ALASKA WORKERS' COMPENSATION BOARD

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

NATASHA D. ZANOSKO, Employee, Claimant, v. SOUTHCENTRAL FOUNDATION, Employer, and ALASKA NATIONAL INSURANCE COMPANY, Insurer, Defendants.	)	FINAL DECISION AND ORDER AWCB Case No. 202123178M AWCB Decision No. 26-0052 Filed with AWCB Anchorage, Alaska on July 24, 2026.

Natasha Zanosko's (Employee) February 18, 2026, and March 24, 2026, petitions to set aside the May 20, 2024 Compromise and Release (C&R) Agreement, and Southcentral Foundation's (Employer) March 10, 2026 petition to dismiss Employee's claims, were heard on June 24, 2026, in Anchorage, Alaska, a date selected at a prehearing conference on March 16, 2023. Employee appeared and was not represented by an attorney. Attorney Michelle Meshke appeared and represented Southcentral Foundation and Alaska National Insurance (Employer). The record closed at the hearing's conclusion on June 24, 2026.

ISSUES

Employee contends the C&R agreement approved on May 20, 2024, should be set aside. She contends the C&R agreement contained misrepresentations of fact when it settled her work injury

of "long COVID" as she was recently diagnosed with trigeminal neuralgia. She argues her diagnosis of "long COVID" was incorrect and therefore, the agreement is void. She contends she did not read the agreement before signing and Employer perpetuated fraud against her by forcing her to sign a settlement agreement that was not in her best interest.

Employer contends none of the legal tests for setting aside a C&R agreement are met. It requests an order denying Employee's petition to set aside the May 20, 2024 C&R agreement.

1) Should the May 20, 2024 C&R agreement be set aside?

Employer argues Employee's February 17, 2026 and May 4, 2026 claims are barred by the approved May 20, 2024 C&R agreement and alternatively, should be dismissed for failure to report the injury timely.

Employee opposes having her claims dismissed because she contends she was diagnosed with trigeminal neuralgia after the settlement agreement and therefore, she is entitled to benefits pertaining to that diagnosis as well as past due medical costs.

2) Should Employee's February 17, 2026 and May 4, 2026 claim be dismissed?

FINDINGS OF FACT

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

1) On November 9, 2020, Employee tested positive for COVID-19 and was placed on home isolation. Employee was working at Alaska Native Medical Center at the time of injury. (First Report of Injury, August 4, 2021).

2) On May 18, 2021, Employee received her first COVID-19 vaccine by Moderna. She received her second vaccine on June 15, 2021. (Deposition of Employee, March 28, 2023).

3) On July 16, 2021, Employee was seen by her Primary Care Provider Amanda Smith, MD. Employee stated she had aches and lung issues that may have arisen after she contracted COVID-19 but worsened within the last three weeks. Dr. Smith assessed Employee with fatigue that was likely related to either long COVID, thyroid dysfunction, or paroxysmal atrial fibrillation (PAF). The physician opined her largest concern with a potential long COVID diagnosis was a lack of

medical research into the duration of long COVID symptoms, and therefore a workup of potential other causes of Employee's symptoms would be necessary to understand Employee's condition. (Smith note, July 16, 2021).

4) On July 20, 2021, Employee conducted a telehealth visit with Dr. Smith, where she reported on-going fatigue and body aches. Dr. Smith reiterated that lab work still needed to be conducted to rule out other possible causes of her symptoms. (Smith note, July 20, 2021).

5) On July 23, 2021, Employee conducted another telehealth visit with Dr. Smith. She stated that she had already missed two days of work because of her symptoms that she believed were caused by the COVID-19 vaccine. Dr. Smith opined that she did not know for sure if this was long COVID, or rather symptoms attributable to the COVID vaccine and that there were no tests that would determine definitively that it was. Her recommendation was for Employee to continue with lab work and that she would follow-up with Employee after the results were in. (Smith note, July 23, 2021).

6) On September 22, 2021, Employer denied all benefits. Under "reason" Employer stated Employee failed to sign medical releases that were sent to her on August 16, 2021. (Controversion Notice, September 22, 2021).

7) On November 10, 2021, Employee reported that she was feeling better due to working in a solitary space at work. She had ringing in her ears that had increased recently. Dr. Smith noted Employee had a history of temporomandibular joint (TMJ) issues and referred her to an Ear, Nose, and Throat (ENT) specialist. (Smith note, November 10, 2021).

8) On December 20, 2021, Employee saw Dr. Smith regarding a work note. Employee informed Dr. Smith she developed a headache a few days prior which worsened quickly resulting in pressure behind her eyes. Employee reported that her left ear pain had increased after returning from a trip to Hawaii and she developed photophobia and phonophobia. Employee also complained of severe neck stiffness and that her vision had gotten worse since having contracted COVID. Dr. Smith noted they were still waiting on a date for Employee to see an ENT physician at which time her ear pain could be addressed. Dr. Smith assessed Employee's headache as likely tension related and recommended switching muscle relaxers and performing neck stretches. (Smith note, December 20, 2021).

9) On February 8, 2022, Employee was seen by PA-C Megan Heinecke, ENT for dizziness and tinnitus. PA-C Heinecke noted Employee missed her previously scheduled audiogram and

therefore she could not render an opinion as to her tinnitus but would follow-up once an audiogram was completed. Regarding Employee's dizziness, PA-C Heinecke opined she reported dizziness for over six months occurring almost weekly but her headache and photophobia symptoms were suspicious for what she assessed as a vestibular migraine. (Heinecke note, February 8, 2021).

10) On February 10, 2022, Julia Swayne, Au.D, performed an audiogram. The findings showed mild sensorineural hearing loss bilaterally. Based on the symmetry of hearing loss in both ears it was not recommended she obtain imaging. Dr. Swayne stated it was unclear if this hearing loss was long-standing or related to Employee's recent symptoms. She stated Employee was overly bothered by her hearing and could consider a hearing aid. (Swayne note, February 10, 2021).

11) On March 14, 2022, Employer denied all benefits. It stated Employee failed to sign medical releases sent to her on February 17, 2022. (Controversion Notice, March 14, 2022).

12) On March 15, 2022, Employee called the Workers' Compensation Division (Division) asking if her benefits were controverted based on the medical releases. She stated she had already signed and returned them. The Division referred Employee to Employer's adjuster for further information the Division did not currently have. The Division also provided a copy of the Workers' Compensation and You packet, the claim flowchart, a claim form, and a list of attorneys currently taking workers' compensation cases. (Agency file, Communications tab, March 15, 2022).

13) On May 10, 2022, Employee returned to Dr. Smith with complaints of anxiety. Dr. Smith noted Employee stated since her COVID diagnosis she had found anxiety was a larger problem in her life. Employee reported heart fluttering, impending doom, feeling irritable, and feeling walls closing in and she had to leave work previously for panic attacks. Dr. Smith assessed Employee's anxiety as uncontrolled and a "new escalating issue," and recommended hydroxyzine to treat Employee's symptoms. (Smith note, May 10, 2022).

14) On June 14, 2022, Dr. Smith noted Employee had been recovering slowly but she anticipated Employee's return to normal function within 18-24 months after the initial infection based on similar cases. (Smith note, June 14, 2022).

15) On August 15, 2022, Employee stated she was requesting reasonable accommodation to work from home due to her vestibular migraines. Employee stated she typically missed Mondays and Fridays due to brain fog and concentration issues due to COVID-19. In her assessment, Dr. Smith stated it was reasonable for Employee to work from home when suffering a vestibular

migraine. Dr. Smith also included a work release covering previous absences for Employee totaling 13 from December 17, 2021, until July 28, 2022. (Smith note, August 15, 2022).

