2024).

7) On July 5, 2024, Employee reported his was struck in the fact with a bottle and sustained multiple broken bones while working for Employer on May 19, 2024. He checked the "No" box for the, "Did Injury/Illness Occur on Employer's Premises." (Employee Report of Occupational Injury or Illness to Employer, July 5, 2024).

8) On July 5, 2024, Employee filed a claim for time loss benefits; he marked every box on the claim form for an injury sustained on May 19, 2024. He wrote, "struck in the head with bottle" under the description of the injury and wrote, "Time" for the reason for filing the claim. (Claim for Workers' Compensation Benefits, July 5, 2024).

9) On July 5, 2025, a termination slip was filled out by a supervisor for Employee with a termination date of July 3, 2024. The portion to be completed by Employee was not filled out, and "Left with out [sic] signing" was written next to it. The section asked whether Employee was injured or whether there was an incident during his employment at Employer. The box "Reduction in Force" was checked in the "Reason for Termination" section, and "Yes" was checked in the "Eligible for Rehire" section. (Termination Slip, July 5, 2025).

10) On an unknown date, an "Incident Report" for the project "22-531 SEARHC MEMCC Sitka" in reference to the "Fred Morse Incident" stated:

> INCIDENT: On Sunday May 19th, 2024, three ASKW-davis employees (Fred Morse, Michael Lerma and Mike Bruse) went to breakfast and then went shopping. Around 1:00 pm they went to Ernie's B on Lincoln St. and started drinking. At this time we do not know the exact time of the incident.

> From the information gathered, Fred Morse was very intoxicated and harassed Michael Lerma. Michael then punched Fred in the face dropping him to the floor. The local ambulance was called and took Fred to the Emergency Room. Fred must have left Sitka after the incident ER visit because he did not show up to the jobsite after May 19th, 2024.
>
> On July 5th, 2024 the Davis Constructors & Engineers Safety and HR department received an "Employee Report of Occupational Injury" form in the mail from Fred. The Safety Department called the MEMCC Superintendent to find out what this report was about. The DCE Safety and HR Department has not spoken to Fred about the incident.
>
> IMMEDIATE/SHORT TERM CORRECTIVE ACTIONS: Since Fred never communicated with the Superintendent or Safety/HR Department there was no action taken with the Employee Injury Report.
>
> NOTES FROM THE SUPERINTENDENT: Exact date and time (if possible) may [sic] 19th, the three men listed went to breakfast, then shopping. Around 11 am they started drinking together at Ernie's bar. I do not know what exact time the incident occurred.
>
> Location Ernie's bars Lincoln Street, Sitka.
> . . . .
>
> Where he went for medical treatment: Search [sic] Medical Facility emergency room. Ambulance took him there.
>
> Do we give workers the option of living somewhere else (besides the totem) if they want to? They can live where they like at their own expense. ASKW-davis has a lodging agreement with our client the Totem Inn and the conex man camp.
>
> Was there a bottle involved? From what I have been told the answer is no, a fist in his face caused the injury.
>
> Was there any video of the incident at the bar or someone else? Ernie's bar will have to answer this question.
>
> FOLLOW UP ACTIONS/RECOMMENDATIONS: The Alaska Workers Compensation Division contacted Wilton Adjustment Services about this incident so Fred must have filed a claim on his own with them.
>
> The incident is being handles by the Davis Safety Dept, Workers Comp Adjuster, and an assigned Lawyer. (Incident Report, undated).

11) On July 15, 2024, Employee complained of chronic facial pain, left maxillary and possibly ophthalmic. He was struck by a beer bottle, causing a fracture. Employee was seen by

ophthalmology and was considering surgery, but it fell through as" cardiology would not clear off of anticoagulants." He had a history of myocardial infarction. Employee was prescribed gabapentin and referred to "Dr. Grendahl" for a second ophthalmology opinion and for pain management to consider facial nerve and trigeminal blocks. (Timothy Miller, DO, record July 15, 2024).

12) On July 28, 2024, the Sitka Police Department received a call requesting officer assistance for a male being disruptive. The caller "stated the individual had punched someone in the face a couple weeks ago." The sergeant located Lerma, who was not breaking any laws. The bar requested him to leave because he had a history of causing problems. (Incident report, July 28, 2024).

13) On July 30, 2024, the Division served Employer with the July 5, 2024 claim, noting it had been served on the incorrect claim administrator on July 8, 2024. (Letter, July 30, 2024).

14) On August 3, 2024, Employer reported Employee sustained a contusion to his face from being hit by another person "while in a bar" on July 5, 2024. (First Report of Injury, August 3, 2024).

15) On August 14, 2024, the Sitka Police Department received a call of a male in need of medical assistance near the Pioneer Bar:

> The male was transported to the Mount Edgecumbe Medical Center.
>
> Later that evening, [redacted], an emergency room physician at Mount Edgecumbe Medical Center, called the Sitka police department to report that he believed the male had been involved in a physical altercation of some kind and appeared to have sustained possibly significant injuries to his neck or head. He advised that the male was going to be sent down to Seattle for medical treatment. Dr. [redated] said that the male had not wanted to report anything to police but Dr. [redacted] felt strongly that he should do so.

The male reported he had been having a good time with coworkers, and a local male came up to their table, but he did not remember anything after that. His coworkers told him "various details" about that night. "Due to the assault the victim can't work for 6 months to 1 year, and he broke his neck and has a 'C2 fracture.'" The investigating officer obtained videos and took still images to Pioneer Bar on September 12, 2024, to see if the bartender recognized anyone. The bartender identified "Mike Lerma." "She said he had been working for Mount Edgecumbe Medical Center as a construction worker on the new hospital being built but had been let go because he had been kicked out of all the bars in town for rowdy or disruptive behavior." The officer noted there had

been several recent contacts with Lerma, including a complaint against him regarding being disruptive at Ernie's Saloon, as well as a note he had punched someone in the face, where another sergeant had contact him on July 28, 2024, and advised him he was being asked to leave Ernie's Saloon due to his disruptive behavior. On another complaint on July 14, 2024, Lerma was the complainant against another male being disruptive and threatening people. Finally, on June 11, 2024, Lerma was served with protective order paperwork in which he was the respondent. On October 23, 2024, the officer contacted Lerma, who told him that he recalled some of the altercation at the Pioneer Bar on August 14, 2024. He was highly intoxicated and did not remember many details from the evening, but he bought drinks for a group of people at a table in the bar. One of the patrons at the table became upset because Lerma did not buy drinks for the whole table. A physical altercation happened and he ended up on the floor; he was punched or struck in the eye or face because it was painful the following day. (Incident Report, August 14, 2024).

16) On August 19, 2024, Employer denied all benefits stating, "The claim is barred under AS 23.30.100. The alleged injury was proximately caused by the willful intention of the employee to injure another. The injury may have been proximately caused either by the intoxication of the employee or by the employee being under the influence of drugs. The injury, condition, and/or disability did not arise out of or in the course and scope of employment." It also contended Employee's work was not the substantial cause of his injury or disability or need for medical treatment, Employer had not received both a medical report and a bill for treatment alleged to be related to a work injury, and Employer had no evidence supporting disability. (Controversion Notice and Answer to Employee's Workers' Compensation Claim, August 19, 2024).

17) On December 30, 2024, Employee sought TTD, temporary partial disability (TPD), and permanent partial impairment (PPI) benefits, medical and transportation costs, a penalty for late-paid compensation, a penalty for Employer's failure to report injury, a finding of unfair or frivolous controversion, and attorney fees and costs for an injury on May 19, 2024. He wrote, "Employee was assaulted by supervisor and sustained multiple injuries" under the description of the injury and wrote, "Employer failed to report injury and benefits were controverted" as the reason for filing the claim. (Claim for Workers' Compensation Benefits, December 30, 2024).

18) On January 13, 2025, Employer denied TTD, TPD, and PPI benefits, medical and transportation costs, penalty for late paid compensation, penalty for Employer's failure to report injury, an unfair or frivolous controversion, and attorney fees and costs. It stated, "The claim is

barred under AS 23.30.100. The alleged injury was proximately caused by the willful intention of the employee to injure another. The alleged injury may have been proximately caused by the intoxication of the employee. The injury, condition, and/or disability did not arise out of in the course and scope of employment. The employee did not sustain an injury as defined by AS 23.30.395(24). As such, employer was not required to report the injury to the Board. There is no nexus between the legal services provided and any benefits received." (Controversion Notice; Answer to Employee's Workers' Compensation Claim, January 13, 2025).

19) On January 24, 2025, Employee complained of whistling through his nose with regular breathing. He showed Dr. Miller a video, which was "quite impressive." Dr. Miller noted Employee's history of nasal fracture and history of orbital fracture. He referred Employee to an ENT and an ophthalmologist. (Miller record, January 24, 2025).

20) On January 25, 2025, Kirk Waggoner testified he is the safety coordinator for Employer and Mass Excavation, which is owned by Employer. (Videoconference Deposition of Kirk Waggoner, January 25, 2025, at 5-6). He had been in the job for almost 20 years "at this particular site." (*Id*. at 5). Waggoner writes and edits safety plans and trains, is involved in the new hire process, tracks job sites, does inspections, supplies "PPE," starts jobs to make sure they have everything the need, and handles workers' compensation claims. (*Id*. at 6-7). He investigates incidences to find out what happened and sends the information to the "work comp carrier," makes sure the person was handled properly and got the care they need, and tracks the incidents from start to finish. (*Id*. at 7). Waggoner has a role in decision making about whether to accept or deny a claim, including whether it would be considered work related, and the return-to-duty program. (*Id*.). Employer recently hired two safety professionals to work under Waggoner as he is getting to retirement age, and one can take over when he gets ready to leave. (*Id*. at 9). The other person is working at the Sitka SEARCH hospital. (*Id*. at 10). Waggoner did not know when the hospital project began but it is not completed. (*Id*. at 11). When asked how the project is organized, he stated, "Well basically we have -- basically carpenters, laborers are under us, and then there is subcontractors. The carpenters do a variety of different tasks and so do the laborers." (*Id*). Employee was a carpenter. (*Id*. at 12). There are foremen, which are leads within the carpenters, and they report to the superintendent. (*Id*. at 12-13). The superintendent reports to the project manager. (*Id*. at 13). The typical work schedule is from 7 to 3:30 or 5:30, six days a week. (*Id*. at 14). Sunday is the typical day off. (*Id*.). Employer has a contract or something with Totem Hotel in Sitka for lodging for

employees that do not live in Sitka; Employer supplies lodging for the workers and subcontractors. (*Id*. at 14). Employer pays for travel to and from the job location and Totem supplies breakfast, lunches and dinner. (*Id*.). Employer does not provide an expense allowance for carpenters. (*Id*.). Employer has a drug and alcohol program that states employees are forbidden to come to work under the influence, they do pre-employment testing, random testing, and incident if "we deem it was appropriate for a particular event." (*Id*. at 15). The policy is specific to the hours they are working. (*Id*.). Employer does not have any policies regarding violent behavior. (*Id*.). Lerma was a carpenter and he could not remember when he met him; before the incident he "couldn't tell you" what Lerma looked like, how big he was, or who he was. (*Id*. at 16). Lerma was not a foreman, and Waggoner could not say whether Lerma had a supervisory responsibilities. (*Id*.). Waggoner was not at the project site when the incident occurred. (*Id*. at 16-17). His first knowledge of the incident was when Employee sent him "a handwritten letter that had a Department of Labor report of injury documentation in it on July 5th." (*Id*. at 17). Waggoner did not talk to Employee about it. (*Id*.). The only role he had in responding to the incident was to write a report "so we had something to, you know, document." (*Id*.). Waggoner prepared exhibit 1; Walls, the superintendent, also participated in preparing it. (*Id*. at 17-18). He typed it. (*Id*. at 18). Waggoner did not speak to Lerma or Bruse before preparing the report; he got the information from Walls that the three of them went to breakfast and then shopping. (*Id*. at 19). He may have gotten information from Ridout, as there are two superintendents down there, and they trade off; sometimes they are there together and he could not remember. (*Id*. at 19). Waggoner got the information that Employee was very intoxicated and had been harassing Lerma from those two. (*Id*. at 19-20). He did not recall their conversations in any more detail as to the nature of the harassment. (*Id*. at 20). Waggoner did not do anything else about the incident after writing the report. (*Id*. at 20). He usually sends reports to the superintendents, so they have a chance to correct something, but he did not recall whether or not they made any corrections. (*Id*. at 20-21). Waggoner did not know whether Lerma was sanctioned or had any adverse action taken against him by Employer as a result of the incident. (*Id*. at 21-22). Lerma is not employed with Employer. (*Id*. at 22). Waggoner did not have any knowledge of whether Lerma had been violent with other Employer employees. (*Id*.).

21) On February 24, 2025, Employee testified he was in jail for about 13 months, from "May -- June of 2021" to September 2022. (Deposition of Fred Morse, February 24, 2025, at 10).

Afterwards, he lived on B Street in Anchorage for 16 months; then he lived on Eagle Street in Anchorage for a little over a year. (*Id*. at 9-10). Employee is a journeyman carpenter and had been a member of the carpenter union, local 1281, since February 2024. (*Id*. at 19). He started working for Employer in February or March of 2024 and he got the job through the union. (*Id*. at 23). Walls hired him over the phone and Waggoner did the paperwork in the office when he was hired. (*Id*.). Employee interacted with Walls almost daily; he was on site in Sitka. (*Id*. at 23-24). "John-something" was an assistant superintendent under Walls; then there were several foremen. (*Id*. at 24). Employee had a few foremen, Curt, Mike Lerma, and Joe. (*Id*. at 24-25). He worked Monday through Saturday, 7:30 or 7:00 to 5:30; he did not work on Sundays. (*Id*. at 25). Employer provided housing while he was in Sitka at a hotel. (*Id*. at 25-26). Daily meals were provided at the hotel because they had a kitchen and hired a chef; a hot breakfast was served, lunch was made to go, and then they had dinner after work. (*Id*. at 26). Alcohol was not served at the hotel. (*Id*.). Employee did not stay anywhere else in Sitka. (*Id*. at 27). May 19, 2024 was a Sunday. (*Id*.). He woke up that morning, and his roommate Mike Bruse told him Lerma wanted to go have breakfast at this bar and discuss our plan for the week because Lerma had just been promoted to foreman, and he had been studying the plans and was told to pick a crew. (*Id*. at 28). Before going to the bar, they had breakfast and went to a few shops. (*Id*. at 29). Another coworker, Elliot, did not make it to breakfast because he was sleeping; he joined them shopping but he did not go to the bar. (*Id*.). Then, John and Trish were at the bar when they got there. (*Id*.). They had breakfast at the bar at the airport at about 9 or 10 a.m., and he had two drinks with breakfast. (*Id*. at 30-31). Then they went shopping for a couple hours and he dropped off a couple of things at the hotel. (*Id*. at 31). Employee was pretty sure he walked to Ernie's. (*Id*. at 32). He said they discussed the new plans for the crew at breakfast but not when shopping. (*Id*. at 32-33). When they got to the second bar, they all had cheers for the new crew and Lerma's promotion, then John and Trish left. (*Id*. at 33). Lerma was talking about bringing on another guy, and they were discussing which apprentice they were going to pick. (*Id*. at 33-34). Employee told him about Elliot, that he was a good hand, good learner, and hard worker. (*Id*. at 34). He had drank two beers and two shots in an hour and a half to two hours. (*Id*. at 35-36). Employee had two bloody Mary's that morning at breakfast; Bruse had purchased them. (*Id*. at 36). Most of the conversation was about the plan for the crew but they also talked about the little island Lerma and Bruse lived on, jail, gang member stuff, and "guys stuff probably." (*Id*. at 37). They also talked about fishing. (*Id*.). Lerma is a member of

the North Side or Nortenos gang; he was from California. (*Id*. at 38). Employee believes Lerma is still an active member. (*Id*.). Employee talked about his time at Goose Creek. (*Id*. at 39). Lerma told Employee he had been to prison before in California. (*Id*.). "We discussed who was going to do what. I was going to be point man. And obviously Mike was going to have all our tools, so that way all of our stuff -- stocks that -- we were discussing how we were going to, you know, have a stockyard, a stockpile. How we were going to have a -- you know, that all organized so we weren't looking for our parts or pieces. And then we discussed how the Kingspan system itself works -- how it's a two-part system, how we were going to install it. Stuff like that. Just gearing up the plan of attack so we didn't just show up and not have a plan and look organized." (*Id*. at 40). At the time of the incident, "we were talking about gang member, and, you know, I didn't really know he was a gang member. And then, you know, he told me that, you know, he was, and he joined this gang, and I was laughing and started to make fun of him. And -- not make fun of him really, just, like, you know, chiding him, laughing, and then that's when he struck me." (*Id*. at 40-41). Lerma struck Employee with a beer bottle in the left eye. (*Id*. at 41). Employee believes he was knocked out because the next thing Employee remembered was being held down, with a rag over his face trying to stop the bleeding. (*Id*.). He did not know if the police were called; when Employee came to, he ran. (*Id*.). Employee did not talk to the police. (*Id*. at 41-42). He ran to an ambulance outside. (*Id*. at 42). Employee was sitting across the table from Lerma and Bruse had asked Lerma to let him out because they were sitting in a booth, and Employee saw "it right before it happened -- that he struck me -- and I went out." (*Id*. at 43, 45). He believed it was struck again in the right eye, but he was not conscious for that. (*Id*. at 43-44). Employee went to the hospital by ambulance; he was there "for hours." (*Id*. at 45-46). The next morning he called Walls and told him he had got into a fight and was not going to be able to make it into work that morning. (*Id*. at 46). Employee told Walls what happened, that Lerma had hit him, and Walls told him to come see him the next morning. (*Id*. at 46). Employee did not return to work; he explained to Walls that he had multiple broken bones and wanted to go to Anchorage to see a doctor. (*Id*. at 47). Walls got him a ticket to fly back to Anchorage. (*Id*. at 48). Prior to the incident, Employee worked with Lerma before and had not had any confrontations. (*Id*.). Lerma had several incidents and had a physical altercation with other employees off the job. (*Id*.). Employee immediately considered the incident to be work related because "when we're in a camp-style setting like that, we are told and expected to be -- always act like we're on the job, you know. We're held

responsible for our actions. I mean, we're in the employer's house living there, eating there, working there, you know. So whether we're actually on site or not, you know, we're told that, you know, uphold a certain professional responsibility." (*Id*. at 58). That extends to "your behavior 24 hours a day." (*Id*. at 59). The hotel was not open for regular business, "the actual employer owns the hotel." (*Id*.). Walls thought Employee would go right back to work on Lerma's crew and he told Walls that he was not willing to do that, so Walls put him with Curt. (*Id*. at 60). Lerma was still working for Employer when Employee returned to work. (*Id*.). Employee saw him regularly, but he did not talk to Lerma and Lerma did not say anything to him. (*Id*.). He was not paid from when he left Sitka. (*Id*. at 61). After working for three to five weeks, he told Walls he was struggling and having a hard time and needed more time off; he took four or five weeks off work. (*Id*. at 61-62). Then Employee went back to work with another union company, Rand, in August 2024. (*Id*. at 62-63). His job with Rand ended in September. (*Id*. at 63). Then he began working for Swalling in October, and his job ended the prior week. (*Id*. at 64). Employee is still on the rolls for the union and was hoping to start work the following week on another job. (*Id*. at 65). It usually takes him a week or two to find another job after being laid off; he has four to eight jobs a year, it "just depends." (*Id*.). Employee's insurance through the union paid for his medical care, and he had to buy new glasses as his were destroyed during the incident. (*Id*. at 66-67).

