ALASKA WORKERS' COMPENSATION BOARD

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

HERMINIA COCSON, Employee, Claimant, v. STATE OF ALASKA, Self-insured Employer, Defendant.	)	FINAL DECISION AND ORDER AWCB Case No. 202005614 AWCB Decision No. 26-0048 Filed with AWCB Anchorage, Alaska on July 17, 2026

The State of Alaska's (Employer) June 30, 2026 petition to dismiss Herminia Cocson's (Employee) March 30, 2023 claim for an unfair or frivolous controversion finding was heard on July 14, 2026, in Anchorage, Alaska, a date selected on May 26, 2026. An April 17, 2026 hearing request gave rise to this hearing. Asst. Attorney Gen. Brent Williams appeared and represented the self-insured Employer. Non-attorney Employee appeared by phone, represented herself and testified. A professional Tagalog interpreter assisted periodically by Zoom when Employee had language issues. The record closed on July 14, 2026.

ISSUE

Employer contends that Employee's March 30, 2023 claim must be denied under AS 23.30.110(c) because she did not timely request a hearing on her claim after Employer's October 10, 2023 controversion. Moreover, Employer argues that Employee failed to pursue her claim at all until it petitioned to dismiss, and only then did she make minimal efforts to preserve her claim. Employer also contends that there is no medical evidence to support any benefit award.

Employee's position was hard to understand. She admitted she never lost wages from work because of her injury, had no permanent impairment, had paid no medical bills, had no outstanding medical bills, and has returned to work and remains working for Employer. Employee's main concern is "what if" her work-related pain in her shoulders, neck or upper back return someday -- would she "be covered" under the Alaska Workers' Compensation Act (Act)?

Shall Employer's June 30, 2026 petition to dismiss Employee's March 30, 2023 claim for an unfair or frivolous controversion finding be granted?

FINDINGS OF FACT

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

1) On May 8, 2020, Employee injured her shoulders, neck and upper back at work for Employer. (First Report of Injury, May 8, 2020).

2) On June 29, 2021, Employer denied Employee's right to temporary total disability (TTD) and temporary partial disability (TPD) benefits after July 19, 2020. It based this controversion on Employee's release to return to work and on statutory prohibitions against temporary disability benefits being paid after medical stability. (Controversion Notice, June 29, 2021).

3) On November 17, 2022, Dustin Schuett, DO, orthopedic surgeon, saw Employee for an employer's medical evaluation (EME). Dr. Schuett took a history and examined Employee. He also reviewed her medical records and provided answers to several questions. Dr. Schuett diagnosed a cervical strain; a right-shoulder strain; and a left-shoulder strain, all related to the May 2020 injury but all resolved based on "chronicity," and left sternoclavicular joint degenerative changes that were preexisting. He opined that the May 2020 work injury was the substantial cause of disability and need for medical treatment for a time, but it was no longer the substantial cause of any ongoing disability or need for treatment. In Dr. Schuett's opinion, the substantial cause for any ongoing disability or need for treatment is Employee's chronic degenerative changes in her shoulders and spine and the sternoclavicular joint on the left side. No further treatment was needed two years after her injury, as physical therapy and other conservative modalities had not made any significant improvement. In his view, Employee did not need any palliative care either. Dr. Schuett opined that Employee became medically stable under Alaska law by August 8, 2020. He expected no permanent partial impairment (PPI) rating above zero percent. Dr. Schuett released Employee to return to work at her job at the time of

injury and provided no physical restrictions resulting from the May 8, 2020 injury. (Schuett report, November 17, 2022) .

4) On January 5, 2023, Employer denied Employee's right to additional medical treatment related to her shoulders, back or neck, TTD, TPD, and permanent total disability (PTD) benefits and a PPI rating greater than zero percent. It based this denial on its EME Dr. Schuett, who had offered the above-referenced opinions. (Controversion Notice, January 5, 2023).

5) On March 31, 2023, in a March 30, 2023 claim, Employee claimed only an "Unfair or Frivolous Controversion (Denial)." (Claim for Workers' Compensation Benefits, March 30, 2023).

6) On April 24, 2023, Employer answered Employee's claim. It denied that its controversion based on Dr. Schuett's opinion was unfair or frivolous. (Answer, April 24, 2023).

7) On October 10, 2023, Employer again denied Employee's right to additional medical treatment related to her shoulders, back or neck, TTD, TPD, and permanent total disability (PTD) benefits and a PPI rating greater than zero percent. It again based this denial on its EME Dr. Schuett. (Controversion Notice, October 10, 2023).

8) Employee never filed a claim for compensation. Employer never controverted her only claim, which was for an unfair or frivolous controversion finding. (Agency file; observations).

