

ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

JOHNNY NIE,)	
)	
Employee,)	
Claimant,)	
)	
v.)	
)	FINAL DECISION AND ORDER
PETER PAN SEAFOOD COMPANY,)	
LLC,)	AWCB Case No. 202301076
)	
Employer,)	AWCB Decision No. 26-0035
and)	
)	Filed with AWCB Anchorage, Alaska
TOKIO MARINE AMERICA)	on May 7, 2026
INSURANCE COMPANY,)	
)	
Insurer,)	
Defendants.)	
)	

Johnny Nie's (Employee) November 2, 2023 (filed on November 7, 2023), November 24, 2023, January 17, 2025, and May 14, 2025 claims for various benefits and other relief were all heard on April 23, 2026, in Anchorage, Alaska, a date selected on January 13, 2026. A July 14, 2025 hearing request gave rise to this hearing. Employee represented himself and testified. Attorney Jeffrey Holloway represented Peter Pan Seafood Company, LLC, and its insurer (Employer). All parties appeared by Zoom. Employee initially contended he is entitled to permanent total disability (PTD) benefits. However, at hearing Employee conceded he could not prove a PTD claim, and withdrew this as an issue. Employee clarified at hearing that his disability periods were temporary and total (TTD), not temporary and partial (TPD). Therefore, this decision will not address a PTD or a TPD claim. The record closed at the hearing's conclusion on April 23, 2026.

ISSUES

Employee contends his left-elbow and shoulder conditions are work-related injuries. He claims he injured his shoulder during physical therapy (PT) for his accepted left-wrist injury.

Employer contends Employee never reported a left-shoulder injury. It argues there is no medical evidence showing any left-shoulder injury during PT, but evidence shows Employee hurt his left shoulder while showering at home, and there was no work connection.

1) Are Employee's left-elbow and left-shoulder compensable injuries?

Employee contends he is entitled to additional TTD benefits for his work injuries.

Employer contends Employee has been medically stable for his accepted left-wrist injury for years, and is by statute no longer entitled to TTD benefits. Moreover, it contends he presented no clear and convincing medical evidence showing he is not medically stable and remains disabled.

2) Is Employee entitled to additional TTD benefits?

Employee contends he is entitled to additional permanent partial impairment (PPI) benefits for his left shoulder. He agreed at hearing that Employer paid his wrist-related PPI in full.

Employer contends Employee's left shoulder is not compensable, so there is no PPI payable.

3) Is Employee entitled to additional PPI benefits?

Employee contends he is entitled to a compensation rate adjustment.

Employer contends it already gave Employee a higher compensation rate by relying on his actual earnings at the time he was injured, rather than on his highest earnings in the two years prior to his reported injury date.

4)Is Employee entitled to a compensation rate adjustment?

Employee contends that Employer unfairly or frivolously controverted his benefits.

Employer contends that each and every controversion notice it filed was supported by the law, the facts, or both.

5)Did Employer unfairly or frivolously controvert Employee's benefits?

Employee contends he is entitled to various penalties.

Employer contends there is no basis to award any penalties in this case. Alternately, it contends Employee is entitled to no additional benefits so there is nothing on which to impose penalties.

6)Is Employee entitled to penalties?

Employee contends he is entitled to interest on any benefits awarded in this decision.

Employer contends Employee is entitled to no additional benefits so no interest can be awarded.

7)Is Employee entitled to interest?

FINDINGS OF FACT

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

- 1) In 2014, Employee earned \$4,978 from Justin Time Services, Inc. (Justin Time), a business he may have owned. (W-2, 2014; Employee Original Online Application, April 24, 2017).
- 2) On April 24, 2017, and on June 12, 2019, Employee electronically signed "Employee's Signature," above "Employee's Printed Name," on documents related to employment with Go-Staff, Inc. (Go-Staff), a temporary services agency. On two documents, Employee stated he was convicted of crimes on "07/12/2013," "03/05/2014," and "09/22/2014." (Arbitration Agreement; Employee Handbook Acknowledgment and At-Will Agreement; Post-Offer Background Information Questionnaires, April 24, 2017, and June 12, 2019).

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- 3) From May 10, 2017 to June 21, 2017, Employee earned \$2,180 while employed by Go-Staff, working for various customers at \$10.50 per hour. His duties were not stated. (Earning Statements, May 10, 2017 through June 21, 2017; W-2, 2017).
- 4) From July 1, 2017 to September 30, 2017, and from September 18, 2017 to December 24, 2017, Employee earned \$7,537.19 working “Part-Time” for Premier Food Concepts, LLC (Premier) at \$10.75 per hour. Premier was doing business as Luna Grill. (Pay stubs, July 1, 2017 to December 24, 2017; W-2, 2017; Employee Personnel Records, 2017-2018).
- 5) From January 1, 2018 to February 4, 2018, Employee earned \$972.73 working for Premier at \$11.00 per hour. Employee ended his employment voluntarily on January 29, 2018. (Pay stubs, January 1, 2018 to February 4, 2018; Employee Personnel Records, 2017-2018).
- 6) In 2018, Employee earned \$16,742.86 working for Hakes Sash & Door. (W-2, 2018).
- 7) On February 6, 2019, Employee filled an employment application with Go-Staff. He listed Hakes Sash & Door and Cal Fire as his employers, and said he was “Owner” of “Justin Time Services” from March 2014 through September 2014. Justin Time did mobile-detailing and power-washing, which included window and screen cleaning and replacement, floor buffing and carpet cleaning. (Employee Original Online Application, April 24, 2017).
- 8) In 2020, Employee earned \$1,548 working for Temecula Valley Drywall, Inc. and \$1,638 working for Procraft Door & Glass. (W-2 forms, 2020).
- 9) In 2021, Employee earned \$616 working for Muhlhauser Steel, Inc. He also received \$16,812 in Unemployment Compensation from California. (W-2; 1099G forms, 2021).
- 10) In 2022, before working for Employer, Employee earned \$9,793.25 working for Pacific Seafood as a seafood processor. (W-2 form, 2022).
- 11) In 2022, Employee earned \$8,977.52 working for Employer for one season and \$5,506.77 working for it in another season in the same year. (W-2 forms, 2022).
- 12) On October 30, 2022, Employee was working for Employer when he heard a “pop” in his left wrist. At hearing on April 23, 2026, Employee said he did not file an injury report until January 20, 2023. (Employee Report of Occupational Injury or Illness to Employer, January 20, 2023; First Report of Injury, January 25, 2023; record, April 23, 2026).
- 13) On October 30, 2022, Employee completed, dated and signed a form stating his last day at work for Employer was October 29, 2022. He was being “Laid Off,” as opposed to leaving due to a work injury, and Employee checked a box stating:

I affirm that I am leaving Peter Pan Seafood, Co., LLC **without** any reported injury or illness. (Emphasis in original).

When asked about this form at hearing, Employee admitted he signed it. He testified he completed the form this way, and did not file a written injury report at that time, because he wanted to return to work for Employer in 2023, and did not want to create a “bad relationship.” (Employee Separation Notice, October 30, 2022; record, April 23, 2026).

14) On or about January 3, 2023, Employee returned to work for Employer for the next processing season. (Adjuster Jackie Salas note, September 18, 2023).

15) On January 20, 2023, Employee dated and signed an injury report. The injury date is typed “11/30/2022.” He stated in his own handwriting, referring to the October 30, 2022 event:

I was working on the Black Cod gutting line, the fish comes up in a 35/45 degree angle, in order to be leveled with the conveyor. I started using my left hand, and heard a pop between the 6th and 7th hour of work. I felt no pain in the moment, but 2 days later, after going home, I could not open my palm or scratch with my left thumb for 1 month and a half, and now it is hindering my work performance and life.

When asked about this report at hearing, Employee admitted he did not mention a left-shoulder injury. He testified he had no left-wrist or left-shoulder medical treatment after October 30, 2022, until he first saw an onsite provider after returning to work for Employer and after he completed the January 20, 2023 injury report. Employee also admitted there is no medical record mentioning a left-shoulder injury until March 4, 2025. (Employee Report of Occupational Injury or Illness to Employer, January 20, 2023; record, April 23, 2026).

16) In January 2023, Employee earned \$2,888.26 working for Employer, primarily doing light-duty work following his January 20, 2023 injury report. (W-2, 2022; Remote Zoom Deposition of Johnny Nie, March 12, 2024).

17) On January 25, 2023, Salas’ note stated Employee departed work on October 31, 2022, and did not have issues or contact the adjuster from November 1, 2022, until he returned in January 2023 and said he was injured in “November 2022.” (Salas note, January 25, 2023).

18) On February 1, 2023, the adjuster sent Employer’s staff an email regarding Employee. The message stated, “Can you ask Ava and Jacqueline if Johnny told them of his injury before

leaving on 10/31/22. He stated that Jacqueline wrote it down after he spoke with Ava. If she still has that, can you send a copy?" (Email, February 1, 2023).

19) On February 1, 2023, Lori Anglin, who worked for Employer responded, "I have checked with both and neither of them have any documentation that he had talked to them regarding his injury before he departed 10/31/22." (Email, February 1, 2023).

20) On February 1, 2023, the adjuster sent Anglin an email regarding Employee, "Do they recall him telling them of his injury before he departed?" (Email, February 1, 2023).

21) On February 1, 2023, Anglin responded to the adjuster's email regarding Employee. The message stated, "Neither Eva [sic] or [sic] Jacqueline recalled talking to him." Also included was Employee's "departure form." (Email, February 1, 2023).

22) On February 1, 2023, the adjuster spoke to Employee by phone. He stated he worked three seasons with Employer. Employee said his pain from the October 30, 2022 injury had "subsided" by December 20, 2022. On January 20, 2023, after he returned to work for the next season, Employee said he was working the cod line "figuriously [sic] when he felt a "shovewave" [sic] of pain from his "thumb to his forearm again." He reported the injury to his supervisor on January 20, 2023. (Adjuster's note, February 1, 2023).

23) On February 13, 2023, Employee emailed the adjuster, who recorded the email in her adjuster's notes:

They are sending me home today[;] I just finished packing. . . . Also I had already signed my job offer for Valdez and was suppose[d] to fly there after the 26th of May for work, straight from King Cove. If I'm not fully recovered by that time will I still be paid through my claim? (Adjuster's note, February 13, 2023).

24) On March 8, 2023, Maria Ramieriz, MD, saw Employee for his left wrist. She released Employee that day to modified work and said, "Employee may work their entire shift." He could lift with his left hand occasionally up to three hours per day, constantly up to eight hours "or greater" per day, and could push and pull up to 10 pounds "constantly." Employee could not use power tools with his left hand, or climb. (Rameriz report, March 8, 2023).

25) In 2023, Jean Domingues, RN, was Employee's nurse case manager. She provided regular updates to Salas. None of her reports mention any reported injuries or symptoms to Employee's left shoulder arising from PT. (Domingues notes, 2023).

26) On June 6, 2023, Gregory Jones interviewed Employee for a reemployment eligibility evaluation, and on June 30, 2023, gave his report. Employee gave Jones the following work history for the 10 years prior to his work injury:

Table I

Employer	Date Started	Date Ended	Job Title
Mobile Detailer	June 2013	September 2013	Automobile Detailer
In Style Furniture	February 2016	June 2016	Receptionist & Sales
Luna Grill	March 2018	August 2018	Cook
Hakes Sash & Doors	September 2018	December 2019	Carpenter Apprentice
Procraft Glass & Doors	January 2020	March 2020	Carpenter Apprentice
Pacific Seafoods	December 2021	March 2022	Fish Cleaner/Processor
Peter Pan Seafoods	June 2022	August 2022	Seafood Processor
Peter Pan Seafoods	August 2022	November 2022	Seafood Processor

Jones recorded that from October 2013 through January 2016, “the employee related that he was not working, living at home.” From September 2016 to February 2018, “the employee noted that he was taking care of his child.” From March 2020 through November 2021, Employee reported he was unemployed during the COVID-19 pandemic. From April 2022 to May 2022, Employee said he was not working; “living at home with his mother.” Jones sent this report to Employee, who could have corrected any mistakes or misstatements. (Reemployment Benefits Eligibility Evaluation Report 1, June 30, 2023; experience; observation; judgment).

27) On August 8, 2023, after Employee had failed conservative left-wrist treatment, James Fait, MD, operated on Employee’s left wrist. (Zahra Surgery Center, August 8, 2023).

28) On or about September 18, 2023, Salas recorded in her adjuster’s notes the following:

PC [phone call] to the EE [Employee] due to email over weekend that was sent.

EE very upset that his DOI [date of injury] is 1/20/23 when he was injured 10/30/22. [A]dvised him of our conversation 2/1/23 where we spoke and he initially injured himself on October 30, 2023 [sic] but did not seek treatment and pain went away by 12/2022 and then went back to PPSF [Peter Pan Sea Food] on 1/3/23 and injured himself 1/20/23. . . . (Salas note, September 18, 2023).

29) On September 21, 2023, the adjuster sent to Employee by certified mail releases along with a letter advising him of his right to file a petition for a protective order, with the applicable time limits included. Attached were an “Employment/Reemployment Records Release,” and a “Release of Medical Information.” The releases used the January 20, 2023 injury date. (Letter, September 21, 2023, with attachments).

30) On October 2, 2023, Salas emailed Employee the following:

Thank you for signing those and sending them to me. Unfortunately, the writing next to the date of injury makes the releases invalid and cannot be used. I have attached new releases needing your signature.

Please note that under AS 23.30.107 - AS 23.30.108, a denial can be issued on your claim for failure to sign and return releases timely. Please return them, unaltered by 10/5/23 or a denial will be considered on your claim. . . . (Salas email, October 2, 2023).

31) Although there was discussion between the parties about a different injury date, the Workers' Compensation Division (Division) has only one file for Employee, and the injury date for that file is October 30, 2022. (Agency file).

32) On October 2, 2023, the adjuster filed with the Division and served on Employee a letter with an attached controversion. Both used January 20, 2023, as the injury date. The reason given for the controversion, suspending all benefits after October 2, 2023, was, "Employee refuses to sign unaltered releases and has not filed a Petition for Protective Order. All benefits are therefore suspended in accordance with AS 23.30.107 and 23.30.108." (Letter; Controversion Notice, October 2, 2023).

33) On October 10, 2023, Dr. Fait examined Employee. He opined that Employee suffered a left-wrist injury at work on October 30, 2022. Given that treatment had been denied and PT was discontinued, Dr. Fait found Employee had reached "maximal medical improvement" absent further treatment. He provided a 10 percent whole-person PPI rating under the AMA *Guides* Fifth Edition. Dr. Fait restricted Employee permanently from using power tools with his left arm or hand, because he had issues with repetitive or forceful gripping or grasping. If further treatment was authorized, he could try additional PT, oral anti-inflammatory medications and possible wrist injections. (Fait report, October 10, 2023).

34) On October 13, 2023, Employee called the Division, and reported "he thinks the DOI needs to be corrected and he received the Releases from the Claims Adj [adjuster] and he is going to sign them and get them in the mail." (Agency file: Judicial, Communications, Phone Call tabs, October 13, 2023).

35) On November 2, 2023, Employee sent the adjuster a notice revoking his prior authorization to Release Medical Information he had signed on January 20, 2023, and the

Employment/Reemployment Records Release he had signed on October 2, 2023. (Notice of Revocation, November 2, 2023).

36) On November 2, 2023, the adjuster filed with the Division and served on Employee another letter with an attached controversion. Both used the January 20, 2023 injury date. The attached controversion stated all benefits were suspended after October 31, 2023, because “The employee has provided written refusal to attend an IME and failed to attend a properly noticed IME. All benefits are therefore suspended until the refusal to attend ceases.” (Letter; Controversion Notice, November 2, 2023).

37) On December 11, 2023, Employer filed with the Division and served on Employee another controversion denying: all benefits from October 2, 2023, and continuing, including TTD, PTD, a compensation rate adjustment, an unfair or frivolous controversion, a penalty, interest, and transportation expenses as well as “other.” The reasons given included:

The employee has refused to properly return releases to the employer under AS 23.30.107-AS 23.30.108, and all benefits from October 2, 2023, continuing are suspended. The employee has also refused to attend an independent medical examination scheduled for November 1, 2023, and all benefits are suspended under AS 23.30.095.

No physician has deemed the employee permanent totally disabled. The employee has not reached medical stability and cannot be both temporarily and permanently disabled. The employee has not attached the presumption of compensability for the employee’s PTD claim.

The employee’s compensation rate will be determined pursuant to AS 23.30.220(a)(4), and his rate is appropriately set. The employee has presented no evidence to justify a change.

All controversions are based on fact and/or law. The claim for unfair/frivolous controversion is meritless.

All benefits owed have been paid or timely controverted or paid, and therefore, no interest or penalty is owed.

The employee has failed to submit a proper transportation log under 8 AAC 45.084, and supply it with proper documentation, to warrant transportation expenses.

The employee's allegations contained in his missive attached to his claims, and his requests for any relief outside of the workers' compensation system, are nonsensical and the Board has no jurisdiction under these statutes.

The employer reserves the right to raise further defenses disclosed during the discovery process. (Controversion notice, December 11, 2023).

38) On December 12, 2023, Employer served on Employee by certified mail nine discovery releases. The cover letter advised Employee about his right to file a petition for a protective order if he had an objection to the releases. Each release referenced the October 30, 2022 injury date. (Letter, December 12, 2023, with attachments).

39) On January 5, 2024, a Division staff member entered a note into Employee's agency file. "Please have parties discuss DOI at PHC [Prehearing Conference] on 1/2/24." (Agency file: Judicial, Communications, Case Notes, January 5, 2024).

40) According to the agency file, there was no prehearing conference in this case on January 2, 2024. (Agency file: Judicial, Prehearing tabs, accessed April 23, 2026).