22) On March 3, 2025, Employee petitioned to compel Employer to provide discovery. He attached a March 3, 2025 letter he sent to Meshke stating:

> I write to follow up on prior discovery requests. Several items of discovery remain outstanding. I previously requested the personnel file for Mr. Lerma, and copies of an employee handbook and/or policies, and a privilege log. Those items have not been fully produced. In addition, an adjuster note on August 8, 2024, refers to a taped interview of my client, which also has not been produced.
>
> Regarding Mr. Lerma's personnel file, nothing has been produced. Instead, I was asked to identify which parts of a I file I want, when I do not have the file in the first place. That is illogical. I cannot identify parts of something which I [have] no knowledge of. If the employer wants to take the position that certain parts of Mr. Lerma's file are not discoverable, then they should produce the parts they do not object-to [sic] and also produce a privilege log of withheld items.
>
> I requested a privilege log in the first place, anyway. The privilege log should be prepared so as to sequentially-number each item of withholding or redaction, include the date of origin of the withheld item, identify the author(s) and recipient(s), indicate the type of item identified as either an adjuster note, email,

> attorney letter, etc., and clearly assert the privilege or other objection relied upon. See *Rockstad v. Chugach Eareckson Support Services*, AWCB Decision No. 08-0208 at 11-12 (November 6, 2008) (finding such a privilege log adequate).
>
> Also, regarding employer files and statements about the incident, Mr. Waggoner testified that he typically provides a draft statement for superintendent review. No drafts, nor any emails pertaining to them, have been provided. Please produce them. . . . (Petition, March 3, 2025; Letter March 3, 2025).

23) On March 24, 2025, Employer wrote a letter to Bredesen objecting to providing copies of Lerma's personnel file, "Mr. Lerma is not a party to the claim. He has a reasonable expectation of privacy to contents of his personnel file. There is no dispute as to Mr. Lerma's role in Mr. Morse's injury. The request is vague and does not identify what information is sought and the relevance of the request to Mr. Morse's workers' compensation claim." (Letter, March 24, 2025).

24) On March 27, 2025, Employee confirmed the only remaining discovery issue is Employee's request for Lerma's personnel file:

> **Employee's Oral Arguments:**
> Employee is contending he is entitled at minimum to a privilege log listing the general contents of Mr. Lerma's personnel file and why the basis for not proving each item. Employee suggested that HIPPAA [sic] might apply to some contents in a personnel file, and that could be listed on the privilege log. Employee contended that while a non-party personnel file might not be available for public inspection, it might be discoverable in the context of litigation. Employee suggested the designee could craft her discovery order so as to prohibit Employee from disclosing the contents and information from Mr. Lerma's personnel file to anyone other than the Board. Employee contended Employer could accept a Board discovery order in lieu of a release.
>
> **Employer's Oral Arguments:**
> Employer is objecting on the basis that non-parties have a reasonable expectation of privacy regarding their personnel files. Employer argued Employee's request is too broad and employees' discovery requests should be specifically tailored the way an Employer's medical release is. Employer argued that a release signed by an employee is required for an employer to obtain a personnel file from another employer, and therefore, Employer could not release Mr. Lerma's personnel file without a release signed by Mr. Lerma.
>
> The board's designee notified the parties that she will order the parties to each file one brief regarding the basis for discoverability of non-party personnel files in the context of litigation, and the legal basis for confidentiality of non-party personnel files. Employer requested 10 days to file its brief. Parties agreed to file one brief each (no replies.) Briefs are due by close of business April 7, 2025. On April 8,

> 2025, the board's designee will consider the parties' briefs, relevant pleadings in the file, as well as the parties' oral arguments above, and will issue a discovery ruling in a second prehearing conference summary by April 10, 2025.
>
> **Order:**
> **Parties are hereby ordered to each file one brief regarding the basis for discoverability of non-party personnel files in the context of litigation, and the legal basis for confidentiality of non-party personnel files. Briefs are due by close of business April 7, 2025.** (Prehearing Conference Summary, March 27, 2025).

25) On April 7, 2025, Employee contended *Granus* broadly encourages liberal discovery. He contended nothing in case law provides any specific protections for coworkers' personnel files. Employee contended his attorney could find no case law in Alaska involving discoverability of a coworker's personnel file during civil litigation that involved a private employer and AS 23.10.410 guarantees every employee a right of access to their own personnel file but provides no similar restrictions that AS 39.25.080 provides for State of Alaska Employees. He contended AS 23.10.660 provides specific rules regarding confidentiality of drug test records and even those may be disclosed "as ordered by a court or governmental agency." Employee contended courts in other jurisdictions have found coworker personnel files discoverable under Federal Civil Rule 26 and have ordered the compelling party to maintain the confidentiality of the information and records in the personnel files ordered to be produced. He contended there is no rule that makes coworker personnel files confidential. Employee contended HIPAA does not restrict the discoverability of possible medical information in Lerma's personnel file. He requested orders compelling Employer to produce Lerma's personnel file and directing Employee to maintain the confidentiality of Lerma's file for any record or information that is not admissible and relied upon at hearing. (Employee's Supplemental Memorandum in Support of Petition to Compel, April 7, 2025).

26) On April 7, 2025, Employer contended Employee failed to identify the relevant information he is seeking from Lerma's personnel file. It contended Employee is on a "fishing expedition," which would result in the production of irrelevant personal information. Employer cited two Board decisions denying an injured worker's request for a non-party's medical records. It contended Employee's request is too broad and needs to be tailored to identify what information is relevant to his claim. Employer contended AS 23.30.107(b) affords no protection to a non-party's information contained in a record held by the Board or Commission and non-party Lerma has a reasonable expectation of privacy in his personnel file. It stated, "There is no dispute as to Mr.

Lerma's role in Morse's injury." Employer requested an order denying Employee's petition. (Employer's Brief in Opposition to Employee's Petition to Compel Non-Party Employee's Personnel File, April 7, 2025).

27) On April 16, 2025, after considering the benefits sought and Employer's defense that the injury did not arise out of or in the course and scope of employment, the Board designee analyzed whether the information sought by employee is reasonably calculated to lead to facts that will have any tendency to make a question at issue in the cause more or less likely. Under the "Analysis" section, the designee wrote:

> 1) Employee requested Mr. Lerma's personnel file in its entirety. Employee argues that discovery of personnel files is routine and not vague, and also stated that there is no precedent in Alaska case law for releasing a non-party's personnel file. Employee instead cited case law from extraterritorial cases deciding on matters of wrongful termination and age discrimination. Employer argued Employee's request is too broad and Employee failed to articulate a reasonable nexus between the information sought to be released and evidence that would be relevant to a material issue in the case. Employer cited board decisions that declined to order release of non-party's medical records. The designee can see how a non-party's personnel files could be relevant in a wrongful termination or age discrimination case, in which the deciding body must determine how an employee was treated compared to an employer's other workers. It appears from the parties' briefs and the designees own research that there are no relevant laws or case law that apply to non-party, non-state-worker personnel files. The designee finds that Employee's broader request for Mr. Lerma's entire personnel file is too broad and it will be denied. However, the designee will evaluate the relevancy of the specific items Employee articulated he is seeking in Mr. Lerma's personnel file.
>
> 2) Employee articulated that he is seeking Mr. Lerma's job duties, expectations regarding employee behavior at remote sites, participation in the Sitka hospital construction project, rate of pay, and hours worked to establish that Mr. Lerma was Employee's supervisor. Employer argued that there is no dispute as to Mr. Lerma's role in Employee's injury. Employer did not deny Employee benefits on the basis that Mr. Lerma is not Employee's supervisor. Employee did not articulate what claimed benefit, rule, or defense would require him to prove that Mr. Lerma was his supervisor. Employee's request for Mr. Lerma's job duties, expectations regarding employee behavior at remote sites, participation in the Sitka hospital construction project, rate of pay, and hours worked is denied.
>
> 3) Employee articulated that he is seeking records from Mr. Lerma's personnel file about the incident of injury, to obtain contemporaneous information about the incident. Alternatively, Employee argues that confirmation that Mr. Lerma's personnel file does not contain information about the incident could establish

> Employer's policy of condoning violence on work trips. Employer did not raise any defenses to this request, and has already provided requested confirmation in its March 24, 2025 response to item #3 of Employee's March 3, 2025 letter:
>
> "3. Regarding employer files and statements about the incident, Mr. Waggoner testified that he typically provides a draft statement for superintendent review. No drafts, nor any emails pertaining to them, have been provided. Please produce them.
>
> **Response:** No responsive documents or correspondence exist."
>
> The board's designee agrees with Employee that records about the incident of injury would be relevant to Employee's claim. However, Employer already provided the above response regarding this item, which is that none exist other than those already provided to Employee. Employee's request for records from Mr. Lerma's personnel file about the incident of injury is denied.
>
> 4) Employee articulated that he is seeking records from Mr. Lerma's personnel file about other violent incidents involving Mr. Lerma, which could establish Employer's knowledge of Mr. Lerma's violent nature and any medical conditions rendering a person violent, and Employer's policy of condoning violence on work trips. Employer argued that there is no dispute as to Mr. Lerma's role in Employee's injury. Employee did not articulate what claimed benefit, rule, or defense would require him to prove that Employer condones violence on work trips or had knowledge of Mr. Lerma's violent nature and/or medical conditions rendering a person violent. Employee does not have to prove that Employer was negligent. However, Employer's defenses include that Employee's injury was caused by willful intention to injury another and that Employee did not sustain an injury as defined by AS 23.30.395(24), which can include willfully being harmed by others due to the employment. This makes the question of who willfully intended to harm whom relevant to Employer's defenses. In the absence of records about the specific incident of injury, the designee finds that records from Mr. Lerma's personnel file about other violent workplace incidents involving Mr. Lerma might lead to facts that could make a question at issue in the case (who willfully intended to harm whom) more or less likely. The privacy of the unknown individuals involved in other violent workplace incidents involving Mr. Lerma must be considered. The privacy of those unknown individual's and Mr. Lerma's medical information must also be considered. Employer is ordered to provide Employee with records from Mr. Lerma's personnel file about other violent incidents involving Mr. Lerma, with the names of individuals other than Mr. Lerma redacted. Employer will also redact all medical information regarding Mr. Lerma and any other individuals. . . .

The Board designee denied Employee's request for Lerma's personnel file as "too broad." Employee's request for Lerma's job duties, expectations regarding employee behavior at remote

sites, participation in the Sitka hospital construction project, rate of pay, and hours worked were denied. Employee's request for records from Mr. Lerma's personnel file about the incident of injury, and Employee's request for information about why Employer didn't report Employee's injury in a timely manner were denied. The designee ordered Employer to provide Employee with records from Lerma's personnel file about other violent incidents involving Lerma, with the names of individuals other than Lerma and all medical information regarding Lerma and any other individuals redacted. The Prehearing Conference Summary was served on the parties by first-class mail. (Prehearing Conference Summary dated March 27, 2025, Prehearing Conference Summary Served and Envelopes, April 16, 2025).

28) On April 16, 2025, Dr. Miller again referred Employee to an ENT for chronic rhinosinusitis, history of left orbital facture. (Miller record, April 16, 2025).

29) On May 7, 2025, Employee noticed May 13, 2025 depositions of Walls and Ridout. (Notice of Taking Deposition of Russell Walls; Notice of Taking Deposition of John Ridout, May 7, 2025).

30) On May 13, 2025, Walls testified he lives in Anchorage, Alaska and works for Employer. (Videoconference Deposition of Russell Walls, May 13, 2025, at 3). The biggest project he worked on with Employer is the project he was on then in Sitka, Alaska, for a new hospital for SEARHC. (*Id*. at 4). This was the seventh year Walls worked for Employer, and he is a site superintendent. (*Id*. at 5). He has been a site superintendent for Employer for six years and he was the site supervisor for the Sitka project on the day of the incident. (*Id*.). The other site supervisor is Ridout. (*Id*. at 5). They work four to five weeks at a time with one week off, and they never take time off at the same time; at least half the time they work together. (*Id*. at 5-6). Ridout was tasked to deal with doors, windows, openings, and detailing work. (*Id*. at 6). Walls is "more of a day-to-day operations and pushing manpower and pushing subs." (*Id*.). But they covered for each other all the time, so they are in constant communication. (*Id*.). Workers are organized into crews, and each crew has a foreman; typically five or six people, up to ten, work under one foreman. (*Id*.). Journeyman carpenters, apprentice carpenters, and labors work under the foreman. (*Id*. at 7). Sitka is considered a camp-type job because there is housing available. (*Id*.). It is a pretty developed community; it is not like remote jobs in most places in Alaska since it is a fully functioning city. (*Id*.). The employees are housed at camp unless they decide they want to live somewhere else; the lure, in addition to the sixty-hour work week, is that we feed them and provide a place to sleep so it should not cost them anything to come there to work. (*Id*. at 7-8). The normal work schedule

is 7 a.m. to 5:30 p.m. Monday through Saturday. (*Id*. at 8). The camp is on Baranof Island, and the project is on Japonski Island; Employer has five passenger crew vans that hold nine people to shuttle workers between the job site and the camp. (*Id*.). There is an orientation when on-boarding workers; it is a site specific safety orientation and covers things of the job site nature. (*Id*.). "[A]nybody that is housed at the totem or the bunkhouse also has a code of conduct, rules that they get orientated on and they have to agree to, and then they sign an agreement that they will list." (*Id*. at 8-9). Walls retrieved a copy of "SEARHC Housing Guidelines" and read it. (*Id*. at 9). Number one, quiet hours are from 10 p.m. to 6 a.m.; number two, no firearms allowed, no exceptions; number three, no fighting physically or verbally; number four, no open containers of alcohol in public spaces; number five, no hot plates or kitchen appliances; number six, only registered guests are allowed in the rooms and dining areas; number seven, this is a non-smoking facility. (*Id*. at 9-10). It also states, "Failure to follow these guidelines will result in loss of housing for that individual." (*Id*. at 10). Walls stated "fighting is just not tolerated" as it is a very small community. (*Id*.). Other people have been sent home in the past for fighting. (*Id*.). He and Ridout do all the hiring and terminating for this project and decide whether to elevate someone to a foreman position. (*Id*. at 10-11). Walls was given Employee's number when he put in an open call for a couple of carpenters; he reached out to Employee who said he wanted to give it a try in Sitka. (*Id*. at 11). They usually do the workers' paperwork and drug and alcohol screening in Anchorage if they are in Anchorage. (*Id*.). Employee told him that he had not been in the carpentry field for three years because he had just gotten out of jail or prison for three years. (*Id*. at 12). He had a really good attitude about wanting to work and was really excited; Walls was happy to offer him an opportunity to advance himself. (*Id*.). Lerma reached out to him because he is from neighboring community in Southeast Alaska; his resume was what "we were looking for for a steel stud type of person" since they were in concrete back when he started. (*Id*.). The first time he met Lerma was for the Sitka project. (*Id*.). The Sitka project began in 2023 right at the New Year and they had a year's worth of concrete. (*Id*. at 13). Walls pulled the file and saw he had an August 24, 2023 dispatch for Lerma. (*Id*.). Lerma had never been a foreman for Employer. (*Id*. at 13-14). Walls hands out tasks to foremen and typically foremen use an iPad in the field. (*Id*. at 14). They do not use a lot of paper. (*Id*.). Walls prints out details for a field hand that is taking on a task that needs extra information. (*Id*.). He recalled giving Lerma paperwork when he and Employee started working together. (*Id*.). They were starting a scope of work called insulated

metal panels, and they were trying to find a person that might be able to handle that. (*Id*. at 14-15). The papers were given to the whole group of people, like four or five, so everybody could have an idea of what they were about to take on. (*Id*. at 15). When Walls was asked if Lerma was ever Employee's supervisor "in any way," he said he did not know if Lerma was ever Employee's supervisor; Employee and Lerma had the same level of pay; they were at the same rate. (*Id*.). Lerma was a better carpenter than Employee, "so if anything, he might have got talked to more than Fred." (*Id*.). Lerma had a situation early on with an ironworker and he was violent to the ironworker; it was not at the job site, at camp, or during working hours. (*Id*. at 15-16). Lerma got terminated for the incident "because he was the first person that ever got into a physical altercation here in Sitka through this project, even after hours." (*Id*. at 16). They also wanted to make "a statement that we weren't going to stand for that period, in general." (*Id*.). Walls did not know "exactly all the situations on why it happened." (*Id*.). "From what [he] understood, the ironworkers were celebrating topping out the building, or hanging the last piece of steel, and apparently Lerma implied that he wanted to sign the piece of steel along with the ironworkers. The ironworkers didn't like that idea, and I don't really know why it escalated from there, but Mr. Lerma punched an ironworker." (*Id*. at 16-17). Walls stated he "did not have any official documentation or writing up besides giving Lerma his reduction in force." (*Id*. at 17). He had not seen the document written by Waggoner before deposition, "Everything that I read sounds accurate." (*Id*. at 17-18). Walls recalled communicating with Waggoner about the incident; he was sure it was company policy to do it. (*Id*. at 18). He did not recall if Waggoner ever gave him a draft of the report and asked him to comment; he could have. (*Id*. at 18). Walls learned about the incident because Employee did not come to work and he asked his foreman where he was and they did not know, so he called Employee. (*Id*.). Employee said he got hit by Lerma and that he was in a lot of pain. (*Id*.). Walls followed up and learned through "the grapevine" that Employee had taken an ambulance to the hospital on Sunday. (*Id*.). He spoke with Lerma about the incident that Monday; he told Walls that they went to breakfast -- Bruse, Lerma, and Employee. (*Id*. at 19-20). They were friends; Employee and Bruse were roommates at the camp and spent a lot of time together. (*Id*. at 20). After breakfast, they decided to go to the bar "for some reason." (*Id*.). As far as he knew, Employee never, ever drank when he was in Sitka because he told Walls that the last time he drank, he ended up in jail for three years. (*Id*.). Walls had no idea why Employee decided to drink that day, but he got pretty intoxicated and got into Lerma's face about "whatever,

and I think it had to do with something about his race," and that is when Employee got hit. (*Id*. at 20-21). The information that Employee was drunk came from Bruse and Employee; Employee admitted that he was drunk and said he did not drink and had not drank in three years. (*Id*.). Employee told Walls that he "mentioned something about his ethnicity, about being a Mexican" and Lerma "did not like that." (*Id*. at 21). He spoke with Bruse on Monday, and Bruse said they were drinking, Employee was getting quite intoxicated, and he "excused himself from the table because he saw a situation coming, and he did not want to be in the middle of it." (*Id*. at 22). Walls has no idea what they drank that day. (*Id*.). He understood that after breakfast, they did a bit of shopping on Lincoln Street and then went to Ernie's. (*Id*. at 23). Walls stated, "I have 150 construction workers. I can guarantee you on a Sunday somebody is at a bar." (*Id*.). When he was asked why Lerma was not terminated based on the incident, Walls stated Lerma said he was, in a sense, defending himself. (*Id*. at 23-24). At the time, Employee did not want anybody to get into trouble, and he asked Walls not to have anybody get into trouble over it. (*Id*. at 24). "[I]n hindsight, we should have just let them both go right then and there." (*Id*.). Walls was not aware of any problems or repercussions at the jobsite because of the incident and he was not aware of other employees asking to work in different crews from Lerma. (*Id*.). After the incident, Employee did not have any real time on the job; he tried to tough it out, but he could not do it. (*Id*. at 24-25). He ended up staying in his hotel room for three or four days and then ended up leaving. (*Id*. at 25). Walls asked Employee about the ethnic remark, but Employee said he did not remember anything. (*Id*.). He remembered having conversations with Ridout about the incident. (*Id*. at 26). "Well, first of all, who starts drinking in a bar first thing in the morning on a Sunday? You know, I mean that's -- I don't know, that's probably not the best place to go with it. So basically about what to do with both of them, terminating them, you know, because ultimately, we talked about terminating them. But both of them asked if they could stay and put it behind us. So being kind hearted, we did. And in retrospect, we should have just terminated them both right there." (*Id*.). Lerma is not working for Employer; he was terminated because his work started "going downhill." (*Id*. at 26-27). "He was having issues with a restraining order against somebody in his past, he was having issues with this incident here, and just a grown man with issues." (*Id*. at 27). "[H]is work ethic at the job site was trailing, and we had to let him go because he wasn't worth employing any longer." (*Id*.). Walls did not hear about another incident in which Lerma assaulted another person in Sitka. (*Id*.). The police went on the job site looking for Lerma "to serve a restraining

order against a woman that he used to date from his hometown because she got medical services here across the street." (*Id*.).