9) Nothing of substance happened in Employee's case after October 10, 2023, until March 26, 2026, when Employer filed its petition to dismiss her claim. (Agency File; observations).

10) On March 26, 2026, Employer filed and served a petition to dismiss. It based its petition on Dr. Schuett's substantive opinions and its allegation that Employee had not attended a prehearing conference and no activity had occurred in her case for years. Moreover, she had not requested a second independent medical evaluation (SIME) because there were no medical disputes. Employee had never asked for a hearing on her claim. Employer added, "Under AS 23.30.110(c), the Board must deny the employee's claim." (Petition, March 26, 2026).

11) On May 21, 2026, Employee wrote a letter to the Division, without proof of service on Employer. In her letter, Employee wanted to cancel a scheduled "prehearing" [more likely the July 14, 2026 hearing]. She no longer wanted to pursue the "appeal of the controversion" because a medical billing had been paid by her group insurance. Employee wanted to withdraw her claim as well. (Employee letter, May 21, 2026).

12) At hearing on July 14, 2026, Employer reiterated arguments made in its memorandum attached to its petition to dismiss, and in its hearing brief. (Record).

13) At hearing, Employee testified, occasionally with assistance from Ulysses, a professional Tagalog interpreter. Employee's testimony was at times difficult to understand. She said she stopped doing physical therapy in 2023 after she received Employer's controversion because she was afraid she would have to pay for treatment. Employee requested transfers to a lighter-duty unit with Employer but these requests were denied. Her continued work with dementia patients aggravated her work-related-injury symptoms. She subsequently had additional injuries including hand surgery. Employee treated once or twice in 2022 and 2023. She occasionally gets physical therapy paid for by her health insurance. (Record).

14) When asked at hearing why she filed no claim for actual benefits, Employee said she had received no medical bills, had returned to full-time work with Employer at regular duty, and had no permanent injury so far as she knew. When asked what she wanted Employer to pay for, her answer was difficult to discern. In essence, Employee wanted to know "what if" her May 2020 work-related-injury symptoms returned in the future; would she "be covered"? The designated chair provided general information based on her hypothetical future situation. (Record).

15) At hearing, when asked what it wanted the Board to dismiss, Employer agreed that Employee had never filed a claim for benefits and the only claim she filed was for an unfair or frivolous controversion finding. The designated chair pointed out that Employer had never controverted Employee's request for an unfair or frivolous controversion finding. Its attorney could not explain why. Nonetheless, Employer argued that Dr. Schuett's EME report required the Board to dismiss her claim because he said her injury was resolved within three months, she was returned to full-duty work with Employer, she had no PPI rating above zero, she needed no further medical treatment, and she was medically stable. (Record).

PRINCIPLES OF LAW

The Board may base its decision on testimony, evidence, the Board's "experience, judgment, observations, unique or peculiar facts of the case, and inferences drawn from all of the above." *Fairbanks North Star Borough v. Rogers & Babler*, 747 P.2d 528, 533-34 (Alaska 1987).

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

> (1) this chapter be interpreted . . . to ensure . . . quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to . . . employers. . . .
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> **AS 23.30.005. Alaska Workers' Compensation Board**. . . .
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> (h) . . . Process and procedure under this chapter shall be as summary and simple as possible.
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> **AS 23.30.110. Procedure on claims**. . . .
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> (c) Before a hearing is scheduled, the party seeking a hearing shall file a request for a hearing together with an affidavit stating that the party has completed necessary discovery, obtained necessary evidence, and is prepared for the hearing. . . . If the employer controverts a claim on a board-prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied.

Richard v. Fireman's Fund, 384 P.2d 445, 449 (Alaska 1963) held:

> We hold to the view that a workmen's compensation board or commission owes to every applicant for compensation that duty of fully advising him as to all the real facts which bear upon his condition and his right to compensation, so far as it may know them, and of instructing him on how to pursue that right under the law.

Bohlmann v. Alaska Construction & Engineering, 205 P.2d 316, 319-21 (Alaska 2009) said:

> A central issue inherent to Bohlmann's appeal is the extent to which the board must inform a *pro se* claimant of the steps he must follow to preserve his claim. . . .
>
> In *Richard* . . . we held that the board must assist claimants by advising them of the important facts of their case and instructing them how to pursue their right to compensation. We have not considered the extent of the board's duty to advise claimants. . . .
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> **AS 23.30.155. Payment of compensation**. . . .
>
> (o) The director shall promptly notify the division of insurance if the board determines that the employer's insurer has frivolously or unfairly controverted compensation due under this chapter. After receiving notice from the director, the division of insurance shall determine if the insurer has committed an unfair claim settlement practice under AS 21.36.125.