41) On January 19, 2024, Employee filed and served on Holloway a petition for a protective order and "other" relief. On an attached page, Employee stated his reason for filing:

In Respect to my injury, releases were signed on the date and sent to Sedgwick, with a notice of violation. Insurer sent a fraudulent Release of Medical Information request on September 21st, 2023 with an incorrect date of injury of 01/20/2023. The original Written Authority was signed on January 20th, 2023 by me with my employer at King Cove and sent to Sedgwick, even then, there is an incorrect date of injury of 11/30/2022. Furthermore against discovery releases which are unnecessary pertaining to my injury as an employee. I've also attached the (PR-4) form pertaining to my permanent injury from my provider listed on the Panel, Dr. Fait. The form designed to be used by the primary treating physician to report the initial evaluation of permanent disability to the claims administrator. I request this petition in good faith and equity.

Attached to this petition among other things were a "Medical Information Release," with the words "Written Authority" hand-written across the top, and the injury date stated as "11/30/2022." The release requested medical information for Employee's left wrist from "11/30/2020 (which is 2 years prior to injury or illness). . . ." Also attached was a "Release of Medical Information" that listed the injury date at "01/20/2023" and allowed release of records back to "10/2020." On this release, Employee had circled the injury date and had hand-written "Notice of Violation." (Petition, January 19, 2024, with attachments).

42) As Employee was petitioning for a protective order against releases served on him on September 21, 2023, which is what his petition states, his January 19, 2024 petition for a protective order was untimely. (Observations; and inferences drawn from the above).

43) On February 15, 2024, the parties appeared for a prehearing conference. The Prehearing Conference Summary discussed releases and Employee's untimely protective order against them. The designee ordered Employee to sign and return the releases to Holloway. The injury date listed on the Prehearing Conference Summary is "10/30/2022," and the summary discloses no discussion occurred about an improper injury date during this prehearing conference. (Observations; Prehearing Conference Summary, February 15, 2024).

44) On March 12, 2024, Employee testified by deposition, in relevant part: in the previous 10 years, Employee was not self-employed and did not own a business. (Remote Zoom Deposition of Johnny Nie, March 12, 2024, at 12). Before working for Employer in 2022, he also worked for Pacific Coast Seafoods (Pacific) as a processor for approximately two months. At Pacific he worked six days per week, mostly 12 but up to 16 hours per day and earned \$17.50 per hour. Employee worked three seasons for Employer. He first worked for Employer in Valdez, Alaska in 2022. He worked the next season in King Cove, Alaska in 2022, where the injury occurred. Employee returned for the third season in January 2023. (*Id.* at 13-14).

45) After the injury, Employee's hand was not in the "same state." (*Id.* at 18). He explained that he cannot hold anything "keeping a grip on [his] hand on it longer than 10 minutes" without feeling a sharp pain "ricocheting from [his] left wrist down to my thumb." Sometimes if he moved quickly pain would go "down" his forearm "all the way up to" his elbow to his forearm. (*Id.* at 18-19). Employee said he could not operate power tools with his left hand because any "vigorous movement" would cause a sharp pain "ricocheting up [his] arm all the way to [his] forearm to the back of [his] tricep (indicating) to [his] shoulder (indicating)." (*Id.* at 22).

46) Employee got out of prison in 2017. (*Id.* at 25). He was in prison for three years. For the first year and one-half, Employee stayed at the main prison; for the last year and one-half, he worked at fire camp, while still in custody, fighting wildfires in California. (*Id.* at 26-27). When asked if he worked after October 30, 2022, Employee said he returned to work for Employer for about a month and then filed his "claim" and they sent him home. Although he testified that he did not report an aggravation on January 20, 2023, he reported his October 30, 2022 injury on that date because he thought his injury had healed 100 percent, but it had not. He agreed while

he was working in January 2023 “it had actually flared up ‘worsen’ then [he] thought it would’ve, so it did not heal.” (*Id.* at 32). He reiterated that the injury “had flared up ‘worsen’ than [he] could ever imagine, and that is why [he] filed the claim for [his] injury for 10/30/2022.” (*Id.* at 32-33). Employee is right-handed. (*Id.* at 35).

47) Employee claimed he reported the injury to “Ava,” but never filed a “claim” because he “loved the company” and wanted to come back and work and did not want to have a “bad standing with them.” (*Id.* at 35-36). Employee testified that Employer put “11/30/2022” on his injury report, but the injury date was actually “10/30.” (*Id.* at 37). He could not remember the exact day he returned to work for Employer in January 2023, but on the first day he worked, the left-wrist pain was “excruciating and severe.” The second day at work made his left-wrist injury “a lot worse.” That day he decided to report his injury, which report he made on January 20, 2023. Employee considered it “filing a claim.” (*Id.* at 38).

48) Employee said Employer sent him home about two weeks later; in the interim he worked light duty. (*Id.* at 39). PT did not help at all. He then had left-wrist surgery. (*Id.* at 44). Dr. Fait told him to continue PT post-surgery. Employee said he had “just recently” started to “work out” and “lift weights” again. (*Id.* at 54).

49) Employee in his deposition did not mention any left-shoulder pain or injury occurring at or resulting from PT, although he did discuss PT in some detail. With exception of the fire-fighting while he was incarcerated, Employee did not disclose how long he had worked at any of his previous employment before he went to work for Employer. (Remote Zoom Deposition of Johnny Nie, March 12, 2024).

50) Employee said he signed “written authority” while at King Cove. Then, for “some reason, they” sent him “a second written authority” with an incorrect date, and he signed it, but also “put them on notice for violation for the date of injury.” That is when Employer controverted him. Employee denied that he “altered the paper” and failed to send the releases to them. He denied signing and sending releases to Holloway’s office; he set them to Sedgwick. (*Id.* at 47-48). Employee admitted he received releases from Holloway with the correct injury date and had not signed and returned them yet, but he said he would be doing it that day. (*Id.* at 49-50). After explaining his typical daily routine post-injury, Employee said the worst part of his injury: “I can’t even play video games like I used to. That is the one thing I hate right now. I can’t even play video games anymore because I can’t use my left thumb like I used to.” (*Id.* at 53).

51) On March 27, 2024, Employer filed with the Division and served on Employee a controversion listing both October 30, 2022, and January 20, 2023, as the injury date. It denied all benefits from February 12, 2024, and continuing. The reason stated, “Per AS 23.30.095, the employer denies all benefits from February 12, 2024, forward due to the employee’s failure to attend a properly noticed independent medical evaluation with Dr. Scott Kitchel on February 12, 2024.” (Controversion Notice, March 27, 2024).

52) On March 29, 2024, Employer served on Employee by certified mail two pharmacy releases. The cover letter advised Employee of his right to petition for a protective order if he objected to the releases. (Letter, March 29, 2024, with attachments).

53) On April 25, 2024, Employer filed with the Division and served on Employee a controversion listing both October 30, 2022, and January 20, 2023, as the injury date. This notice denied specific benefits on the following grounds:

Per AS 23.30.108, and for the foregoing reasons, the employer denies all benefits from April 13, 2024, forward due to employee’s failure to provide written authority to release medical and rehabilitation information related to the subject injury. The employer’s request for written authority is dated March 29, 2024. Further, upon information and belief, the employee did not file a petition with the board seeking a protective order within 14 days from service of the request. (Controversion Notice, April 25, 2024).

54) On September 27, 2024, *Nie v. Peter Pan Seafood Co., LLC*, AWCB Dec. No 24-0053 (September 27, 2024) (*Nie I*) denied Employer’s petition to dismiss Employee’s claim for twice failing to attend its employer’s medical evaluation (EME). All findings from *Nie I* are incorporated here by reference. *Nie I* found that Employee admittedly refused to attend two EMES. While it did not dismiss his claims, *Nie I* sanctioned Employee \$2,900 from any future benefits to reimburse Employer for “no-show” fees it paid to the EME physician. (*Nie I*).

55) On October 22, 2024, Employer served on Employee by certified mail 10 discovery releases; each where appropriate used the October 30, 2022 injury date. The cover letter advised Employee of his right to petition for a protective order. (Letter, October 22, 2024, with attachments).

56) On October 26, 2024, Employee signed, and presumably returned to Holloway, 10 discovery releases. However, on each release after his signature, Employee modified the

releases with the following language: “A.R.R. Without Prejudice U.C.C. 1-207, 1-308, 1-103.” (Releases, signed October 26, 2024).

57) On November 5, 2024, Scott Kitchel, MD, orthopedic surgeon, saw Employee for an EME. Employee told Dr. Kitchel that he injured his left wrist on October 30, 2022, but did not seek medical advice until he returned to work about two months later in 2023. He did not mention a left-shoulder injury to Dr. Kitchel. When Dr. Kitchel gave Employee an opportunity after taking his history, to provide any additional information, Dr. Kitchel said, “He declines.” At hearing on April 23, 2026, Employee agreed that Dr. Kitchel’s charted statements were all correct. After reviewing Employee’s records and performing an evaluation, Dr. Kitchel stated:

Impression:

1. Left wrist strain/sprain, causally related to the October 30, 2022, work injury on a more-probable-than-not basis.
2. Left wrist de Quervain’s tenosynovitis, causally related to the October 30, 2022, work injury on a more-probable-than-not basis.

Employee denied any aggravation of this injury from an event on January 20, 2023. Dr. Kitchel found the October 30, 2022 work injury was the substantial cause of Employee’s disability. He initially found Employee’s left wrist had reached medical stability effective November 5, 2024. Employee’s treatment had been reasonable and necessary to treat the work injury. Dr. Kitchel was not aware of any additional curative treatment for the wrist injury. He provided an AMA *Guides* Sixth Edition PPI rating for Employee resulting in a two percent left-upper extremity rating which converted to a one percent whole-person rating. Dr. Kitchel opined Employee could work at the “medium level of physical demands” with the stipulation that he do no left-handed work. (Kitchel report, November 5, 2024).

58) On November 18, 2024, Employee returned to Dr. Fait’s office. Dr. Fait noted he had found Employee permanent and stationary on October 10, 2023, and had given him a PPI rating. Given the advice from *Nie I*, Employee requested an updated rating under the Sixth Edition of the AMA *Guides*. “He denies new or additional injuries.” Employee admitted his wrist was improved slightly. There was no mention of a left-shoulder injury or left-shoulder symptoms. Dr. Fait reiterated his medical stability opinion from October 10, 2023, and provided a new PPI rating under the proper *Guides* for use in Alaska. Ultimately, Dr. Fait provided an eight percent “impairment of the left thumb.” He reiterated his permanent restriction against Employee using

power tools and forcibly gripping and grasping with his left hand. “The patient has been released from care.” (Fait report, November 18, 2024).

59) On November 21, 2024, after receiving from Employee unaltered releases on October 30, 2024, Employer partially withdrew its October 2, 2023, December 11, 2023, December 28, 2023, and April 25, 2024 controversions effective October 30, 2024. Employer argued that Employee’s benefits should remain denied from October 2, 2023, through October 29, 2024, because he repeatedly failed to return unaltered and signed releases. (Notice of Partial Withdrawal of Controversions, November 21, 2024).

60) On November 21, 2024, Dr. Kitchel provided an addendum report. After being provided with the Alaska Workers’ Compensation Act’s (Act) definition of “medical stability,” Dr. Kitchel stated Employee reached medical stability by no later than October 10, 2023. He reiterated that no additional treatment was indicated for Employee’s left wrist. Dr. Kitchel reviewed job descriptions for Employee’s work in the 10 years prior to his injury and reiterated that he could work at medium-level physical exertion without using his left arm and could work in a sedentary or light position without additional restriction. He further released Employee to full regular-duty as a Receptionist or a Salesperson, based upon Dr. Kitchel’s review of various job descriptions provided. When asked about this at hearing, Employee testified that he did not work as a Receptionist or Salesperson in the furniture store in 2016, as stated in the reemployment forms, but actually volunteered at the furniture store for a relative in 2008 or 2009. He testified that he added the furniture store volunteer work to his 10-year work history just to build up his “image.” (Kitchel Addendum report, November 21, 2024; record, April 23, 2026).

61) On November 21, 2024, Employee filed, with proof of service on Holloway, an email citing the *Geerhart* Board decision. Also attached were Dr. Fait’s October 10, 2023 PPI rating report, and Employee’s earnings statements from Employer showing his earnings in August, September, and October 2022, and Employee’s “Chime” checking account statements for September, October and November 2022. (Agency file: Judicial, Communications, Email tabs, November 21, 2024, with attachments).

62) On December 3, 2024, Jones authored a labor market survey. Since Dr. Kitchel approved Employee to perform the Receptionist job, Jones researched and found approximately 100,000

jobs existed in the labor market for Receptionist. Ten employers in Employee's local area had job openings for a receptionist. (Labor Market Research Report, December 3, 2024).

63) On December 3, 2024, Employer filed with the Division and served on Employee a controversion using only the October 30, 2022 injury date. It denied all benefits from November 1, 2023 through November 4, 2024, TTD, TPD, and PTD benefits from October 10, 2023, and continuing, a compensation rate adjustment, a penalty, interest, and an unfair and frivolous controversion. The reasons given for the denial included:

All benefits denied from 11/1/23-11/4/24 due to the employee's willful refusal to attend two independent medical examinations scheduled for 11/1/23 and 2/12/24, pursuant to AS 23.30.095.

TTD/TPD/PTD benefits from 10/10/23 forward are denied as Dr. James Fait assessed the employee's condition at maximum medical improvement and he released the employee to fulltime work. Dr. Scott Kitchel, in his reports dated 11/5/24 and 11/21/24, concurred that medical stability was reached as of 10/10/23, and that the employee is capable of fulltime work. No temporary disability is due beyond medical stability. The employee retains capacities to work and is not permanently disabled. Further, the employee has been in the reemployment process and cannot be determined PTD under AS 23.30.041(k).

The employer calculated the compensation rate based on gross earnings from 2022, the highest year presented by the employee; the employer voluntarily based the rate on wages earned the year of injury, which it did not have to do under AS 23.30.220(a). No adjustment is owed.

All benefits have been timely paid or controverted; no interest or penalty is owed. All controversions have been based on facts and/or law. (Controversion Notice, December 3, 2024).

64) On December 6, 2024, Employer filed with the Division and served on Employee a controversion dated December 28, 2023, using both October 30, 2022 and January 20, 2023, as the injury date denying all benefits. The reasons given for the denial included:

Per AS 23.30.108, and for the foregoing reasons, the employer denies all benefits from December 26, 2023, forward due to employee's failure to provide written authority to release medical and rehabilitation information related to the subject injury. The employer's request for written authority is dated December 12, 2023. Further, upon information and belief, the employee did not file a petition with the board seeking a protective order within 14 days from service of the request. (Controversion Notice, December 28, 2023).

65) On January 10, 2025, *Nie v. Peter Pan Seafood Co., LLC*, AWCB Dec. No. 25-0001 (January 10, 2025) (*Nie II*) decided Employee's petition regarding Employer's request to cross-examine the authors of certain non-medical records, and Employer's request for a protective order against certain discovery. All factual findings and conclusions from *Nie II* are incorporated here by reference. *Nie II* admitted Employee's records over Employer's objection and remanded the case back to the Board's designee for a prehearing conference discovery ruling. (*Nie II*).

66) On January 15, 2025, the Rehabilitation Benefits Administrator's (RBA) designee notified Employee that he was "not eligible" for reemployment benefits based on a December 3, 2024 eligibility evaluation report from reemployment specialist Gregory Jones. The reemployment process was delayed because Employee withdrew his consent to release information from Dr. Fait, and consequently, Dr. Fait would not respond to the reemployment specialist's request for opinions. Given this withdrawal and refusal, Jones sent the necessary materials to Dr. Kitchel for his review and comment. Dr. Kitchel predicted Employee would have physical capacities to perform the physical demands of Receptionist, which Jones found existed in the current labor market. (RBA-designee letter, January 15, 2025).

67) On February 12, 2025, Employer filed with the Division and served on Employee a controversion listing only the October 30, 2022 injury date. This notice denied specific benefits including, all benefits from November 1, 2023, through November 4, 2024, TTD, TPD and PTD benefits prior to February 4, 2023, and from October 10, 2023, and continuing, PPI benefits above two percent, a compensation rate adjustment, a penalty, interest, and an unfair and frivolous controversion. The reasons given for this denial included:

All benefits denied from 11/1/23-11/4/24 due to the employee's willful refusal to attend two independent medical examinations scheduled for 11/1/23 and 2/12/24, pursuant to AS 23.30.095.

There is no authorization for disability pertaining to the employee's injury prior to February 4, 2023; the employee has not attached the presumption of compensability for disability benefits prior to February 4, 2023. The employee worked for the employer from January 4-February 3, 2023, and was therefore not disabled. The employee's attending physician, Dr. James Fait, released the employee to work as of October 10, 2023, and found the employee's injury at maximum medical improvement as of that date. Dr. Scott Kitchel, in his reports

dated November 4 and 21, 2024, assessed medical stability as of October 1, 2023, and released the employee to medium duty work. No temporary disability is owed once medical stability is reached.

No physician has deemed the employee permanent totally disabled. Both Dr. Fait and Dr. Kitchel have opined the employee is capable of full time work. He has not attached the presumption of compensability for permanent total disability.

The employee's physician, Dr. Fait, assessed the employee with 2% PPI on November 1, 2024; these benefits have been paid and there is no other rating.

The employee's compensation rate has been determined pursuant to AS 23.30.220(a)(4), and his rate is appropriately set. The employee has presented no evidence to justify a change.

All controversions are based on fact and/or law. The claim for unfair/frivolous controversion is meritless.

All benefits owed have been paid or timely controverted or paid, and therefore, no interest or penalty is owed. (Controversion Notice, February 12, 2025).

68) On February 18, 2025, the parties appeared before a Board designee for a prehearing conference. Among other things discussed, Employee mentioned the changed injury date and stated he needed discovery:

8. Provide **PROOF OF CLAIM** that the undersigned had a 'meeting of the mind(s)' with Sedgwick on 2/17/23 when they changed the undersigned's **Date of Injury** from **10/30/22** to **1/20/2023** pursuant to the Workers Compensation Claim in respect to full disclosure and that said Claim contained or contains no elements of fraud by Sedgwick under **AS Sec. 23.30.250**.