31) On May 27, 2025, in an email dated May 26, 2025, Employee rescheduled Ridout's deposition to May 27, 2025. (Notice of Rescheduling Deposition of John Ridout, May 27, 2025).

32) On May 27, 2025, Ridout testified he is a site superintendent for Employer in Sitka, Alaska on the SEARHC hospital project. (Videoconference Deposition of John Ridout, May 27, 2025 at 3). He goes back and forth from Anchorage and has worked for Employer for 20 years. (*Id*.). Ridout is the project guy, trying to maintain the job schedule and direct field crews on their tasks; he makes sure all the subcontractors and everybody else is in coordination and working together. (*Id*. at 4). He performs in coordination with Walls. (*Id*.). Ridout has been a site supervisor for Employer since 2008; he was in the position when the incident happened. (*Id*.). Employer has a concrete crew, framing crew, and sheetrock crew; the number of crews ebbs and flows depending on the state of the project. (*Id*. at 4-5). There is usually a foreman for the crews, and some foremen will run two or three crews depending on the workload. (*Id*. at 5). Underneath the foreman are carpenters and laborers, there are journeymen and apprentice carpenters, and laborers and apprentice laborers mixed in. (*Id*.). Ridout leaves the assignment of apprentices to the foremen. (*Id*. at 5-6). The apprentices follow instructions from the journeymen. (*Id*. at 6). There is "a lot of fluidity" in the journeymen that work for the foreman. (*Id*.). The project in Sitka is an out-of-town job. (*Id*. at 6-7). He assumes it is common for workers to socialize after hours and go out for drinks, depending on the location; in Bethel there is no place to do that. (*Id*. at 7). The incident was Ridout's first experience with co-workers getting into a fight after hours. (*Id*.). He had not heard of a similar incident that others had to deal with while working for Employer. (*Id*. at 7-8). Ridout hires and fires workers; he splits the duty with Walls depending on the workflow and if it was his week off or Walls' week off. (*Id*. at 8). He typically finds workers to hire by reaching out to the union halls. (*Id*.). Walls and he make decide who the foremen are. (*Id*.). Sometimes Walls and he decide the individual crew members assigned to a foreman, or "if there is fluidity and guys -- you know, one guy has got more people than he has work for and another guy needs guys, they can kind of handle that internally. (*Id*.). There is usually a meeting every morning with the foremen to discuss whether their manpower needs are met for the day or the week, or if they are heavy and another guy might need some help. (*Id*. at 8-9). The foremen are provided blueprints or engineering specifications on an iPad; it is not provided to carpenters or laborers. (*Id*. at 9). He

has printed plans for a carpenter or laborer but they "try to go through the foremen more than just giving out information." (*Id*. at 9-10). Lerma was a journeyman carpenter; he was doing a wide variety of stuff, imbeds in some concrete formwork for the blazing system, some metal stud framing, and some siding work. (*Id*. at 10). Ridout did not recall whether he participated in the decision to hire Lerma; he knew him about six months. (*Id*.). Lerma was terminated earlier for a minor altercation with an ironworker in the bar one night because it was with a subcontractor. (*Id*. at 10-11). "We told him we would bring him back when that contractor was gone, because I kind of think there was more to that story than what we were hearing." (*Id*. at 11). "We heard that Mike punched the one guy, but when Mike was in the next day he had -- his face was pretty swollen up. So I don't know who threw the first punch or anything like that." (*Id*.). Ridout participated in the decision to fire Lerma at that time, but he did not know whether there was any paperwork done regarding that termination. (*Id*.). Either he or Walls would do that paperwork as there is a long checklist, but he could not tell without finding that document how "we checked the box." (*Id*. at 12). After the incident, Lerma was terminated because he had been out drinking and was missing multiple days of work, and "I finally said, 'Enough, you're out of here.'" (*Id*.). He estimated Lerma was probably terminated a couple months after the incident. (*Id*. at 12-13). Ridout participated in the decision to rehire Lerma after the first termination. (*Id*. at 13). "[W]e kind of thought there was more to the story with the ironworker crew. And up to that point he had been a -- he had done pretty good work for us." (*Id*.). Ridout talked with Lerma about the ironworker incident when he was rehired and he remembered telling him, "[H]e should not be putting himself in positions where that would happen to him again." (*Id*.). He became acquainted with Employee a couple months before the incident. (*Id*. at 13-24). Employee was kind of doing the same thing as Lerman, he was doing some metal stud framing and whatever they asked him to do. (*Id*. at 14). At one time, Employee's foreman was Paul Bell, but he was no longer with them when the incident happened; at time the foreman was Brady Winona and that was who Lerma and Employee were working for. (*Id*.). Employee was a journeyman. (*Id*. at 15). Sometimes journeymen are put in positions of leads within a crew but they "haven't really done that here." (*Id*.). Ridout saw that on other projects but "not here." (*Id*.). Usually that is decided "top down" and there is a pay rate associated with it. (*Id*.). Lerma was not assigned a role or pay rate for lead. (*Id*.). Ridout first heard of the incident the next day from Walls "because I think the client contacted him on Sunday, on our day off, and said, 'What's with the -- one of your guys went to the emergency room from a

bar fight and was kind of combative there." (*Id*. at 15-16). The client was SEARHC and the project manager for the hospital was Mike Pountey. (*Id*. at 16). Ridout thought the staff from the emergency room contacted Pountey. (*Id*.). Both Walls and he talked to Lerma and Employee "because they were both just as guilty, in my opinion. Not being there of course." (*Id*. at 17). They questioned both of them on whether it was going to be a problem "because we did need employees at the time, we were in a personnel crunch. (*Id*.). And, you know, saying, you know, if you guys can't work together, than you're pretty much not going to be working here." (*Id*.). Both said they did not want to lose their jobs and wanted to keep working and that they would be able to work in proximity but not working together, "maybe keep them on the project at opposite ends of it or something like that." (*Id*.). Ridout heard from Employee or Lerma that they went out for breakfast then ended up in a bar, and that Employee got in Lerma's face, at which point Lerma punched him. (*Id*. at 18). When asked if he interviewed anyone else about the incident, he answered he did not know who else was there. (*Id*.). Ridout told Lerma, "This is strike number two." (*Id*. at 19). "[W]e thought that everybody was going to be working and we -- you know, things were going to be fine and hopefully people weren't going to go to the bar and get that intoxicated where they were making those decisions." (*Id*.). When asked if they were ever instructed to not drink or go out to the bars, Ridout said, "Well, it's pretty hard for me to tell a guy what to do and what not to do on his own time." (*Id*.). He remembered discussing the incident with Waggoner and he recounted what happened to him like he did during this deposition. (*Id*.). Ridout does not recall Waggoner drafting a documented. (*Id*. at 19-20). He was not aware of anybody else on the crew objecting to working with Lerman following the incident. (*Id*. at 20).

33) On December 12, 2025, Employee requested an oral hearing on his July 5, 2024 and December 30, 2024 claims. He signed a sworn statement that, "I state that I have completed necessary discovery, obtained necessary evidence, and am fully prepared for a hearing on the issues set forth in the" claims dated July 5 and December 30, 2024. (Affidavit of Readiness for Hearing (ARH), December 12, 2025).

34) On December 22, 2025, Employer opposed the ARH based on the need for a prehearing conference to arrange a mutually convenient hearing date. (Affidavit of Limited Opposition to Affidavit of Readiness, December 22, 2025).

35) On January 7, 2026, the designee scheduled an oral hearing for five hours on March 10, 2026 on Employee's July 5 and December 30, 2024 claims on "Compensability, TTD, TPD, Medical

Costs, Transportation Costs, Unfair or Frivolous Controversion, Penalty for late paid compensation, interest, and Attorney's Fees and Costs." Employee requested a 25-page brief, and Employer opposed, "stating she did not think it was necessary." Employee "noted that he will file a petition, if need be, but that he usually requests 25 pages in the event he needs additional pages." The designee ordered parties "to serve and file witness lists and hearing briefs by close of business on **03/03/2026** and to serve and file evidence by close of business on **02/18/2026** in accordance with 8 AAC 45.060, 8 AAC 45.112, 8 AAC 45.114, and 8 AAC 45.120." (Prehearing Conference Summary, January 7, 2026).

36) On January 28, 2026, Employee filed a Notice of Intent to Rely with video from Ernie's bar on May 19, 2024, showing Employee standing next to Lerma at the end of the table at the booth Lerma was sitting in next, looking down at Lerma and talking, and Lerma striking Employee in the face once with his closed right fist. Employee fell to the ground; other individuals came to Employee's assistance. Lerma took a drink of his beer and walked away. There were no papers visible on the table, neither Employee nor Lerma had papers in their hands. (Notice of Intent to Rely, January 28, 2026).

37) On January 28, 2026, Peter Menendez testified he has been the manager of Ernie's Old Time Saloon in Sitka, Alaska since 2019 and had been working for Ernie's Saloon since 2003. (Videoconference Deposition of Peter Menendez, January 28, 2026, at 5). The only person above him is the owner, Stan Filler. (*Id*.). After reviewing the video exhibit, Menendez stated he recognized the content of the video, and it was a video "of the gentlemen getting punched from his coworker." (*Id*. at 6). He went to the video camera after the incident when he was made aware the gentlemen did not just fall over or have an accident, that he was actually assaulted, and he went to find out what happened. (*Id*.). Menendez got the video to use it for day-to-day operations so we would be able to let the staff know that this was a problem and not to allow that person into the bar anymore. (*Id*. at 6-7). The guy that got punched was not removed from the bar, but the other guy was not allowed back in the bar anymore. (*Id*. at 7-8). Menendez took pictures of the guy that got punched so we would know who he was and to keep an eye out, but he did not really cause any problems. (*Id*. at 8). He was present on the day of the incident. (*Id*.). Menendez went into the stockroom to retrieve supplies because they were busy and just starting to slow down that day. (*Id*.). He heard a crash and immediately turned around to come back and see what was going on; he saw a crowd standing around the guy. (*Id*. at 8-9). One of the bartenders, a young woman with

her hair back in a bun, went over to help him off the ground. (*Id*. at 9). Menendez asked her what happened and she said she did not know and thought he might have tripped or fallen or something. (*Id*.). The guy was out cold and had to be woken up. (*Id*.). It took him about five seconds to get back from the back room to the front, and the guy was alert five seconds after that. (*Id*.). Menendez was going around the bar to retrieve ice when another customer that is visible in the video stopped him and said the guy did not fall down, he got punched and he saw "the dude do it." (*Id*. at 9-10). The customer is one of the first ones that kind of walks over and glanced at the gentleman as he wakes up and leaves. (*Id*. at 9). Menendez continued to go help the guy, who was upset and wanted to know where the guy went; "he kept yelling his name out." (*Id*. at 10). They shuffled the guy outside, trying to get him to an ambulance they called, but he refused and took off on foot. (*Id*.). Then Menendez cleaned up the bit of blood that was there and went to the back room and checked the video to see what happened and made the clip and sent it to the staff. (*Id*.). The person that threw the punch was barred from the place after that, but it was not the last encounter with him. (*Id*. at 10-11). Menendez recalled he came back three to four times, and he personally dealt with him. (*Id*. at 11). The first time he tried to come back, Menendez was working and told him that he was not allowed in the bar; he had not told him before because he took off on foot after the incident. (*Id*.). He told his staff to call him and not say anything to the guy because he was "obviously violent." (*Id*.). Menendez told him you punched your coworker here and we do not allow that, and you cannot come back here. (*Id*. at 12). The guy said he did not do that, and they went back and forth, but eventually the guy left but he argued and complained the entire time. (*Id*.). There were two more times were he came back but Menendez did not have to physically remove the guy. (*Id*.). Menendez explained the situation and that he was not allowed in the bar. (*Id*.). The last time, Menendez called the police to have him "trespassed officially." (*Id*. at 12-13). The guy would say "why don't you come outside, let's do something about it" when Menendez reminded him he could not be there; Menendez would go outside and say, "Now, don't come back in." (*Id*. at 13). He did not recall having any further dealings with Employee. (*Id*. at 13).

38) On February 10, 2026, a prehearing conference was held to "get a case status before the 3/10/25 Hearing." "The EE noted that he would be deposed [sic] a co-worker who was a witness. The ER opposed stating that he had filed an ARH and should have been ready for a hearing with a complete discovery. The EE stated that he would be proceeding to scheduling the deposition, and the ER

noted that she would be prepare[d] to file a petition to quash." (Prehearing Conference Summary, February 10, 2026).

39) On February 12, 2026, Employer requested an order to "Quash deposition scheduled for 2/18/26 of Eliott Mann" contending, "The employer opposes the deposition scheduled for 2/18/26 of a non-party, Elliot Mann. Mr. Morse, through counsel, affied that all necessary discovery is complete and that he was fully prepared for hearing. The scheduling of this non-party's deposition is contrary to his sworn affidavit of readiness for hearing." (Petition, February 12, 2026).

40) On February 18, 2026, Employee filed a video showing a man wearing a red flannel shirt and sunglasses and another man wearing a black shirt with a yellow design on the front and then a camera device was placed face up towards the ceiling. The man in the red flannel shirt said he was thinking about what the other man said about why "we were fighting" because he did not remember. The man in the red flannel shirt said that what he meant to say was that prisons involuntarily separate the "north side" and the "south side" immediately when they enter for "their own protection." He had been in prison units with both at different times. The man in the red flannel said he told Mike he had no problem being his number two, no problem supporting him, to keep him informed and he had Mike's back. The man in the red flannel shirt said he did not remember if Mike hit him more than once; the man in the black shirt said, "Nope." The man in the black shirt said Mike would not let him out; he was stuck in between them in the booth, and he saw it was about to "pop off." He told Mike to "let me out" and he would not move. The man in the black shirt said "you would not let me out for a minute either" and the man in the flannel shirt said, "You should have just took me home bro." (Notice of Intent to Rely, February 18, 2026).

41) On February 18, 2026, Mann testified he lives in Anchorage, and he worked for Employer as a carpenter "in spurts" -- maybe three or four years. (Deposition of Elliot Mann, February 18, 2026, at 4-5). He was not working for Employer anymore; he last worked for Employer in December 2024. (*Id*. at 5). Mann came back to Anchorage and started working for another company in town. (*Id*. at 5-6). He began working for Employer in April 2024. (*Id*. at 6). Mann focused more on the outside stuff, all the siding and dressing up the outside, more than the inside. (*Id*. at 7). They were always broken up into groups or crews; they were kind of building a crew to work on the siding. (*Id*. at 7-8). Employee, Mike, and Lerma were going to be on the crew with Mann. (*Id*. at 8). He could not remember Mike's last name; he hated Mike and Lerma. (*Id*.). Lerma was supposed to be running the crew. (*Id*. at 9). Mann learned about the new crew when

he was riding in the van on the way back to the camp. (*Id.*). Lerma had papers in his hand, the plans of how the siding was going to go and said they were going to start on Monday. (*Id*. at 9-10). Lerma told them they could read over the plans tonight or over the weekend. (*Id*. at 10). Mann was not present during the incident. (*Id*. at 11). The ambulance was right outside his room, across the street. (*Id.*). Employee called him on video right after it happened and told him what had happened. (*Id.*). His face was bloody and Mann looked out the window and saw the ambulance. (*Id*.). Mann stated the location of the incident was a bar called Pioneer; it was across the street from the camp. (*Id*.). Mann had been to the bar a couple times, but he is not a big drinker; he would just stay in his room and mind his own business. (*Id*. at 12). Other workers would go there all the time. (*Id*.). Mann did not know Lerma or Employee before the Sitka job; he had just met both of them at work. (*Id*. at 12-13). Both told him what happened and had their own side of the story. (*Id*. at 13). Employee and he were friends and worked side by side for a few months. (*Id*.). Lerma said they were both drinking, and he bragged about how hard he hit Employee and did all that damage. (*Id*.). Mann did not remember his side of the story because he did not like him. (*Id*.). Employee told him that they had gotten into it and Lerma cracked his head. (*Id*. at 13-14). Employee had said a couple comments; Lerma had a short fuse; they were talking about being in jail or something. (*Id*. at 14). Employee said he told Lerma, "Your 50 years old. What are you doing gangbanging? Like we're -- we're out here to work. Like -- and you're acting like -- like you're still in a -- a gang from the -- you know, from your teen years." (*Id*.). That was the question that set Lerma off and he swung on him. (*Id*. at 14-15). Mann looked at the plans in the ride back to camp. (*Id*. at 15). He did not work with Lerma after the incident. (*Id*.). Mann went inside and started framing with another crew. (*Id*. at 15-16). Brady ended up running the siding crew; Mann worked under another older, super nice guy that had been with the company for 20 years and then ended up working under Joe. (*Id*. at 16-17). He stayed away from Lerma and just saw him around the job site after that. (*Id*. at 17). Mann was written up once while working for Employer because he and his partner flagged off an area, and the safety guy came and saw that they were both gone. (*Id*. at 19). He had gone to the restroom and then his partner decided to leave too. (*Id*.). Mann's employment with Employer ended because his coworker, an old roommate, brought up some methamphetamines that were not approved, and he used some and got "a dirty UA the next day." (*Id*. at 19-20). It was a violation of Employer's policies. (*Id*. at 20). If you get two write-ups you get suspended from working for Employer for a year and Walls

told him they could not hire him back for a year. (*Id*. at 20-21). Lerma had been suspended for six months for getting into a fight; he had just gotten back. (*Id*. at 21). Mann did not dispute his termination; he went to treatment "and that was that." (*Id*. at 21-22). Employee approached him about giving testimony; then he spoke with Bredesen. (*Id*. at 22). Mann and Employee do not really have an ongoing relationship; they were coworkers for two or three months before the incident. (*Id*. at 22-23). They did not really hang out after work because they spent all day together. (*Id*. at 23). They might have had a beer or something one other time, or a couple times, but it was pretty rare. (*Id*.). Mann did not interact with Lerma at work. (*Id*.). Lerma picked the plan papers up outside Walls the superintendent's office, as they were leaving in the van. (*Id*. at 23-24). Mann spoke with Employee by video before he went to the hospital; he was not sure whether Employee rode in the ambulance. (*Id*. at 24). He got written plans before from Kurt, his foreman, weekly or biweekly depending on what they were doing. (*Id*. at 26-27). Rarely he got plans from the superintendent; typically Joe or Kurt were the field foremen, and they mainly met with Walls, and they would disperse the plans. (*Id*. at 27-28). Occasionally Walls would give him plans because he was a welder, but it was maybe only once a month. (*Id*. at 28). The field foremen got iPads, and he saw plans on those; but Mann personally saw more printed-out plans. (*Id*. at 28-29). The plans would not go out to all crew members; the lead or foreman got the plan, and it was up to them to share "because otherwise it would be chaos. Everyone would be trying to run the project." (*Id*. at 29).