16) On August 18, 2022, Dr. Smith submitted a work excuse for Employee from August 16-19, 2022, due to illness. (Smith note, August 18, 2022).

17) On August 22, 2022, PA-C McNamara noted Employee was calling regarding a work excuse from the previous week. The physician explained she could only write a note for the appointment that day and Employee's primary care provider would need to provide a note for any additional days. (McNamara note, August 22, 2022).

18) On September 1, 2022, Employer filed a withdrawal of its March 14, 2022, controversion. It stated Employee signed and properly executed releases on August 22, 2022. (Notice Withdrawing Controversion Notice of 3/14/2022, September 1, 2022).

19) On September 6, 2022, Employee stated she needed Family Medical Leave Act (FMLA) paperwork detailing the time she was forced to miss work due to appointments, fatigue, dizziness and persistent long COVID symptoms. Employee stated her condition was not improving. Dr. Smith discussed a physical therapy referral for Employee's fatigue. Additionally, Dr. Smith prepared a referral for an outside audiologist to evaluate Employee's hearing and tinnitus. He also wrote a work excusal note, due to COVID, for Employee from September 1 – 12, 2022. (Smith note, September 6, 2022).

20) On September 19, 2022, Employee reported to Dr. Smith she felt depressed, had poor energy and motivation, and was not sleeping well. She requested Dr. Smith provide her a note for work missed from the previous week. Dr. Smith provided the work note and continued to monitor Employee's approach to care. (Smith note, September 19, 2022).

21) On September 26, 2022, Employee stated her fatigue had become "insurmountable." She did not think she could function for a full workday. Dr. Smith provided a work note for Employee's absence from work for the previous week. (Smith note, September 26, 2022).

22) On October 11, 2022, Employee filed a claim for temporary total disability (TTD), permanent partial impairment (PPI), and medical costs. In describing the nature of her injury or illness Employee stated, "multiple issues since Covid/Covid vaccine hearing loss vestibular headaches fatigue memory issues." Her reason for filing the claim was that she needed hearing aids, time loss payments, and a PPI rating. (Claim for Workers' Compensation Benefits, October 11, 2022).

23) On October 12, 2022, Employee was seen by Jared Kirkham, MD, for an Employer's Independent Medical Exam (IME). Dr. Kirkham reviewed Employee's medical records from the date of her COVID diagnosis to present. He performed an interview and physical evaluation of Employee. Throughout his report, Dr. Kirkham opined Employee's symptoms could have originated from a multitude of sources to include age, genetics, and prior medical history. Dr. Kirkham provided diagnoses for the following: (1) Covid -19 infection, (2) Sensorineural hearing loss, (3) Tinnitus, (4) Vestibular migraine, (5) Anxiety and depression, (6) Fatigue, (7) Cognitive dysfunction or "brain fog," and (8) Multiple preexisting medical comorbidities. Dr. Kirkham noted the difficulty in diagnosing post Covid syndrome, in his words "one of the challenges with long Covid is there is no objective method of diagnosis." His further analysis correlated the symptoms Employee was experiencing were not unlike symptoms a person with her comorbidities would experience had they not contracted Covid-19. In diagnosing all eight of Employee's symptoms Dr. Kirkham came to the same conclusion. He indicated the symptoms Employee was experiencing arose from factors outside of her Covid-19 infection. He opined there were better explanations for Employee's symptoms in her medical history that did not relate back to her Covid-19 infection. He also noted all tests and imaging performed on Employee to date were returned normal and not related to her Covid-19 infection. In establishing the substantial cause of Employee's need for medical treatment Dr. Kirkham found Employee's need for medical treatment related to a variety of non-Covid factors. He further explained Employee's age, genetics, obesity, lifestyle factors, including poor sleep, smoking, and lack of exercise, and psychosocial factors, including history of anxiety and depression, history of chronic pain, poor expectations for improvement, self-limiting behavior, disability conviction, tendency to perseverate on or overreport symptoms, misattribution of symptoms, and difficulty managing stress, were the substantial causes of Employee's need for medical treatment. (Kirkham IME report, October 12, 2022).

24) On October 18, 2022,. Employee requested a note for missed work as she cannot perform her essential job functions at this time. Dr. Smith entered a referral for a physical therapist within her covered care. (Smith note, October 18, 2022).

25) On October 20, 2022, Employer filed a controversion notice in response to Employee's claim. Employer specifically denied TTD, TPD, PTD, vocational rehabilitation, PPI in excess of 0% and ongoing medical treatment beyond October 18, 2022, as a result of the November 9, 2020,

Covid-19 exposure or the May 18, 2022, and June 15, 2022, Covid-19 vaccine. Employer's reason for controverting was based on the IME performed by Dr. Kirkham on October 12, 2022, Employee was medically stable regarding her COVID-19 infection and vaccinations. Dr. Kirkham found there was no objective medical evidence of any residual effects from Covid-19 or the Covid-19 vaccination. (Controversion Notice, October 20, 2022).

26) On October 26, 2022, Employee reported symptoms of dizziness, headaches, and hearing loss. PA-C Heinecke noted these were the same symptoms reported to her on February 8, 2022. Employee has a history of papillary thyroid carcinoma which resulted in a thyroidectomy in November of 2021. Employee had concerns of the "cancer returning." PA-C Heinecke reassured Employee based on her labs there was low concern of her thyroid cancer recurring. PA-C Heinecke also informed Employee while her symptoms could be related to COVID-19 she could not definitely say they were. (Heinecke note, October 26, 2022).

27) On November 7, 2022, Employee reported feeling much improved. Employee requested to go back to work with half time restrictions for sedentary work as well as continuing in an isolated room. (Smith note, November 7, 2022).

28) On November 9, 2022, Employer filed a controversion notice. Employer controverted TTD, PTD, PPI, medical and related benefits which are unnecessary, unreasonable, and/or unrelated to the November 9, 2020, injury effective October 12, 2022. Employer's controversion notice added additional rationale from their previous controversion notice on October 20, 2022. Employer added IME physician Dr. Kirkham's opinion that Covid-19 or the vaccine was not the substantial cause of Employee's need for medical treatment, that none of her preexisting conditions were exacerbated by COVID-19 or the vaccine, and that Employee had the physical capacity to return to her work for Employer. Employer added Employee did not sustain an injury as defined in AS 23.30.395(24). (Controversion Notice, November 9, 2022).

29) On November 9, 2022, Employer filed an Answer to Employee's claim for benefits. Employer denied Employee's claim for TTD, PTD, PPI and medical benefits. Employer raised affirmative defenses regarding pending discovery, work not being the legal cause of Employee's disability, Employee's injury not being defined under AS 23.30.395(24), lack of medical evidence that supports Employee being totally and permanently disabled from work, and the IME physician's opinion that work was not the substantial cause of Employee's need for medical

treatment, the injury did not exacerbate a preexisting condition, and Employee's capacity to return to work. (Answer to Employee's Workers' Compensation Claim, November 9, 2022).

30) On November 18, 2022, ophthalmologist James Ford, MD. assessed Employee with cataracts that were age related and recommended Cataract Extraction and Interocular Lens procedure for both eyes. (Ford report, November 18, 2022).

31) On November 18, 2022, George Banks, MD, neurologist evaluated Employee. Employee had been experiencing consistent headaches that warranted a referral from her primary care provider. Dr. Banks in his evaluation noted Employee had a history of headaches prior to her Covid infection that were worsened after her infection. In his evaluation, Dr. Banks did not observe any abnormal findings and recommended pharmaceutical intervention for Employee's migraines. Dr. Banks also noted it can be hard to tell whether the migraines were a primary disorder or whether they were being driven by comorbid symptoms. In his assessment he concluded treating the migraines with medication is important and treating Employee's other comorbidities such as arthralgias, myalgias, depression, and anxiety were equally important. (Banks note, November 18, 2022).