Harp v. Arco Alaska, Inc., 831 P.3d 352, 358 (Alaska 1992) held, "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."

Irby v. Fairbanks Gold Mine, Inc., 203 P.2d 1138 (Alaska 2009) said the Board's determination 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 to justify it. Legal-based findings focus on whether the employer was legally justified in controverting benefits.

In *Vue v. Walmart Associates, Inc.*, 475 P.3d 270, 286 (Alaska 2020) the claimant argued that the employer's controversions were frivolous or unfair such that the employer's insurer "must be referred to the Division of Insurance under AS 23.30.155(o)." Because the employee's arguments were principally related to the evidence his employer had to support its controversions, the analysis of the controversions in *Vue* focused "on whether they were frivolous." *Id.* at 288. *Vue* found that an EME report must contain adequate evidence to support a controversion based on that physician's report. *Id.* at 291. If not, the controversion was "frivolous" as a matter of law. *Id.* Likewise, a controversion completely lacking a plausible legal defense or evidence to support a fact-based controversion is likewise frivolous. *Id.*, n. 110.

ANALYSIS

Shall Employer's June 30, 2026 petition to dismiss Employee's March 30, 2023 claim for an unfair or frivolous controversion finding be granted?

Employer raises two primary bases for seeking an order dismissing Employee's March 30, 2023 claim. First, it contends it controverted Employee's claim and she did not request a hearing within two years. Thus, Employer seeks claim denial under AS 23.30.110(c). This first basis for Employer's petition is without merit because §.110(c) does not apply because Employer never controverted Employee's claim for an unfair or frivolous controversion finding.

It is undisputed that Employee never filed a claim for compensation. The only thing she requested on March 31, 2023, in her March 30, 2023 claim, was an unfair or frivolous

controversion finding. That claim implicates only AS 23.30.155(o), and if granted, would provide no monetary benefit to Employee. It would simply result in the panel's decision being sent to the Division director who would then forward the matter to the Division of Insurance for that agency to determine if Employer had made an unfair claim settlement practice under separate statutes.

The controversion to which Employee's March 30, 2023 claim referred was Employer's January 5, 2023 controversion in which it controverted her right to "medical treatment related to the shoulders, back, or neck, TTD, TPD, PTD, 041k, and a PPI rating greater than 0%." After Employee filed her March 30, 2023 claim on March 31, 2023, Employer on October 10, 2023, again controverted "medical treatment related to the shoulders, back, or neck, TTD, TPD, PTD, 041k, and a PPI rating greater than 0%." This is the controversion Employer contends results in a claim denial under §.110(c). But Employer never controverted the claim Employee actually made for an unfair or frivolous controversion. *Rogers & Babler*. On October 10, 2023, Employer controverted benefits Employee did not claim, but failed to controvert the remedy she requested. Since Employer never controverted Employee's claim for an unfair or frivolous controversion, the two-year statute of limitations clock never began to run. Thus, §.110(c) is inapplicable to her March 30, 2023 claim and her claim will not be denied based on that statute.

The second basis for Employer's petition to dismiss is its contention that Employee has no evidence to support any award of benefits under the Act. But as Employer admitted at hearing, Employee has never filed a claim for benefits under the Act. Moreover, in her May 20, 2026 letter to the Division, which Employer apparently never received, Employee asked to withdraw her claim because she understood a particular medical bill had been resolved. So as this case stands, Employee still has a pending request for an unfair or frivolous controversion finding, but Employer still has a third basis to dismiss that claim on its merits, based on its EME report.

Employer's third basis for its petition to dismiss is that the January 5, 2023 controversion to which Employee objected, was not unfair or frivolous because Dr. Schuett's EME report, and the January 5, 2025 controversion based thereon, were factually and legally sufficient to deny

Employee's right to benefits under applicable law. Thus, the controversion was not unfair or frivolous.

Although Employer's petition to dismiss was the only issue set for hearing, this decision must also address the merits of Employee's March 30, 2023 claim to ensure "quick, efficient, fair" adjudication of this matter "at a reasonable cost" to Employer. AS 23.30.001(1). The claim and the petition to dismiss it are interrelated issues subject to "summary and simple" process and procedure. AS 23.30.005(h).

At this juncture, the relevant controversion in Employee's claim is dated January 5, 2023. "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." *Harp*. If Employee never introduced evidence in opposition to the January 5, 2023 controversion, a panel would conclude that she was not entitled to any benefits based on Dr. Schuett's opinions. Thus, the January 5, 2023 controversion meets the *Harp* test.