42) On February 27, 2026, Employee filed Mann's deposition transcript. (Email, February 27, 2026).

43) On February 27, 2026, the parties stipulated that an "additional hearing issue would be whether Employer's petition would be heard by the Board." The summary stated:

> **Amended Issues for the 3/15/2026:**
> - ER's 02/12/2026 Petition to quash Elliott Mann deposition
>
> (Parties stipulated that the board could decide if the petition would be heard)
> - EE's Claims dated 7/5/24 and 12/30/24
>
> - Compensability, TTD, TPD, Medical Costs, Transportation Costs, Unfair or Frivolous Controversion, Penalty for late paid compensation, interest, and Attorney's Fees and Costs. (Prehearing Conference Summary, February 27, 2026).

44) On March 3, 2026, Employee filed a witness list and included Mann on the witness list and that he testified by deposition; Mann's address was provided but his telephone number was not. (Employee's Witness List, March 3, 2026).

45) On March 4, 2026, Employee filed a 22-page hearing brief, including a cover page containing no legal arguments. He contended Lerma was Employee's supervisor as he possessed technical specifications provided to him by Walls and Walls informed him a new crew was being put together. Employee contended Lerma was promoted to foreman and he was going to be in Lerma's crew to side the exterior of the hospital. He contended Employer stipulated that Lerma was Employee's supervisor in the April 16, 2025 Prehearing Conference Summary. Employee contended Employer knew Lerma was violent because Ridout terminated him several months before for getting into a fight at a bar with an ironworker who was employed as a subcontractor. He contended Walls' understanding of the circumstances around the ironworker incident, that he did not "exactly know all the situations on why it happened," rendered Ridout's explanation at deposition, that Lerma wanted to sign a piece of steel along with his coworkers who were celebrating hanging the last piece of steel and the ironworker did not like that idea, not credible. Employee contended the morning of the incident involved a combination of work and authorized recreational activities. He contended that Lerma invited the crew out for breakfast at the airport bar to discuss the upcoming siding work, and the parties ate breakfast and drank alcohol. Employee contended Bruse went but Mann slept in and did not go and the group went to a couple other places and ended up at Ernie's, a block away from the bunkhouse. He contended discussions about siding work continued at Ernie's and the group continued drinking. Employee said the group discussed topics about their respective personal lives and that Lerma attacked without warning. He contended Ridout and Walls learned of the incident the next day and their only concern was whether Lerma and Employee would be able to work together. Employee contended Ridout in his deposition testimony provided conflicting rationales for the decision to keep Lerma. Based on Walls testimony about what Bruse said, Employee contended Bruse had been aware of Lerma's "short fuse" while Employee had not. He contended the video of the fight shows Employee standing at the end of the table when Lerma suddenly swung upwards and hit him, Employee fell down and a waitress rushed over to help, then Lerma proudly got up and walked out without stopping to help Employee. Employee contended it also showed several individuals "were within arm's distance were having conversations without noticing any sort of fight brewing at all when

Lerma struck. Their body language reflects that Morse was not 'harassing' Lerma in a way which could be reasonably described as imminently violent." He contended the second video he submitted was from his cell phone when he recorded a conversation with Bruse in their room at the bunkhouse a couple days after the incident. Employee said Lerma assaulted others in the following weeks, and he was only fired when his drinking led him not to show up for work on several occasions. He contended Employee and Mann reasonably understood that Lerma would be in charge because Walls provided Lerma with written plans for the upcoming work. Employee contended he was injured when "an employer-directed fist" hit him in the face during an employer-related activity as Lerma invited them out for a meal and drinks to discuss the project and socialize. He contended the activity took place "within a stone's throw of the bunkhouse" where Employer understood their employees would go to for recreational purposes. Employee contended Employer "considered the incident sufficiently within the course and scope of employment that, in its aftermath, they held a meeting to address it and considered firing Lerma over it (as they had before in a similar circumstance) and then regretted not firing him at that time." He cited *LeSuer* and contended that using local bars and restaurants for business meetings and social activities was an employer-sanctioned activity because Lerma, a supervisor, approved of the specific activity or because it was otherwise an open and obvious employee activity which Employer was well aware of and openly condoned over a period of months and years. Employee contended Employer allowed its employees to go to the bars and drink as they pleased so long as it did not affect others at the bunkhouse or interfere with on the clock work. He contended Employer did not identify any misconduct by Employee and there is no rule against giving a supervisor or any coworker grief "for genuinely being ridiculous." Employee contended Employer made Ernie's "available as a reasonable recreational facility" because none of its employees had any say in where the work would occur, nor where their bunkhouse would be located. He contended the employees used Ernie's for recreation because that was one of the facilities which Employer made available to them. Employee contended the "positional risk doctrine" could apply and cited *Larson*'s which states that the doctrine applies only to neutral forces, such as stray bullets or raving lunatics, which are not personal to the claimant nor directly associated with the employment. He contended he was injured because his employment with Employer put him in Sitka, at Ernie's with Lerma, when he was injured by Lerma. Alternatively, he contended Employer put Employee in an increased risk of assault by having him work with a violent individual and is analogous to a decision to

supply an employee with a dangerous and defective piece of machinery. Employee contended his activities would still be work-related even if Lerma was not his supervisor and work was never discussed at Ernie's under the "remote site doctrine." He contended the activities would still be work-related even if he had gone to Ernie's on his own and ended up drinking with a stranger discussing hockey. Employee contended he obtained limited conservative treatment for chronic issues arising from the work injury and he would like to have further evaluation and possible testing authorized, as well as an eventual impairment rating evaluation. He requested a limited period of TTD benefits, plus interest and penalties. (Employee's Hearing Brief, March 4, 2026 pages 1-16).

46) On March 4, 2026, Employee requested acceptance of his overlength hearing brief. (Petition, March 4, 2026).

47) On March 4, 2026, Employer filed a hearing brief contending the presumption of compensability does not apply because Employee failed to timely report the incident as a work injury. It contended Employee gave written notice to Employer on July 5, 2024, that he believed the incident was work-related, 47 days late. Employer contended the presumption of compensability did not attach under AS 23.30.120(a)(3) because the incident was caused by Employee's intoxication as he admitted to consuming alcohol, CBD, and marijuana prior to the assault and he was combative while seen in the emergency room. It contended the preponderance of the evidence supports that Employee was engaged in activities of a personal nature and the injury did not arise out of and in the course and scope of employment with Employer. Employer contended Sitka is not a remote worksite, the activities on the injury date were not performed at the direction or control of Employer, their presence at a bar was not sanctioned by Employer, and the bar is not an employer-provided facility. It contended Employee's and Lerma's activities were of a personal nature away from the work site and lodging provided by Employer. Employer contended the incident falls under the "traveling employee" doctrine and cited *Larson's:* "Employees whose work entails travel away from the employer's premises are held in the majority of the jurisdictions to be within the course of their employment continuously during the trip, except when a distinct departure on a personal errand is shown. Thus, injuries arising out of the necessity of sleeping in hotels or eating in restaurants away from home are usually held compensable." It contended none of the men in the group was a foreman, supervisor, or crew lead, and that Employee and Lerma were equals on the job with the same title and pay. Employer contended there is no

credible evidence that the group was gathered as a crew to discuss the work plans. It contended Employee testified that he provoked Lerma on a completely personal, non-work related subject. Employer cited case law from other jurisdictions as there was little case law in Alaska on point. It requested Employee's claim be denied. (Employer's Brief for 3/10/26 Hearing, March 4, 2026).

48) On March 4, 2026, Bredesen filed an affidavit itemizing 72.70 hours of hours for $38,776 in attorney fees and an additional $1,411.86 in costs. (Affidavit of Counsel, March 4, 2026).

49) On March 5, 2026, Employer requested an oral hearing on its February 12, 2026 petition to quash Mann's deposition. (ARH, March 5, 2026).

50) On March 9, 2026, Employee opposed Employer's February 12, 2026 petition to exclude Mann's deposition, contending the Commission in *Guys with Tools* broadly stated the "fundamental rule" is that "any relevant evidence is admissible because an exclusionary rule is inherently contrary to the open access to all relevant information regarding the claimant's injury that workers' compensation statues are designed to promote." He contended AS 23.30.005 authorizes the Board to enforce the attendance and testimony of witnesses, AS 23.30.115 states the testimony of a witness may be taken by deposition or interrogatories and provides no deadlines to do so, AS 23.30.108 empowers Board designees to adjudicate discovery matters, and 8 AAC 45.054 states that the testimony of a witness may be taken by deposition. Employee contended 8 AAC 45.112(2) allows witness testimony by deposition. He requested Employer's petition be denied. (Employee's Answer to Employer's Petition to Quash Deposition, March 9, 2026).

51) On March 9, 2026, Employee objected to Employer's argument that Lerma was not Employee's supervisor on the date of injury. He contended that Employer previously stipulated that it "did not deny Employee benefits on the basis that Mr. Lerma is not Employee's supervisor" and obtained a protective order on that basis. Employee contended he has been prejudiced by Employer withholding documents regarding Lerma's employment records by a discovery order issued in a prehearing conference summary and by being denied the opportunity to use the documents to cross-examine Employer representatives. He requested an order enforcing Employer's stipulation and striking Employer's argument that Lerma was not Employee's supervisor or otherwise find that Employer is estopped from making that argument. (Employee's Objection to Employer's Hearing Brief and Argument, March 9, 2026).

52) On March 10, 2026, Employer objected to consideration of Mann's testimony, contending this case is distinguishable from *Nie* because *Nie* involved an unrepresented claimant and Employee is

represented. It contended *Nie* does not have precedential effect. It contended Employee did not file the ARH in good faith because discovery was not complete. Employer contended Employer could have presented Mann for testimony at hearing. It contended Employee's witness list did not comply with 8 AAC 45.112 because it did not provide Mann's telephone number. Employer requested Mann's deposition testimony be quashed. (Employer).

53) On March 10, 2026, Employee contended Employer cited no rule or law to support its request to quash Mann's deposition. He contended he scheduled Mann's deposition according to the Act and filed it pursuant to 8 AAC 45.120(a). Employee contended the sworn affidavit only requires "necessary discovery" not all discovery be completed. He requested that he be permitted to amend his witness list to add Mann's telephone number. (Employee).

54) On March 10, 2026, Employee contended 8 AAC 45.114 did not specify that the remedy for an overlong brief was exclusion. He contended Employer's brief did not address all the issues raised and he had requested additional pages at a prehearing conference. Employee requested his petition be granted and his brief be considered in full. Alternatively, he requested that pages two through 16 be accepted. (Employee).

55) On March 10, 2026, Employer contended it would violate legislative intent to permit Employee to file an overlong hearing brief because it allows him to disregard procedure and it would not be fair because Employer was not permitted an overlong hearing brief. It requested an order excluding pages 17-22 of Employee's hearing brief. (Employer).

56) On March 10, 2026, Employee contended he was denied discovery and access to Lerma's employment records by the designee in a prehearing conference discovery order. He contended the information is relevant to the course and scope issue because Employee is contending Lerma was Employee's supervisor. Employee contended it was Employer's position at the prehearing conference that there was no dispute that Lerma was Employee's supervisor. He contended he was prejudiced as a result. Employee contended Employer should not be allowed to argue Lerma was not Employee's supervisor because its statement at the prehearing conference was a stipulation of fact which requires Employer to show good cause for setting it aside. He also contended Employer should not be allowed to argue Lerma was not Employee's supervisor based on equitable estoppel. Employee contended Employer asserted there was no dispute about Lerma's role and that it was not denying benefits on the basis that Lerma was not a supervisor. He contended the designee reasonably relied on Employer's assertion when she made the discovery order. Employee

contended that he does not have the underlying documents with which to cross-examine Employer's witnesses on the issue, which prejudiced Employee. He conceded that Employer did not petition for a protective order but contended it provided arguments in opposition to the petition to compel that amounted to a cross-petition for a protective order. Employee contended he asked the questions he could ask of the witnesses at deposition without the evidence he sought. He contended the documents would have been useful in cross-examination. Employee contended Employer is still withholding the evidence while arguing Lerma was not Employee's supervisor. He contended he is not prepared to adequately cross-examine Employer's witnesses at hearing because he does not have the relevant documents, Lerma's personnel file, that Employer continues to withhold. (Employee).

57) On March 10, 2026, Employer contended Employee petitioned to compel Employer, which Employer opposed, and that it did not petition for a protective order. It contended the designee granted Employee's petition in part and ordered Employer to produce documents that "just didn't exist." Employer contended that it has never disputed the role Lerma played in Employee's injury as he is the man who punched Employee in Ernie's bar. It contended it relied on the testimony of two superintendents to support its position that Lerma was not Employee's supervisor. Employer contended that there was no prejudice to Employee as both superintendents were deposed and cross-examined by Employee, and Employee was able to ask about the makeup of the crews on the Sitka project and to question them about the roles each man in the crew had. It contended Employee pursued this information well after the prehearing conference discovery order. Employer contended that the depositions show there was no prior clear representation of a lie by Employer. It contended Employee's pursuit of information by deposition is inconsistent with and cannot be characterized as reliance inducing conduct. Employer said Employee's reliance was not reasonable as a party who advances discovery on a subject cannot positively claim that they reasonably relied on a representation that purportedly caused them to act differently. It contended Employee's actions demonstrates a choice, not reliance. Employer contended that a party who strategically assumes one posture, who pursues evidence only when advantageous, invites the Board to reject equitable relief. It contended that allowing estoppel under the facts of the case would reward gamesmanship and undermine the Board's fact-finding and truth-seeking. Employer contended its argument that Employer never disputed Lerma's role in the injury as the individual

who punched Employee addressed Employee's contention regarding a stipulation of fact. (Employer).

58) On March 10, 2026, Employee contended Lerma was a dangerous and defective coworker that Employer brought into a remote worksite, and employees were expected to work, live, and socialize with Lerma which resulted directly in Employee's injuries. He contended workers' compensation is a no-fault system and he is not arguing Employer was negligent. Employee contended the bar was a part of the worksite as it was across the street from the employer provided hotel and the employees were authorized by Employer to socialize there. He contended all of the people at the bottom of the food chain had a different impression of Lerma as they all understood him to be a supervisor as he held himself out to be the crew lead. Employee contended Lerma has apparent authority under *Cummins* because Lerma was provided with plans and other people were not, there was reliance on those manifestations by a third party because everybody else recognized Lerma was a supervisor, and it was reasonable for them to do so. He contended Employer cloaked Lerma in authority as a working foreman by providing the plans. Employee contended the presumption of compensability applies because Employer had actual knowledge of the injury. He contended the course and scope is met because Lerma was Employee's supervisor, he brought them out to the bar, and he assaulted Employee. Employee contended the going out and getting meals and having alcohol is an employer-sanctioned activity even when it occurs offsite based upon *LeSuer*. Employee contended *Black's* Dictionary, Seventh Edition defines sanction as to approve, authorize, or support. He contended Employer supported people going out to bars and restaurants by furnishing the transportation to do so. Employee contended local places for recreational activity are employer-provided facilities because the conditions of employment made those reasonable recreational activity locations and employees have no say whatsoever in terms of what locations are available to them at the remote job site. He noted *Haysen* rejected an argument that a man camp facility was not an employer-provided facility because the employer did not own and operate it, so facilities not owned and operated by the employer are employer-provided facilities. Employee contended that Ernie's bar is directly analogous to the softball field in *LeSuer*. He contended the traveling employee doctrine is the same thing as the remote site doctrine. Employee contended the discussion at Ernie's bar was work-related regardless of what the content of the discussion was because employees are required as a condition of employment to sleep and socialize with their coworkers. He contended Ernie's bar was walking distance from the man

camp. Employee contended Employer's defense that Employee was intoxicated is frivolous because Employee is the victim of a crime and Employer is blaming him for having some drinks for getting assaulted. He contended that had the facts changed and it was a woman who got raped by a coworker, the Board would not conclude the assault was not compensable on the ground that the woman's own intoxication was the legal cause for the crime committed against her. Employee contended he did nothing to remove himself from the course and scope of employment as Walls testified engaging in hazing was not grounds for sanctioning Employee. He requested an award of two months of time loss because he started working for Rand on July 19, 2024, and an order authorizing him to see an ENT. Employee requested an order awarding penalties and a referral to the Division of Insurance because Employer lacked a legal argument that Employee's injuries were outside the course and scope of employment, and an additional 20 percent is owed because Employer failed to report the injury. He also requested attorney fees and costs be awarded under AS 23.30.145 and *Wozniak*. (Employee).