32) On November 21, 2022, Dr. Ford conducted a cataract extraction with intraocular lens implant procedure on Employee's right eye with no complications. (Ford note, November 21, 2022).

33) On November 28, 2022, Employee filed a petition for a SIME. In the "other" section of the form Employee entered "ppi rating medical bills time loss future medical." Under reason for petition Employee stated, "to have hearing aids paid for and medical bills and ppi paid i [sic] am considered mmi for hearing loss it is not coming back. I request seme [sic] due to no mention of my second exposure on 5/27/22 I am still currently being treated. also doctor states i [sic] was in shorts and wrong injury date I do not think this is my report I was not in shorts my injury date is 11/9/20 and no mention of 5/27/22." (Petition, November 28, 2022).

34) On November 29, 2022, Dr. Ford conducted a cataract extraction with intraocular lens implant procedure on Employee's left eye with no complications. (Ford note, November 29, 2022).

35) On December 1, 2022, Dr. Smith listed multiple concerns for Employee as the reason for her visit. Employee stated after eye surgery her dizziness and migraines had improved but she was still experiencing fatigue. Dr. Smith wrote a referral for memory testing at Employee's request.

Employee stated her memory was improving but would like to get tested. Dr. Smith noted Employee had been taking Ozempic since August and had not been able to lose as much weight as was expected while on the medication regimen. Employee stated she was not in the right mental space to focus on her weight loss and would like to keep trying. (Smith note, December 1, 2022).

36) On December 6, 2022, Employee's primary concern was her accommodation to wear a hat and sunglasses at work had expired. She requested a letter from Dr. Smith to continue this accommodation. She stated to Dr. Smith that her migraine medication Phenergan was causing tinnitus, and her headaches had not subsided with additional pharmaceutical intervention. Dr. Smith wrote a letter for Employee's accommodation and recommended she use her migraine medication only as necessary. (Smith note, December 6, 2022).

37) On December 6, 2022, Employee filed a First Report of Occupational Injury for a COVID exposure on May 27, 2022. Employee stated she took a home test for COVID-19 and was positive on that date. (First Report of Occupational Injury, December 6, 2022).

38) Employee submitted to polymerase chain reaction (PCR) testing for COVID-19 on May 20, 2022, and May 27, 2022, with both tests being negative. (Employer's Medical Summary, pg. 82-83, December 7, 2022).

39) On December 7, 2022, Employee filed a claim for workers' compensation benefits asserting TTD, TPD, PTD, PPI, Compensation Rate Adjustment, medical costs, penalty for late paid compensation, and interest. Employee stated she was positive for Covid on May 27, 2022, and tested positive seven days after exposure notification. She also indicated that the new injury exacerbated her current symptoms of long Covid. Employee failed to sign and date the bottom of the Workers' Compensation form. (Claim for Workers' Compensation Benefits, December 7, 2022; observations).

40) On December 14, 2022, the Division sent Employee a claim rejection letter, letting Employee know she failed to sign and date the bottom of her claim form and therefore her claim could not be processed. (Claim Rejection Letter, December 14, 2022).

41) Employee has not filed a corrected claim form for her December 7, 2022, claim. (Agency file, observations).

42) On December 14, 2022, Employer filed a Controversion Notice for Employee's December 7, 2022, claim with a date of injury of May 27, 2022. Employer denied all medical benefits. Employer stated the claim is barred under AS 23.30.100 as not being timely reported, that

Employee did not sustain an occupational disease or illness as defined in AS 23.30.395(24), and that Employee failed to provide medical evidence of a positive COVID test for the date of the reported injury. It is unclear whether Employee corrected her rejected claim and sent it to Employer. The Division has no record of a corrected claim being filed. (Controversion Notice, December 14, 2022; agency file; observations).

43) On December 14, 2022, Employer filed a corrected Controversion Notice relating back to the November 9, 2022, controversion. The only change between the two controversions was the Employers' date of signature, with the latter being dated on December 14, 2022. (Corrected Controversion Notice, December 14, 2022).

44) On December 20, 2022, Employer filed a petition to consolidate both of Employee's claims. The first with a date of injury of November 9, 2020, and the second claim, which was never corrected and resubmitted to the Division, with a date of injury of May 27, 2022. (Petition, December 20, 2022).

45) On December 27, 2022, Dr. Kirkham performed a records review IME for Employer. Additional records provided to Dr. Kirkham began June 28, 2021, through December 6, 2022. Dr. Kirkham in his discussion noted Employee continues to have diffuse widespread symptoms since he last saw her on October 12, 2022. He noted continuing multiple preexisting and unrelated conditions as well as psychosocial factors influencing her widespread symptomology. In his report, Dr. Kirkham stated Employee was alleged as testing positive for Covid-19 via a home test kit on May 27, 2022. However, Dr. Kirkham noted in his report Employee had taken PCR Covid tests on May 20, 2022, and May 27, 2022, both negative. He noted the PCR tests were more accurate than home tests. Dr. Kirkham further noted Employee had not seen any providers around that time frame to corroborate symptoms that would make it more likely than not she contracted COVID-19 on that date. In summation, Dr. Kirkham reiterated his previous opinion that nothing in the new records changed his previous opinion rendered on October 12, 2022. He found no objective evidence of any condition related to Covid-19 or the Covid vaccination. He recommended multimodal, multidisciplinary treatment focusing on the psychosocial factors are the main cause of her chronic somatic symptoms and subjective inability to return to work. (Kirkham report, December 27, 2022).

46) On December 28, 2022, Employee reported a positive Covid-19 test on December 27, 2022, and complained of severe ear pain in one ear. Employee requested steroids during the visit. NP

Marble explained she could not prescribe steroids without a physical examination of Employee's ear. Employee understood and stated she would schedule an appointment. (Marble note, December 28, 2022).

47) On December 28, 2022, Employee stated she had contracted Covid-19 and was experiencing ear pain. NP Zink recommended Employee start an antiviral medication to alleviate her Covid symptoms. In evaluating Employee's ear, NP Zink noted no infection, with possible eustachian tube dysfunction, and recommended a trial of fluticasone for her symptoms. (Zink note, December 28, 2022).

48) On December 29, 2022, Employee's primary care provider was out of town. She called neurologist Dr. Banks' office, for a telehealth visit. Employee reported over the phone to Dr. Banks she was in severe pain all over her body, and all her joints and muscles were hurting. Dr. Banks in his assessment found her current symptoms were not neurologic or compatible with a primary headache disorder. He stated she had migraines in the past and had reported similar symptoms when she was last seen by him. He stated her pain is not an acute viral myalgia but a more chronic disorder of pain akin to fibromyalgia. His ultimate assessment was Employee's pain was part of a systemic disorder and not capable of being adequately treated in a neurology setting. (Banks note, December 29, 2022).

49) On December 29, 2022, Employee presented with complaints related to her recent Covid infection as well as a flare up of hidradenitis suppurativa, a skin disorder. NP VanHoozer recommended Employee maintain her current treatment for her COVID related symptoms to include Ibuprofen for aches and pain and remaining hydrated. NP VanHoozer also prescribed Bactrim to treat Employee's skin disorder. She recommended follow-up in 5-7 days with her primary care provider if her symptoms did not subside. (VanHoozer note, December 29, 2022).