Employee argued that this discovery documentation will support a finding of fact in a Civil Action. Stating that "I was not in agreement with the change and this was fraud!" (Prehearing Conference Summary, February 18, 2025; emphasis in original).

69) On March 4, 2025, Employee returned to Dr. Fait for the first time since 2023:

However, he states on February 15th, of this year, he was in the shower attempting to wash and clean behind himself, when he had a sharp onset of pain from his left shoulder going all the way down his left arm to his left thumb. He has had episodes like this in the past. He seems to recall that this started when he was in physical therapy for his left wrist, when he experienced a pop and pain in the left shoulder. However, he was doing reasonably well with respect to the

shoulder until this most recent flare-up of pain. He therefore requested an evaluation to come in today to see if anything further can be done. . . .

In respect to the left shoulder, Dr. Fait diagnosed, “left shoulder pain with possible subacromial impingement.” He said it was “certainly possible” that PT activities following left-wrist surgery could have aggravated his rotator cuff. To determine if there was “any objective evidence of a condition that could have been aggravated by postoperative” PT, Dr. Fait requested left-shoulder magnetic resonance imaging to ferret this out. (Fait report, March 4, 2025).

70) On March 4, 2025, Dr. Fait also released Employee to modified work effective March 4, 2025, with the same restrictions from 2023 and said, “Patient may work their entire shift.” (Fait report, March 4, 2025).

71) On March 27, 2025, Employer filed with the Division and served on Employee an amended controversion listing only the October 30, 2022 injury date. This notice denied specific benefits including all benefits from November 1, 2023 through November 4, 2024, TTD, TPD, PTD benefits prior to February 4, 2023, and from October 10, 2023, and continuing, PPI benefits above three percent, a compensation rate adjustment, a penalty, interest, and an unfair and frivolous controversion. The grounds included:

All benefits denied from 11/1/23-11/4/24 due to the employee’s willful refusal to attend two independent medical examinations scheduled for 11/1/23 and 2/12/24, pursuant to AS 23.30.095.

There is no authorization for disability pertaining to the employee’s injury prior to February 4, 2023; the employee has not attached the presumption of compensability for disability benefits prior to February 4, 2023. The employee worked for the employer from January 4 - February 3, 2023, and was therefore not disabled. The employee’s attending physician, Dr. James Fait, released the employee to work as of October 10, 2023, and found the employee’s injury at maximum medical improvement as of that date. Dr. Scott Kitchel, in his reports dated November 4 and 21, 2024, assessed medical stability as of October 1, 2023, and released the employee to medium duty work. No temporary disability is owed once medical stability is reached.

No physician has deemed the employee permanent totally disabled. Both Dr. Fait and Dr. Kitchel have opined the employee is capable of full time work. He has not attached the presumption of compensability for permanent total disability.

The employee’s physician, Dr. Fait, assessed the employee with 3% PPI on November 1, 2024; these benefits have been paid and there is no other rating.

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The employee’s compensation rate has been determined pursuant to AS 23.30.220(a)(4), and his rate is appropriately set. The employee has presented no evidence to justify a change.

All controversions are based on fact and/or law. The claim for unfair/frivolous controversion is meritless.

All benefits owed have been paid or timely controverted or paid, and therefore, no interest or penalty is owed. (Controversion Notice, March 27, 2025).

72) On April 30, 2025, *Nie v. Peter Pan Seafood Co., LLC*, AWCB Dec. No. 25-0030 (April 30, 2025) (*Nie III*) addressed Employee’s appeal from the designee’s discovery order. *Nie III*’s factual findings and conclusions are incorporated here by reference. Among other things, Employee testified that he was hurt during one processing season and “returned to work for Employer for another season because he needed the money. . . .” *Id.* at 2. (*Nie III*).

73) On May 6, 2025, Dr. Fait saw Employee again for his left-wrist condition. He released Employee to “return to modified work/activity today,” and anticipated maximum medical improvement on August 30, 2025. Dr. Fait’s limitations remained the same as when he last saw Employee. (Work Activity Status Report, May 6, 2025).

74) On May 14, 2025, Employee filed an amended claim for TTD, TPD, PPI benefits, a compensation rate adjustment, an unfair or frivolous controversion, a penalty for late-paid compensation, interest and “other.” Attached to the claim, among other things were Employee’s payroll records from Employer beginning August 22, 2022 through October 16, 2022:

Table II

From Date	To Date	Gross Earnings
August 22, 2022	September 4, 2022	\$1,315.71
September 5, 2022	September 18, 2022	\$2,230.18
September 19, 2022	October 2, 2022	\$2,503.11
October 3, 2022	October 16, 2022	\$1,418.02
Total Gross Earnings		\$7,467.02

(Amended Claim for Workers’ Compensation Benefits, May 14, 2025, with attachments).

75) On June 6, 2025, Employer filed with the Division and served on Employee a controversion denying specific benefits including, all benefits from November 1, 2023 through November 4, 2024, all benefits related to any claim to a body part other than the left wrist and hand, TTD, TPD, and PTD benefits prior to February 4, 2023, and from October 10, 2023, and continuing, PPI benefits above three percent, a compensation rate adjustment, a penalty, interest,

an unfair and frivolous controversion, claims for fraud, coercion, “leasing,” COLA [cost-of-living allowance], inflation adjustment, and civil damages or penalties. The reasons given included:

All benefits pertaining to any left elbow or left shoulder condition are barred by AS 23.30.100 or otherwise barred by law and/equity. The employee only originally reported a left hand injury. Dr. Scott Kitchel assessed the only work-related injuries, in his report of November 5, 2024, as left wrist sprain/strain and left wrist de Quervain’s tenosynovitis.

There is no authorization for disability pertaining to the employee’s injury prior to February 4, 2023; the employee has not attached the presumption of compensability for disability benefits prior to February 4, 2023. The employee worked for the employer from January 4 - February 3, 2023, and was therefore not disabled. The employee’s attending physician, Dr. James Fait, released the employee to work as of October 10, 2023, and found the employee’s injury at maximum medical improvement as of that date. Dr. Kitchel, in his reports dated November 5 and 21, 2024, assessed medical stability as of October 10, 2023, and released the employee to medium duty work. No temporary disability is owed once medical stability is reached.

The employee’s physician, Dr. Fait, assessed the employee with 3% PPI on November 1, 2024; these benefits have been paid and there is no other rating.

The employee’s compensation rate has been determined pursuant to AS 23.30.220(a)(4), and his rate is appropriately set. The employee has presented no evidence to justify a change.

All controversions are based on fact and/or law. The claim for unfair/frivolous controversion is meritless.

All benefits owed have been paid or timely controverted or paid, and therefore, no interest or penalty is owed.

The employee’s claims included unintelligible and nonsensical claims of employer fraud, coercion, “leasing” practices, etc., all of which are gibberish. At no point did the employer commit any fraud or coercion in the handling of the employee’s claim. His original date of injury was assigned as January 20, 2023, because he had returned to work for the employer in January 2023 and that is when the employer was first made aware of his claimed injury. It was also the first time the employee treated for his injury. The employee backdated his injury to October 30, 2022, to which the employer agreed. The employee’s whiny complaints about his date of injury have been addressed, and the during entire time period the employee claims he was defrauded or coerced in 2023 he was actually being paid benefits. The employee’s obsession with his date of injury is

illogical as it had zero impact on his entitlement to workers' compensation benefits or the payment thereof. The employer does not understand the claim for "leasing" practices. The employer has not leased anything to the employee.

The employee's claims for an adjustment to benefits due to COLA (for living in California) are disallowed under AS 23.30.175(b)(5). Further, there is no adjustment to compensation under the Act due to "inflation." The Board has no jurisdiction over any claim for civil damages or penalties. (Controversion Notice, June 6, 2025).

76) On June 12, 2025, the parties appeared before a Board designee for a prehearing conference. Employee confirmed that his May 14, 2025 claim related to not only his left wrist "but also his left arm and left shoulder." (Prehearing Conference Summary, June 12, 2025).

77) On June 26, 2025, Employee returned to Dr. Kitchel for a follow-up EME. He told Dr. Kitchel that he had reported pain running up his left shoulder to his supervisor but they did not record that conversation or document it. Employee told Dr. Kitchel that on February 15, 2025, while showering, he reached behind his back with his left arm and had sudden onset of a sharp, shocking pain that started in the left shoulder and ran all the way down to his fingers. He further told Dr. Kitchel that since the "original onset in 2022," and since February 15, 2025, his left-shoulder and arm pain had gotten worse. After examining Employee, Dr. Kitchel opined he had diffuse left-upper-extremity pain "causally related to February 15, 2025, episode in shower when he reached behind his back and had immediate onset of left shoulder and arm shocking and sharp pain." The 2025 shower incident was the "most significant cause of the arm pain syndrome." While Employee's left-shoulder was not medically stable, in Dr. Kitchel's opinion, any additional workup for the left-shoulder was not substantially caused by the 2022 work injury. Employee needed no further treatment to his left wrist. Dr. Kitchel's opinions concerning Employee's ability to work remained the same as in his previous report. (Kitchel report, June 26, 2025).

78) On July 9, 2025, Employer filed with the Division and served on Employee a controversion listing only the October 30, 2022 injury date. This notice denied all benefits from November 1, 2023 through November 4, 2024, all benefits related to any claimed body part other than the left wrist and hand, TTD, TPD and PTD benefits prior to February 4, 2023, and from October 10, 2023, and continuing, PPI benefits above three percent, a compensation rate

adjustment, a penalty, interest, an unfair and frivolous controversion, claims for fraud, coercion, “leasing,” COLA, an inflation adjustment, and civil damages or penalties. The reasons included:

All benefits pertaining to any left elbow or left shoulder condition are barred by AS 23.30.100 or otherwise barred by law and/equity. The employee only originally reported a left hand injury. Dr. Scott Kitchel assessed the only work-related injuries, in his report of November 5, 2024, as left wrist sprain/strain and left wrist de Quervain’s tenosynovitis. Per Dr. Kitchel in his report dated 6/26/25, the work injury is not the substantial cause of any left elbow or shoulder disability or need for treatment, which is due to an unrelated personal accident occurring on or about 2/15/25.

There is no authorization for disability pertaining to the employee’s injury prior to February 4, 2023; the employee has not attached the presumption of compensability for disability benefits prior to February 4, 2023. The employee worked for the employer from January 4-February 3, 2023, and was therefore not disabled. The employee’s attending physician, Dr. James Fait, released the employee to work as of October 10, 2023, and found the employee’s injury at maximum medical improvement as of that date. Dr. Kitchel, in his reports dated November 5 and 21, 2024, assessed medical stability as of October 10, 2023, and released the employee to medium duty work. No temporary disability is owed once medical stability is reached.

The employee’s physician, Dr. Fait, assessed the employee with 3% PPI on November 1, 2024; these benefits have been paid and there is no other rating.

The employee’s compensation rate has been determined pursuant to AS 23.30.220(a)(4), and his rate is appropriately set. The employee has presented no evidence to justify a change.

All controversions are based on fact and/or law. The claim for unfair/frivolous controversion is meritless.

All benefits owed have been paid or timely controverted or paid, and therefore, no interest or penalty is owed.

The employee’s claims included unintelligible and nonsensical claims of employer fraud, coercion, “leasing” practices, etc., all of which are gibberish. At no point did the employer commit any fraud or coercion in the handling of the employee’s claim. His original date of injury was assigned as January 20, 2023, because he had returned to work for the employer in January 2023 and that is when the employer was first made aware of his claimed injury. It was also the first time the employee treated for his injury. The employee backdated his injury to October 30, 2022, to which the employer agreed. The employee’s whiny complaints about his date of injury have been addressed, and the during entire

time period the employee claims he was defrauded or coerced in 2023 he was actually being paid benefits. The employee's obsession with his date of injury is illogical as it had zero impact on his entitlement to workers' compensation benefits or the payment thereof. The employer does not understand the claim for "leasing" practices. The employer has not leased anything to the employee.

The employee's claims for an adjustment to benefits due to COLA (for living in California) are disallowed under AS 23.30.175(b)(5). Further, there is no adjustment to compensation under the Act due to "inflation". The Board has no jurisdiction over any claim for civil damages or penalties. (Controversion notice, July 9, 2025).

79) On July 25, 2025, Employer filed with the Division and served on Employee, a controversion listing only the October 30, 2022 injury date. This notice denied specific benefits including all benefits from November 1, 2023 through November 4, 2024, all benefits related to any claimed body part other than the left wrist and hand, medical and related transportation benefits for the left wrist from June 26, 2025, forward, TTD, TPD, and PTD benefits prior to February 4, 2023, and from October 10, 2023, continuing, PPI benefits above three percent, a compensation rate adjustment, a penalty, interest, an unfair and frivolous controversion, claims for fraud, coercion, "leasing," COLA, an inflation adjustment and civil damages or penalties. The reasons Employer offered included:

All benefits pertaining to any left elbow or left shoulder condition are barred by AS 23.30.100 or otherwise barred by law and/equity. The employee only originally reported a left hand injury. Dr. Scott Kitchel assessed the only work-related injuries, in his report of November 5, 2024, as left wrist sprain/strain and left wrist de Quervain's tenosynovitis. Per Dr. Kitchel in his report dated 6/26/25, the work injury is not the substantial cause of any left elbow or shoulder disability or need for treatment, which is due to an unrelated personal accident occurring on or about 2/15/25. Also, no further treatment is needed in relation to the left wrist.

There is no authorization for disability pertaining to the employee's injury prior to February 4, 2023; the employee has not attached the presumption of compensability for disability benefits prior to February 4, 2023. The employee worked for the employer from January 4-February 3, 2023, and was therefore not disabled. The employee's attending physician, Dr. James Fait, released the employee to work as of October 10, 2023, and found the employee's injury at maximum medical improvement as of that date. Dr. Kitchel, in his reports dated November 5 and 21, 2024, assessed medical stability as of October 10, 2023, and released the employee to medium duty work. No temporary disability is owed once medical stability is reached.

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The employee's physician, Dr. Fait, assessed the employee with 3% PPI on November 1, 2024; these benefits have been paid and there is no other rating.

The employee's compensation rate has been determined pursuant to AS 23.30.220(a)(4), and his rate is appropriately set. The employee has presented no evidence to justify a change.

All controversions are based on fact and/or law. The claim for unfair/frivolous controversion is meritless.

All benefits owed have been paid or timely controverted or paid, and therefore, no interest or penalty is owed.

The employee's claims included unintelligible and nonsensical claims of employer fraud, coercion, "leasing" practices, etc., all of which are gibberish. At no point did the employer commit any fraud or coercion in the handling of the employee's claim. His original date of injury was assigned as January 20, 2023, because he had returned to work for the employer in January 2023 and that is when the employer was first made aware of his claimed injury. It was also the first time the employee treated for his injury. The employee backdated his injury to October 30, 2022, to which the employer agreed. The employee's whiny complaints about his date of injury have been addressed, and during entire time period the employee claims he was defrauded or coerced in 2023 he was actually being paid benefits. The employee's obsession with his date of injury is illogical as it had zero impact on his entitlement to workers' compensation benefits or the payment thereof. The employer does not understand the claim for "leasing" practices. The employer has not leased anything to the employee.

The employee's claims for an adjustment to benefits due to COLA (for living in California) are disallowed under AS 23.30.175(b)(5). Further, there is no adjustment to compensation under the Act due to "inflation". The Board has no jurisdiction over any claim for civil damages or penalties. (Controversion Notice, July 25, 2025).

80) On August 12, 2025, *Nie v. Peter Pan Seafood Co., LLC*, AWCB Dec. No. 25-0051 (August 12, 2025) (*Nie IV*) heard Employer's request for a second independent medical evaluation (SIME) and ordered one. (*Nie IV*).

81) On September 3, 2025, Employee advised that he had a "new temporary" address in Cincinnati, Ohio. (Agency file: Change of Contact Info, September 3, 2025). Employee's Ohio address remains the same. (Agency file: Party Information tab).

82) On November 3, 2025, Blake Nonweiler, MD, an orthopedic surgeon, wrote an SIME report regarding Employee's left shoulder, elbow and wrist pain. Employee told Dr. Nonweiler that on October 30, 2022, he was working on a conveyor and was using his left arm more than

usual. Employee felt a pop in his radial wrist with no pain, but the next morning it hurt. He eventually had de Quervain's release surgery in 2023, which he reported "did not help at all." "He then states, on March 15, 2025, [sic] he sustained a left shoulder injury while showering. He would customarily clean his back using his right arm, but he was trying to use his left arm and noticed acute left shoulder pain while doing so." Employee added "that he was having shoulder pain all along for the previous two years and reporting that to physicians; however, he states that they minimized issues with respect to his shoulder." (Nonweiler report, November 3, 2025).

83) Dr. Nonweiler reviewed Employee's medical records and performed a physical examination. He found "extreme expressions of pain" with light touch to Employee's mid-clavicle, and left shoulder. Dr. Nonweiler was unable to use some tests "due to pain." He diagnosed:

1. Left de Quervain's tenosynovitis status post de Quervain's release: Due to October 30, 2022 work injury on a more probable than not basis. It remains medically stationary, without objective change or indication for further treatment.
2. Left shoulder strain: due to 02/15/25 showering incident on a more probable than not basis.
3. Significant symptom magnification and functional overlay.

Dr. Nonweiler continued with his report:

1. Please list all causes of Johnny Nie's disability, or need for medical treatment.

With respect to the elbow, Mr. Nie does not complain of any problems with it as of today.

As far as the shoulder is concerned, he does have migratory non-anatomical areas of pain about the shoulder. He gave submaximal effort during the exam of the shoulder with unusual distributions of pain, stating that his shoulder pain starts from his radial wrist and goes up to the shoulder joint itself. There is no objective evidence on his clinical exam or his history that could lead one to believe that he has sustained more than a mild shoulder strain within a reasonable degree of medical probability. He sustained a mild shoulder strain due to the 02/15/25 shower incident. This is unrelated to his 10/30/22 work related injury on a more probable than not basis.