59) On March 10, 2026, Employer contended Employee was not injured in the course and scope of employment because he departed from his employment when he went to the bar and consumed drinks and was engaged in a personal recreational activity. It contended the injury falls under the exception to the traveling employee doctrine as he was an employee whose work entailed travel away from the employer's premises and Employee made a distinct departure on a personal errand. Employer contended Employee had a choice to go to the bar, like Mann and the other employees did that day. It contended Sitka is not a remote worksite because the community is not there for the sole purpose of Employer's project that they were working on. Employer noted *Marsh Creek* determined that it was not necessary to resort to the traveling employee rule if the Board found the fight arose out of the employment when the employer had knowledge of a preexisting conflict between the employee and the other guest of the hotel provided by employer as the incident was generated and facilitated by the employment. It further contended that *Marsh Creek* found injuries sustained in a fight may be compensable when the workplace environment increased the risk of attack on the injured worker when the fight was motivated by common lodging facilities, not a purely personal and private issue. Employer contended the work injury did not occur at Employer-provided housing, it occurred on the crew's day off, there was no reported conflict or tension between Employee and Lerma before the work injury, and the interaction between the two was a purely personal dig at Lerma's alleged gang membership. It contended the men's presence at

Ernie's bar was for personal, recreational drinking and the conversation was of a personal nature and a departure from their employment and they had not yet returned to the course and scope of employment as they had not made their way back to the hotel. Employer contended Mann is not credible because he testified he was next in line to be the crew lead but it did not work out even though Walls testified that conversation never happened, he believed the incident occurred at the Pioneer Bar when it occurred at Ernie's, he clearly disdained Lerma as he referred to him as an idiot and said he stole his "shit on the way out," and Mann was terminated for using meth on the job. It contended Employee is not credible because Employee was highly intoxicated and under the influence of CBD and marijuana that day, testified he was hit multiple times, said he was hit with a bottle, and was combative with hospital staff. Employer contended Walls and Ridout testified consistently regarding Employer's policies and about crew makeup on the Sitka project. It contended Employee's video of the conversation that allegedly occurred with Bruse is suspect because you cannot see who the other individual is in the room, there is no indication to confirm the time and place of the recording, Bruse was not aware he was being recorded, and there is nothing to corroborate the person's presence in the room. Employer contended the video of the work injury demonstrates Lerma did not hit Employee more than once, nor did he hit him with a bottle, there is no visible paperwork on the table, and Lerma did not pick up any paperwork from the table when he walked away. It contended Employer timely reported the work injury once it became aware Employee related it to employment. Employer contended it was not reasonable for Employer to have foreseen that Employee would drink, use CBD and marijuana, and make fun of someone's gang affiliation to the point he would get punched. It contended Employee's testimony about Bruse showed that Bruse recognized the situation was building and he wanted to get away. Employer contended drinking while on the job and using drugs would have been grounds for Employer to terminate Employee. Employer requested Employee's claim be denied. (Employer).

60) On March 10, 2026, Employee testified he began working for Employer in March 2024 and Employer provided him plane tickets to fly to Sitka. He stayed in the hotel in Sitka provided by Employer. They have laundry and a cafeteria at the hotel and two workers stayed in each hotel room. Bruse was usually his roommate. Employer provided three meals -- breakfast, a packed lunch, and dinner. Employee went out for meals a couple times per week. There were three to four vans available for employees to drive, and the employees often went out together. There were no organized activities besides the meals Employer provided. Employee did not need the van to

go to Ernie's. Crews were run by lead men not foremen; a lead man was another more experienced carpenter or someone who knows what is going on. Employee did not go out with Mann to bars or restaurants, he never went out with Bruse before the work injury. He did not go out to a bar with Lerma before the work injury and they had no previous argument or tension. Lerma possessed physical plans on Sunday and Lerma told Employee he was going to be running the siding crew, Employee was going to be second man, and Bruse was to be the laborer. Lerma asked for a recommendation for an apprentice. Bruse told Employee to come out for breakfast to discuss the plans with Lerma and they went to breakfast at a place by the airport using the company van. They were at breakfast for one and a half to two hours and he had a Bloody Mary. Bruse needed hygiene items, so Bruse drove the van to the store. Then they went to Ernie's; Mann was supposed to meet them there. They were there for a couple hours and drinking occurred. Other employees were drinking, eating, and playing pool. They went over the project and expectations. Employee toasted Lerma and made a speech before the incident. He met with Walls and did not work due to the work injuries. Lerma was not fired and Employee did not feel safe. Employee told Walls he needed to go to Anchorage for medical treatment and Walls got him a plane ticket. His doctor recommended surgery for his facial injuries but he was unable to get it because his heart doctor would not sign off on the surgery. Now surgery is no longer an option because the injuries have healed. Employee called Walls to return to work and Employee was not willing to work with Lerma. Walls said that was no problem and got him a ticket to return to Sitka at the end of June and he was there about 10 days. Due to pain and headaches, Employee was not able to work the 10 hour days, so Walls got him a ticket home. Employee returned to work at the end of July or August 2024 for another employer, Rand Construction, and he has been working fairly regularly since he started there. Employee is still getting migraines and takes medication so he can work. His nose constantly runs and he can whistle through it. Employee's teeth are still chipped. He would like to see an ENT to treat ear popping and running and whistling nose. When Employee went out for meals, he paid for his meals, or a friend sometimes did. He recommended another coworker named Mike for the apprentice position, but that conversation did not take place at Ernie's. Mann did not show up at Ernie's. Walls told Employee he should fire him and Lerma; Employee asked to keep his job and be reassigned away from Lerma. Employer provided meals at the hotel on Sundays and Employer did not pay for meals away from the hotel. He was not at the crew meeting before the work injury. (Employee).

61) On March 10, 2026, Walls testified that all journeyman carpenters make the same base wage and there are three levels of foreman wages, working class, non-working, and general foreman. Mann, Lerma, and Employee were all journeymen carpenters. Lerma's skill set was steel studs and dry wall; Walls put him in metal siding because he needed to try to fill a crew. Mann did not ask to be reassigned away from Lerma. Mann was terminated because he failed a field sobriety test. Employer has a drug and alcohol policy; alcohol is not tolerated at the worksite, and every employee has to be drug tested before employment and they have to pass. There are random screenings and if "something's off" with an employee, we have the right to test them. If someone is on their personal time, we would not tell them they cannot have alcohol, but drugs are "absolutely nil." Employer provides housing, but Walls has his own place in Sitka and his residency is Anchorage. Five carpenter and one labor foreman meet every day for crew meetings in the office with Walls and Ridout and they line them out with work every single day. Lerma, Mann, and Employee never attended those meetings. There are no lead men, everyone works under a foreman. Ridout and Walls decide who is going to be on the crews. Plans are given to foremen on iPads. Sometimes Walls prints out sheets to blow up the plans and so they can be handed down to field hands so they can understand what they are doing. Non-foreman are provided printed plans if he feels that they need the information to understand the task at hand. Plans are given to laborer and journeyman carpenters when they need them. Walls printed out four sets of plans the Friday before the work injury for Bruse, Mann, Employee, and Lerma. He called Employee because he did not show up for work on Monday. Employee did not say it was a work related incident, but he did state that Lerma hit him and he was hurt very badly. Under OSHA, the work injury would not be reported because it was not in the constraints of the footprint of the project site. It was Employer's policy to allow their employees to go to bars and restaurants in Sitka during their off hours because "this is not a dictatorship" and "after hours is after hours." The van policy has changed and now they have assigned drivers and employees are permitted to use vans to go into town for restaurants and bars for meals. There are only 13 miles of road in Sitka but "a guy needs to be able to stretch his legs every once in a while." Walls never fired an employee for verbal hazing. The only reason Lerma and Employee were not fired is because both of them basically begged for their jobs and said it was an after-work deal they can get past. Walls wished he would have just fired them both in hindsight but both of them needed a job badly. He fired Lerma for getting in fight with the ironworker off the worksite and hotel and he fired someone

for being drunk and disorderly at the hotel Employer provided. The video of Ernie's was not a factor in the discussions with Employee. Employees are permitted to have alcohol in their rooms at the hotel, but they cannot have it in the corridor, cafeteria, lobby, or parking lot. Only Walls and Ridout get paid for food in Sitka. (Walls).

62) On March 12, 2026, Employee filed a supplemental affidavit of counsel itemizing 25.30 hours of work performed after March 3, 2026 through March 12, 2026, for $14,294.50 and additional $16.91 in costs. (Affidavit of Counsel, March 12, 2026).

63) On March 20, 2026, Employer objected to time entries spent on the discovery issue on which Employee did not prevail and for time spent drafting a request for cross-examination which was not filed. It requested that any award of attorney fees be reduced by $3,640. (Employer's Objections to Employee's Attorney Fees, March 20, 2026).

64) On March 20, 2026, Employee replied that the request for cross-examination entry was for another case and was inadvertently entered into this case and he withdrew it. He contended the designee granted his petition to compel in part and denied it in part. Employee contended that given Employer's hearing argument that Lerma was not a supervisor, "it is evident that the Petition to Compel was in fact meritorious and should have been granted." He contended if his objection to Employer's hearing arguments are sustained in this decision, he should be awarded attorney fees in full for time spent on the discovery issue. (Employee's Reply to Employer's Objection to Attorney's Fees, March 20, 2026).

65) Employer's "Drug and Alcohol Policy and Procedures" dated December 20, 2022, states:

> 3.0 PROHIBITED CONDUCT
> 3.1 Controlled Substances
> Employees are prohibited from reporting for duty or remaining on duty when using or under the influence of any drugs, except when the use is pursuant to the instructions of a Licensed Medical Practitioner (LMP). In cases where this exception applies, the LMP must advise the employee that the substance will not adversely affect the employee's ability to safely perform the job.
>
> 3.2 Alcohol
> A. Employees may not report for duty or remain on duty with an alcohol concentration of 0.02 or greater.
> B. Employees are prohibited from using alcohol in any form (including medications containing alcohol) while they are working for Davis Constructors in any capacity.
> . . . .

4.5 Requirements for Return-to-Duty after Violating this Policy
A. Employees who have engaged in conduct prohibited in section 3.0 may not perform safety-sensitive duties until they have fulfilled the following requirements for returning to duty.
1. Initial evaluation by a Substance Abuse Professional (SAP) to determine the level of assistance needed to address the employee's drug and/or alcohol problems;
2. Initiation of the education and/or treatment plan prescribed by the SAP. . . .

7.0 Consequences for Policy Violations.
The consequences discussed below apply to all employees and prospective employees who are found to have violated this policy. . . .

7.1. Automatic Removal from Safety-Sensitive Functions.
Employees who violate this policy will be immediately removed from their safety sensitive functions. It is Davis Constructors' policy that all job functions are considered to be safety sensitive.
If their employment is not terminated, employees will not be able to return to their safety sensitive functions until they have met the requirements for return-to-duty outlined in 4.5. (Drug and Alcohol Policy and Procedures, December 20, 2022).

66) Employer's "Safety Program and Policy" states:

3.4 Conduct
The following conduct is prohibited and may result in discipline up to and including termination:
- Horseplay and scuffling on the job

. . . .
- Fighting
- Violating the prohibitions of the Drug and Alcohol Policy (distributed to each employee in their new hire packet).

. . . .

Davis does not tolerate unlawful discrimination, harassment, or violence of any kind. Davis strikes to create and maintain a work environment in which people are treated with dignity, decency, and respect. . . . (Safety Program and Policy, undated).

PRINCIPLES OF LAW

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;
. . . .

> (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.

The Board may base its decision on not only direct testimony, medical findings, and other tangible evidence, but also on the Board's "experience, judgment, observations, unique or peculiar facts of the case, and inferences drawn from all of the above." *Fairbanks North Star Borough v. Rogers & Babler*, 747 P.2d 528, 533-34 (Alaska 1987).

> **AS 23.30.010. Coverage.** (a) Except as provided in (b) of this section, compensation or benefits are payable under this chapter for disability or death or the need for medical treatment of an employee if the disability or death of the employee or the employee's need for medical treatment arose out of and in the course of the employment. To establish a presumption under AS 23.30.120(a)(1) that the disability or death or the need for medical treatment arose out of and in the course of the employment, the employee must establish a causal link between the employment and the disability or death or the need for medical treatment. A presumption may be rebutted by a demonstration of substantial evidence that the death or disability or the need for medical treatment did not arise out of and in the course of the employment. When determining whether or not the death or disability or need for medical treatment arose out of and in the course of the employment, the board must evaluate the relative contribution of different causes of the disability or death or the need for medical treatment. Compensation or benefits under this chapter are payable for the disability or death or the need for medical treatment if, in relation to other causes, the employment is the substantial cause of the disability or death or need for medical treatment.

In *Marsh v. Alaska Workmen's Compensation Board*, 584 P.2d 1134 (Alaska 1978), the worker, an assistant bartender, was injured on his break when he was found kissing a customer by the customer's husband, and the husband stuck the worker and the worker fell to the floor unconscious. The worker suffered a blood clot in his brain, which required surgery and resulted in partial paralysis and a 15-day memory loss. The worker argued his employer derived some benefits from his conduct, either in improving relations with customers or that his recreational activities made him a better employee. The Alaska Supreme Court (Court) affirmed the holding that the assault was not work-connected. "Although an employee is normally covered by workmen's compensation if he is injured while on break, numerous courts have held that when the employee's injury arises out of a wholly personal quarrel, the employee is not entitled to compensation." *Id*. at 1135-36. It cited Professor Larson:

> When it is clear that the origin of the assault was purely private and personal, and that the employment contributed nothing to the episode, whether by engendering or exacerbating the quarrel or facilitating the assault, the assault should be held noncompensable . . . . (footnotes omitted). 1A. Larson, *The Law of Workmen's Compensation*, s 11.21, at 3-207 (1978).

While there is a presumption in favor of compensability, the activity must still be "reasonably foreseeable and incidental" to the employment, and not just "but for" the employment. *Id*. at 1136. The Court quoted Professor Larson:

> Under even the broadest rule, the but-for test, it must be emphasized that the test is not 'but for the bare existence of the employment,' but rather 'but for the conditions and obligations of the employment.' Surely it would be going too far to say that every assault arises out of employment if it can be proved that the acquaintance of the parties came about through the employment. 1A. Larson, Supra, at 3-211.

While the worker was a member of the lodge he worked as a bartender and had every right to be in the lodge without his employment, socializing with the customer, his "presence at the place of fighting was in pursuance of no demand of his employment." *Marsh*. The Court considered *Ross v. Workmen's Compensation Appeals Board*, 21 Cal. App.3d 949 (1971), where a store clerk was shot by the jealous husband of a costumer who had heard the wife and clerk were having an affair. *Id*. at 1137. The clerk helped customers load their purchases into their vehicles and were friendly with customers and spoke with them when not busy with other tasks. *Id*. *Ross* found there was no evidence to indicate that the clerk was in any way acting in a "personal" capacity in being friendly with his assailant's wife and found the claim compensable. *Id*. In *Marsh*, the Court found substantial evidence to determine that the assault was not work-connected because the worker had taken himself outside the scope and duties of his employment in his encounter with the customer and that conduct motivated the assault. *Id*.

In *Kelly v. Nelbro Packing Co.*, AWCB Dec. No. 99-0217 (November 1, 1999), the employee worked as a head technician for the employer out of Sitka on board a tender ship contracted to carry fish for the employer going to commercial fishing boats. The employer paid for his transportation to Sitka from his home in Washington, he had a bunk on the tender, was entitled to meals on the tender at no charge, and the employer paid a daily wage plus expenses, including meals not eaten aboard the vessel and provided a vehicle for transportation in Sitka. On the day

of the injury, the employee went to a fishing boat to test the herring, which was in line and could not be unloaded until later. The employee left work to get a sandwich in town, and he and a friend took the company vehicle to the Pioneer Bar. While they were at the bar, the employee's friend was involved in a confrontation with another individual about a fur-trapping dispute that the employee was not involved in. After the altercation, the employee and his friend went back to the dock to the boat waiting in line and the employee intended to pick up his raingear and head back to the boat. The individual from the altercation was waiting for them at the dock and hit the employee in the head with a blunt object and he was injured. The employer denied benefits under the Jones Act and the employee filed a claim. The Board found the employee was not injured in the course and scope of employment because he was engaged in activities of a personal nature away from the employer-provided facilities. The Superior Court reversed the denial of benefits because the trip was "reasonably foreseeable and incidental" to his employment as he had to cross the docks to enjoy a meal in town. 3AN-00-03682CI.

In *Temple v. Denali Princess Lodge*, 21 P.3d 813 (Alaska 2001), the injured worker was assaulted by his live-in girlfriend's prior boyfriend while working for the employer. The prior boyfriend went to the restaurant to confront the injured worker, which was thinly staffed; the cashier and hostess stations were unattended. He was not questioned about his presence or challenged by other personnel despite a policy prohibiting non-employees in the part of the restaurant where he waited for the injured worker. The prior boyfriend confirmed the injured worker's identity by asking another employee; it was disputed whether the prior boyfriend independently recognized the injured worker or relied on the staff member's identification. The injured worker approached the prior boyfriend, thinking he was a staff member or customer, as he was required to help as a part of his job duties, when the prior boyfriend punched him in the jaw. The injured worker filed a claim. The Board found the prior boyfriend had purely personal motives and the assault was not work related. It found the employer's failure to enforce policies was irrelevant to compensability. The superior court remanded the case back to the Board to apply the proper test, whether "the employer, by action or lack of action, engendered, exacerbated, or facilitated" the injured worker's attack. On remand, the Board concluded the employer did not facilitate the attack and denied the claim. The superior court affirmed. The Court held the injured worker failed to prove his claim by a preponderance of the evidence. It cited *Larson's Workers' Compensation Law* treatise that

generally, courts have found that injuries do not arise from employment where private quarrels are "imported" from outside of the employment. *Id*. at 816. Fights over spouses or lovers are classic examples of imported quarrels. *Id*. Compensation is especially likely to be denied when the sole role of the employment in the assault is "provid[ing] a place where the assailant can find the victim." *Id*. The injured worker claimed the employer facilitated the assault due to the lack of managers and trained servers violated the employer's policy, his job duties which required him to approach and assist customers, and a coworker pointing the injured worker out. The Court found the injured workers' performance of employment obligations did not give the prior boyfriend a unique opportunity to attack as he had already found the injured worker when the injured worker approached him and the restaurant provided a place where the assailant could find the victim. *Id*. at 818. The Court also found the injured worker's performance of employment obligations did not motivate the prior boyfriend's attack. *Id*. at 819. At most, the injured worker's accessibility at work provided the prior boyfriend with the inspiration and opportunity to attack. *Id*. The Court found the injured workers' performance of employment obligations did not create a unique risk of attack and the employer did not facilitate the attack by letting the prior boyfriend into the restaurant. It found the employer did not facilitate the attack by failing to uphold its policies. *Id*. at 821. It considered Larson's, which discussed liability arising from the employer's failure to adhere to statutory or regulatory safety requirements; but Larson's did "not treat internal employer policy as a source for special employer obligations." *Id*. The Court considered *Devault v. General Motors Corp.*, 386 N.W.2d, 671 (Mich. App. 1986), which did not find the employer's inadequate enforcement of a security policy facilitated a personally motivated attack when the employee was assaulted by an off-duty coworker that was admitted to the workplace despite the fact he had the wrong badge for the shift and only on-duty workers were supposed to be allowed inside. *Id*. It found the injured worker's argument "would make negligence and fault the basis for workers' compensation. This is inconsistent with the underlying logic of workers' compensation" and the rule that "compensation is payable irrespective of fault as a cause for the injury." *Id*. at 821-22.