50) On January 5, 2022, Employee reported that the whole side of her face was hurting. She stated the medication she was prescribed on December 28, 2022, for her ear pain did not help. Dr. Smith opined Employee's symptoms could be Bell's Palsy, but it was difficult to determine without a physical exam. Dr. Smith provided a work excusal from December 27, 2022 – January 11, 2023, for Employee to quarantine based on her positive Covid test on December 27, 2022. (Smith note, January 5, 2022).

51) On January 6, 2023, Employer filed a Controversion Notice for both of Employee's claims. Under reason for controversion, Employer reiterated Dr. Kirkham's original opinion as to why

Employee's first claim was controverted and added Dr. Kirkham's December 27, 2022, opinion that Employee's positive home test was a less credible determination of her contracting Covid given the PCR tests Employee took on May 20, 2022, and May 27, 2022, were both negative. In his opinion the PCR tests were a more accurate predictor of a Covid infection. (Controversion Notice, January 6, 2023).

52) On January 10, 2023, Employer filed an Affidavit of Readiness for Hearing on Employer's petition to consolidate both of Employee's cases. (Affidavit of Readiness for Hearing, January 10, 2023).

53) On January 12, 2023, Dr. Smith provided Employee with a work excusal note until January 23, 2023. Dr. Smith stated Employee was requiring additional time off from work to recover from her recent Covid infection and would need to return to work in a part-time capacity. (Smith note, January 12, 2023).

54) On January 25, 2023, Dr. Smith provided Employee with a work modification letter. In her letter Dr. Smith stated Employee was suffering from refractory long Covid symptoms and while she had shown signs of improvement, she was not fit for full-time work. She recommended part-time work up to 20 hours per week and anticipated the modification to be in place for 4 months. (Smith note, January 25, 2023).

55) On February 2, 2023, Employee filed a petition for an SIME. In her reason for filing the petition Employee stated, "I do not think Dr. Kirkham has diagnosed and treated Covid patients I called AFOC where he is employed they stated they do not dx or treat Covid 19 that they treat orthopedic issues and my treating doctors and his opinion do not match up I went to neurology seen Dr Banks he stated my head pain is not just headaches his report is attached i ask that a doctor be chosen by the board." (Petition, February 2, 2023).

56) On February 7, 2023, the parties attended a prehearing conference. The parties agreed to administratively join Employee's two cases. The parties could not agree on SIME deadlines. Employee advised she would be filing an Affidavit of Readiness for Hearing shortly. (Prehearing Conference Summary, February 7, 2023).

57) On February 7, 2023, Employee was seen by Susan Mermelstein, AuD. An audiogram was performed in her office. Dr. Mermelstein opined the results of the audiogram were grossly stable. Employee mentioned a muffled sensation in her left ear but when tested individually with her right ear being occluded, she stated the sound in her left ear was good. Employee was informed she had

bilateral hearing loss in both ears in the low-to-mid frequencies, which can impact communication but the results in both ears were the same. (Mermelstein note, February 7, 2023).

58) On February 8, 2023, Employee was seen by Vanina Chavarri MD, for a follow-up on her ear and sinus issues. Employee reported sitting under a cold vent at work caused a muffled sensation in her left ear and an itching sensation in the back of her throat near her ears. Dr. Chavarri performed a nasopharyngolaryngoscopy in which a fiberoptic scope is placed inside the naval cavity for a more precise evaluation. Upon completion of the procedure, Dr. Chavarri found normal nasal mucosa except for congested inferior turbinates, normal adenoid bed and fossae of Rossen Meuller, and normal bilateral true vocal folds. (Chavarri note, February 8, 2023).

59) On February 8, 2023, Dr. Smith provided a letter to Employer stating Employee may benefit from working in a location that does not have direct overhead air flow. (Smith note, February 8, 2023).

60) On February 9, 2023, Employee reiterated her joint pain due to cold working conditions with overhead air flow. She also mentioned she felt like she had Post-Traumatic Stress Disorder (PTSD) from speaking with customer owners who also had Covid. Dr. Smith referred Employee to the Behavioral Health Clinic. (Smith note, February 9, 2023).

61) Employee works for the Southcentral Foundation at the Alaska Native Medical Center. At the medical center patients are referred to as "customer owners" in documentation and colloquially. (Knowledge, observations, experience).

62) On February 10, 2023, Employee filed an Affidavit of Readiness for Hearing on her petition for an SIME. (Affidavit of Readiness for Hearing, February 10, 2023).

63) On February 22, 2023, Employer filed its answer to Employee's petition for a SIME. Employer asserted it did not object to the petition but rather, Employee failed to complete a SIME form outlining medical disputes, nor did she attach medical records documenting a dispute between her treating providers and the Employer's independent medical examiners. (Answer to Employee's Petition for a SIME, February 22, 2023).

64) On February 27, 2023, at 5:08 PM, Employee emailed Employer's attorney and stated, "Im. [sic] At ime I was late no number provided they stated you did not provide my number so needs to be rescheduled I was at kirkhams tudor [sic] address then realized it was not there." Employer's attorney responded at 6:21 PM and notified Employee she had been properly notified multiple times of the date and time of the IME, to include earlier that a notice of IME had been sent to

Employee with date, time and location included. Employer's attorney notified Employee that her benefits would be controverted because of Employee's failure to attend a properly noticed IME. (Agency file, Email, communications tab, February 27, 2023).

65) On February 28, 2023, Employee filed a petition to reschedule an IME. Employee asserted she was late to her IME, and it should be rescheduled. (Petition, February 28, 2023).

66) On February 28, 2023, Employer filed a Controversion Notice. Under the reason for controversion section Employer asserted, "[t]he employee's rights to benefits are suspended, pursuant to AS 23.30.095(e). The employee was provided adequate and repeated notice of the scheduled Ime, in accordance with the Act, and failed to appear at the noticed location at the scheduled time. By 4:54 p.m. the employee was considered a no-show." (Controversion Notice, February 28, 2023).

67) On March 13, 2023, Employee stated she was getting worse due to her new working conditions that were dusty. Employee reported having issues with breathing, taste, and smell. Dr. Smith prescribed Flovent and Albuterol to help with Employee's cough. Dr. Smith provided Employee a work excusal note from March 13-17, 2023. (Smith note, March 13, 2023).

68) On March 15, 2023, Employee was seen by Dr. Chavarri for continued sinus issues. Dr. Chavarri noted Employee was seen in her office on February 8, 2023. Employee reported her symptoms were worse after sitting under vent at work that blew cold air. She also stated she was having facial pain that before was intermittent but now was permanent. Employee informed Dr. Chavarri that she thought she might have Covid. As a result, Employee's physical exam was deferred. Dr. Chavarri offered a CT scan as an alternative. This was performed in the office with subsequent follow-up to discuss results. As to Employee's facial pain, Dr. Chavarri opined it may be more related to her chronic pain issues and anxiety. Employee mentioned stellate ganglion blocks performed by Dr. Luke Liu in Anchorage. Dr. Chavarri stated she was unfamiliar with the procedure but would reach out to pain management specialists about it. (Chavarri note, March 15, 2023).

69) On March 17, 2023, radiologist Elizabeth Hosselkus, MD, reviewed Employee's CT scan. Dr. Hosselkus opined that the results of the imaging showed a normal sinus CT. (Hosselkus note, March 17, 2023).

70) On March 17, 2023, radiologist Joel Verbrugge, MD, reviewed a chest X-ray of Employee. He noted lungs were expanded and clear, cardio mediastinal silhouette and pulmonary vascularity

appeared normal with mild degenerative change present throughout the spine. He opined no acute cardiopulmonary process identified. (Verbrugge note, March 17, 2023).