His underlying symptom magnification expand his subjective complaints to outweigh any valid objective findings on his clinical exam.

With respect to the wrist, he does have marked pain complaints; however, during the exam, when he is distracted, he has very little pain about the wrist. During direct palpation of the wrist, while he is watching, he notes extreme pain to light touch over the wrist; however, during the exam, during impingement testing and muscle strengthening, gripping and pushing on the radial aspect of the wrist gives him no pain whatsoever. He does have administratively accepted left de Quervain's tenosynovitis causally related to the work injury. In my estimation, this continues to be medically stationary and has no need for medical treatment at this time. His ongoing subjective complaints are amplified by his symptom magnification and functional overlay.

....

3. If, in your opinion, one cause of Johnny Nie's disability, or need for medical treatment is a pre-existing condition, did the 10/30/2022 employment injury aggravate, accelerate, or combine with the pre-existing condition to cause disability or need for treatment?

In my opinion, Mr. Nie's disability and need for medical treatment is not a pre-existing condition, nor did the employment injury of October 30, 2022, aggravate, accelerate, or combine with a pre-existing condition to cause a disability or need for treatment. He had a mild acute shoulder strain in the shower, the symptoms of which are amplified and ongoing due to his symptom magnification and functional overlay only. This is unrelated to a pre-existing condition or the 10/30/22 work injury on a more probable than not basis.

4. If so, did the 10/30/2022 injury aggravate, accelerate, or combine with the pre-existing condition to produce a temporary or permanent change in the pre-existing condition?

Not applicable, as there is no pre-existing condition to combine with the August 30, 2022 work injury to aggravate, accelerate, or combine.

5. Please evaluate the relative contribution of different causes of Johnny Nie's disability, or need for medical treatment identified in question one.

In my medical opinion, the relative contribution of Mr. Nie's disability and need for medical treatment is largely due to marked symptom magnification and functional overlay. His mechanisms of injury are not of the type that would give ongoing severe pain complaints and functional limitations that he expresses. His physical exam findings are not valid. He is noted to give sub-maximal effort on both shoulder and wrist testing. He notes severe tenderness to palpation while his attention is directed to the specific body part however more aggressive palpation when his attention is focused elsewhere results in no pain or tenderness whatsoever. This is supportive of diagnosis #3 of symptom magnification and functional overlay.

6. Which of the different causes identified in question one is “the substantial cause” of Johnny Nie’s disability, or need for medical treatment? Please provide the basis for your opinion.

In my opinion, the substantial cause of Mr. Nie’s disability and need for medical treatment is due to the functional overlay and symptom magnification, with the explanations described previously.

7. If, in your opinion, the 10/30/2022 injury was “the substantial cause” of Johnny Nie’s disability, does the work-related disability continue?

In my medical opinion, the October 30, 2022 work injury was initially the substantial cause of Mr. Nie’s disability however the work-related disability does not continue in my professional opinion. His ongoing pain and functional limitations are due to his symptom magnification and functional overlay. By review of the medical records and in my professional opinion, the October 30, 2022 injury was a substantial cause of Mr. Nie’s disability. By his clinical exam today, however, he has marked functional overlay and symptom magnification with non-anatomic pain complaints and invalid physical exam findings that make ongoing work disability not within a reasonable degree of medical probability.

8. If, in your opinion, Johnny Nie is no longer disabled from the work injury, when did the disability end?

Considering the answer to number six, in my opinion, Mr. Nie was no longer disabled from the work injury as of October 10, 2023, when he was declared permanent and stationary by Dr. Fait.

9. The Alaska Workers’ Compensation Act defines “medical stability” as: The date after which further objectively measurable improvement from the effects of the compensable injury is not reasonably expected to result from additional medical care or treatment notwithstanding the possible need for additional medical care or the possibility of improvement or deterioration resulting from the passage of time; medical stability shall be presumed in the absence of objectively measurable improvement for a period of 45 days; this presumption may be rebutted by clear and convincing evidence.

Please answer the following questions based upon this definition:

a. Is Johnny Nie medically stable?

Mr. Nie is medically stable.

b. If Johnny Nie is medically stable, on what date was medical stability reached?

Date of medical stability is November 21, 2024 [sic] when he was declared medically stable by Dr Fait [sic].

c. If Johnny Nie is not medically stable, on what date do you predict medical stability?

Not applicable.

10. What specific additional treatment, if any, do you recommend to address the 10/30/2022 injury or its consequences?

In my professional opinion, no specific additional treatment is needed to address the October 30, 2022 work injury or its consequences.

11. Johnny Nie has received a course of care requiring continuing and multiple treatments of a similar nature. In your opinion, was or is this type of treatment reasonable and necessary for the injury? That is,

- **Will the treatment help Johnny Nie recover from the injury?**
- **Will the treatment relieve chronic, debilitating pain?**
- **Will the treatment promote recovery from individual episodes of pain caused by a chronic condition?**
- **Will the treatment limit or reduce permanent impairment?**
- **Will the treatment enable Johnny Nie to return to work?**
- **If Johnny Nie is working, will the treatment enable Johnny Nie to continue working?**
- **Will the treatment enable Johnny Nie to continue to participate in an approved reemployment plan?**

In my opinion, further treatment is not reasonable or necessary related to the October 30, 2022 work injury, in that it will not help him recover from the injury, relieve chronic debilitating pain, promote recovery from individual episodes of pain, limit or reduce his permanent impairment, or enable Mr. Nie to return to work. In my estimation, Mr. Nie should be able to continue to work to participate in an approved re-employment plan. . . . (Nonweiler SIME report, November 3, 2025; all emphasis in original).

84) On January 13, 2026, Employee filed a six-page brief with three attached exhibits. He did not file another brief prior to the April 23, 2026 hearing. At hearing, Employee confirmed that the January 13, 2026 brief was his only brief for the April 23, 2026 hearing. He was not asked, and did not say, why he filed his brief so early. (Brief, January 13, 2026; record, April 23, 2026).

85) In his brief, Employee argued Employer had used “fraudulent” medical releases with an improper injury date “of 01/20/2023.” Employee contended Employer “breached” limitations of his medical release by producing information outside the limits designated in the release; at hearing, Employee did not further develop this argument. His brief further argued that Employer had engaged in unauthorized *ex parte* communication with his provider through the nurse case manager. In his view, this resulted in a “false and misleading submission”; Employee did not elaborate on this argument at hearing either. His brief contended Employer coerced him into filing a “fraudulent date of injury.” Employee added:

Miraculously God has healed my land [sic] completely. Dr. Fait released me from care on 12/02/2025, and I no longer have restrictions. I may now return to work/activity with full duty, and work my entire shift. I started work on January 13, 2026 in an at-sea vessel. I will not be seeing Dr. Fait again.

The above quote contained a typographical error and meant to say “hand,” not “land.” (Brief, January 13, 2026; inferences drawn from the above; record, April 23, 2026).

86) Under “Issue Presented,” Employee’s brief stated his injury date needed to be “corrected.” He mentioned his “right to benefits” for November and December 2022, but did not specify the benefits he thought were unpaid during that period. Employee cited alleged violations by Employer or its insurer under AS 23.30.250(a)(1)-(4) and AS 23.30.255(a). He did not elaborate. Employee requested a COLA and an “inflation adjustment” for Ohio where he now resides; Employee did not further explain any legal basis for these arguments at hearing. His brief requested an “acceleration of benefits, and correction.” Employee did not elaborate on that either in his brief or at hearing. He cited “lost wages compensation” he allegedly did not receive during months of “no work status” from his attending physicians. Employee cited limitations on “Work Activity Status Reports” on February 22, 2023, for two weeks, August 15, 2023, for four weeks, and September 12, 2023, for four weeks; he initially repeated this contention at hearing. He claimed TTD benefits beginning September 27, 2023 through October 9, 2023, which he contended were 13 days that he remained disabled before Dr. Fait deemed him medically stable on October 10, 2023. Employee contended Dr. Fait only found him medically stable because Employer controverted his case, “so he deemed” Employee medically stable. He repeated that argument at hearing. (Brief, January 13, 2026; record, April 23, 2026).

87) Employee’s brief also argued that he had been unable to work at his usual job, had lost earning capacity and job opportunities as a carpenter, working at Procraft Glass & Door, and

working as a seafood processor for Triton Seafoods, Unisea, and Silver Bay Seafoods, with his “modified capacity” and permanent restrictions “at the time.” He also mentioned having worked at unspecified times as a lead firefighter, carpenter and a seafood processor. Employee stated, “**I request lost time claim**” (emphasis in original) apparently for all of 2024 and 2025 because he could not “perform [his] regular duties.” At hearing, Employee quoted extensively from his brief. However, after Employer showed him a benefit payment spreadsheet at hearing, Employee agreed that Employer had paid him all TTD benefits he previously thought were unpaid in 2023. (Brief, January 13, 2026; record, April 23, 2026).

88) Employee’s hearing brief then refocused on the issue regarding his injury date. The brief’s attachments addressed this issue. He stated:

Insurer sent me a fraudulent medical release to sign with an incorrect DOI on 10/01/2023, then coerced, and intimidated me to sign it or they will controvert my benefits.

Dishonesty may be considered workers’ compensation fraud. Anyone committing workers’ compensation fraud may be civilly liable and may be required to pay triple damages, litigation costs to the prevailing party. They may also be held liable in criminal court. Insurer and their representative committed workers’ compensation fraud. (Brief, January 13, 2026).

89) Employee’s brief cited AS 23.30.001(4), §§.250(a)(1)-(4), .255(a), and referenced a criminal code statute, not identified. The brief also cited *Richard*, and language from *Rogers & Babler*, as well as 8 AAC 45.120(k)(1)-(6). (Brief, January 13, 2026).

90) In the analysis portion, Employee’s brief stated his displeasure with the insurer, the EME physician and Holloway. He set forth how he came to see Dr. Fait and cited language and case law from past decisions in his case. Employee contended Dr. Fait’s written reports support his claims for benefits. (Brief, January 13, 2026).

91) In Employee’s brief’s “Impression” section, which the panel treated as his “conclusion,” Employee argued that the insurer knowingly “damaged, deceived and defrauded” him and is therefore “civilly liable.” He desired to be “made whole” and to obtain “whatsoever amount of compensation that is applicable under the Act. . . .” Employee made these same arguments and requests at the hearing. (Brief, January 13, 2026; record, April 23, 2026).

92) The attachments to Employee’s January 13, 2026 brief include a January 25, 2023 letter from Sedgwick to Employee listing an October 30, 2022 injury date; a January 26, 2023 letter

from the Division to Employee listing an October 30, 2022 injury date, and a February 3, 2023 letter from Sedgwick's nurse case manager listing an October 30, 2022 injury date. These appear to be "boilerplate" informational letters. (Brief, January 13, 2026; attachments).

93) On April 17, 2026, Employer filed and served its hearing brief. It noted that Employee reported a left-wrist injury occurring on October 30, 2022, the last day of the summer fish processing season. However, he did not complete the injury report until January 20, 2023, and initially misidentified the injury date as "November 30, 2022," even though October 30, 2022 was his last day at work. Employee completed the written injury report after he had returned to work for Employer in early January 2023 for the winter processing season. Employer cited Dr. Kitchel's EME reports stating that none of Employee's left-arm or shoulder complaints were related to his work injury with Employer, but rather were caused by his showering event in February 2025. It also cited Dr. Nonweiler's SIME report in which he, as did Drs. Fait and Kitchel, found Employee reached medical stability, without the need for additional treatment. He too opined the left-shoulder condition was not related to work but rather to a showering incident on February 15, 2025. (Brief of Peter Pan Seafood Co., LLC, April 17, 2026).

94) Addressing Employee's arguments from his January 2026 brief, Employer stated the assigned injury date is irrelevant and had no impact on Employee's benefits. It contended it paid all benefits due Employee under the Act "without paying attention to his date of injury." Employer cited Employee's apparent error, or at best tardiness, in filing his October 30, 2022 injury report on January 20, 2023, and noted it could have denied the entire claim for late reporting, but did not. Moreover, Employee had signed a separation document on October 30, 2022, stating he had no reported injuries while working for Employer. Employer concluded from this that there is no evidence of insurance fraud or bad-faith on its part regarding Employee's injury date. It further concluded that any initial confusion regarding the injury date helped Employee because his compensation rate was based on his earnings from 2022, rather than 2020 or 2021, which should have been used for a 2022 injury. Employer voluntarily amended Employee's injury date to October 30, 2022, retroactively. (Brief of Peter Pan Seafood Co., LLC, April 17, 2026).

95) Employer's brief argued no benefits were due for the left shoulder based on Employee's failure to report a left-shoulder injury timely. Employee did not mention his left shoulder to Dr. Fait in 2023 or 2024, or at Employee's deposition on March 12, 2024, or to Dr. Kitchel in his

November 5, 2024 EME examination. Employer found no medical evidence suggesting Employee injured his left shoulder while at PT. It asserted that Dr. Fait never gave a causation opinion regarding the left shoulder and simply parroted what Employee told him. Employer cited the lack of evidence to support disability or PPI for Employee's left shoulder. It further noted that Employee had sedentary and light-duty work in his history according to his reemployment evaluation and contended he could have worked in these capacities notwithstanding his left-shoulder condition, but did not. (Brief of Peter Pan Seafood Co., LLC, April 17, 2026).

96) As for Employee's compensation rate adjustment claim, Employer argued he did not articulate a factual or legal basis for it. It rejected Employee's "cherry picked" 2022 pay stubs showing his best earnings while working for Employer. Employer calculated his compensation rate using his 2022 earnings, even though his injury occurred in 2022, and used his Social Security earnings statement, which said he earned \$24,359.41 while working for Employer and another seafood processor, to calculate his TTD weekly rate. At hearing, Employee agreed that the Social Security earnings were accurate. This resulted in an average weekly wage of \$487.19, which yielded a \$332.35 TTD rate, which is what Employer paid him. Employer said Employee's work was seasonal, but paid hourly. At hearing, Employee did not dispute this contention. In Employer's opinion no compensation rate adjustment is due. (Brief of Peter Pan Seafood Co., LLC, April 17, 2026; record, April 23, 2026).

97) Employer's brief further argued that Employee is not entitled to additional benefits for his left wrist because he is medically stable, and it already paid him the highest, valid PPI rating it has. He has not had any left-wrist medical treatment since October 10, 2023. Any other medical treatment was directed toward Employee's left shoulder, which Employer argued was not compensable. Since Drs. Kitchel and Nonweiler agreed Employee was medically stable effective October 10, 2023, the counter-presumption applied and Employee bears the burden through clear and convincing evidence that he remained disabled and entitled to TTD benefits beyond October 10, 2023. Employer further argued that Dr. Kitchel released Employee to full-time sedentary work effective October 10, 2023, and approved several job descriptions based on Employee's work history, including up to medium-duty jobs, in his November 5, 2024 EME report. Moreover, Employee was found not eligible for reemployment benefits. Employer argued that the only time during which it did not pay TTD benefits prior to October 10, 2023,

was October 31, 2022 through January 3, 2023, which was the day following the injury through the day prior to Employee returning to work for Employer on January 4, 2023. It contended no benefits were due during that period because Employee did not even report his injury until January 20, 2023. And he signed a termination slip in 2022 stating he had no injuries. Moreover, there was no evidence he sought treatment from October 31, 2022, until January 20, 2023, and thus there was no authorization for disability during that period. Employer's plant was closed in November and December 2022 and Employee was not working there because the plant was shut down and his 2022 contract had ended. Employer argued that once Employee stopped working effective February 4, 2023, it initiated TTD benefits. Based on this analysis, Employer argued no additional TTD benefits were due prior to February 4, 2023. Employer contended no PTD benefits are owed because he has been released back to work and no physician opined he is permanently disabled from all work. (Brief of Peter Pan Seafood Co., LLC, April 17, 2026).

98) Employer's brief further contended no additional PPI benefits are due for the left wrist because it paid Dr. Fait's three percent PPI rating, minus \$2,900 withheld under *Nie I*. If the Board were to award any additional benefits, Employer requested an order forfeiting those benefits from October 2, 2023, through November 4, 2024, based on Employee's consistent and repeated failure to cooperate with discovery. (Brief of Peter Pan Seafood Co., LLC, April 17, 2026).

99) As for Employee's requests for unspecified penalties, Employer's brief rejected these and asserted that it timely paid Employee all benefits due and its controversions were all in accordance with the *Harp* decision. (Brief of Peter Pan Seafood Co., LLC, April 17, 2026).

100) At hearing on April 23, 2026, Employee clarified his TTD benefit claim and conceded that all benefits owed him in 2023 had been paid. However, he claimed TTD benefits for the entirety of 2024 and 2025. During those years, Employee said he had no work and remained disabled by his work injury with Employer. Employee also clarified and conceded that Employer had paid him all PPI benefits related to his left wrist, less the amount docked in *Nie I*. However, he argued his left shoulder was a compensable work injury, and claimed PPI benefits for it. Employee also conceded he had no left-shoulder PPI rating. (Record, April 23, 2026).

101) As support for his compensation rate adjustment claim, Employee testified it was "too low," and not enough to pay his bills or account for inflation. He estimated that a fair compensation rate would be around \$1,000 to \$1,500 per week. Employee apparently based this

calculation on a rough average of all wages he earned while working for Employer in September and October 2022. He agreed that October 30, 2022, was both his injury date and the last day he worked for Employer during that processing season. (Record, April 23, 2026).

102) Employee testified that Employer unfairly or frivolously controverted his claim by using an incorrect injury date. In his view, using a January 20, 2023 injury date was “illegal.” He admitted that he received an email from the adjuster explaining why the January 20, 2023 injury date was used, and understood that it actually benefited him because the adjuster used his highest earnings from 2022 to calculate his compensation rate. Nonetheless, Employee reasoned that the adjuster had still treated him unfairly and frivolously. (Record, April 23, 2026).