In *Devine v. Great Divide Insurance Company*, 350 P.3d 782 (Alaska 2015), a worker was injured when he was assaulted by another worker at a job site and he filed a lawsuit against his assailant as the concrete pouring company and its owner. The assailant was a violent and unstable individual with a history of assaultive behavior and criminal conduct. The employer owner provided him

with a place to stay and a job. The assailant told the owner he was agitated by the worker's presence at the job site and told the owner he could not work in the worker's presence. The owner provided the assailant with two Valium tablets in an effort to calm him down but did not warn the worker the assailant was angry or agitated or that he could attack the worker. The assailant snuck up on the worker; other workers saw but did not warn him and the assailant attacked the worker, punching him several times and knocking him down; the worker significant injuries to his teeth, hip, shoulders, and head. The employer only purchased commercial general liability (CGL) insurance and did not purchase workers' compensation insurance. The insurer sought a declaratory judgment that the CGL insurance policy's employee exclusion clause precluded coverage for the worker's personal injury suit for negligence against its insured because the assailant was a "volunteer employee" and the assault happened in the course and scope of employment. The Court held the attack arose out of and in the course of employment because the owner employer "engendered, exacerbated, or facilitated" the worker's injury. *Id*. at 790-91. It cited *Temple*, that a personally motivated assault that occurs on the job is not generally compensable because it does not arise out of and in the course of employment. *Id*. at 791. "But an assault may be found to have arisen out of and in the course of employment if the employer 'contributed to the episode by engendering, exacerbating, or facilitating the assault.'" *Id*. The Court stated:

> Here there is no coverage under the commercial general liability insurance policy because, taking as true the facts alleged in Sindorf's complaint, Chatari knew of the peril to Sindorf and either negligently exposed him to it or failed to take action to protect him from harm. These allegations, presumed to be true, establish that Chatari, as Sindorf's employer under the policy, engendered, exacerbated, or facilitated Allen's attack on Sindorf as a matter of law. The resulting injury thus arose out of and in the course of Sindorf's employment by Chatari and is subject to the policy's employee exclusion. *Id*. at 792.

The principle behind the remote site doctrine is that because work at a remote site requires workers, as a condition of employment, to eat, sleep, and socialize on work premises, activities normally divorced from work become part of working conditions to which the worker is subjected. *Norcon, Inc. v. Siebert*, 880 P.2d 1051 (Alaska 1994).

In *Anderson v. Employers Liability Assurance Corp.*, 498 P.2d 288 (Alaska 1972), the employee was injured during a pole-climbing contest off his regular shift. The employee lived on the

employer's premises on Amchitka Island and was provided food and lodging by the employer; the employer also provided a bartender and a liquor license for a bar on its premises. The employee was induced by a wager with another employee while in the bar to determine which man could climb the transmission pole the fastest; he climbed the pole but lost his grip at the top and fell, fracturing his wrist and crushing two vertebrae. The Board awarded benefits, but the Superior Court reversed. The Court reversed and remanded, finding a special condition of employment at a remote site like Amchitka Island is that it placed severe limitations upon the recreational outlets available to the average worker and the employer benefits by increased worker efficiency when its employees take part in reasonable recreation. It said the activity must be reasonable, gauged by "both the entire circumstances and by a consideration of what, consistent with human needs, a person in the position of the injured worker might have sought as a recreational outlet. Working men at remote places can hardly be expected to limit themselves to purely sedate forms of recreation or to physical activities into which only the most timorous would venture." *Id*. at 293. The Court found the activity reasonable as persons who live or work together in close proximity often engage in contests of physical prowess or athletic skill and the activity was not abnormal for an employee who earned his living through climbing poles. *Id*.

In *M-K Rivers v. Schleifman*, 599 P.2d 132 (Alaska 1979), the employee was injured while traveling from the Sourdough pipeline camp, a remote worksite, to a bank in Glenallen about 30 miles away, to cash is payroll check. The Board denied his claim for benefits because it found the employment in no way created the risk which resulted in the injury. The Superior Court reversed the Board. The Court affirmed. Workers' Compensation Act, coverage is established by the "work connection" and the test of work connection is that, if accidental injury or death is connected with any of incidents of one's employment, then injury or death both would arise out of and be in the course of employment. The Court found the trip to cash a check was reasonably contemplated and foreseeable by the employment situation, a remote worksite, and a risk inherent to that activity is that injuries could be sustained enroute, and the trip benefited the employer as it paid the employee by check.

In 1982, the legislature amended the Workers' Compensation Act to address concerns that the remote worksite doctrine had been applied too broadly and it defined the phrase "arising out of

and in the course of employment" to clarify what activities might give rise to a compensable injury, including "employer-sanctioned activities at employer-provided facilities" but excluding "activities of a personal nature away from employer-provided facilities." *Mitchell v. Bering Strait School District*, 2026 WL 846950 (March 27, 2026).

In *LeSuer-Johnson v. Rollins-Burdick Hunter of Alaska*, 808 P.2d 266 (Alaska 1991), an employee was injured while playing softball on her employer's team. The employer paid some of the costs for renting the field to play on and it provided balls, bats, bases, T-shirts, and caps. The employer encouraged its employees to participate in some way in its softball games. The Board concluded that participation on the softball team was both employer-sanctioned and that it occurred at an employer-provided facility. On appeal, the Superior Court reversed the Board's holding that the two-part "employer-sanctioned activities at employer-provided facilities" test applied in this case. Instead, the Superior Court relied on an analysis offered by Professor Larson to the effect that in these cases, the factors that must be considered are (1) the time and place of the recreation; (2) the degree of employer initiative and encouragement; (3) financial support and equipment furnished, and (4) the benefit to the employer. The Court disagreed with the Superior Court's analysis, found the Board's application of the "employer-sanctioned activities at employer-provided facilities" test was correct as the statute pertaining to the test was not limited to the remote worksite, and held its conclusions were supported by substantial evidence, and affirmed the Board's decision.

In *Doyon Universal Services v. Allen*, 999 P.2d 764 (Alaska 2000), the injured worker was employed as cook at a remote site on the Trans-Alaska Pipeline, he lived in an on-site dormitory and took meals at the employee cafeteria. The employer-provided facilities were the only available room and board for employees that worked at the site. The employee arrived at the work site to begin a two-week rotation and ate a meal that night at the cafeteria that had Brussels spouts. Afterwards, he began his shift and hours later he had pain in his stomach, vomiting, and blood in his stool. The employee was medevacked to Anchorage and was diagnosed with a bowel obstruction and underwent surgery, which revealed bezoars that included the brussels sprouts. Under the remote site doctrine, everyday activities that are normally considered nonwork-related are deemed a part of a remote site employee's job for workers' compensation purposes because the requirement of living at the remote site limits the employee's activity choices. Workers'

compensation liability is to be imposed whenever employment is established as a causal factor in the disability, and a causal factor is a legal cause if it is a substantial factor in bringing about the harm at issue.

In *Excursion Inlet Packing Co. v. Ugale*, 92 P.3d 413 (Alaska 2004), Ugale worked at the employer's remote processing facility in Excursion Inlet, 35 miles west of Juneau. The decedent's family contended Ugale quit his job out of fear for his life because of threats from a co-worker. No available flights out of the remote worksite were scheduled that day, and by the time a flight arrived, Ugale was missing. His body was found later that day in the boat harbor with his wallet and wedding ring missing. While the medical examiner determined Ugale had drowned, the manner of death was unknown. Ugale's family argued Excursion Inlet is a remote location, he was waiting on an employer-provided flight out, which was the only way out and his death arose out of his employment and therefore should be presumed compensable. The Court held in a *per curiam* decision Ugale's death was compensable because the condition of confinement at the remote location was an incident of employment. Ugale could not leave the location until the next available flight, and regardless of the fact the death likely occurred off the employer's premises and was not directly connected to employment, there was insufficient evidence to rebut the presumption of compensability.

In *Estate of Milos v. Quality Asphalt Paving, Inc.*, 145 P.3d 533 (Alaska 2006), the employee worked as a materials technician, testing gravel samples to determine whether it met standards for road construction, requiring a significant amount of waiting. The employees spent the time reading books, doing paperwork, listening to the radio, or otherwise "passing the time." At first, the employee was waiting in the company truck, listening to the radio waiting for testing to end. He got on a company ATV parked outside the lab and drove to the top of a gravel pit under a power line; he stuck the power line and was electrocuted. The employee's estate filed a civil lawsuit against the employer; the employer moved for summary judgment arguing workers' compensation was the estate's exclusive remedy. The Superior Court granted summary judgment, holding his injuries arose out of and in the course of his employment even if he was not authorized to use the ATV and was off shift at the time of the accident. The estate appealed and the Court reversed and remanded, finding a genuine issue of fact as to whether the employee was off shift at the time of

the accident. Coworkers testified the employee was on duty when the accident occurred, although other coworker testimony and a Alaska Division of Occupational Safety and Health report suggested his shift had already ended.

> **AS 23.30.070. Report of injury to division.** (a) Within 10 days from the date the employer has knowledge of an injury or death or from the date the employer has knowledge of a disease or infection, alleged by the employee or on behalf of the employee to have arisen out of and in the course of the employment, the employer shall file with the division a report setting out. . . .
>
> (f) An employer who fails or refuses to file a report required of the employer by this section or who fails or refuses to file the report required by (a) of this section within the time required shall, if so required by the board, pay the employee or the legal representative of the employee or other person entitled to compensation by reason of the employee's injury or death an additional award equal to 20 percent of the amounts that were unpaid when due. The award shall be against either the employer or the insurance carrier, or both.

> **AS 23.30.095. Medical treatments, services, and examinations.** (a) The employer shall furnish medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus for the period which the nature of the injury or the process of recovery requires, not exceeding two years from and after the date of injury to the employee. However, if the condition requiring the treatment, apparatus, or medicine is a latent one, the two-year period runs from the time the employee has knowledge of the nature of the employee's disability and its relationship to the employment and after disablement. 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.

The version of AS 23.30.100 in effect at the time of Employee's injury states:

> **AS 23.30.100. Notice of injury or death.** (a) Notice of an injury or death in respect to which compensation is payable under this chapter shall be given within 30 days after the date of such injury or death to the employer.
>
> (b) The notice must be in a format prescribed by the director and contain the name and address of the employee, a statement of the time, place, nature, and cause of the injury or death, and authority to release records of medical treatment for the injury or death, and be signed by the employee or by a person on behalf of the employee, or, in case of death, by a person claiming to be entitled to compensation for the death or by a person on behalf of that person.

> (c) Notice shall be given to the employer by delivering it to the employer or by sending it by mail addressed to the employer at the employer's last known place of business. If the employer is a partnership, the notice may be given to a partner, if a limited liability company, the notice may be given to a member, or if a corporation, the notice may be given to an agent or officer on whom legal process may be served or who is in charge of the business in the place where the injury occurred.
>
> (d) Failure to give notice does not bar a claim under this chapter
>
> > (1) if the employer, an agent of the employer in charge of the business in the place where the injury occurred, or the carrier had knowledge of the injury or death and the board determines that the employer or carrier has not been prejudiced by failure to give notice;
> > (2) if the board excuses the failure on the ground that for some satisfactory reason notice could not be given;
> > (3) unless objection to the failure is raised before the board at the first hearing of a claim for compensation in respect to the injury or death.

An employee must provide formal written notice to an employer within 30 days of an injury in order to be eligible for workers' compensation benefits. *Cogger v. Anchor House*, 936 P.2d 157, 160 (Alaska 1997). The purpose of the statute is to afford an employer the opportunity to provide immediate medical diagnosis and treatment to minimize the seriousness of the injury and to facilitate the earliest possible investigation of the facts surrounding the injury. *Alaska State Housing Authority v. Sullivan*, 518 P.2d 759, 761 (Alaska 1974).

Although the statute requires written notice, actual knowledge of an injury can serve as a substitute for formal written notice if the employer has not been prejudiced. *Tinker v. Veco, Inc.*, 913 P.2d 488, 492 (Alaska 1996) (writing, "[i]t would take an exceptional set of circumstances for [the] difference in the form by which the information was conveyed to prejudice the employer."). Thus, when an employer's agents knew an employee was experiencing eye problems, the employee's failure to give timely injury notice may be excused under § 100(d)(1) when the delay in reporting did not prejudice the employer's interest in conducting a timely investigation or in providing prompt medical diagnosis and treatment. *Defermo v. Municipality of Anchorage*, 941 P.2d 114, 118-119 (Alaska 1997).

> **AS 23.30.108. Prehearings on discovery matters; objections to requests for release of information; sanctions for noncompliance.**

> . . . .
>
> (c) At a prehearing on discovery matters conducted by the board's designee, the board's designee shall direct parties to sign releases or produce documents, or both, if the parties present releases or documents that are likely to lead to admissible evidence relative to an employee's injury. If a party refuses to comply with an order by the board's designee or the board concerning discovery matters, the board may impose appropriate sanctions in addition to any forfeiture of benefits, including dismissing the party's claim, petition, or defense. If a discovery dispute comes before the board for review of a determination by the board's designee, the board may not consider any evidence or argument that was not presented to the board's designee, but shall determine the issue solely on the basis of the written record. The decision by the board on a discovery dispute shall be made within 30 days. The board shall uphold the designee's decision except when the board's designee's determination is an abuse of discretion. . . .

The scope of evidence admissible in administrative hearings is broader than is allowed in civil courts generally, because AS 23.30.135 makes most civil rules of procedure and evidence inapplicable. Under relaxed evidence rules, discovery should be at least as liberal as in a civil action and relevancy standards should be at least as broad. *Schwab v. Hooper Electric*, AWCB Dec. No. 87-322 (December 11, 1987). *Granus v. Fell*, AWCB Dec. No. 99-0016 (January 20, 1999) at 11-15, in addition to guidance in determining admissibility, established a two-step analysis to determine whether information is properly discoverable:

> Information which would be inadmissible at trial, may nonetheless be discoverable if it is reasonably calculated to lead to admissible evidence. Under our relaxed rules of evidence, discovery should be at least as liberal as in a civil action and the relevancy standards should be at least as broad.
>
> To be admissible at hearing, evidence must be 'relevant.' However, we find a party seeking to discover information need only show the information appears reasonably calculated to lead to the discovery of evidence admissible at hearing. *Smart v. Aleutian Constructors*, AWCB Dec. No. 98-0289 (November 23, 1998).
>
> The first step in determining whether information sought to be released is relevant, is to analyze what matters are "at issue" or in dispute in the case. In the second step we must decide whether the information sought by employer is relevant for discovery purposes, that is, whether it is reasonably "calculated" to lead to facts that will have any tendency to make a question at issue in the case more or less likely.
> . . . .

> The proponent of a release must be able to articulate a reasonable nexus between the information sought to be released and evidence that would be relevant to a material issue in the case. To be "reasonably" calculated to lead to admissible evidence, both the scope of information within the release terms and the time periods it covers must be reasonable. The nature of employee's injury, the evidence thus far developed, and the specific disputed issues in the case determine whether the scope of information sought and period of time covered by a release are reasonable.

Information is relevant for discovery purposes if it is reasonably calculated to lead to facts that will have any tendency to make a question at issue in the case more or less likely. *Granus*. Information that may have a "historical or causal connection to the injuries" is generally discoverable. *Id*.

> **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. An opposing party shall have 10 days after the hearing request is filed to file a response. If a party opposes the hearing request, the board or a board designee shall within 30 days of the filing of the opposition conduct a pre-hearing conference and set a hearing date. If opposition is not filed, a hearing shall be scheduled no later than 60 days after the receipt of the hearing request. The board shall give each party at least 10 days' notice of the hearing, either personally or by certified mail. After a hearing has been scheduled, the parties may not stipulate to change the hearing date or to cancel, postpone, or continue the hearing, except for good cause as determined by the board. After completion of the hearing the board shall close the hearing record. If a settlement agreement is reached by the parties less than 14 days before the hearing, the parties shall appear at the time of the scheduled hearing to state the terms of the settlement agreement. Within 30 days after the hearing record closes, the board shall file its decision. 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 *Nie v. Peter Pan Seafood Co., LLC*, AWCB Dec. No. 25-0030 (April 30, 2025), the employer contended that once the employee filed an ARH, he was no longer entitled to discovery and relied upon AS 23.30.110(c)'s plain language. The Board rejected the employer's argument. It considered the plain language and found nothing in the statute implied an end to discovery for the person filing the ARH. The Board also considered the legislative history in *Kim v. Alyeska Seafoods, Inc.*, 197 P.3d 193 (Alaska 2008), and found AS 23.30.110(c) was a directory procedural

statute intended to resolve problems with a party requesting a hearing and then cancelling it without good reason. *Kim* also noted a party should not have to choose between perjury and relinquishing a valid claim. The Board found Employer's proposed rule contrary to legislative intent because it would not be fair or predictable, it was unlikely to ensure a reasonable cost to employers, it was not impartial, and it would not afford parties due process and an opportunity to be heard and for their arguments and evidence to be fairly considered. It also stated Employer's proposed rule would inappropriately limit the panel's right to make its investigation or inquiry and conduct a hearing in a way to "best ascertain the rights of the parties" under AS 23.30.135(a).

> **AS 23.30.115. Attendance and fees of witnesses.** (a) A person is not required to attend as a witness in a proceeding before the board at a place more than 100 miles from the person's place of residence, unless the person's lawful mileage and fee for one day's attendance is first paid or tendered to the person; but the testimony of a witness may be taken by deposition or interrogatories according to the Rules of Civil Procedure.
>
> **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;
> (2) sufficient notice of the claim has been given;
> (3) the injury was not proximately caused by the intoxication of the injured employee or proximately caused by the employee being under the influence of drugs unless the drugs were taken as prescribed by the employee's physician;
> (4) the injury was not occasioned by the wilful intention of the injured employee to injure or kill self or another.
>
> (b) If delay in giving notice is excused by the board under AS 23.30.100(d)(2), the burden of proof of the validity of the claim shifts to the employee notwithstanding the provisions of (a) of this section. . . .

"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. In less complex cases, lay evidence may be sufficiently probative to make the link. *VECO, Inc. v. Wolfer*, 693 P.2d 865, 871 (Alaska 1985). Whether or not medical evidence is required depends on the probative value of available lay evidence and the complexity of the medical facts involved. *Id*. An employee need only adduce "some," minimal relevant evidence, *Cheeks v. Wismer & Becker/G.S. Atkinson, J.V*., 742 P.2d 239, 244 (Alaska 1987), establishing a "preliminary link" between the "claim" and the employment, *Burgess Construction Co. v. Smallwood*, 623 P.2d 312, 316 (Alaska 1981). Witness credibility is not examined at this first step. *Excursion Inlet Packing Co. v. Ugale*, 92 P.3d 413, 417 (Alaska 2004).

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 according to 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); *citing Big K Grocery v. Gibson*, 836 P.2d 941 (Alaska 1992).