A controversion may be fact- or legal-based -- or both. *Irby*. "Fact-based" findings focus on whether the controversion is based on adequate facts to justify it. "Legal-based" findings focus on whether Employer was legally justified in controverting benefits. Here, Employer's January 5, 2023 controversion was fact- and legal-based. Dr. Schuett's factual opinions on "the substantial cause," medical stability, disability, impairment, need for medical treatment and ability to return to work were adequate as factual bases to deny Employee's right to benefits. This is true regardless of whether she actually requested those benefits. Given the factual bases gleaned from Dr. Schuett's opinions, the controversion was also legal-based. If a panel accepted all of Dr. Schuett's opinions, Employee would be entitled to no benefits under the Act as a matter of law.

Vue held that an EME report must contain adequate evidence to support a controversion based on that physician's report. If not, the controversion was "frivolous" as a matter of law. Likewise, a controversion lacking a plausible legal defense or evidence to support a fact-based controversion

is also frivolous. *Vue*. Here, Employer's January 5, 2023 controversion was supported by adequate evidence from Dr. Schuett's EME report. It also had plausible legal defenses to support it. If a panel accepted Dr. Schuett's opinions, Employee would be entitled to no temporary disability benefits because she was medically stable, no permanent disability benefits because she returned to work, no PPI benefits because she had a zero PPI rating, no retraining because she returned to her regular job, and no additional medical care, all based on Dr. Schuett's opinions. Thus, Employer's January 5, 2023 controversion was not unfair or frivolous. Employee's March 30, 2023 claim will be denied on its merits and the matter will not be referred to the Division director. Employer's March 26, 2026 petition to dismiss will be granted on this basis.

Employee is self-represented, or in other words, "*pro se*." This panel has a duty to fully advise her as to all the facts that bear on her condition and her right to compensation, "so far as it may know them," and instructing her how to pursue her rights under the law. It has a duty to advise Employee of the important facts of her case and instructing her how to pursue her right to compensation. *Richard*; *Bohlmann*.

Employee asked the designated chair hypothetical questions. Those answers are summarized here. Employee had a May 8, 2020 injury to her shoulders, upper back and neck. If in the future she is at work and believes her work exacerbates symptoms from her May 8, 2020 injury, she should seek medical care and tell her physician that in her view her symptoms relate back to that May 8, 2020 injury. She should advise her physician to bill the adjuster using the above case number. Alternately, if Employee is at work and suffers another injury to the same body parts as in her May 8, 2020 injury, or has similar or worse symptoms, she should promptly provide written notice to Employer within 15 days, as required by current law, and seek immediate medical care. If Employee's symptoms increase while she is not at work, she may still seek medical care and ask her physician if her work injury or her work with Employer in general -- past or future -- is the substantial cause of her need for treatment and any disability.

In any event, whether Employee thinks any future symptoms relate back to her May 8, 2020 injury or are caused by a new injury, she must have medical evidence stating that a work event or

work itself is "the substantial cause" of any disability or need for treatment that she may suffer. In all cases, if Employer controverts her right to benefits, Employee may a file a claim for benefits within two years of the Controversion Notice. Failure to file a claim for disability or impairment benefits within two years of a Controversion Notice may result in those benefits being denied. As Employee probably knows, if Employer controverts a claim for benefits that she files with the Division, she must ask for a hearing on her claim, or ask for more time to request a hearing, within two years of the date of the Controversion Notice, or her right to controverted benefits may be denied under §.110(c). There are nuanced exceptions to this rule and the exact date by which she must request a hearing is often hard to determine. If Employee has additional questions, she can always consult a Workers' Compensation Technician for free procedural advice by calling (907) 269-4980, or visiting the Division's office. Also, Employee is advised that she can consult with an attorney with experience in workers' compensation law and will not be charged a fee in most instances. The Division will provide her a list of attorneys who practice in the workers' compensation field, at her request. *Richard*; *Bohlmann*.

CONCLUSION OF LAW

Employer's June 30, 2026 petition to dismiss Employee's March 30, 2023 claim for an unfair or frivolous controversion finding will be granted.

ORDER

1) Employer's March 26, 2026 petition to dismiss based on §.110(c) is denied.
2) Employer's March 26, 2026 petition to dismiss based on other grounds is granted.
3) Employee's March 30, 2023 claim for an unfair or frivolous controversion finding is denied on its merits.

Dated in Anchorage, Alaska on July 17, 2026.

ALASKA WORKERS' COMPENSATION BOARD

/s/
William Soule, Designated Chair

/s/
Sara Faulkner 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 Herminia Cocson, employee / claimant v. State of Alaska, self-insured employer defendant; Case No. 202005614; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties by certified US Mail on July 17, 2026.

/s/
Trish Palmer, Workers' Compensation Technician