103) Regarding his request for penalties, Employee initially testified that benefits owed to him in 2023 were untimely and he requested a 25 percent penalty on those. However, he later agreed that he had been paid all benefits owed in 2023. As for his request under §.250(a)(1), Employee testified that adjuster Salas made a “misleading submission,” by changing his injury date from October 30, 2022, to January 20, 2023. Under §.250(a)(2), Employee stated that Salas “definitely assisted” in making a “false or misleading submission” affecting his benefits by changing the date, but admitted he could not prove she conspired with anyone to do so. Under §.250(a)(4), he contended Salas fraudulently used the January 20, 2023 injury date because he was not injured on that date. (Record, April 23, 2026).

104) Employee testified he wanted statutory interest on any benefits awarded. As for his “other” claim, Employee said Employer had “damaged” and “deceived” him and was “civilly liable.” To compensate him for possible future medical benefits, Employee suggested a lump-sum payment of between \$400,000 to \$500,000 would be fair compensation. (Record, April 23, 2026).

105) Employee also testified that he “never worked as a receptionist and a furniture salesman” within the 10-year period before his work injury. “That was volunteer work back in 2008, 2009,” when he was helping his stepdad. (Record, April 23, 2026).

106) He testified that he went to work for a new employer in January 2026 when he “had” Dr. Fait “release him” to work without limitations. He began working for Coastal Villages Region Fund, which is a fishing vessel, but stated he was injured again on March 7, 2026, while working for that employer as a Seafood Processor. Employee is currently receiving maintenance and cure benefits under a Jones Act claim against that employer. (Record, April 23, 2026).

107) On cross-examination, Employee clarified his direct testimony regarding his employment. Prior to working for Employer, Employee worked for Pacific Seafood in Oregon. He started there in December 2021 and stopped work in March 2022. Employee agreed that he began working in Valdez, Alaska in June 2022. He worked in Valdez for a couple of months and was transferred to King Cove, Alaska. Employee worked in King Cove until the end of October 2022. (Record, April 23, 2026).

108) At hearing, during Employee's cross-examination, Employer screen-shared its October 30, 2022 "Employee Separation Notice," and Employee agreed it was for his work at King Cove and he was being laid off. The document bore his signature, and an October 30, 2022 date. He also agreed that he checked the box that stated he was leaving Employer's employ without any reported illness or injury. (Record, April 23, 2026).

109) Employee agreed that in 2022, he worked approximately seven months in the seafood processing industry. Employee returned to work for Employer in January 2023, for the winter season. (Record, April 23, 2026).

110) Reviewing a screen-shot of his Social Security earnings history, Employee affirmed his earnings with Hakes Sash & Door in 2018, and said he had no earnings and did not work in 2019. Employee agreed he earned about \$3,200 pre-Covid in 2020, and earned \$616 in 2021. He admitted that his earnings, totaling \$24,359.41 earned in 2022, were the most he had earned since at least 2017. (Record, April 23, 2026).

111) Employee agreed that following his October 30, 2022 injury, he never sought medical care until after he returned to work for Employer in January 2023. At hearing he reviewed his January 20, 2023 injury report and admitted that when he said in his report that his injury was "now" affecting his life and his ability to work, he was referring to January 20, 2023. Employee also conceded that he did not give a written injury report to Employer in October, November, or December, "because [he] wanted to come back to work for them, and [he] did not want a bad relationship between us." (Record, April 23, 2026).

112) Employee agreed that he told his adjuster that his October 30, 2022 wrist injury was aggravated on January 20, 2023. He further agreed that when the adjuster served a letter with releases on Employee with the January 20, 2023 date of injury, he signed but altered the releases, but never timely filed a petition for a protective order with the Division. Employee also agreed

that Salas told him she could not use the altered releases and sent him new ones, but he refused to sign them, and she then controverted his right to benefits. (Record, April 23, 2026).

113) Employee also admitted that Employer timely paid his medical benefits for his left wrist. After Employer screen-shared its Exhibit 13, he agreed there were no benefits that remained unpaid between January 20, 2023, through October 10, 2023. This spreadsheet showed all payments Employer's adjuster made to Employee. (Record, April 23, 2026).

114) Employee agreed that his January 20, 2023 injury report did not mention a left-shoulder injury and that 2025 was the first time he ever claimed a left-shoulder injury. He agreed he did not mention a left-shoulder injury at any prior hearings and did not mention it in his deposition. Employee said he mentioned to his nurse case manager that he had pain in his shoulder, but she did not record it. He said that while his nurse case manager never recorded a left-shoulder injury, he also said he told her that his pain went "up the arm." Although Employee admitted there was no documentation in Dr. Fait's records until 2025 about a left shoulder injury, he testified that he repeatedly mentioned the left-shoulder injury to Dr. Fait, but he "brushed it off," and said, "don't worry about it." Employee agreed he had no medical care between October 2023 and November 2024 for either his wrist or left shoulder. He agreed he never told Dr. Kitchel he had a left-shoulder injury. Employee agreed his first written report of a left-shoulder injury was to Dr. Fait on March 4, 2025, when Employee told him his left shoulder popped while he was showering. He agreed Dr. Fait released him to full-time modified work on October 10, 2023, and to full-duty work at his request on December 5, 2025. (Record, April 23, 2026).

115) When asked about the information he provided to reemployment specialist Jones for his eligibility evaluation, Employee admitted that Jones's report correctly recorded what he had told Jones. However, at hearing he stated he did not work for In Style Furniture as a receptionist or a furniture salesman in 2016. It was "volunteer work." When he provided Jones with this information his "memory was vague." He testified, "and I had a mistake of law, and my memory was vague. I did not work for In Style Furniture in 2016." He actually worked for his stepdad back in 2008 or 2009. Employee testified, "the reason I told Dr. Kitchel [sic] 2016 it was a mistake of law and my memory was vague. . . . I told him it was 2016 . . . because I thought it will make my image look better." When asked if he was being untruthful with Jones, Employee testified, "Well if you put it that way my memory was vague at that time . . . I couldn't remember if it was exactly 2009, I just guessed 2016." (Record, April 23, 2026).

116) When asked why he made no effort to return to work after October 10, 2023, Employee said his “passion” is labor work, construction and fish processing, and implied it was beneath him to perform work as a Walmart Door Greeter. He applied for no jobs after October 10, 2023, through January 2026. Employee said he wanted to go back to work doing what he had experience in, “what [he] actually worked at for the past 10 years, and that is in Alaska as a . . . seafood processor.” (Record, April 23, 2026).

117) Employee testified that in November 2025 he started lifting weights. After doing so for approximately one month, he was able to bench and military press 180-190 pounds, but mostly 140-150 repetitively. Employee saw Dr. Nonweiler on November 3, 2025. He told Dr. Nonweiler his pain was seven out of 10. Employee could not hold anything weighing as little as 20 ounces in his left hand without “extreme pain.” When asked which was accurate, the 140 pounds or the 20 ounces, Employee said “definitely the 120 pounds.” When asked to explain how he could reconcile Dr. Nonweiler’s report stating he could only lift 20 ounces, with weight lifting, Employee said the weight-lifting was a brief “short burst,” as opposed to holding objects in his left hand, which lasted much longer. He also acknowledged that he had left-upper-extremity problems since 2010 when he fell off a skateboard. (Record, April 23, 2026).

118) Employee returned to work for Coastal Villages on January 12, 2026, as a fish processor. He was injured on March 7, 2026. Employee has a pending Jones Act claim for maintenance and cure. He added that they “forced [him] to work.” Employee is currently getting medical care under the Jones Act for his left wrist and left shoulder. He gets \$55.25 per day for maintenance. (Record, April 23, 2026).

119) For his closing argument, Employee agreed he did not cooperate with discovery efforts, because he did not trust Holloway. He argued he did not return to work after October 10, 2023, because he was “in pain and healing.” Employee thought no one would hire him without the ability for him to use his left arm. Employee stated, “I was not going to go to work at a Walmart. My background and my . . . knowledge of the work field is way more prominent than a Walmart job. I was not going to subject myself to working at a fast food restaurant or a Walmart job.” (Record, April 23, 2026).

120) In its closing argument, Employer said it accepted Employee’s injury and paid him benefits even though it could have sought a claim-bar for his failure to timely report his October

30, 2022 left-wrist injury. During this argument, Employee interrupted to state that he did in fact report his injury to “Ava” and told her he was injured. (Record, April 23, 2026).

121) Continuing with its closing argument, and citing its hearing exhibits and other evidence from the agency file, Employer explained that it changed Employee’s date of injury because when he filed his 2023 injury report, Employee stated that he reinjured or aggravated his left wrist on January 20, 2023. When the adjuster sent Employee releases with the January 20, 2023 injury date listed, Employee initially did not object. He did not timely file a petition for a protective order with the Division, but signed the releases but also altered them rendering them useless. Employee admitted the adjuster sent him new releases and he deliberately refused to sign them, and that is why she controverted his case. Employer said Employee obstructed discovery and he had admitted as much at hearing. Nevertheless, Employer argued that the injury date had no effect upon it paying Employee the benefits to which he was entitled. Thereafter, the adjuster changed the injury date to October 30, 2022, at Employee’s insistence. (Record, April 23, 2026).

122) Employer further argued that there was no basis for Employee’s compensation rate adjustment claim because he was an hourly seasonal worker and the adjuster based his compensation rate on his 2022 earnings even though it could have used the higher of the previous two years, during which Employee earned far less than he earned in 2022. As for additional TTD benefits, Employer argued that Employee had the ability to return to work at lighter duty positions as authorized by his attending physician Dr. Fait, but chose not to. Moreover, Employee was medically stable at all times after October 10, 2023, which would disqualify him from entitlement to TTD benefits. Regarding Employee’s objection to how PPI benefits were paid, Employer explained, citing to its payment spreadsheet, that PPI benefits were “broken up” because when Employee finally attended the EME, the adjuster lifted the suspension of benefits and paid PPI while Employee was in the reemployment process until he was found not eligible, at which time remaining PPI benefits were paid in a lump-sum pursuant to law. In general, Employer also argued that Employee is not credible. (Record, April 23, 2026).

123) As far back as can be determined from the Social Security earnings records in his file, Employee’s past employment history and earnings include:

Table III

Year	Employer	Gross Earnings -- All Employment
2012	Wal-Mart	\$3,215.04

2013		00
2014	Justin Time Services	\$4,978
2015		00
2016		00
2017	Premier Foods (Luna Grill) & Go-Staff	\$9,718.19
2018	Luna Grill & Hakes Sash & Door	\$17,678.74
2019		00
2020	Temecula Valley Drywall & Procraft	\$3,186
2021	Muhlhauser Steel	\$616
2022	Pacific Seafoods & Employer	\$24,359.41
2023	Employer	\$2,888.26

(Social Security earnings records).

124) According to the Division’s “Benefit Calculator” for an October 30, 2022 injury, for a seasonal, “single” worker, paid hourly, with one dependent, whose annual earnings are \$24,359.41, his gross weekly wage by statute is \$487.19 ($\$24,359.41 / 50$ weeks under §.220(a)(4) = \$487.19). According to the Benefit Calculator, the weekly TTD benefit rate is \$332.35. (Division website, Benefit Calculator, accessed April 28, 2026).

125) Employee’s hearing testimony disclosed that he worked approximately seven months in 2022, all in the seafood processing industry. (Record, April 23, 2026).

126) Experience shows that if a patient repeatedly complains to a medical provider about a specific injury or symptoms, the provider will put that information in the provider’s medical records. It is also unheard of for a party to file a hearing brief four months prior to a scheduled hearing. (Experience; observations; judgment).

PRINCIPLES OF LAW

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

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

The Board may base its decision on testimony, tangible evidence, its “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 need

for medical treatment . . . if the disability . . . or need for medical treatment arose out of and in the course of the employment. To establish a presumption . . . that the disability . . . or . . . 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 need for medical treatment. A presumption may be rebutted by . . . substantial evidence that the . . . disability or . . . need for medical treatment did not arise out of and in the course of the employment. When determining whether . . . the . . . 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 . . . need for medical treatment. Compensation or benefits under this chapter are payable for the disability . . . or . . . need for medical treatment if, in relation to other causes, the employment is the substantial cause of the disability or . . . need for medical treatment. . . .

Construing AS 23.30.010(a), *Morrison v. Alaska Interstate Construction, Inc.*, 440 P.3d 224, 237 (Alaska 2019) said the Board must consider different causes of the “benefits sought” and the extent to which each cause contributed to the need for the specific benefit at issue. The Board must then identify one cause as “the substantial cause.” *Morrison* held §.010(a) does not require the substantial cause to be a “51% or greater cause, or even the primary cause, of the disability or need for medical treatment.” The Board need only find which of all causes, “in its judgment is the most important or material cause related to that benefit.” *Id.* *Morrison* further held preexisting conditions, which a work injury aggravates, accelerates or combines with to cause disability or the need for medical treatment, can still constitute a compensable injury. *Id.* at 238-39.

AS 23.30.041. Rehabilitation and reemployment of injured workers. . . .

(k) . . . If an employee reaches medical stability before completion of the plan, temporary total disability benefits shall cease, and permanent impairment benefits shall then be paid at the employee’s temporary total disability rate. If the employee’s permanent impairment benefits are exhausted before the completion or termination of the reemployment process, the employer shall provide compensation equal to 70 percent of the employee’s spendable weekly wages, but not to exceed 105 percent of the average weekly wage, until the completion or termination of the process, except that any compensation paid under this subsection is reduced by wages earned by the employee while participating in the process to the extent that the wages earned, when combined with the compensation paid under this subsection, exceed the employee’s temporary total disability rate. If . . . permanent partial impairment benefits have been paid in a lump sum before the employee requested or was found eligible for reemployment benefits, payment of benefits under this subsection is suspended until . . .

permanent partial impairment benefits would have ceased, had those benefits been paid at the employee's temporary total disability rate, notwithstanding the provisions of AS 23.30.155(j). A permanent impairment benefit remaining unpaid upon the completion or termination of the plan shall be paid to the employee in a single lump sum. . . .

AS 23.30.095. Medical treatments, services, and examinations. . . .

(e) The employee shall, after an injury, at reasonable times during the continuance of the disability, if requested by the employer . . . submit to an examination by a physician or surgeon of the employer's choice authorized to practice medicine under the laws of the jurisdiction in which the examination occurs, furnished and paid for by the employer. . . . If an employee refuses to submit to an examination provided for in this section, the employee's rights to compensation shall be suspended until the obstruction or refusal ceases, and the employee's compensation during the period of suspension may, in the discretion of the board or the court determining an action brought for the recovery of damages under this chapter, be forfeited. . . .

AS 23.30.100. Notice of injury or death. (a) Notice to an employer 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 the injury or death.

(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. . . .

(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.

AS 23.30.107. Release of information. (a) Upon written request, an employee shall provide written authority to the employer, carrier, rehabilitation specialist, or reemployment benefits administrator to obtain medical and rehabilitation information relative to the employee's injury. . . .

AS 23.30.108. Prehearings on discovery matters; objections to requests for release of information; sanctions for noncompliance. (a) If an employee objects to a request for written authority under AS 23.30.107, the employee must file a petition with the board seeking a protective order within 14 days after service of the request. If the employee fails to file a petition and fails to deliver the written authority as required by AS 23.30.107 within 14 days after service of the request, the employee's rights to benefits under this chapter are suspended until the written authority is delivered. . . .

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; . . .

Benefits sought by an injured worker are presumptively compensable, and the presumption applies to any compensation claim under the Act. *Meek v. Unocal Corp.*, 914 P.2d 1276 (Alaska 1996). To attach the presumption, and without regard to credibility, an injured worker must first establish a "preliminary link" between his injury and the employment. *Tolbert v. Alascom, Inc.*, 973 P.2d 603, 610 (Alaska 1999). The employee need only present "sufficient 'minimal' evidence" to raise it. *Cowen v. Wal-Mart*, 93 P.3d 420, 423-24 (June 25, 2004). Once the presumption attaches, and without regard to credibility, the employer must rebut the raised presumption with contrary "substantial evidence." This may be done with "negative" or "affirmative" evidence. *Huit v. Ashwater Burns, Inc.*, 372 P.3d 904 (Alaska 2016). If the employer's evidence rebuts the presumption, it drops out and the employee must prove his claim by a preponderance of the evidence. *Id.* This means the worker must "induce a belief" in the fact-finders' minds that the facts being asserted are probably true. *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964). In the last step, evidence is weighed, inferences are drawn, and credibility is considered. *Huit*.

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. . . .

The Board's credibility findings and weight accorded evidence are "binding for any review of the Board's factual findings." *Smith v. CSK Auto, Inc.*, 204 P.3d 1001, 1008 (Alaska 2009). When doctors' opinions disagree, the Board determines which has greater credibility. *Moore v. Afognak Native Corp.*, AWCAC Dec. No. 087 (August 25, 2008).

AS 23.30.155. Payment of compensation. (a) Compensation under this chapter shall be paid periodically, promptly, and directly to the person entitled to it, without an award, except where liability to pay compensation is controverted by the employer. . . .

. . . .

(e) If any installment of compensation payable without an award is not paid within seven days after 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 time 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 employee'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 . . . in effect on the date the compensation is due. . . .

"When an employer neither timely pays nor controverts a claim for compensation, AS 23.30.155(e) imposes a 25% penalty," but only if "if the employer is ultimately found liable for the disputed compensation. *Bauder v. Alaska Airlines, Inc.*, 52 P.3d 166, 176 (Alaska 2002). A controversion notice must be filed "in good faith" to protect an employer from a penalty. "For a controversion notice to be filed in good faith, the employer must possess sufficient evidence in support of the controversion that, if the claimant does not introduce evidence in opposition to the

controversion, the Board would find that the claimant is not entitled to benefits.” Only evidence the employer possessed “at the time of controversion” is relevant. *Harp v. ARCO Alaska, Inc.*, 831 P.2d 352, 358 (Alaska 1992). The Board’s finding in an unfair or frivolous controversion case may be fact- or legal-based. Fact-based findings focus on whether the controversion is based on adequate facts. Legal-based findings focus on whether an employer was legally justified in controverting. *Irby v. Fairbanks Gold Mine, Inc.*, 203 P.2d 1138 (Alaska 2009).