For claims arising after November 7, 2005, employment must be the substantial cause of the disability or need for medical treatment. *Runstrom v. Alaska Native Medical Center*, AWCAC Dec. No. 150 (March 25, 2011) (reversed on other grounds by *Huit*). 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 v. ITT Services,* 577 P 2d. 1044, 1046). The party with the burden of proving asserted facts by a preponderance of the evidence must "induce a belief" in the fact-finders' minds the asserted facts are probably true. *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964).

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

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

> **AS 23.30.135. Procedure before the board.** (a) In making an investigation or inquiry or conducting a hearing the board is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this chapter. The board may make its investigation or inquiry or conduct its hearing in the manner by which it may best ascertain the rights of the parties. . . .

The Court has recognized the Board may be required to apply equitable or common law principles in a specific case and has explicitly held the Board has authority to invoke equitable principles to prevent an employer from asserting statutory rights. *Wausau Insurance Companies v. Van Biene*, 847 P.2d 584, 588 (Alaska 1993). An implied waiver arises where the course of conduct pursued evidences an intention to waive a right or is inconsistent with any other intention than a waiver, or where neglect to insist upon the right results in prejudice to another party. *Id*. To prove an implied waiver of a legal right, there must be direct, unequivocal conduct indicating a purpose to abandon or waive the legal right, or acts amounting to an estoppel by the party whose conduct is to be construed as a waiver. *Id.* (citing *Milne v. Anderson*, 576 P.2d 109 (Alaska 1978). The elements of estoppel are assertion of a position by word or conduct, reasonable reliance thereon by another party, and resulting prejudice. *Id.* (citing *Jamison v. Consolidated Utilities,* 576 P.2d 97, 102 (Alaska 1978)).

> **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. When the board advises that a claim has not been controverted, but further advises that bona fide legal services have been rendered in respect to the claim, then the board shall direct the payment of the fees out of the compensation awarded . In determining the amount of fees the board shall take into consideration the nature, length, and complexity of the services performed, transportation charges, and the benefits resulting from the services to the compensation beneficiaries.

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

AS 23.30.155. Payment of Compensation.

. . . .

(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.

. . . .

(o) The director shall promptly notify the division of insurance if the board determines that the employer's insurer has frivolously or unfairly controverted compensation due under this chapter. After receiving notice from the director, the division of insurance shall determine if the insurer has committed an unfair claim settlement practice under AS 21.36.125.

(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.

Employers must either pay or controvert benefits without an award but may controvert any time after payments are made. AS 23.30.155(a). A controversion notice must, however, be filed and it must be filed in good faith to protect an employer from a penalty for nonpayment of benefits. *Harp v. ARCO Alaska, Inc.*, 831 P.2d 352 (Alaska 1992). "In circumstances where there is reliance by the insurer on responsible medical opinion or conflicting medical testimony, invocation of penalty provisions is improper. However, when nonpayment results from bad faith reliance on counsel's advice, or mistake of law, the penalty is imposed." *Id*. at 358. The employer must possess sufficient evidence in support of the controversion that, if the employee does not introduce evidence in opposition to the controversion, the Board would find the employee not entitled to benefits. *Id*. The controversion and the evidence on which it is based must be examined in isolation, without assessing credibility and drawing all reasonable inferences in favor of the controversion.

> **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 23.30.235. Cases in which no compensation is payable.** Compensation under this chapter may not be allowed for an injury . . . .
>
> (2) proximately caused by intoxication of the injured employee or proximately caused by the employee being under the influence of drugs unless the drugs were taken as prescribed by the employee's physician.

The Court has held that, for an injury to be "proximately caused by the employee being under the influence of drugs" within the meaning of subsection AS 23.30.235(2), the employee must be (1) "under the influence of drugs" in the sense that the (2) employee's mental or physical faculties must be impaired by use of drugs, and (3) the employee's impaired condition must proximately cause the injury. A common example would be a worker whose judgment or coordination becomes impaired by consumption of drugs and who consequently suffers a traumatic injury. *Parris-Eastlake v. State of Alaska, Dept. of Law*, 26 P.3d 1099, 1104 (Alaska 2001).

> **AS 23.30.395. Definitions.** In this chapter,
> . . . .

(2) "arising out of and in the course of employment" includes employer-required or supplied travel to and from a remote job site; activities performed at the direction or under the control of the employer; and employer-sanctioned activities at employer-provided facilities; but excludes recreational league activities sponsored by the employer, unless participation is required as a condition of employment, and activities of a personal nature away from employer-provided facilities; . . .

8 AAC 45.065. Prehearings. (a) After a claim or petition has been filed, a party may file a written request for a prehearing, and the board or designee will schedule a prehearing. Even if a claim, petition, or request for prehearing has not been filed, the board or its designee will exercise discretion directing the parties or their representatives to appear for a prehearing. At the prehearing, the board or designee will exercise discretion in making determinations on

(1) identifying and simplifying the issues;
. . . .

(c) After a prehearing the board or designee will issue a summary of the actions taken at the prehearing, the amendments to the pleadings, and the agreements made by the parties or their representatives. The summary will limit the issues for hearing to those that are in dispute at the end of the prehearing. Unless modified, the summary governs the issues and the course of the hearing.

(d) Within 10 days after service of a prehearing summary issued under (c) of this section, a party may ask in writing that a prehearing summary be modified or amended by the designee to correct a misstatement of fact or to change a prehearing determination. The party making a request to modify or amend a prehearing summary shall serve all parties with a copy of the written request. If a party's request to modify or amend is not timely filed or lacks proof of service upon all parties, the designee may not act upon the request.
. . . .

(h) Notwithstanding the provisions of (d) of this section, a party may appeal a discovery order entered by a board designee under AS 23.30.108 by filing with the board a petition in accordance with 8 AAC 45.050 that sets out the grounds for the appeal. Unless a petition is filed under this subsection no later than 10 days after service of a board designee's discovery order, a board designee's discovery order is final.

(i) Notwithstanding the provisions of (d) of this section, a board designee may order reconsideration of all or part of a discovery order entered by the board designee under AS 23.30.108 on the board designee's own motion or on petition of a party. To be considered by the board designee, a petition for reconsideration must set out the specific grounds for reconsideration and be filed with the board in accordance with 8 AAC 45.050 no later than 10 days after service of a board

designee's discovery order. The power to order reconsideration expires 20 days after service of a board designee's discovery order. If no action is taken on a petition during the time allowed for ordering reconsideration, the petition is considered denied. If a petition for reconsideration is timely filed with the board, a petition for appeal under (h) of this section must be filed no later than 10 days after service of the reconsideration decision or the date the petition for reconsideration is considered denied in the absence of any action on the petition, whichever is earlier.

8 AAC 45.070. Hearings.

. . . .

(i) At hearing, the board will consider a legal memorandum only if it is in accordance with 8 AAC 45.114.

(g) Except when the board or its designee determines that unusual and extenuating circumstances exist, the prehearing summary, if a prehearing was conducted and if applicable, governs the issues and the course of the hearing.

8 AAC 45.112. Witness list. 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. If a witness list is required under 8 AAC 45.065, the witness list must be filed with the board and served upon all parties at least five working days before the hearing. If a party directed at a prehearing to file a witness list fails to file a witness list as directed or files a witness list that is not in accordance with this section, the board will exclude the party's witnesses from testifying at the hearing, except that the board will admit and consider

(1) the testimony of a party, and

(2) deposition testimony completed, though not necessarily transcribed, before the time for filing a witness list.

8 AAC 45.114. Legal memoranda. Except when the board or its designee determines that unusual and extenuating circumstances exist, legal memoranda must

(1) be filed and served at least five working days before the hearing, or timely filed and served in accordance with the prehearing ruling if an earlier date was established;

(2) not exceed 15 pages, excluding exhibits, unless at a prehearing the board or its designee determined that unusual and extenuating circumstances warranted a longer memorandum; if the board or its designee granted permission at

> prehearing to file a legal memorandum exceeding 15 pages, excluding exhibits, it must be accompanied by a one-page summary of the issues and arguments; . . .

> **8 AAC 45.120. Evidence.** (a) Witnesses at a hearing shall testify under oath or affirmation. The board will, in its discretion, examine witnesses and will allow all parties present an opportunity to do so. Except as provided in this subsection and 8 AAC 45.112, a party who wants to present a witness's testimony by deposition must file a transcript of the deposition with the board at least two working days before the hearing. If the board determines that a party is extremely indigent and cannot afford to pay the transcription fee, the board will rely upon the audio or visual recording of the deposition without a transcript. If a party fails to file a transcript of a witness's deposition at least two days before the hearing and if the board or its designee determines that neither unusual and extenuating circumstances exists nor is the party extremely indigent, the witness's deposition testimony will be excluded from the hearing, except for impeachment purposes, and will not be relied upon by the board in reaching its decision. If the board or its designee determines that unusual and extenuating circumstances exist, the board or its designee will determine whether to rely upon either the late-filed transcript or upon the audio or visual recording of the deposition without a transcript.

> **8 AAC 45.195. Waiver of procedures.** A procedural requirement in this chapter may be waived or modified by order of the board if manifest injustice to a party would result from a strict application of the regulation. However, a waiver may not be employed merely to excuse a party from failing to comply with the requirements of law or to permit a party to disregard the requirements of law.

In *Cummins Inc. v. Nelson*, 115 P.3d 536 (Alaska 2005), owners of a commercial fishing boat that caught fire and sank after it had been repowered with a new marine engine sued the installer, manufacturer, and distributor of the engine for breach of contract, warranties, product liability, and negligence. The jury found the manufacturer vicariously liable for the installer's negligence based upon apparent authority. Apparent authority is used to hold a principal accountable for a third-party's belief about an actor's authority to act as an agent for the principal when the belief is reasonable and is traceable to a manifestation of the principal. *Id*. at 541. It is created by written or spoken words or any other conduct of the principal which, reasonably interpreted, causes the third person to believe that the principal consents to have the act done on his behalf by the person purporting to act for him. *Id*. at 541-42. The three considerations in evaluating apparent agency is (1) the manifestations of the principal to the third party, (2) reliance on the principal's manifestations by the third party, and (3) the reasonableness of the third party's interpretation of

the principal's manifestations and the reasonableness of the third party's reliance. *Id*. at 542. If a principal cloaks its apparent agent with authority to enter into a transaction on its behalf, the principal is liable as if it had entered into the transaction personally. *Id*.

ANALYSIS

1) Was the oral order denying Employer's February 12, 2026 petition to quash Mann's deposition correct?

Employer objected to consideration of Mann's deposition transcript, contending Employee's non-party deposition of Mann is contrary to his sworn statement that all necessary discovery is complete and he was fully prepared for hearing in his ARH because it occurred after Employee filed his ARH. It contended Employee did not file the ARH in good faith because discovery was not complete and Employee could have presented Mann for testimony at hearing. Employer contended this case is distinguishable from *Nie* because Employee is represented and *Nie* does not have precedential effect. It also contended Employee's witness list did not comply with 8 AAC 45.112 because it did not provide Mann's telephone number. Employee contended the Act allows witness testimony by deposition, *Guys with Tools* provides a fundamental rule that any relevant evidence is admissible, there is no rule prohibiting testimony by deposition after filing an ARH, and the deposition transcript was timely filed. He requested leave to correct his witness list and provide Mann's telephone number.

On December 12, 2025, Employee filed an ARH on his claims. Mann's deposition occurred on February 18, 2026. AS 23.30.115(a) provides that a witness's testimony may be taken by deposition and 8 AAC 45.120(a) requires the deposition transcript to be filed at least two working days before the hearing. Employee timely filed Mann's deposition transcript on February 27, 2026, seven working days before the March 10, 2026 hearing. 8 AAC 45.112 states that if a party is directed to file a witness list in a prehearing and filed a witness list not in accordance with the regulation, which requires the witness's address and telephone number be provided, the witness will be excluded from testifying at hearing except completed deposition testimony will be considered and admitted. Employee's witness list did not provide Mann's telephone number; and the parties were directed to file witness lists in accordance with 8 AAC 45.112 in the January 7, 2026 prehearing conference. Mann testified by deposition on February 18, 2026, and the

deposition was completed. This falls under the exception provided in 8 AAC 45.112, which expressly states it can be admitted and considered. Employer's argument that Mann's deposition be excluded because Employee's witness list failed to comply with 8 AAC 45.112 is baseless.

Employee could have chosen to call and examine Mann at hearing under 8 AAC 45.120(c)(1), but that testimony would also have been provided after Employee filed his ARH that affirmed all necessary discovery was complete. Yet Employer argued Employee should have called and examined Mann at hearing. The panel notes Menendez's testimony was taken at deposition on January 28, 2026, after Employee filed his ARH, but Employer did not request his testimony be quashed. Employer's proposed rule to exclude deposition testimony taken after an ARH is filed is nonsensical and is actually contrary to the Act, which allows consideration of deposition testimony after the ARH as along as the transcript it is filed at least two working days before hearing. Furthermore, there is nothing in AS 23.30.110(c) which implies an end to discovery for the party filing an ARH. *Nie*. The oral order denying Employer's February 12, 2026 petition to quash Mann's deposition was correct.

2) Was the oral order denying Employee's overlong hearing brief and limiting consideration to pages one through 16 correct?

Employee's hearing brief was 22 pages long, including a cover page that contained no legal arguments, and he requested it be accepted. Employee contended 8 AAC 45.114 did not specify that the remedy for an overlong brief was exclusion. He contended Employer's brief did not address all the issues raised and he had requested additional pages at a prehearing conference. Employer contended it would violate legislative intent to permit Employee to file an overlong hearing brief because it allow him to disregard procedure and it would not be fair because Employer was not permitted an overlong hearing brief.

8 AAC 45.114 requires a hearing brief not exceed 15 pages unless at a prehearing conference the designee determined that unusual or extenuating circumstances warranted a longer brief. At the January 7, 2026 prehearing conference, Employee requested a 25-page brief and said, "that he usually requests 25 pages in the event he needs additional pages," and Employer opposed stating it "did not think it was necessary." The designee ordered the parties to file a hearing brief in

accordance with 8 AAC 45.114; the designee did not determine that unusual or extenuating circumstances warranted a longer brief at the January 7, 2026 prehearing conference. Employee's brief length was not in accordance with 8 AAC 45.114. 8 AAC 45.070(i) states a hearing brief can only be considered if it is in accordance with 8 AAC 45.114. Because Employee's hearing brief was not in accordance with 8 AAC 45.114, it should not have been considered.

Alternatively, Employee requested that pages two through 16 be accepted, rather than his entire hearing brief be excluded. Similarly, Employer requested an order excluding pages 17-22 from consideration. In some cases, procedural requirements may be waived or modified if manifest injustice to a party would result from strictly applying a regulation. 8 AAC 45.195. However, a waiver may not be employed merely to excuse a party from failing to "comply with the requirements of law" or to disregard those requirements. *Id*. It would contravene the legislative intent that hearings be impartial and fair to all parties and that all parties should be afforded due process and an opportunity for their evidence to be heard and for their arguments and evidence to be fairly considered to exclude one party's entire overlong hearing brief while considering the other party's entire conforming hearing brief. AS 23.30.001(4). Therefore, manifest injustice would result to Employee if 8 AAC 45.070(i) and 8 AAC 45.114 were strictly applied in this instance and his entire brief was excluded from consideration. Furthermore, limiting consideration to the first 15 pages of legal argument is consistent with the legislative intent. *Id*. The oral order denying Employee's overlong hearing brief and limiting consideration to pages one, a cover sheet with no legal argument, through 16 was correct. His March 4, 2026 petition to accept an overlong hearing brief will be denied.

3) Should Employee's objection to Employer's hearing brief and argument that Lerma was not Employee's supervisor be sustained?

Employee contended Employer stipulated to the fact the Lerma was Employee's supervisor because it did not deny benefits on the basis that Lerma was not Employee's supervisor in the April 16, 2025 prehearing conference summary and it obtained a protective order on that basis. He contended he was prejudiced by Employer withholding Lerma's employment records as he was denied the opportunity to use Lerma's employment records to cross-examine Employer's witnesses. Employee contended the designee reasonably relied upon Employer's assertion when

she made the discovery order. He requested an order enforcing Employer's stipulation and striking Employer's argument that Lerma was not Employee's supervisor or otherwise finding that Employer is estopped from making that argument. Employer contended it has never disputed the role Lerma played in Employee's injury because he is the man who punched Employee in the bar. It contended it provided evidence that Lerma was not Employee's supervisor in the form of testimony from Walls and Ridout. Employer contended Employee did not reasonably rely on any assertion and he was not prejudiced because he pursued and obtained testimony from Employee, Walls, Ridout, and Mann on the issue.

Parties may stipulate to a fact if there is no dispute as to the material fact in writing or orally in the course of a prehearing conference. 8 AAC 45.050(f)(1)(2). Employee filed claims for medical and disability benefits for injuries he sustained when Lerma punched him in the face at Ernie's bar. He contended Lerma was his supervisor in his December 30, 2024 claim. In the April 16, 2025 Prehearing Conference Summary "Analysis" section it states, "Employer argued that there is no dispute as to Mr. Lerma's role in Employee's injury" and "Employer did not deny Employee benefits on the basis that Mr. Lerma is not Employee's supervisor." The parties did not dispute that Lerma punched Employee in the face. Employer's argument that there was no dispute as to Lerma's role in Employee's injury is accurate to the extent that there is no dispute that Lerma punched Employee.

Employer contended Employee's injury "did not arise out of or in the course and scope of employment" in its August 19, 2024 and January 13, 2025 controversion notices. Under AS 23.30.395(2), "arising out of and in the course of employment" is defined to include activities performed at the direction or under the control of the employer and employer-sanctioned activities at employer-provided facilities and excludes personal activities away from employer-provided facilities. Thus, Employer did contend Employee was not performing activities at the direction or under the control of the employer and that he was not performing employer-sanctioned activities at an employer-provided facilities and that he was performing personal activities away from an employer-provided facility when he was injured in its controversion notices. It did not withdraw the portion of the controversion centered on the "arising out of an in the course of employment." There was no direct, unequivocal conduct by Employer indicating a purpose to abandon its right

to a defense based upon the definition of "arising out of and in the course of employment." *Van Biene*. Thus, the parties had a dispute as to whether Employee was performing activities at the direction or under the control of the employer and whether he was performing employer-sanctioned activities at an employer-provided facilities or whether he was performing personal activities away from an employer-provided facility when he was injured, and they were material issues in dispute. Based upon the parties' pleadings, the designee failed to identify material issues in dispute and incorrectly stated that Employer did not deny Employee benefits on the basis that Lerma was not his supervisor in the April 16, 2025 prehearing conference. Employee's reliance on an incorrect statement in a Prehearing Conference Summary made by the designee is not a stipulation because the parties did not agree on material issues. 8 AAC 45.070(a).