71) On March 20, 2023, Employee conducted a pulmonary function test lab with pulmonologist John Clark, MD. Dr. Clark stated his impressions, including a mild obstructive ventilatory abnormality, significant improvement with bronchodilator, total lung capacity as normal, and diffusing capacity of carbon monoxide at the lower range of normal. He also noted Employee coughed throughout testing. (Clark note, March 20, 2023).

72) On March 20, 2023, Employee stated she was struggling with long Covid symptoms and this past week her symptoms were worse. Mikayla DeSoto, PA, provided a work excusal for Employee stating Employee may return to work on March 27, 2023, due to Employee not feeling well. PA DeSoto noted this was not due to COVID. (DeSoto note, March 20, 2023).

73) On March 21, 2023, Thomas McLemore, MD, reviewed Employee's function test lab performed the day prior. Dr. McLemore's assessment of Employee noted her coughing during the evaluation contributed to variable results which raised questions for him. However, he found Employee did have chronic sinus issues with Paroxysmal Nocturnal Dyspnea (PND) a condition which results in shortness of breath during sleep. He recommended a follow-up with an ENT for surgical intervention but in the interim, that Employee remain on a Flonase regimen. He made no findings or correlations to COVID-19. (McLemore note, March 21, 2023).

74) On March 28, 2023, Employee was seen by behavioral psychiatric provider, Jonathan Benaknin, DO. Dr. Benaknin assessed Employee with a moderate risk level for anxiety and depressed mood based on her representations of COVID infections, difficulty at work, and recent memory issues. Dr. Benaknin recommended Employee seeing a therapist, antidepressants, and Duloxetine. (Benaknin note, March 28, 2023).

75) On March 30, 2023, Dr. Smith reviewed reports from Employee's consults with pulmonology and behavioral health specialists. Employee's medications were modified based on recommendations from her consults. Dr. Smith issued a work excusal for Employee from March 27 to April 3, 2023, due to recurrent illness, appointments, and legal counsel. Employee also requested a light duty accommodation starting on April 4, 2023. (Smith note, March 30, 2023).

76) On March 30, 2023, Christina Darby, MD, indicated that she believed Obstructive Sleep Apnea (OSA) was the cause of Employee's sleep issues. Dr. Darby based her determination of chronic insomnia on the following: untreated OSA, inadequate sleep hygiene with too much time

in bed, the potential for contributing underlying mood disorder, psychophysiological insomnia components as secondary to the previously listed factors, and a history of hypothyroidism, long Covid-19 symptoms, allergies, migraine variant, anxiety/depression, and a BMI of 34. Dr. Darby recommended Employee treat her physiologic sleep disruptors, address her psychosocial factors with an appropriate provider, and work on better sleep hygiene. (Darby note, March 30, 2023).

77) On April 3, 2023, Dr. Kirkham and Loretta Lee, MD, internal medicine, saw Employee with Dr. Kirkham focusing on Employee's chronic pain and Dr. Lee focusing on Employee's internal medicine complaints. Dr. Kirkham dictated the report and Dr. Lee agreed with his findings and provided her input, where necessary. Dr. Kirkham previously saw Employee on October 12, 2022, for an IME. Dr. Kirkham also provided a chart review on December 27, 2022, for Employee. The purpose of the IME was to diagnose five issues for Employee: (1) Covid infection on November 9, 2020; (2) COVID vaccination on May 18, 2021, and June 15, 2021; (3) Positive Covid home test on May 27, 2022, with corresponding negative PCR test on same day; (4) Covid infection on December 27, 2022; and (5) Diffuse widespread pain. In his discussion and recommendation, Dr. Kirkham reiterated that it is well established in medical literature that Covid infections can cause a persistent state of ill health termed long Covid or Post-Covid-19 syndrome. However, there are many challenges with such a diagnosis: including that there is currently no objective method of diagnosis for providers and that many of the symptoms of long Covid including fatigue, brain fog, headaches, and muscle aches, are nonspecific and found in both normal individuals and individuals with a multitude of comorbidities. They indicated based on medical literature, the duration of long Covid is difficult to find but in many cases, symptoms subside in a matter of months. Dr. Kirkham further noted Employee did not begin reporting symptoms for her November Covid infection until eight months after the infection and shortly after she received the vaccine. In his opinion this delay in symptoms is not consistent with long Covid. Typically, long Covid patients would be symptomatic within 14 days and those symptoms would simply not subside over the course of many months. It is unlikely for symptoms to appear eight months after an infection. Dr. Kirkham opined on a more probable than not basis, Employee's multitude of chronic symptoms, including chronic pain complaints, are not substantially caused by Covid infection or Covid vaccination and instead are substantially caused by non-Covid factors. These factors can be grouped into medical factors and psychosocial factors. Regarding medical factors for Employee's chronic pain the physicians opined that age, genetic factors, obesity, history of chronic pain, and lifestyle factors

including poor sleep, smoking, and lack of exercise were the cause of her chronic pain. Dr. Kirkham previously noted Employee displayed psychosocial factors that could be attributing to her need for medical treatment, such as history of anxiety and depression, poor expectations for improvement, self-behavior, disability conviction, tendency to perseverate on and overreport symptoms, misattribution of symptoms and difficulty managing stress. To validate his diagnosis, Dr. Kirkham noted Employee reported a near maximum score on the pain disability questionnaire. Employee reported her pain as a 10/10 but her demeanor during the exam did not indicate as such. He noted Employee felt Employer was retaliating against her increasing her anxiety and depression. When asked whether any of the Covid infections or vaccinations were the substantial cause of Employee's need for treatment, Dr. Kirkham stated with a positive infection a 14-day disability determination would be warranted, he also noted with the vaccine it is not uncommon for persons to experience 48-72 hours of illness that would impede their ability to work. He opined after those time frames, Employee's work would not be the substantial cause of any disability or need for medical treatment. Both physicians summarized the nuance of Employee's long Covid diagnosis by reference to the medical definition of long Covid, i.e., that a person experiencing long Covid is diagnosed as long Covid in the absence of an alternative diagnosis. They explained that in Employee's case, her chronic pain symptoms are better explained through her history of chronic pain and psychosocial factors rather than objective residual effects of Covid or the Covid vaccine. When asked what additional specialties would be required if a Second Independent Medical Exam were to be ordered, Dr. Kirkham believed because of Employee's myriad of symptoms a cardiologist, pulmonologist, gastroenterologist, neurologist, neuropsychologist, ENT specialist, and physical medicine specialist could all be warranted. He did note however, that a panel of all specialties would be costly and excessive. As to medical stability, Dr. Kirkham believed Employee was medically stable as of the date of the current IME. He based his opinion on his belief that factors other than Covid are contributing to her disability. He recommended she return to her current work with no restrictions. (Kirkham report, April 3, 2023).

78) On April 4, 2023, Employee requested a work note, and stated she was suffering from persistent symptoms related to long COVID. Employee believed she would be unable to work during the week due to her symptoms. (VanHoozer note, April 4, 2023).

79) On April 5, 2023, NP VanHoozer, wrote a work note excusing Employee from April 3 – April 7, 2023, with a return-to-work date of April 10, 2023. (VanHoozer note, April 5, 2023).

80) On April 25, 2023, Employee reported left side face pain including tingling in her left arm. NP Witteveen reassured Employee she did not see any signs or symptoms of stroke. She offered to have an MRI ordered on Employee's brain and cervical spine to assist future providers as necessary. (Witteveen note, April 25, 2023).

81) On April 27, 2023, Dr. McLemore noted that Employee's cough was significantly contributed to by chronic sinus issues and postnasal drip. He noted her sinus CT scan on March 17, 2023, was unremarkable. He ordered a CT scan of Employee's thorax to rule out any abnormalities in the chest that may be causing Employee's cough. (McLemore note, April 27, 2023).