AS 23.30.175. Rates of compensation. . . .

(b) The following rules apply to benefits payable to recipients not residing in the state at the time compensation benefits are payable:

(1) the weekly rate of compensation shall be calculated by multiplying the recipient’s weekly compensation rate calculated under . . . 23.30.185 by the ratio of the cost of living of the area in which the recipient resides to the cost of living in this state; . . .

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.

“The concept of disability compensation rests on the premise that the primary consideration is not medical impairment as such, but rather loss of earning capacity related to that impairment.” *Vetter v. Alaska Workmen’s Compensation Board*, 524 P.2d 264, 266 (Alaska 1974). An award of compensation must be supported by a finding the claimant suffered a decrease in earning capacity due to a work-connected injury or illness. *Vetter* further held where a claimant, through voluntary conduct unconnected with his or her injury, leaves the labor market, there is no compensable disability. *Id.* Expanding on *Vetter*, the Alaska Supreme Court (Court), in *Cortay v. Silver Bay Logging*, 787 P.2d 103, 106 (Alaska 1990) said “disability” defined in AS 23.30.395 says nothing about an employee’s reasons for leaving work. The issue is whether the claimant is able to work despite his injury, not why he is no longer working. Even though an employee may have limited capabilities, he is not entitled to TTD when work is regularly and continuously available to him within his capabilities. *Summerville v. Denali Center*, 811 P.2d 1047 (Alaska 1991).

If a claimant voluntarily removes himself from the labor market, he can be disqualified from indemnity benefits. *Humphrey v. Lowe's Home Improvement Warehouse, Inc.*, 337 P.3d 1174 (Alaska 2014). Interpreting both *Vetter* and *Cortay*, the Alaska Workers' Compensation Appeals Commission (Commission) in *Strong v. Chugach Electric Assoc. Inc.*, AWCAC Dec. No. 128 (February 12, 2010) held where an employee's unemployment is because of his work injury, and his earning capacity is impaired he is entitled to compensation. *Strong* set the legal standard as "unemployed but willing to work and making reasonable efforts to return to work" when deciding if an unemployed injured worker's loss of earnings is due to a compensable disability or an otherwise non-compensable voluntary withdrawal from the work force. *Id.* at 20.

Lowe's v. Anderson, AWCAC Dec. No. 130 at 13-14 (March 17, 2010) said to obtain TTD benefits, assuming no presumption applied, an injured worker must establish: (1) he is disabled as defined by the Act; (2) his disability is total; (3) his disability is temporary; and (4) he has not reached the date of medical stability as defined in the Act. *Bailey v. Litwin Corp.* 713 P.2d 249, 254 (Alaska 1986) recognized that once an injured worker raises the presumption of temporary total disability, he is entitled to a "presumption of continuing compensability" for TTD benefits. An employer may rebut the continuing presumption of compensability and gain a "counter-presumption," by producing substantial evidence that the date of medical stability has been reached. *Lowe's*. Once an employer produces substantial evidence to overcome the presumption in favor of TTD benefits, the employee must prove all elements of his claim by a preponderance of the evidence. However, if the employer raised the medical stability counter-presumption, "the claimant must first produce clear and convincing evidence" that he has not reached medical stability. One way an employee rebuts the counter-presumption with clear and convincing evidence is by presenting a medical opinion showing "further objectively measurable improvement is expected" from additional medical care. *Id.* The 45-day provision merely signals "when that proof is necessary." *Municipality of Anchorage v. Leigh*, 823 P.2d 1241, 1246 (Alaska 1992).

AS 23.30.190. Compensation for permanent partial impairment; rating guides.

(a) In case of impairment partial in character but permanent in quality, and not resulting in permanent total disability, the compensation is \$177,000 multiplied by

the employee's percentage of permanent impairment of the whole person. . . . The compensation is payable in a single lump sum, except as otherwise provided in AS 23.30.041. . . .

(b) All determinations of the existence and degree of permanent impairment shall be made strictly and solely under the whole person determination as set out in the American Medical Association Guides to the Evaluation of Permanent Impairment, except that an impairment rating may not be rounded to the next five percent.

In a contested PPI claim, the employee is required to obtain and present at hearing a PPI rating if he does not agree with a rating by the employer's physician, or a PPI rating has not been obtained. *Stonebridge Hospitality Assoc., LLC v. Settje*, AWCAC Dec. No. 153 (June 14, 2011).

AS 23.30.220. Determination of spendable weekly wage. (a) Computation of compensation under this chapter shall be on the basis of an employee's spendable weekly wage at the time of injury. An employee's spendable weekly wage is the employee's gross weekly earnings minus payroll tax deductions. An employee's gross weekly earnings shall be calculated as follows:

. . . .

(4) if at the time of injury the employee's earnings are calculated by the day, by the hour, or by the output of the employee, then the employee's gross weekly earnings are 1/50 of the total wages that the employee earned from all occupations during either of the two calendar years immediately preceding the injury, whichever is most favorable to the employee; . . .

Williams v. Abood, 53 P.3d 134 (Alaska 2002) a rate adjustment case, stated that the one challenging a rate statute has "the burden of proving the statute was an inaccurate predictor of his future earnings loss due to injury." *Johnson RCA/OMS*, 681 P.2d 905, 907 (Alaska 1984) construed former §.220 but did not decide the case on constitutional grounds. It for the first time held:

The objective of AS 23.30.220 is to formulate a fair approximation of a claimant's probable future earning capacity during the period in which compensation benefits are to be paid. Normally the formula in subsection (2) [now its equivalent, designated (a)(4)] will yield a fair approximation of this figure. However, sometimes it will not, and in those cases subsection (3) of the statute is to be used.

Gilmore v. Alaska Workers' Compensation Board, 882 P.2d 922 (Alaska 1994) struck down former §.220 for the first time on constitutional, equal protection grounds. *Gilmore* cited *Johnson*:

The overall purpose of AS 23.30.220(a) . . . used to calculate an injured worker's indemnity benefits is "to formulate a fair approximation of a claimant's probable

future earning capacity during the period in which compensation benefits are to be paid.” This “fair approximation” is an essential component of the basic compromise underlying the Workers’ Compensation Act -- the worker’s sacrifice of common law claims against the employer in return for adequate compensation without the delay and expenses inherent in civil litigation. . . .

Gilmore noted in some cases the statute may work well and “roughly approximate the employee’s lost wages when the employee worked full time during the entire two year period at the same job held at the time of injury” or “when the employee has consistently worked only at seasonal occupations,” but it does not “account for any upward or downward change in the employee’s earning capacity and punishes workers who have newly committed to full time employment.” *Gilmore* further stated the “formula also fails entirely to take account of any change in the employee’s earning capacity that occurred during the year of injury.” *Gilmore*, at 932, n. 6.

Thompson v. United Postal Service, 975 P.2d 684 (Alaska 1999) said “‘fair’ is not the primary goal in statutory construction. The Board erred “when it conducted a generalized fairness inquiry rather than asking whether the claimant’s past earnings could accurately be used to determine what she would have earned had she not been injured.” *Bauder v. Alaska Airlines*, 52 P.3d 166, 181 (Alaska 2002) affirmed the Board’s denial of a TTD rate adjustment noting “the temporary total disability benefits were an accurate reflection” of the worker’s wage loss. *Williams*, 53 P.3d at 134, 142-43 in another rate adjustment case again discussed *Gilmore* and *Thompson* and said:

We made clear that departure from the statutory formula “must be based on substantial evidence supporting the conclusion that past wage levels will lead to an irrational workers’ compensation award.” Specifically, there must be substantial evidence that past wages are an inaccurate predictor of loss due to injury. We stated that the inquiry is not to determine whether the statutory application led to a “fair” result, but whether the formula accurately predicted what the employee would have earned had he or she not been injured.

Wilson v. Eastside Carpet Co., AWCAC Dec. No. 106 (May 4, 2009) said employers may presume that for an hourly worker §.220(a)(4) will provide a spendable weekly wage fairly approximating the employee’s wages at the time of injury in most cases. The Board “must look at the evidence and decide the facts in each case” when determining a spendable weekly wage. *Id.* at 4.

JOHNNY NIE v. PETER PAN SEAFOOD COMPANY, LLC

Straight v. Johnson Construction & Roofing, LLC, AWCAC Dec. No. 16-002 (November 22, 2016) addressed a compensation rate adjustment claim. The injured worker had worked as a roofer from 1973 through 2012. Beginning in 2013, he took time off from work for the employer to build his own home. In 2015, the employee returned to work with the employer and in September of that year injured his shoulder. At the time he was injured, the claimant was earning \$41.45 per hour on a Davis-Bacon job and his reported gross weekly wage was \$2,108.80. He was off and received TTD benefits. His pre-injury work history and earnings included:

Table IV

Year	Gross Earnings From All Employment
2010	\$66,909
2011	\$56,086
2012	\$66,010
Average for the above three years =	\$63,002
2013	\$7,810
2014	\$18,657

The claimant’s employer applied the statutory formula in effect in 2015 under §.220(a)(4) and divided the claimant’s \$18,657 earnings from 2014 by 50 and derived a TTD rate of \$255 per week. At hearing, the Board approved this method. The employee appealed.

On appeal, *Straight* highlighted the tortuous path of compensation rate calculation statutes over the years. It noted *Gilmore*’s focus on calculating a compensation rate “commensurate” with the injured worker’s “actual losses.” *Straight* stated that while the compensation rate statute no longer included a “fair” provision, the legislature in 2005 authored §.001, which applied fairness to the entire Act. It also stated that a fair compensation rate must take into consideration the injured worker’s probable future earning capacity had he not been injured. In some instances, an injured worker’s earnings “may not be readily ascertainable” under §.220(a). *Straight* stated:

Under *Gilmore*, the question is “whether a worker’s past employment history is an accurate predictor of losses due to injury.

In *Narcisse v. Trident Seafoods Corporation*, AWCAC Dec. No. 242, at 15 (January 11, 2018), the Commission reviewed the Board’s compensation rate adjustment denial and said:

Likewise, Mr. Narcisse is not entitled to a compensation rate adjustment. He admitted at hearing he did not provide Trident Seafoods with tax returns for 2010

and 2011 because he did not have these records. According to his testimony at hearing, Mr. Narcisse earned \$263.65 in 2010 and nothing in 2011.⁹⁸ Pursuant to AS 23.30.220(a), as an hourly employee, Mr. Narcisse's compensation rate is based on his earnings from all occupations in either of the two calendar years immediately prior to the year of injury. Since Mr. Narcisse admitted to almost no earnings in either 2010 or 2011, Trident Seafoods was correct in paying him TTD at the minimum compensation rate of \$110.00 per week. Therefore, even if the Board had reached the merits of his claim for benefits in his November 2013 WCC, Mr. Narcisse would not have been awarded a compensation rate adjustment because he was paid at the proper rate under the Act.

Geerhart v. Yukon Kuskokwim Health Corp., AWCB Dec. No. 23-0020 (April 4, 2023) decided a compensation rate adjustment claim. The claimant had been in nursing school in the two years prior to her 2021 injury, did not work at all in 2019, and had worked one season as a flagger and made about \$9,200 in 2020. She became a nurse in 2021 making \$44 per hour. In 2021, she earned \$91,635.14, not including a hiring bonus. In October 2021, the claimant had an injury while lifting a patient. After being off work for a few days, she returned to full-time work, obtaining a raise to \$60.23 per hour in March 2022, and worked until she needed injury-related surgery in May 2022.

The adjuster obtained the claimant's 2019 and 2020 W-2s and initially set her TTD rate at \$308, the minimum legal rate for 2021, rather than petition the Board for a lower rate based on her meager 2020 flagging income. The worker claimed a rate adjustment based on her earnings at the time of her injury; *i.e.*, she sought an adjustment based on her 2021 earnings. The employer argued that post-injury earnings could not be used to calculate a TTD rate. However, her employer voluntarily increased the claimant's TTD rate to \$1,112.25. The employee nevertheless claimed the \$1,298 maximum legal TTD rate, arguing that but-for her work-related surgeries in 2022, she would have earned more than enough to obtain the maximum rate, based on her known 2022 earnings, plus her identifiable 2022 earnings she lost due to her injury-related surgeries.

Geerhart found the employee satisfied her burden of proof with substantial evidence, including paystubs showing her pre- and post-injury earnings and her own testimony, which demonstrated her intention to continue working coupled with the fact that she still worked for the same employer. This evidence was undisputed. She demonstrated her dramatically higher earnings would, and did, extend into the period of her disability, and beyond.

AS 23.30.250. Penalties for fraudulent or misleading acts; damages in civil actions. (a) A person who (1) knowingly makes a false or misleading statement, representation, or submission related to a benefit under this chapter; (2) knowingly assists, abets, solicits, or conspires in making a false or misleading submission affecting the payment, coverage, or other benefit under this chapter; . . . is civilly liable to a person adversely affected by the conduct, is guilty of theft by deception as defined in AS 11.46.180, and may be punished as provided by AS 11.46.120-11.46.150.

(b) If the board, after a hearing, finds that a person has obtained compensation, medical treatment, or another benefit provided under this chapter, or that a provider has received a payment, by knowingly making a false or misleading statement or representation for the purpose of obtaining that benefit, the board shall order that person to make full reimbursement of the cost of all benefits obtained. . . . If a person fails to comply with an order of the board requiring reimbursement of compensation and payment of costs and attorney fees, the employer may declare the person in default and proceed to collect any sum due as provided under AS 23.30.170(b) and (c).

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

Municipality of Anchorage v. Devon, 124 P.3d 424 , 429 (Alaska 2005) adopted the Board’s test for fraud under §.250(b). To prevail on a fraud claim an employer must show: (1) the employee made statements or representations; (2) that were false or misleading; (3) that were made knowingly; and (4) that resulted in the employee obtaining benefits.

AS 23.30.255. Penalty for failure to pay compensation. (a) An employer required to secure the payment of compensation under this chapter who fails to do so is guilty of a class B felony if the amount involved exceeds \$25,000 or a class C felony if the amount involved is \$25,000 or less. If the employer is a corporation, its president, secretary, and treasurer are also severally liable to the fine or imprisonment imposed for the failure of the corporation to secure the payment of compensation. The president, secretary, and treasurer are severally personally liable, jointly with the corporation, for the compensation or other benefit which accrues under this chapter in respect to an injury which happens to an employee of the corporation while it has failed to secure the payment of compensation as required by AS 23.30.075. . . .

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

(16) “disability” means incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment;

....

(24) “injury” means accidental injury . . . arising out of and in the course of employment. . . .’

....

(28) “medical stability” means the date after which further objectively measurable improvement from the effects of the compensable injury is not reasonable expected to result from additional medical care or treatment, notwithstanding the possible need for additional medical care or the possibility of improvement or deterioration resulting from the passage of time; medical stability shall be presumed in the absence of objectively measurable improvement for a period for 45 days; this presumption may be rebutted by clear and convincing evidence; . . .

ANALYSIS

1) Are Employee’s left elbow and left shoulder compensable injuries?

Employee contends his left-shoulder symptoms and condition arose out of and in the course of his employment under §.010(a) because it resulted from PT prescribed to treat his left-wrist injury. In some records, he implied that his left elbow was also a work-related injury, but provided no evidence or argument regarding it at hearing and told SIME Dr. Nonwieler that his left-elbow symptoms had resolved. Regarding the left shoulder, Employee relies on his own testimony and Dr. Fait’s March 4, 2025 statement that it was “certainly possible” that PT activities following left-wrist surgery could have aggravated Employee’s rotator cuff.

Employer contends the left-shoulder symptoms and condition did not arise out of and in the course of his employment and thus the left-shoulder is not compensable under §.010(a). It did not directly address the left-elbow symptoms, probably because Employee did not bring it up. Employer relies on the fact that Employee never reported a left-shoulder injury or symptoms to Employer or to the Division, never mentioned it in his deposition or in any previous hearing in this case, and it is not recorded in any physician’s chart note until March 4, 2025. It relies on opinions from Drs. Kitchel and Nonweiler, both of whom stated the left-shoulder symptoms and condition are unrelated to the October 30, 2022 work injury and were caused by Employee’s

non-work-related February 15, 2025 shower incident. This creates a factual dispute to which the statutory presumption analysis applies. AS 23.30.120(a)(1); *Meek*.

Without regard to credibility, Employee raised the statutory presumption with “sufficient ‘minimal’ evidence.” This includes his own testimony combined with Dr. Fait’s statement it was “certainly possible” Employee’s left-wrist PT could have aggravated his left shoulder. *Cowen; Tolbert; Huit*. Without regard to credibility, Employer rebutted the raised presumption with contrary “substantial evidence.” This included the lack of reporting a left-shoulder injury or symptoms for 18 months post-injury, and Drs. Kitchel’s and Nonweiler’s opinions that the October 30, 2022 injury played no role in the left-shoulder symptoms or condition, and that Employee injured his left shoulder while taking a shower at home on February 15, 2025. *Huit*.

Therefore, the presumption drops out and Employee must prove his claim that his left shoulder is a compensable injury, by a preponderance of the evidence. *Id.* He must induce a belief in the fact-finders’ minds that the facts he asserts are probably true. *Saxton*. In this last step of the analysis, evidence will be weighed, inferences drawn and credibility considered. *Huit*.

Employee has troublesome credibility issues. On April 24, 2017, and on June 12, 2019, Employee electronically signed documents related to Go-Staff. Associated documents show that from May 10, 2017 to June 21, 2017, he earned \$2,180 while employed by Go-Staff. The nature of his work is not disclosed. From July 1, 2017 to June 30, 2017, and from September 18, 2017 to December 24, 2017, he earned \$7,537.19 working part-time for Luna Grill. However, on June 6, 2023, when Gregory Jones interviewed him for a reemployment eligibility evaluation, Employee did not mention his 2017 work for Go-Staff or his earlier 2018 work for Luna Grill. Employee misrepresented part of his work history to Jones.