The Board may apply equitable estoppel to prevent an employer from asserting statutory rights. AS 23.30.135(a); *Van Biene*. Estoppel requires reasonable reliance by another party on the assertion of a position by a party. *Van Biene*. The designee's incorrect identification of material issues and statement in a Prehearing Conference Summary does not qualify as an assertion by a party. *Id*. Even if it had, Employee could have requested modification of the Prehearing Conference Summary and pursued a petition for reconsideration or appealed the discovery order issued in the April 16, 2025 prehearing conference based on the designee's error, but failed to do so. AS 23.30.108(c); 8 AAC 45.065(c), (d), (h), (i); *Granus*. Instead, Employee deposed Walls, Ridout, and Mann after the discovery order became final and obtained evidence on the material issues. Employee did not reasonably rely on the incorrect identification of the issues and statement by the designee in the April 16, 2025 Prehearing Conference Summary. *Van Biene*; *Rogers & Babler*. Any resulting prejudice is due to Employee's failure to pursue reconsideration or appeal the discovery order based upon the designee's failure to identify material issues in dispute and her incorrect statement. *Id*. Employee's objection to Employer's hearing brief and argument that Lerma was not Employee's supervisor should not be sustained. His March 9, 2026 objection to Employer's hearing brief and argument will be denied.

4) Is Employee entitled to medical and related transportation costs and TTD benefits?

Employee seeks medical and related transportation costs and about two months TTD benefits after he stopped working for Employer and began working for another employer on July 19, 2024.

Employer contended Employee's injury did not arise out of or in the course of his employment with Employer. Typically, the presumption of compensability applies to this issue. However, Employer contended the presumption did not attach because Employee reported his injury 45 days late and because the incident was caused by Employee's intoxication.

At the time Employee was injured, AS 23.30.100(a) required him to report it within 30 days after the injury date. If the delay is excused under AS 23.30.100(d)(2), the burden shifts to the employee. AS 23.30.120(b). Under AS 23.30.100(d)(1) and (2), respectively, failure to give notice does not bar a claim if an agent of employer in charge of the business in the place where the injury occurred had knowledge of the injury and the employer has not been prejudiced or if the failure is excused on the ground that for some satisfactory reason notice could not be given. Employee filed an injury report on July 5, 2024. Employee informed Walls, Employer's agent in charge of Sitka hospital project, of the assault committed by Lerma on May 19, 2024, the next day according to Employee's, Walls', and Ridout's testimony. Walls spoke with both Employee and Lerma about the incident that day and had actual knowledge of the injury and Employee obtained medical treatment immediately after the incident. *Sullivan*. There is no evidence Employer was prejudiced by Employee's late injury report. *Tinker*; *Defermo*. Therefore, Employee's failure to timely provide a written injury report is excused under AS 23.30.100(d)(1).

AS 23.30.120(a)(3) provides that there is a presumption that the injury was not caused by an employee's intoxication in the absence of substantial evidence to the contrary. AS 23.30.235 states that compensation is not allowed for an injury proximately caused by an employee's intoxication. For an injury to be proximately caused by intoxication, the employee must be (1) under the influence of alcohol or drugs in the sense that the (3) employee's mental or physical faculties must be impaired by the use of the alcohol and/or drugs, and (3) the employee's impaired condition must proximately cause the injury. *Parris-Eastlake*.

Employee contended his intoxication was not the cause of Lerma punching him in the face. He contended engaging in teasing or razzing behavior while intoxicated is "not grounds" to condone Lerma's assault. Employee testified he was making fun of Lerma for being in a gang when Lerma unexpectedly punched him. Without regard to credibility, this evidence establishes a preliminary

link and raises the presumption his work injury was not caused by his intoxication. *Cheeks*; *Koons*; *Wolfer*; *Smallwood*; *Ugale*.

Employer contended Employee's intoxication was the cause of his injury because the fire department and emergency room records shows Employee admitted to using CBD and marijuana and his blood alcohol showed he was intoxicated and he was combative while seen in the emergency room. Without assessing credibility, the evidence is sufficient to rebut the presumption. *Huit*; *Miller*; *Norcon*.

Employer has the burden of proving the affirmative defense that Employee's intoxication was the proximate cause of his injury. AS 23.30.120(a)(3); AS 23.30.235(2); *Parris-Eastlake*. It must prove Employee's mental or physical faculties were impaired by alcohol and his impaired condition proximately caused the injury by a preponderance of the evidence. *Id*. There is no dispute Employee consumed alcohol on May 19, 2024. He presented as "anxious and unable to focus" to the fire department minutes after the assault and admitted to using CBD and marijuana; his blood alcohol was 203 mg/dL at the emergency room. The video shows Employee was standing next to and talking to Lerma, who was seated in a booth, when Lerma struck him in the face with a closed fist, then Lerma took a drink of his beer and walked away. Lerma had been drinking alcohol as well. The only evidence that showed Employee was aggressive or combative was from after Lerma punched him in the face hard enough to break his facial bones and teeth. Employee tried to punch the nurse and radiology technician during the CT scan in the emergency room, and he was redirected and he took a nap. When he woke up, Employee was "belligerent and complained of pain." He was diagnosed with a closed left orbital fracture. While Employee may have been razzing Lerma, there is no evidence he was combative, aggressive, or belligerent before or during the incident. Employer has not proven by a preponderance of the evidence Employee's intoxication was the proximate cause of his work injury. AS 23.30.120(a)(3); 23.30.235; *Rogers & Babler*.

Because Employee's failure to timely provide a written injury report was excused under AS 23.30.100(d)(1) and Employer failed to prove Employee's intoxication was the proximate cause of the work injury, the presumption of compensability applies to his claim for medical and

transportation costs and approximately two months of TTD benefits and his claim is not barred. AS 23.30.120(a)(3); AS 23.30.235(2); *Parris-Eastlake*. However, the result would be the same even if the presumption was not applied.

Employee contended his injury arose out of and in the course of his employment with Employer because he worked in a remote worksite and his supervisor, Lerma, invited him out to breakfast and drinks to discuss the siding project they were to begin the next day when Lerma assaulted him at Ernie's bar. He contended Ernie's bar is an employer-provided facility under the remote worksite in Sitka because Ernie's bar is across the street from Employer's hotel. Employee contended he was engaged in employer-sanctioned activities, not personal activities when Lerma punched him. He contended Employer knew Lerma was violent when socializing with coworkers because it fired him for fighting with a contractor and Employer required Employee to work and socialize with Lerma at a remote worksite.

Employer contended Employee's injury did not arise out of and in the course of his employment with Employer because he was off shift while engaged in a personal recreational activity. It contended Employee was engaged in a discussion with Lerma that was not work related when a personal quarrel arose with Lerma. Employer contended it did not contribute towards the assault because there was no known animosity between Employee and Lerma. Employer contended the worksite is not remote because Sitka is a developed community, with public restaurants, bars, shopping, and services. It contended Ernie's bar is not an employer-provided facility because Sitka is not a remote worksite, Employer does not own the bar, it did not pay for Employee's transportation to it, and it did not pay for the food and drinks Employee and Lerma consumed. Employer contended Employee was not engaged in employer-sanctioned activities because Lerma was not a supervisor, Employer's policies prohibit drinking while working and using drugs, and Employee was not required to go to Ernie's as a condition of his employment.

Employee raised the presumption with his testimony that Lerma was lead man and had invited him out to breakfast and drinks to discuss the siding project they were to begin the next day, and Lerma assaulted him at Ernie's bar and Mann's, Walls', and Ridout's testimony that Lerma had been fired

previously for getting into an altercation with a contractor ironworker while at a bar. *Cheeks*; *Koons*; *Wolfer*; *Smallwood*; *Ugale*.

Employer rebutted the presumption with Employee's and Walls' testimony that Employee was off shift on Sunday, May 19, 2024, Walls' and Ridout's testimony that Lerma was a journeymen carpenter, not a foreman, Employee's and Walls' testimony that Lerma and Employee were discussing Lerma's ethnicity and alleged gang affiliation while drinking at Ernie's bar when Lerma punched him, Walls' testimony that Sitka is not a typical remote worksite and Employer did not pay for food or drinks at bars or restaurants for employees, Employee's testimony that he paid for his meals when he left Employer's lodging and that he had no previous tension while working with Lerma, Employer's drug and alcohol policy, which prohibits employees from working while intoxicated and from using drugs, and Mann's and Employee's testimony that Mann was also invited by Lerma but did not go out to breakfast or to Ernie's. *Huit*; *Miller*; *Norcon*.

AS 23.30.010(a) states that benefits are payable for disability and medical treatment if the disability or need for medical treatment "arose out of and in the course of the employment." The remote worksite doctrine states that because work at a remote site requires workers to eat, sleep, and socialize on work premises as a condition of employment, those activities become part of working conditions to which the worker is subjected. *Norcon*. In 1982, the legislature amended the Act to address concerns that the worksite doctrine had been applied too broadly. *Mitchell*. It defined the "arising out of and in the course of employment" to clarify what activities might give rise to a compensable injury." *Id*. AS 23.30.395(2) defines "arising out of and in the course of employment" to include employer-required or supplied travel to and from a remote job site; activities performed at the direction or under the control of the employer; and employer-sanctioned activities at employer-provided facilities. It excludes recreational league activities sponsored by the employer, unless participation is required as a condition of employment, and activities of a personal nature away from employer-provided facilities.

When an employee's work injury arises out of a wholly personal quarrel, the employee is not entitled to compensation. *Marsh*; *Temple*. If the assault originated from a purely private and personal quarrel not motivated by work and the employment did not engender, exacerbate, or

facilitate the assault, the assault is not compensable. *Id*. The activity must be "reasonably foreseeable and incidental" to the employment, but for the conditions and obligations of the employment. *Marsh*. The activity must be reasonable considering the entire circumstances and of what a person in the position of the injured worker might have sought as recreational outlet. *Anderson*. The work injury must be connected with an incident of the injured worker's employment because it was reasonably contemplated and foreseeable by the employment situation, and a risk inherent to the activity. *M-K Rivers*. Whether an employee was off shift is material to whether the injury arose out of and in the course of his employment. *Milos*.

Employee and Lerma were off duty when the incident occurred on Sunday, May 19, 2024. *Milos*. Employer prohibited its employees from drinking alcohol in any form while working for Employer in any capacity in its drug and alcohol policy, but did not prohibit them from drinking off shift or in their room at the hotel. Unlike *LeSuer* and *Kelly*, Employer did not pay for any of the costs for Employee to go to Ernie's bar and it did not encourage employees to drink at Ernie's bar. Even if Lerma was a "lead man," Employee was not obligated to go to Ernie's with Lerma to discuss the work plans as demonstrated by Employee's testimony that Mann did not go to breakfast because he slept in and he did not go to the bar and Mann's testimony that he was not at the bar. It was not an obligation or condition of Employee's employment with Employer to go to Ernie's bar with Lerma to discuss work plans.

Walls testified Employer provides housing, but employees are not required to stay at the housing, and they can live somewhere else. The employees often went to bars and restaurants in Sitka off shift to purchase and consume meals they purchased themselves. The employer-provided hotel was not the only available room and board for employees that worked at the Sitka project and Employee was not injured by consuming a meal or drink provided by Employer at the hotel. *Doyon*. Employee testified he dropped his things off at the hotel after they had gone shopping and then he walked to Ernie's bar. The fact that employees can walk to Ernie's bar does not mean that Employer engendered, exacerbated, or facilitated the assault at the bar that Employee walked to. *Marsh*. Unlike the employee in *Kelly* who was injured while returning to his employment site on the public dock, Employee left the hotel and went to the bar he was in when he was assaulted, and

he was not returning to work. Thus, he was not injured while using employer-required or supplied travel to and from a remote job site. AS 23.30.395(2).

Mann testified Lerma was supposed to be running the siding crew. Employee testified Lerma had been promoted to foreman at deposition and he had been given paper plans for the siding project. At hearing, Employee changed his testimony and said crews were run by lead men, not foremen, and Lerma was a lead man. Walls and Ridout testified Lerma was a journeyman carpenter, just like Employee, and he had never been a foreman and that Employee and Lerma were paid the same pay rate. Walls and Ridout testified foreman are given iPads for plans while field workers, like carpenters and laborers, are provided paper plans and Lerma was given paper plans. Ridout testified sometimes journeymen were put in positions of lead within a crew, with an associated pay increase, but they did not do that for the Sitka project; Lerma was not a lead and did not receive a pay rate for lead. Walls also testified crews were run by foremen. This is inconsistent with Employee's testimony that crews were run by a lead man at hearing. Mann testified Lerma had papers in his hands when they rode in the van on the way back to the hotel, he looked at the plans in the ride back to camp, and that foremen got iPads. No one testified that Lerma had been provided an iPad, like a foreman would be provided. Employee's testimony that Lerma was a foreman is not credible because Employee inconsistently testified later that Lerma was a lead man, and Lerma was provided paper plans, not an iPad. AS 23.30.122; *Smith*.

Employee contended Lerma has apparent authority because Lerma was provided with plans and other people were not, there was reliance on Employer's manifestation that Lerma was a supervisor by a third party because everybody else recognized Lerma was a supervisor, and it was reasonable for them to do so. Walls testified he printed out four sets of plans the Friday before the work injury for Bruse, Mann, Employee and Lerma. This is consistent with Mann's testimony that he reviewed the plans on the ride back to camp on Friday before the work injury. AS 23.30.122; *Smith*. As stated before, Mann testified Lerma had papers, not an iPad, like a foreman would have, as confirmed by Walls and Ridout. There was no manifestation by Employer that Lerma was a foreman, and it would not be reasonable for Employee or Mann to believe he was a foreman because he had paper plans. *Cummins*.

Furthermore, the video of the assault at Ernie's does not show any papers on the table or in Employee's or Lerma's possession. Employee testified he and Lerma were discussing a non-work related topic, their incarceration experience and Lerma's alleged gang affiliation, when Lerma punched him. Even if Lerma was a lead or foreman, the topics they discussed were purely private and personal to Lerma and Employee; their quarrel was not motivated by work. AS 23.30.395(2); *Marsh*. The fact that Lerma and Employee became acquainted at work and were socializing off work in Sitka while discussing non-work related topics does not make the assault reasonably foreseeable and incidental to Employee's employment with Employer. *Marsh*; *Temple*; *Anderson*; *M-K Rivers*.

Walls testified Lerma was previously fired because he got into an altercation with an ironworker after hours not at the job site or at camp and Lerma was the first person that got in a physical altercation in Sitka. Ridout testified Lerma had a swollen face the day after the altercation with the ironworker, but they did not know who threw the first punch. They testified Lerma was terminated a few months after the work injury because his work went downhill and he was drinking and missing work. Employee testified there had been no animosity between Lerma and Employee prior to the work injury. The other incident involving Lerma assaulting another person at a bar occurred after the work injury. Unlike *Devine*, there was no history of animosity, no warning of violence directed towards Employee by Lerma, and Employer did not know of the peril towards Employee. It was not reasonably contemplated and foreseeable by the employment situation, nor was it a risk inherent to the employment, that Employee would go to Ernie's with Lerma off shift and get assaulted for taunting or ribbing comments he made to Lerma about non-work-related topics. *Marsh*; *Temple*; *M-K Rivers*; *Anderson*.

Employee took himself outside the scope and duties of his employment with Employer in his encounter with Lerma and that conduct motivated the assault. *Marsh*; *Temple*. Thus, Employee's employment with Employer was not the substantial cause of the injuries he sustained when Lerma assaulted him. Employee is not entitled to medical and related transportation costs and about two months of TTD benefits. AS 23.30.095(a); AS 23.30.185. His request for medical and related transportation costs and about two months of TTD benefits will be denied.

5) Did Employer unfairly or frivolously controvert benefits?

Employee contended Employer unfair or frivolously controverted benefits. Employer contended its August 19, 2024 and January 13, 2025 controversions were filed in good faith because they were supported by the law and the facts that Employee's injury did not arise out of and in the course of his employment. As determined above, Employer provided substantial evidence to rebut the presumption that Employee's injury arose out of and in the course of his employment. *Harp*. Employer did not unfairly or frivolously controvert benefits in its Controversion Notices. *Id*. Employee's request for a finding of unfair or frivolous controvert will be denied. AS 23.30.155(o).

6) Is Employee entitled to interest and penalty?

Because Employee was not awarded any benefits, he is not entitled to interest. Employee's request for interest will be denied. AS 23.30.155(p).

Penalties are imposed when employers fail to controvert in good faith or fail to pay compensation when due. AS 23.30.155(e); *Haile*. As determined above, Employer provided substantial evidence to rebut the presumption that Employee's injury arose out of and in the course of his employment with Employer. *Harp*. No penalty will be assessed for late-paid compensation. AS 23.30.155(e).

Employee contended Employer failed to timely report the work injury because the assault occurred on May 19, 2024, and he informed Employer of the assault on May 20, 2024, and Employer did not report the injury until August 3, 2024. He sought a 20 percent penalty for a late-reporting penalty on all past benefits which where unpaid when due. AS 23.30.070(a). Employer contended it timely reported the work injury once Employee informed it the assault was work related on July 5, 2024, when he filled out a report of injury. It also contended no penalty is due because Employee is not entitled to any benefits.

AS 23.30.070(a) requires an employer to report a work injury within 10 days of the date it had knowledge of the injury and that the employee was alleging the injury arose out of and in the course of the employment. The purpose of AS 23.30.070(a) is to ensure timely reporting of injuries. However, Employer has paid no benefits to Employee, and this decision found Employee

was not entitled to medical and related transportation costs and TTD benefits. No penalty will be assessed for late reporting. AS 23.30.070(f). Employee is not entitled to interest or penalties.

7) Is Employee entitled to attorney fees and costs?

Employee requested attorney fees under AS 23.30.145 and costs. Because Employee was not awarded any benefits, he is not entitled to attorney fees or costs under AS 23.30.145. His claim will be denied.

CONCLUSIONS OF LAW

1) The oral order denying Employer's February 12, 2026 petition to quash Mann's deposition was correct.
2) The oral order denying Employee's overlong hearing brief and limiting consideration to pages one through 16 was correct.
3) Employee's objection to Employer's hearing brief and argument that Lerma was not Employee's supervisor should not be sustained.
4) Employee is not entitled to medical and related transportation costs and TTD benefits.
5) Employer did not unfairly or frivolously controvert benefits.
6) Employee is not entitled to interest and penalty.
7) Employee is not entitled to attorney fees and costs.

ORDER

1) Employee's July 5 and December 30, 2024 claims are denied.

Dated in Juneau, Alaska on April 24, 2026.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Kathryn Setzer, Designated Chair

/s/
Brad Austin, Member

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.

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 accord with 8 AAC 45.150 and 8 AAC 45.050.

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Final Decision and Order in the matter of Fred Morse, employee / claimant v. Davies Constructors & Engineers, employer; New Hampshire Insurance Co., Ltd., insurer / defendants; Case No. 202410309; dated and filed in the Alaska Workers' Compensation Board's office in Juneau, Alaska, and served on the parties by certified U.S. Mail, postage prepaid, on April 24, 2026.

/s/
Lorvin Uddipa, Workers' Compensation Technician