82) On April 27, 2023, a CT scan of Employee's Thorax was conducted and reviewed by diagnostic radiologist Rhonda Smith, DO. Dr. Smith also reviewed previous imaging of Employee's chest on March 17, 2023, and September 14, 2020, for comparison. Dr. Smith found the most recent imaging to be normal without abnormality. (Smith note, April 27, 2023).

83) On April 29, 2023, Employee's CT scan of her cervical spine was reviewed by radiologist, Todd Stephens, DO. For comparison, Dr. Stephens also reviewed previous imaging of Employee's chest from June 19, 2009. Dr. Stephens found mild to moderate bilateral stenosis on C4-7 vertebrae, but did not expound as to cause. (Stephens note, April 29, 2023).

84) On April 29, 2023, Employee's CT scan of her chest was reviewed by Dr. Smith who reviewed previous imaging of Employee's chest on June 19, 2009 for comparison. Dr. Smith noted no abnormal findings. (Smith note, April 27, 2023).

85) On October 4 and 5, 2023, Dr. Liu performed left and right sided stellate ganglion blocks to address Employee's headaches. (Liu note, October 4, and 5, 2023).

86) On October 27, 2023, Employee reported a mental stress injury based upon emotional abuse from her supervisor. Employee claimed she developed post-traumatic stress disorder. (First Report of Injury, November 3, 2023).

87) On November 27, 2023, Mark Kimmel, PhD., psychologist, performed a neuropsychological evaluation on Employee as part of a panel SIME. Dr. Kimmel noted under Employee's "current symptoms" she "felt overmedicated" he did not endorse her opinion of overmedication in his report. Dr. Kimmel performed neuropsychological tests on Employee and noted under "Motivation/Credibility" Employee's symptom validity testing indicated she may not have put forth her best effort on cognitive tests. Under the "Self-Reported Inventory" tests Dr. Kimmel

opined Employee's profile suggests an individual with longstanding personality pathology who is overstating the nature and extent of her emotional and psychological problems. Intense somatic preoccupation, depression, anxiety, and disordered thinking are prominent problems. There is also a high likely to be a high degree of manipulation of others through the expression of somatic complaints. He diagnosed Employee with Conversion Disorder (Functional Neurological Symptom Disorder), Other Specified Depressive Disorder, Unspecified Personality Disorder, and suboptimal effort. In his opinion, Employee's need for medical treatment was predominantly nonindustrial. He expounded recovery from Covid-19 can be protracted and can require medical care from various specialties; however he found Employee's need for treatment 60 days after her initial Covid diagnosis was likely due to her conversion disorder as Employee has an intense focus on a variety of cognitive and emotional symptoms. He explained her November 9, 2020 Covid exposure became the convenient focus for her pre-existing personality disorder and tendency to somaticize psychological needs and problems. In allocating liability, Dr. Kimmel believed the November 9, 2020 injury was responsible for 20 percent of her need for ongoing treatment as it exacerbated her underlying pre-existing psychological problems. He noted the other 80 percent of liability could not be attributed to work. In regard to future treatment, he opined Employee's mixed personality disorder and entrenched conversion disorder are relatively treatment resistant. He noted cognitive behavioral therapy is one form of treatment which might address her dysfunctional beliefs about her disability status but he was reluctant to predict a positive result from said treatment. (Kimmel SIME report, January 5, 2024).

88) On November 29, 2023, SIME physician Leon Zeitzer, MD, otolaryngologist, reviewed over 600 pages of medical reports and performed a physical examination which included ontological, audiological, and olfactory related testing, all which returned normal. Dr. Zeitzer opined within medical probability Employee's claims of hearing loss and tinnitus due to the Covid vaccine and/or infection are without foundation. He found from an Ear, Nose and Throat (ENT) perspective Employee did have an ENT related disability that required treatment. He noted no aggravation or exacerbation of a preexisting injury and deemed Employee medically stable. (Zeitzer SIME report, December 1, 2023).

89) On December 4, 2023, SIME physician Leon Barkodar, MD, neurologist, performed a physical examination of Employee and reviewed over 600 pages of medical record. In his report he noted Employee was to undergo a neuropsychological examination in the near future and

deferred his opinion until after the neuropsychological evaluation. He requested the evaluation so he could better delineate cognitive and psychiatric testing as well as more detailed validity measures. (Barkodar SIME report, December 27, 2023).

90) At the time of Dr. Barkodar's evaluation, Dr. Kimmel's neuropsych evaluation report had not been published. Kimmel's report was published and served on the Division on January 5, 2024. (Observations).

91) On January 8, 2024, Dr. Banks recommended an EMG study to rule out pathology other than carpal tunnel syndrome for Employee. He noted Employee presents with highly atypical symptoms and lack of objective examination findings. He reported Employee wanted to discuss her TMJ and workers' compensation issues. She wanted a referral for TMJ pain that she says is work related and wants to get trigger point injections. Dr. Banks noted TMJ is not neurologic but would assist in any referral, he also noted there is no indication for additional neurological work up or follow. He thought behavioral health and psychiatry should remain involved in her care based upon her recent diagnosis of Conversion Disorder. (Banks note, January 8, 2024).

92) On January 16, 2024, Employee emailed her resignation to Employer. (Email from Natasha Zanosko to Patricia Seizys, January 16, 2024, 3:29 PM).

93) On January 17, 2024, Patricia Seizys, Senior Human Resources Manager for Southcentral Foundation, responded "Your resignation of employment is accepted effective today." (Email from Patricia Seizys to Natasha Zanosko, January 17, 2024, 10:44 AM).

94) On January 18, 2024, Employee reported she had worsening severe left jaw joint pain on January 9, 2024 from her anxiety from work stress. (First Report of Injury, January 18, 2024).

95) On January 19, 2024, Dr. Barkodar provided a supplemental report to his December 4, 2023 SIME report. Dr. Barkodar reiterated his opinion he found no neurologic industrial diagnoses as a result of Employee's vocation. When asked to list all causes of Employee's disability or need for treatment, he responded, "There are no neurological causes for Natasha Zanosko's disability or need for medical treatment. The causes appear to be psychological in nature specifically functional neurologic symptom disorder also known as conversion disorder." (Barkodar supplemental SIME report, February 5, 2024).

96) On January 31, 2024, Employer denied all benefits associated with Employee's January 18, 2024 report of injury. Employer contends Employee seeks benefits for TMJ/face/jaw pain related to mental stress and/or other events from September to October 2023. Employer notes Employee

has an October 17, 2023 work injury claim pertaining to left ear and face pain. Employee also has an October 27, 2023 mental stress claim stemming from work on or about March 20, 2023. Employer contends no evidence has been presented by Employee that a "new" work injury occurred. Employer relies on the December 12, 2023 SIME opinion of Dr. Kimmel. He opined any limitations Employee is experiencing are due to many critical nonindustrial factors that are responsible for her psychosomatic complaints including personality disorder, somatization, and secondary gain. Employer asserts Employee making "new" claims are part of an ongoing course of conduct related to her diagnosis of Conversion Disorder. (Controversion Notice, January 31, 2024).

97) On February 6, 2024, Employee called the Division with questions regarding signing medical releases by Employer. Employee said she received an email from Janel Wright regarding mediation but planned on asking to cancel the mediation and proceed with a hearing instead. (Agency file: Communications Tab, Phone Call tabs, February 6, 2024).