On February 6, 2019, Employee submitted another employment application with Go-Staff. Among other things, he said he was “Owner” of Justin Time Services from March 2014 through September 2014. That self-employment also does not appear on Jones’ 10-year work history report. Moreover, in his March 12, 2024 deposition, Employee testified that he never owned his own business. Both of these things cannot be true.

In 2020, evidence shows Employee earned \$1,548 working for Temecula Valley Drywall. His duties were not stated, but Employee did not disclose that employment to Jones. Employee told Jones he worked for In Style Furniture from February 2016 through June 2016, in reception and sales. However, at hearing on April 23, 2026, knowing that the receptionist job had rendered him not eligible for reemployment benefits and that several physicians had released him to full-time duty as a receptionist, Employee testified that In Style Furniture was “volunteer” work for his step-father. He also said it did not happen in 2016, but happened sometime around 2008 or 2009. He offered that the reason he told Jones he worked for the furniture store in 2016 was, in part, “because I thought it will make my image look better.” His recollection about why he gave Jones this information was clear and unequivocal. In short, Employee acknowledged that he knowingly misrepresented when he worked for the furniture store to make his resume look better. In retrospect, knowing the receptionist job actually hurt his claims, Employee at hearing attempted to walk that information back. When Employer queried if Employee had been untruthful with Jones, he immediately changed his testimony, stating, “Well if you put it that way my memory was vague at that time . . . I couldn’t remember if it was exactly 2009, I just guessed 2016.” Employee’s last testimony on this point was patently false.

When Employee initially injured his left wrist on October 30, 2022, he did not file an injury report. In fact, on that same date he completed an Employee Separation Notice affirming that he was leaving his employment “**without**” any reported injury or illness. At hearing on April 23, 2026, when asked about this Employee stated he did not report the injury timely because he wanted to avoid having a “bad relationship” with Employer, because he wanted to return to work in 2023. In other words, Employee intentionally refused to file an injury report timely, and simultaneously willfully misrepresented his injury status to Employer on October 30, 2022, when he signed the separation notice. Then he admitted at hearing under oath that he did so to avoid harming his relationship and the possibility of future employment in 2023 with Employer. By contrast, in his March 12, 2024 deposition, Employee testified, among other things, that he did not report the injury on October 30, 2022, because he thought his injury had healed. That testimony contradicted his hearing testimony and it also contradicted Employee’s reports to physicians to whom he said that his left-wrist pain never abated from the injury date forward.

In early 2023, when the “injury date” issue arose, and Employee discovered that his failure to report the October 30, 2022 injury timely could be a legal problem for him under §.100(a)-(d), he told the adjuster on February 1, 2023, that he had told “Ava” (or “Eva”) and another woman about the injury. However, the adjuster’s notes show the adjuster queried “Ava” and the other woman if Employee had filed a written injury report or had even mentioned an injury to them before leaving the worksite in late October. Both women denied receiving a written report and neither could recall Employee ever telling them about his left-hand injury in October 2022.

Other evidence casts doubt on Employee’s credibility as well. In his March 12, 2024 deposition, Employee testified that any “vigorous movement” would cause sharp pain in his left wrist and up his arm. At hearing, when Employer asked Employee to explain how he could bench press 180-190 pounds in November 2025, but told Dr. Nonweiler in November 2025, the month Employee said he started lifting weights, that he could not lift and hold a cup weighing 20 ounces, he said weight-lifting was a “short burst.” His explanation trying to distinguish between any “vigorous movement” with his left-hand versus using both hands in a “short burst” to bench press 180-190 pounds was not plausible. At hearing, Employee stated he began lifting weights in November 2025, about one month before he went to work for his new employer Coastal Villages in January 2026. In his March 12, 2024 deposition, however, Employee testified he had “just recently” started to “workout” and “lift weights” again. Both of these statements cannot be true.

At hearing on April 23, 2026, Employee explained that he applied for no jobs for over two years because he wanted to go back to work doing what he had done “for the past 10 years,” which was working in Alaska as a “seafood processor.” However, Employee’s 10-year work history shows he worked only three fishing seasons for two employers in 2022, and a brief part of the January 2023 fishing season, in the past 10 years.

Employee also testified that he repeatedly told his medical providers about his left-shoulder symptoms. Yet none of the medical records support that contention, until March 4, 2025. He never mentioned a left-shoulder injury in his March 12, 2024 deposition. There is no evidence in his PT records demonstrating he had a left-shoulder injury while performing PT for his left-wrist. His nurse case manager recorded no such reports.

Perhaps the most disturbing credibility problems with Employee are the facts surrounding his January 12, 2026 hearing brief. It is unheard of in the panel's experience for a party to file a hearing brief in January for a hearing in April. *Rogers & Babler*. It could be that Employee thought he would be at sea from his first day at work with his new employer, January 12, 2026, and would not have enough time or an opportunity to file his hearing brief for the April 23, 2026 hearing. Or it could be that Employee wanted to create an evidentiary record that his left-hand and wrist symptoms, and his alleged left-shoulder symptoms had been "miraculously" healed, as he wrote in his brief and testified at hearing. That way, when he allegedly injured his left-wrist and left-shoulder again, on March 7, 2026, at Coastal Villages after they "forced [him] to work," Employee could point backwards to his January 12, 2026 brief to show his new employer that he was "healed" and ready to go. Employee is currently receiving \$55.25 per day for maintenance, and treatment for his left wrist and shoulder in a Jones Act case. Given this evidence, it is difficult to know what the truth is regarding Employee's work, actual work history, potential future earnings, and his injuries. His medical records, deposition and hearing testimony and demeanor at hearing, and the unusual sequence of events most recently regarding his new employment, render Employee's testimony overall as extremely non-credible. AS 23.30.122; *Smith*.

It is not entirely clear if Employee claims his left elbow is work-related under §.010(a). Whatever ailed his left elbow appears to have resolved according to Dr. Nonweiler. In any event, the above and following analyses apply equally well to both Employee's left-elbow and left-shoulder claims: there is little dispute over the relevant facts. Employee admittedly never reported a left-shoulder injury or symptoms to Employer or to the Division. He does not contend he hurt his left shoulder on October 30, 2022. He contends he injured it while doing PT following his August 8, 2023 left-wrist surgery. Whenever it occurred, if it occurred, he still did not report it to Employer or to the Division. Employee's medical records contain no mention of left-shoulder symptoms or injury at PT, until March 4, 2025, when he first reported the alleged PT event to Dr. Fait.

At hearing, Employee agreed he never mentioned left-shoulder symptoms or an injury at previous hearings, nor did he mention either in his deposition. Employee has not been shy about

mentioning his physical symptoms to his providers. It is difficult to understand why he would also not mention his left-shoulder symptoms, especially if they began during PT. Thus, Employee's statements that his left-shoulder symptoms existed for nearly two years before he reported them to Dr. Fait are also not credible. Experience shows that if a patient repeatedly reports symptoms to a physician, the physician will likely record them in the physician's notes. *Rogers & Babler*. Employee's statements that he repeatedly told his providers before March 4, 2025, that he had left-shoulder symptoms are likewise not credible. AS 23.30.122; *Smith*.

Moreover, the only medical evidence Employee has connecting his left-shoulder symptoms and condition to his work injury are Dr. Fait's March 4, 2025 report that said it is "certainly possible" that PT following surgery for his left-wrist condition could cause aggravation to Employee's left shoulder. *Morrison*. While this is enough to raise the statutory presumption, it is not persuasive evidence. Missing from Dr. Fait's report is any analysis about why this was his opinion, and any understanding of whether Employee's records contain evidence of PT-related shoulder symptoms. They do not. Further, on November 18, 2024, Employee denied "new or additional injuries" beyond his left-wrist, to Dr. Fait. Consequently, Dr. Fait's causation speculation is weak at best, and his opinion is given no weight. *Huit; Moore*.

Employee at his November 5, 2024 visit never told EME Dr. Kitchel he had a left-shoulder condition or symptoms. Employer sent Employee back to Dr. Kitchel for follow-up to address the left-shoulder. At that second visit, Employee told Dr. Kitchel that on February 15, 2025, while showering, he reached behind his back with his left arm and had sudden onset of shocking pain. Dr. Kitchel opined that Employee had diffuse left-upper extremity pain "causally related to February 15, 2025, episode in shower." He stated the shower incident was the "most significant cause of the arm pain syndrome." Dr. Kitchel said the work injury did not substantially cause the left-shoulder issue. These opinions satisfy the "negative evidence" and "affirmative evidence" tests. *Huit*. Dr. Kitchel's opinion is credible and is given more weight. *Moore*.

SIME Dr. Nonweiler addressed Employee's left-shoulder and wrist pain on November 3, 2025. His report contains a typographical error when he referred to a "March 15, 2025" left-shoulder injury while showering. However, his report subsequently stated Employee had sustained a mild

shoulder-strain during the “February 15, 2025” shower incident, which was “unrelated to his October 30, 2022 work injury on a more probable than not basis.” Dr. Nonweiler noted Employee’s pain reaction demonstrated symptom magnification and functional overlay, especially when Employee was “distracted.” Employee’s physical examination was “non-anatomic” and he presented with “submaximal effort” and “invalid findings.” This behavior suggests that Employee’s SIME presentation was performative. Employee said he had no elbow pain.

Dr. Nonweiler diagnosed a left-shoulder strain “due to 02/15/25 shower incident on a more probable than not basis.” These opinions also satisfy the “negative evidence” and “affirmative evidence” tests. *Huit*. Dr. Nonweiler’s opinions are persuasive and will be given significant weight. *Moore*. By contrast, Dr. Fait as Employee’s attending physician seemed willing to support whatever Employee wanted; for example, when Employee “had” Dr. Fait release Employee to return to full-duty work in December 2025. Dr. Kitchel, Employer’s EME, offered opinions consistent with Dr. Nonweiler’s. His opinions parallel Dr. Nonweiler’s, are credible and thus his opinions are also given more weight. *Huit; Moore*.

Lastly, considering the TTD and PPI benefits Employee seeks, and to the extent he contends his left-elbow or left-shoulder issues created an entitlement to those benefits, he has failed in his burden of proof and persuasion. *Saxton*. The left-elbow issues are resolved, and there never was any medical opinion stating the October 30, 2022 work injury was the substantial cause of any left-elbow symptoms or condition. Of all the possible causes of Employee’s entitlement to disability or impairment benefits for his left-shoulder, the most material or important cause is the February 15, 2025 shower incident. *Morrison*.

Given the above analyses, Employee failed to meet his burden to show by a preponderance of evidence that his left-elbow and left-shoulder symptoms or conditions were in any way related to his October 30, 2022 work injury with Employer, or its sequela. *Saxton*. Therefore, his left-elbow and left-shoulder symptoms and conditions did not arise out of or in the course of his employment, including any left-wrist-related PT, and are not compensable under §.010(a), *Morrison* and §.395(24). All left-elbow and left-shoulder benefits will be denied.

2) Is Employee entitled to additional TTD benefits?

To obtain TTD benefits under §.185, without benefit of the presumption, Employee must establish: (1) he is disabled as defined in §.395(16); (2) his disability is total; (3) his disability is temporary; and (4) he has not reached medical stability as defined in §.395(28). *Lowe's*. If Employee raises the presumption of temporary total disability, he is entitled to a “presumption of continuing disability” for TTD benefits. *Bailey*. Employer can rebut the continuing presumption and gain a “counter-presumption” by producing substantial evidence that Employee reached the date of medical stability. *Lowe's*. If Employer raises the medical stability counter-presumption, Employee has to produce “clear and convincing” evidence that he has not reached medical stability. *Id.* He can do so with a medical opinion showing further objectively measurable improvement is expected from additional medical care. *Leigh*.

After some clarification at hearing, Employee ultimately admitted that Employer had paid him all TTD benefits due and owing through 2023. His remaining claim is for additional TTD benefits for 2024 and 2025. Employee admitted at hearing that he did not seek any employment during 2024 or 2025. He did not demonstrate that though unemployed, he was willing to work and made reasonable efforts to return to work. *Strong*. He also agreed at hearing that Dr. Fait had released him to “full-time duty,” though not “full-duty,” on October 10, 2023. Thus, he could have worked. *Cortay*. Nevertheless, Employee argues, based on his subjective symptoms, that he could not have returned to work, and admitted he did not apply for any jobs in 2024 or 2025 because he assumed no one would hire him given his left-hand, and presumably, his left-elbow and shoulder limitations. As analyzed above, Employee’s left-elbow and left-shoulder are not work-related injuries, so they cannot form the basis for any TTD benefits.

That leaves any potential TTD benefits based solely on Employee’s left-wrist injury. Given Employee’s testimony and subjective symptoms, there is a factual dispute between him and Drs. Kitchel and Nonweiler regarding disability. *Meek*. Without regard to credibility, Employee raised the presumption with his subjective symptoms and testimony that he could not work and would not be hired based on his left-wrist dysfunction. *Cowen; Tolbert; Huit*. Without regard to credibility, Employer rebutted the presumption with Drs. Fait’s, Kitchel’s and Nonweiler’s

opinions stating Employee was medically stable effective October 10, 2023, and released to full-time work at positions that he told his reemployment specialist Jones that he held in the past. *Huit*. The panel notes that Dr. Nonweiler stated Employee became medically stable “November 21, 2024 when he was declared medically stable by Dr. Fait.” However, the panel treats this as a dictation error, because Dr. Fait never said Employee was medically stable on November 21, 2024. Rather, Dr. Kitchel initially said that, until Employer gave him the §.395(28) definition of “medically stability,” and he changed his opinion to October 10, 2023. Thus, Employee must prove his claim for additional TTD benefits by a preponderance of evidence. *Saxton*. He must prove that he was not “medically stable” at any time beginning January 1, 2024, when his TTD claim begins, through December 31, 2025, when it ends, and that he was also “disabled” during that period pursuant to §§185, .395(16) and .395(28). *Lowe’s*.

a) *Employee was at all relevant times medically stable.*

Employee has not provided any medical record disputing his attending physician Dr. Fait’s opinion that he was medically stable effective October 10, 2023. He accurately noted that Dr. Fait said, “absent further treatment,” Employee had reached “maximal medical improvement,” which the parties agree is equivalent to “medical stability,” because treatment was denied and PT discontinued. Employee argued that Dr. Fait only “deemed him” medically stable because Employer controverted his case, and he could not get treated. However, Dr. Fait still opined he was medically stable and provided Employee with a left-wrist PPI rating, albeit using the wrong *AMA Guides*. Dr. Fait did not state that Employee needed additional medical care, or that he expected any objectively measurable improvement from additional medical care. He merely stated that if further treatment was authorized Employee could try additional PT, oral anti-inflammatory medicine and possible wrist injections. Employee had tried all of these with no results. If Dr. Fait had wanted to say Employee was not medically stable and needed more treatment, but was simply denied that treatment, he could have said so. Instead, he said Employee was medically stable, and gave him a PPI rating, which is not performed unless and until a worker is medically stable. *Rogers & Babler*. Dr. Fait’s opinion is not “clear and convincing” evidence that Employee was not medically stable; at best, it is evidence that he was medically stable. *Leigh*.

Even if Dr. Fait's medical stability opinion is not considered, or if his 2025 reports could be construed to suggest that he later became medically unstable in 2025, Drs. Kitchel, and Nonweiler (albeit with a dictation error) both concurred with Dr. Fait's medical stability opinion and stated Employee reached medical stability effective October 10, 2023. Those physicians were provided §.395(28)'s "medical stability" definition, while Dr. Fait was not. Thus, the panel gives more weight to Drs. Kitchel's and Nonweiler's medical stability opinions. *Huit; Moore*. Because Employee became medically stable from his left-wrist injury, which is the only compensable injury in his case, on October 10, 2023, he is not entitled to TTD benefits after that date as a matter of law under §.185. Medical stability alone defeats his claim for more TTD benefits.

b) Employee was at all relevant times not disabled.

Notwithstanding the "medical stability" roadblock, Employee also failed to meet the statutory definition of "disability" under §.395(16). Employee's attending physician Dr. Fait released him to full-time modified duty doing work he had done before with a restriction on using his left-hand for gripping. *Cortay*. Dr. Kitchel reviewed job descriptions for Employee's work in the 10-years prior to his injury and opined he could work at a "medium level" physical exertion without using his left hand, and could work in a sedentary or light position with no restrictions. This would include work as a Receptionist or Sales Person. Likewise, Dr. Nonweiler stated Employee was no longer disabled effective October 10, 2023. Vocational reemployment specialist Jones in a Labor Market Survey identified 10 receptionist jobs advertised in Employee's local area, and noted at least 100,000 receptionist jobs available Nationwide at any given time. Work was regularly and continuously available within Employee's documented capabilities and he was not disabled under both statute and decisional law. *Summerville*.

At hearing, Employee admitted he sought no work during 2024 or 2025 because he was certain no one would hire him. But in fact, he never tried. Employee voluntarily removed himself from the labor market. *Vetter*. That disqualified him from receiving disability benefits. *Humphrey*. He further stated that he did not apply for sedentary or light work because such work was beneath him and he refused to "subject" himself to such menial labor. Thus, given his medical

stability date and his voluntary self-removal from the labor market, Employee's TTD period ended on October 10, 2023. His claim for more TTD benefits will be denied.

3) Is Employee entitled to additional PPI benefits?

Employee claimed additional PPI benefits under §§.190(a) and (b). At hearing, after Employer demonstrated through its payment spreadsheet that it had paid Employee his full PPI rating, minus the \$2,900 deducted from future benefits under *Nie I*, Employee agreed he had received his full PPI rating payment. Since this decision found his left elbow and shoulder not compensable injuries, no PPI benefits are payable for either body part or condition. As he presented no evidence of a higher PPI rating for his compensable left-wrist injury, Employee's claim for additional PPI benefits will be denied. *Settje*.

4) Is Employee entitled to a compensation rate adjustment?

Employee claims a TTD compensation rate adjustment. Employer contends it properly computed Employee's compensation rate based on his actual earnings at the time of injury, using the year of his injury as the benchmark. The interesting thing about this case is that Employer did not use the statutory rate calculation to determine Employee's TTD rate. Had it done so, Employer would have used Employee's 2020 earnings totaling \$3,186, because that was the highest earnings in the two years prior to his 2022 work injury, and divided that amount by 50. This would have resulted in Employee receiving at best the minimum TTD rate for a 2022 injury. Such a result was approved by the Commission in *Narcisse*.

Therefore, Employee is not actually challenging the rate statute. *Williams*. However, Employee still has the burden of proving that the method Employer used to calculate his rate was "an inaccurate predictor of his future earnings lost due to injury." *Id.*; *Gilmore*. Even *Gilmore* noted the rate statute generally applied best to an injured worker who "worked full time during the entire two year period at the same job held at the time of injury," or when the claimant "has consistently worked only at seasonal occupations." The rate statute does not necessarily work well and may punish workers who "have newly committed to full time employment." *Id.* Here, Employee had recently committed to seasonal employment. Even then, he had completed only

three seasons working for Pacific and for Employer in 2022. He did not have a consistent record working as a seasonal worker; rather, he had a sporadic work history, in general.

For over 40 years, decisional law has construed former and current §.220 to require a TTD rate that is a “fair approximation of a claimant’s probable future earning capacity during the period in which compensation benefits are to be paid.” *Johnson; Straight; Geerhart*. Employee was entitled to TTD benefits from the date he first became disabled on February 4, 2023, through October 10, 2023. “Fair” is not the primary goal in statutory construction. *Thompson*. Rather, the inquiry should be whether past earnings “could accurately be used to determine” what an injured worker would have earned had he not been injured. *Gilmore*. If the TTD benefit calculation method Employer used is an “accurate reflection” of Employee’s lost wages, it will be affirmed. *Bauder*. A party’s departure from the statutory formula must be based on “substantial evidence supporting the conclusion that past wage levels would lead to an irrational” award. *Williams*.

The starting point for a TTD rate calculation is §.220(a)(4) and Employer could presume this statute would provide a spendable weekly wage fairly approximating Employee’s wages at the time of injury. *Wilson*. However, this decision “must look at the evidence and decide the facts” in this particular case when determining Employee’s claim for a rate adjustment. *Id.* Employee was undisputably a seasonal worker, and Employer calculated his earnings by the hour. It is undisputed that Employee earned \$3,200 in 2020 and \$616 in 2021. Employee did not say why his earnings were so low in the two calendar years prior to his work injury. However, Employee agreed that his 2022 earnings were the best he had since 2017. In reality, they were the best he had since 2012 according to his Social Security earnings. He gave no explanation for his lack of earnings in the ensuing years since 2017.

Employee faults Employer for not using his earnings while working for Employer before his contract expired in 2022, as the basis for his compensation rate. He is wrong. Employer voluntarily used his actual earnings from all employment in 2022, rather than utilizing the statutory formula, to calculate his TTD compensation rate. Employee at hearing admitted that this benefited him with a rate much higher than if Employer had used the statutory formula.

Narcisse. The Division’s online benefits calculator demonstrates that Employer took Employee’s 2022 earnings from all employers, divided it by 50 and derived the TTD rate that it paid him. Employee does not dispute that calculation. He simply demands a higher weekly TTD rate to pay his monthly bills and to account for inflation. Employee cited no statute or case law supporting his request based on those factors. *Geerhart*, which Employee cited in his brief, does not support his position.

Geerhart is distinguishable from Employee’s case on its facts. The claimant in *Geerhart* had been out of work for nearly the entire two years prior to the year of her injury. She was in nursing school and only worked one summer as a flagger. The *Geerhart* claimant easily demonstrated that her earnings at the time of injury were dramatically higher, both in hourly wage and in hours worked including overtime, than her meager earnings while she was in college and working briefly one summer. The *Geerhart* claimant’s hourly pay post-injury, when she was still actually working while awaiting surgery, increased from \$44 per hour to \$60.23 per hour. She clearly established that her dramatically higher earnings would and did “continue through the period of her disability” because she continued working for her employer. *Straight*.

The focus in a rate adjustment claim is on Employee’s likely lost future earnings resulting from his work injury “during the period of his disability.” *Straight; Gilmore*. What does all the evidence in this case show regarding Employee’s likelihood to continue working at the wages he earned in the seafood industry in 2022? Here with exception of what Employee vaguely described in his deposition as a three-year stint in prison, there is no evidence explaining why he otherwise earned only \$3,215.04 in 2012, \$4,978 in 2014, \$9,718.19 in 2017, \$17,678.74 in 2018, \$0 in 2019, \$3,186 in 2020, \$616 in 2021 and \$24,359.41 in 2022. It is unclear from Employee’s testimony when he was in prison, or as he told Jones, was “living at home.” Regardless, his 10-year pre-injury earning history was poor at best.

Moreover, Employee’s hearing testimony revealed he had no interest in “subjecting” himself to available work in 2024 or 2025 even after his physician released him to full-time sedentary work and Drs. Kitchel and Nonweiler released him to light and medium-duty work, all effective October 10, 2023. Evidence gleaned from his Social Security earnings records going back to

2012, including four years with \$0 earnings and other years with minimal earnings, suggests Employee has a sparse and irregular working history, sometimes not working at all for years. Indeed, 40 percent of the years in the 10-years prior to his injury year, Employee earned \$0.

By contrast the *Geerhart* claimant had recently obtained a professional nurse's license and began work making over \$91,000 annually in her first year. Her intention to continue working was demonstrated by the fact that she continued to work after her work injury, and only stopped temporarily to obtain work-related surgery. She also returned to work after recovering from surgery and continued to work for the same employer, even having obtained a significant raise prior to her disability beginning following surgery. *Straight; Gilmore*.

By comparison, Employee had a poor work history with several consecutive and intermittent years with \$0 income for no obvious reason, except prison. He worked seasonally for about seven months in one year as a fish processor; that was three fishing seasons -- one beginning in December 2021 and ending in January 2022 followed by two seasons in fall and winter 2022. Contrary to his closing argument that fish processing was his "passion," he had only done it for essentially one year at the time he was injured. There is evidence he intended to continue working for Employer had he not been injured. He told the adjuster that he had already made a contract to begin work in May 2023. Had he continued to work for Employer, there is no reason to believe his future work habits and earnings would be any different than his past work history from 2022, especially in the seasonal seafood industry. *Straight*. His documented credibility issues negate any reasonable inferences to the contrary. *Rogers & Babler; AS 23.30.122; Smith*.

When asked at hearing what he thought his proper TTD rate should be, Employee suggested it should be somewhere between \$1,000 and \$1,500 per week. He did not provide any factual or legal justification for this request. It appears Employee took his earnings from August 2022 through October 2022 and averaged them. But that is not how TTD rates are established.

Straight is also distinguishable from Employee's situation. The claimant in *Straight* had been a roofer for over 40 years. In 2013 he took time off from work to build his own home. His average earnings in the three years prior were \$63,002. While building his home, his earnings

dropped. When he returned to work for his employer, the claimant was earning \$41.45 per hour on a Davis-Bacon job and his gross weekly wage was over \$2,000. His adjuster applied the statutory formula, which resulted in a minimal TTD rate. On appeal, *Straight* cited *Gilmore* and stated that the focus in TTD rate calculation was a rate “commensurate” with the worker’s “actual losses.” *Straight* said that §.001(1) required “fairness” in rate calculation. It stated the question was “whether a worker’s past employment history is an accurate predictor of losses due to injury.”

Employee’s earnings two years prior to his work injury were not accurate predictors of his losses due to injury. *Straight; Gilmore*. However, his actual earnings in the seafood industry in 2022 for the entire three seasons he actually worked and could have worked were a “fair” approximation “commensurate” with his predicted future losses during the time he was disabled. Moreover, given the undisputed facts, the rate Employer calculated fairly estimated his “actual losses” had he not been injured. *Williams; Gilmore; Thompson; Bauder; Wilson; Straight; Geerhart*. Thus, Employer properly used Employee’s 2022 earnings to calculate the correct TTD rate. Employee’s request for a compensation rate adjustment will be denied.

Employee’s January 13, 2026 hearing brief also mentioned a COLA claim to account for his move to Ohio. AS 23.30.175(b)(1). At hearing, Employee did not address this issue. It may be that he confused the COLA with a compensation rate adjustment under §.220(a). In any event, he presented no evidence or argument on this issue at hearing and it is considered abandoned. Moreover, according to his agency file, Employee moved to Ohio on or about September 3, 2025. This decision awards him no benefits on or after that date, so the COLA is irrelevant.

5) Did Employer unfairly or frivolously controvert Employee’s benefits?

Employee sought a finding that Employer unfairly or frivolously controverted his benefits under §.155(o). Such a finding, if made, would not benefit Employee, but would result in this decision asking the Division director to notify the Division of Insurance that Employer’s insurer had frivolously or unfairly controverted compensation due. Though his basis for this request is difficult to follow, it appears Employee relies on his argument regarding the “changed injury date.”

Employee appears to contend that all controversions in his case were made due to alleged “fraud,” which occurred when Employer used January 20, 2023 as his injury date, rather than October 30, 2022. At hearing, Employee admitted that his adjuster explained the reason why the January 20, 2023 date was initially used: the adjuster interviewed Employee personally over the phone; he described how he hurt his left wrist in October 2022, but had no medical treatment for it; he said the wrist improved by December 2022; when he returned for work with Employer in January 2023, he felt sudden “shocking” pain in his left wrist while at work and told the adjuster that he felt this was an aggravation of his previous left-wrist injury. Employee’s report would lead a reasonable adjuster to assume that Employee either aggravated a preexisting condition, or had a new injury on January 20, 2023. Either event could constitute an “injury” under §.395(24).

Employee testified that he did not tell the adjuster he had aggravated his previous injury. However, the concurrent adjuster notes state otherwise. Given Employee’s credibility issues, the notes are more credible than his testimony. AS 23.30.122; *Smith*.

The law regarding an unfair or frivolous controversion arises from §.155(o) and *Harp*. An employer or insurer must file a controversion notice “in good faith” to protect it from a penalty, or to avoid a finding of an unfair or frivolous controversion. For a controversion notice to be filed in good faith, “the employer must possess sufficient evidence in support of the controversion, that if the claimant does not introduce evidence in opposition to the controversion,” a panel would find the claimant was not entitled to benefits. The relevant evidence is what the employer possessed at the time the controversion was made. *Harp*.

A controversion may be “fact-based” or “legal-based.” *Irby*. In other words, an employer may have a factual reason to controvert an injured worker’s right to benefits. For example, if an employer told the adjuster that an injured worker was not physically present on the job site on a stated injury date, the employer would be justified in controverting the employee’s right to benefits because a work-related injury would be an impossibility since the employee was not present on that date. A controversion may be “legal-based” if, for example, the injured worker

lacked medical evidence of work-related injury or disability. An employer may controvert on both bases.

Here Employee gave no other argument regarding his request for an unfair or frivolous controversion finding, other than the “injury date” issue. As analyzed above, the adjuster’s initial use of the January 20, 2023 injury date was fully justified by Employee’s own account. There is nothing “fraudulent” regarding the January 20, 2023 injury date, which Employer voluntarily changed to October 30, 2022, at Employee’s insistence. The panel has reviewed every Controversion Notice filed in this case and, absent some evidence or argument from Employee illuminating why he thinks any of them were otherwise frivolous or in bad faith, the factual and legal bases stated in each Controversion Notice, viewed in isolation, would result in Employee been entitled to no benefits. *Harp*.

Employer’s October 2, 2023 controversion properly suspended Employee’s benefits effective October 2, 2023, when he refused to sign unaltered releases and had not filed a petition for a protective order under §§.107(a) and 108(a), and (b). Likewise, the November 2, 2023 controversion effective October 31, 2023, properly suspended Employee’s benefits for failure to attend an EME under §.095(e). On December 11, 2023, Employer again controverted Employee’s right to specific benefits based on his refusal to return releases and to attend an EME. These were all legal-based denials. *Irby*. Employer also provided fact-based reasons for denying certain benefits such as Employee’s failure to submit a transportation log and his difficult-to-understand requests for relief not falling under the Act. *Id*.

Employer’s December 28, 2023 controversion again denied all benefits from December 26, 2023, and continuing, because Employee failed to provide written authority following Employer’s December 12, 2023 request. On April 25, 2024, Employer correctly controverted Employee’s benefits from April 13, 2024, and continuing, because he failed to provide written releases timely under §§.107(a) and 108(a), and (b).

Employer’s July 20, 2024 controversion properly denied benefits from February 12, 2024, and continuing under §.095(e) when Employee failed to attend another EME. This too was a legal-

based denial. On December 3, 2024, Employer controverted Employee's right to certain benefits based on Dr. Fait's medical stability opinion and his release of Employee to full-time work. Employer also based this controversion on Dr. Kitchel's two reports concurring that Employee was medically stable effective October 10, 2023, and was capable of full-time work. These were both fact- and legal-based denials. On February 12, 2025, Employer denied certain benefits based on Employee's continuing refusal to attend an EME, and the lack of authorization for disability prior to February 4, 2023. It also incorporated previous factual bases for its controversion. The March 27, 2025, June 6, 2025, July 9, 2025 and July 25, 2025 controversions echoed the same factual and legal bases for Employer's controversion and added the absence of evidence supporting Employee's various amended claims, including the lack of a higher PPI rating. They also added a "bar" defense under §.100 for Employee's failure to timely report his October 30, 2022 injury, and his failure to ever report an elbow or left-shoulder injury.

Under *Harp*, the above-stated grounds were based on sufficient evidence or law such that if Employee did not introduce evidence in opposition to the controversion, a panel would find he was not entitled to benefits. *Id.*; *Irby*. Once Employee finally signed releases and wen to an EME, Employer withdrew all controversions based on his prior, repeated failures to sign and return unaltered releases and attend an EME. Accordingly, Employee's request for a finding that Employer unfairly or frivolously controverted his claims will be denied.

6)Is Employee entitled to penalties?

Employee's claims for "penalties" were hard to define. At hearing, he initially stated that the only bases for his penalty claims were §§.250(a)-(c) and .255. However, later at hearing Employee said he also sought a 25 percent penalty under §.155(e). These will be addressed separately:

a) There is no penalty due under §.155(e).

A valid controversion protects an Employer from a penalty under §155(a) and (e). At one point during the hearing, Employee stated he wanted a 25 percent penalty on certain benefits. It is unclear exactly to which benefits Employee believed this provision applied. He stated that Employer did not pay his PPI benefits timely, although he agreed that PPI benefits had been paid

in full. When Employer showed him the payment spreadsheet during the hearing, and explained why the PPI benefits were paid out in increments, including §.041(k)'s requirements, Employee seemed to understand and agree. Employer's payment spreadsheet was credible and Employee did not present contrary evidence. AS 23.30.122; *Smith*. It is not clear if Employee still maintains a request for the §.155(e) penalty. To the extent he does, the panel finds no factual or legal basis to support that request, which is ill-defined at best. *Bauder*. Thus, any §.155(e) penalty Employee may still seek will be denied.

b) The penalty provisions in §.250 are not applicable.

Employee also sought a "fraud" penalty under §.250(a). Although the basis for this was also hard to follow, he appeared to base this request on the "date-of-injury" issue. As discussed above, Employer and its insurer did not fraudulently use the wrong injury date. That discussion is incorporated here by reference for brevity. Case law only applies §.250(a) to an employee's false statements, although this subsection arguably could apply to any "person." *Devon*. Finding no evidence of fraud or misrepresentation on Employer's or its agents' part, this decision will deny Employee's request for relief under §.250(a). If Employee seeks a criminal or civil remedy, this panel has no jurisdiction over those. He is free to seek relief from the proper forums. The panel further notes that subsection §.250(b) does not appear to pertain to an employer or insurer.

c) The penalty provisions in §.255 are not applicable.

Likewise, there is no readily apparent connection with §.255 to this case. That section refers to remedies against uninsured employers. Employer has workers' compensation insurance, and in fact paid Employee all benefits due and owing. Thus, §.255 does not apply here. Notwithstanding this advice, if Employee still seeks a criminal or civil remedy under §.255, this panel has no jurisdiction over those. He is free to seek relief from the proper forums.

7) Is Employee entitled to interest?

Interest on benefits unpaid when due is statutory. AS 23.30.155(p). However, as this decision does not award Employee any additional benefits, he is not entitled to interest.

This completes the panel’s analyses of all issues set for hearing under the controlling January 13, 2026 Prehearing Conference Summary, except for those issues Employee withdrew, or agreed were resolved, at hearing. Given the above, Employee is entitled to no additional relief.

CONCLUSIONS OF LAW

- 1) Employee’s left elbow and left shoulder are not compensable injuries.
- 2) Employee is not entitled to additional TTD benefits,
- 3) Employee is not entitled to additional PPI benefits.
- 4) Employee is not entitled to a compensation rate adjustment.
- 5) Employer did not unfairly or frivolously controvert Employee’s benefits.
- 6) Employee is not entitled to penalties.
- 7) Employee is not entitled to interest.

ORDER

- 1) Employee’s left elbow and shoulder are not compensable injuries and any and all claims for left-elbow and left-shoulder related benefits are denied.
- 2) Employee’s claim for additional TTD benefits is denied.
- 3) Employee’s claim for additional PPI benefits is denied.
- 4) Employee’s claim for a compensation rate adjustment is denied.
- 5) Employee’s request for a finding that Employer unfairly or frivolously controvert Employee’s benefits is denied.
- 6) Employee’s claims for penalties are denied.
- 7) Employee’s claim for interest is denied.

Dated in Anchorage, Alaska on May 7, 2026.

ALASKA WORKERS’ COMPENSATION BOARD

/s/
William Soule, Designated Chair

/s/

Brian Zematis, 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 Johnny Nie, employee / claimant v. Peter Pan Seafood Company, LLC, employer; Tokio Marine America Insurance Company, insurer / defendants; Case No. 202301076; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties by certified US Mail on May 7, 2026.

/s/
Trish Palmer, Workers' Compensation Technician