98) On February 23, 2024, Dr. Kimmel provided a supplemental report to his November 27, 2023 SIME report. Dr. Kimmel indicated in his previous opinion he believed Employee's disability was 80 percent related to her personality disorder and somatization, he believed 20 percent was likely due to her brief periods of Covid. Upon review of Drs. Zeitzer and Barkodar's opinions, Dr. Kimmel determined no part of Employee's disability was work related as neither Zeitzer nor Barkodar attributed any neurologic issues to Employee's original Covid infection. He explained, "after review of additional records, it appears the remaining 20% was due to personnel issues in her belief that she had been mistreated by her employer." Responding to Employee's question as to whether she could return to full time employment, Dr. Kimmel stated, "I do not believe that there are any work restrictions from a neuropsychological basis that would prevent her from returning to full-time employment." (Kimmel supplemental SIME report, February 27, 2024).

99) On March 28, 2024, the parties attended a prehearing conference telephonically. The parties mutually agreed to an eight hour oral hearing on June 27, 2024, deadlines were set for the presentation of evidence, and briefing. (Prehearing Conference Summary, March 28, 2024).

100) The parties mediated this case with assistance from Amanda Eklund. Eklund is a former Chief of Adjudications for the Alaska Workers' Compensation Division and currently represents

injured workers and conducts mediations to resolve workers' compensation cases. (Agency file; experience; knowledge).

101) On May 7, 2024, Employee emailed Employer's attorney, after Employee showed up for mediation and left. Employee believed she would be offered $80,000; Employer offered $25,000. In Employee's email she stated, "I reject the 25 g but thanks see you in June." (Email from Natasha Zanosko to Michelle Meshke, May 7, 2024, 12:53 PM).

102) On May 14, 2024, the parties submitted a fully executed C&R agreement. Employee initialed every page and signed the last page of the agreement before a notary. The C&R agreement provided her $30,000 in exchange for waiving all benefits. The designee reviewed the agreement and observed the following on page 9:

> . . . .
>
> 9. MEDICARE
>
> . . . .
>
> Employee will receive funds ($15,000.00) that can be used for medical treatment for his back strain condition.
>
> . . . .

The designee noted the agreement predominantly centered around Employee's Covid infections and their sequelae, not a back condition; further, Employee never filed a claim for a back strain and she is female, not male. Further, the settlement agreement was for $30,000 not $15,000. (Observations, Compromise and Release Agreement, May 14, 2024).

103) On May 16, 2024, the designee issued the following letter:

> The Alaska Workers' Compensation Board (board) has reviewed the compromise and release agreement filed on May 14, 2024. The board may only approve a settlement agreement if a preponderance of the evidence demonstrates approval is in the employee's best interest. 8 AAC 45.160(a).
>
> The settlement agreement is not approved at this time for the following reasons:
>
> > Unjustified or unexplained waiver of medical benefits, possible typographical error.
>
> On page 9 of the parties' agreement under the "9. MEDICARE" heading, second paragraph it states, "used for medical treatment for his back strain condition." As there is no medical reports to indicate a back injury it is presumed this is a typographical error requiring correction prior to approval by the board.

> By copy of this letter, we advise the parties we will reconsider the agreement upon our own motion if the agreement is rewritten to include the item(s) noted above. The rewritten agreement must be signed and resubmitted.
>
> Otherwise, upon a party's request we will schedule a hearing to determine whether the agreement should be approved. A party may request a hearing by calling the board's office at the telephone number above. If a hearing is scheduled, any non-local party may participate telephonically; however, the parties must pay their own long distance charges. Parties must, in advance of the hearing, advise the board of telephonic participation. (Compromise and Release Agreement Rejection Letter, May 16, 2024).

104) On May 17, 2024, the parties re-submitted a fully executed C&R agreement with corrections based upon the May 16, 2024 rejection letter. Employee initialed every page and signed the last page of the agreement before a notary. The C&R agreement provided her $30,000 in exchange for waiving all benefits. The agreement below has been edited for clarity and brevity:

> COMPROMISE AND RELEASE AGREEMENT
>
> 1. INTRODUCTION
>
> The parties whose signatures appear below do by this Compromise and Release agree to settle a disputed claim arising out of an injury to the employee on or about 11/9/20, 5/27/22, 12/27/22, 3/20/23, 11/17/23, 1/9/24, which have been joined. On the date of injury, the employee was employed as case management support and was 48 years of age (DOB: 6/24/72, SSN: 469-88-2928). The employee also had a work injury on 7/1/19.
>
> 2. PAYMENT HISTORY
>
> The employee's compensation rate is $515.13 per week based on gross weekly earnings of $773.50. As of 5/6/24, for the 11/9/20 work injury, $9,713.88 in temporary total disability benefits and $39,984.61 in medical benefits; for the 12/27/22 claim: $2,879.62 in TPD, $2,708.34 in TTD, $125.37 in interest, and $1,395.47 in penalty; for the 10/17/23, $5,547.77 in TTD and $684.63 in medicals; for the 7/1/19 claim $1,451.99 in medical benefits. Compensation payments have already been electronically reported to the Division, and they are incorporated herein by reference.
>
> 3. CLAIM HISTORY
>
> *[Employee's medical history as recounted in the Compromise and Release is substantially similar to the factual findings in this decision.]*

4. DISPUTE

It is the position of the employee that she contracted "Long-Covid" during the course and scope of employment, resulting in numerous chronic and disabling symptoms. The employee relies on Dr. Liu and other treating physicians.

It is the position of the employer and carrier that the employee's symptoms are better explained by other non-Covid related conditions, including pre-existing psychological conditions and personality disorders. The employer relies on the opinions of Drs. Kirkham, Lee, Barkodar, Kimmel, and Zeitzer.

5. COMPROMISE AND RELEASE OF CLAIMS

Based upon the foregoing disputes, the parties agree to the settlement of this claim as follows:

A. Consideration

The employer and carrier agree to pay the employee the sum of $30,000.00 [THIRTY THOUSAND AND 00/100 DOLLARS] without any offset or deduction. In addition, the employer will hold harmless and indemnify the employee for any lien asserted by Medicaid.

In consideration thereof, the employee accepts said compromise funds in full and final settlement of all claims for the benefits outlined below in accordance with the terms and conditions described in this agreement.

B. Claims for Compensation Benefits

The employee waives her entitlement to any and all past, present, and future compensation benefits that might be due under the Alaska Workers' Compensation Act, including compensation for temporary total disability, temporary partial disability, permanent partial impairment, and permanent total disability, as well as penalties and interest thereon, arising from employment with the employer.

The employee further waives any claim for a compensation rate adjustment that could be asserted under any provision of the Alaska Workers' Compensation Act.

. . . .

F. Latent of Undiscovered Injuries or Conditions

The employee understands and acknowledges that her condition may progress, worsen, be greater in degree, or different in kind or character than that which is known at present, and that there may be latent or undiscovered injuries associated with said incident. Nonetheless, the employee acknowledges her intent to release the employer and carrier from any and all liability for the benefits waived through this agreement.

G. Right to a Hearing and/or Opportunity for Medical Evaluation

The employee understands and acknowledges that, had this case not settled, she could have had the opportunity to have the case heard on the merits at a hearing before the Alaska Workers' Compensation Board and that the Board may have ordered a second independent medical evaluation under AS 23.30.095 with a doctor or doctors of its choice or that the Board may have ordered an evaluation with a duly qualified physician under AS 23.30.1l0(g).

. . . .

9. MEDICARE

This settlement does not meet the CMS review threshold and the parties have taken Medicare's interests into consideration. Employee is not anticipated to require lifetime care for her work-related injuries. Employee is not a Medicare beneficiary and has not applied for Social Security Disability benefits. Thus, no "Medicare Set-Aside" account is appropriate in this case.

Employee will receive funds ($15,000.00) that can be used for medical treatment for her long Covid condition as a result of this settlement. [*This sentence was corrected based on the prior rejection letter*]. Employee understands and agrees that treatment related to long Covid should be paid by Employee from the portion of proceeds of the settlement funds which are allocated to closure of medical benefits. Whether or not future treatment is related to the work injury is based on the determinations of Employee's physicians.

Employee further agrees and understands that Medicare will not pay for Medicare-covered medical expenses or Medicare-covered prescription drug expenses related to long Covid until the medical settlement funds have been exhausted. Employee will place the funds allocated for medical benefits in an interest bearing bank account. Employee also agrees to keep records of how she spends the money in case it is needed in the future to demonstrate exhaustion.

. . . .

RELEASE ACKNOWLEDGEMENT

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, Natasha Zanosko, being first duly sworn, depose and say:

I am the employee named in this Compromise and Release Agreement. I have read the agreement and understand that this is a release of certain workers' compensation benefits. I represent that I am fully competent and capable of understanding the

> benefits I am releasing and the binding effect of this agreement. To the best of my knowledge, the facts have been accurately stated in this Compromise and Release Agreement. No representations or promises have been made to me by the employer or carrier or their agents in this matter which have not been set forth in this document, and I have not entered into this agreement through any coercion or duress created by the employer or carrier or their agents in this matter.
> I am signing this agreement freely and voluntarily because I agree that settlement is in my best interest.
>
> (signed)
> Natasha Zanosko, Employee
>
> SUBSCRIBED and SWORN to before me this 16th day of May 2024.
>
> (Notary Signature)
> (Compromise and Release Agreement, May 17, 2024).

105) The designee reviewed the settlement agreement and all medical records in Employee's file. The designee determined Employee's likelihood of success at hearing was minimal based on multiple medical opinions that did not attach Employee's symptoms to specific work injuries. Further, the designee noted all three SIME opinions attributed psychosocial factors as the substantial cause of Employee's need for treatment and not work, therefore settling her case for $30,000, $15,000 of which was to cover future medical benefits taking Medicare's interests into consideration, and was in Employee's best interest. (Experience, judgment).

106) The hearing set for June 27, 2024 was cancelled upon approval of the parties' agreement. (Observations).

107) On September 26, 2025, Brian Trimble, MD, neurologist, diagnosed Employee with trigeminal neuralgia. He noted Employee had been having spasms of pain on the left side of her face that began in 2022, she stated she was recovering from Covid when she began to have symptoms. He noted he did not check facial sensation but based on the intermittent nature and triggers of pain Employee reported, he suspected she had trigeminal neuralgia. He recommended that she try carbamazepine for pain. (Trimble note, September 26, 2025).

108) On September 26, 2025, Employee called the Division, she stated she was misdiagnosed and requested paperwork to set aside her C&R agreement and an attorney list. (Agency File, Communications Tab, Phone Call, September 26, 2025).

109) On October 30, 2025, Dr. Trimble indicated Employee's pain on carbamazepine had not diminished for her trigeminal neuralgia, he recommended increasing her dosage. He maintained

Employee's reporting of intense intermittent pain in her face with specific triggers was likely trigeminal neuralgia. He noted a previous MRI in 2023 did not indicate any intracranial abnormalities. At this appointment Employee requested treatment for chronic headaches that started in 1999 when she was in a four-wheeler accident. Dr. Trimble recommended she trial prolotherapy. (Trimble note, October 30 2025).

110) On November 21, 2025, Employee called Dr. Trimble's office regarding her left trigeminal neuralgia and chronic headaches. Dr. Trimble suspected Employee was not taking the prescribed carbamazepine because she reported increased pain after Dr. Trimble increased her dosage at her last appointment. Employee stated she did not want to proceed with prolotherapy and demanded Botox; Dr. Trimble switched her upcoming prolotherapy appointment to a Botox appointment. (Trimble note, November 21, 2025).

111) On December 12, 2025, Employee reported an injury to her head from exposure to loud noises, extreme climate, bright lights, and overuse of her mouth to speak at her job. Her reported date of injury was April 25, 2023. (First Report of Injury, December 12, 2025).

112) On February 17, 2026, Employee filed a claim for an injury that occurred on April 25, 2023. Employee stated: "I was put in a room with no heat ac blowing full force on my face and neck exacerbating symptoms, required to sit and not get up manager outside talking room watching, Heat taken away accomidations [sic] pulled resulting in termination after symptoms exacerbated from flying to SEME IN CALI." Employee requested TTD, TPD, PTD, PPI, Transportation costs, medical costs, penalties, and interest. (Claim, February 17, 2026).

113) On February 19, 2026, Employer denied all benefits. Employer reasoned that the claim was barred under AS 23.30.100 or otherwise barred by law or equity. Further, Employee waived all past and future workers' compensation benefits stemming from her employment with Employer when she entered into Compromise and Release Agreement, which was approved by the Board on 5/20/2024 in AWCB No. 202123178M. There is no evidence of an injury on 4/25/23 as defined by AS 23.30.395(24). Employee's claims arise from the same events and symptoms addressed in the Board-approved Compromise & Release in AWCB No. 202123178M. (Controversion Notice, February 19, 2026).

114) On February 26, 2026, Employee filed a petition to set aside her May 20, 2024 C&R agreement. (Petition, February 26, 2026).

115) On March 3, 2026, Dr. Banks provided an addendum opinion to his January 8, 2024 opinion. He noted Employee underwent an EMG which did not show any potential organic explanation for her hemisensory loss on the left side of her face. Dr. Kimmel's SIME opinion was added to Employee's chart to accurately reflect her psychiatric conditions with no noted neurologic disorder present. (Banks addendum report, March 3, 2026).

116) On March 10, 2026, Employer filed a petition to dismiss Employee's February 17, 2026 claim for benefits under the same rationale articulated in its February 19, 2026 Answer. (Petition, March 10, 2026).

117) On March 24, 2026, Employee filed a petition to set aside the May 20, 2024 C&R Agreement. Under reason, she stated, "Mutual Mistake of Fact(s), Fraud & Misrepresentation, and Duress & Coercion." (Petition, March 24, 2026).

118) On April 13, 2026, Employer answered Employee's petition to set aside her C&R. "The employer, South Central Foundation, and its workers' compensation insurer carrier, by and through counsel of records, hereby respond to the employees' 3/23/2026, Petition to Set Aside the Compromise and Release Agreement as follows: The employee twice voluntarily executed a Compromise and Release Agreement that specifically affirmed that she was "fully competent and capable of understanding the benefits I am releasing and the binding effect of this agreement." She affirmed before a notary that to the best of her knowledge, "the facts have been accurately stated in this Compromise and Release Agreement. No representations or promises have been made to me by the employer or carrier or their agents in this matter which have not been set forth in this document, and I have not entered into this agreement through any coercion or duress created by the employer or carrier or their agents in this matter." See Board-approved Compromise and Release Agreement. She also confirmed that she was entering the agreement "freely and voluntarily." *Id*. There was no fraudulent or material representation by the employer, carrier, or their agents that induced the employee to execute the Compromise and Release Agreement. Further, the employee was not under duress or coerced by the employer on the two separate occasions that she voluntarily executed the Compromise and Release Agreement. (Employer's Answer to Employee's Petition to Set Aside C&R, April 13, 2026).

119) On April 30, 2026, the parties attended a prehearing conference telephonically. The parties orally stipulated to a June 24, 2026 hearing on the following issues: Employee's February 18, 2026 & March 24, 2026 Petitions to set-aside the May 20, 2024 C&R and Employer's March 10, 2026

Petition to Dismiss. (Prehearing Conference Summary, April 30, 2026).

120) On May 4, 2026, Employee filed a petition for medical costs. Under "other" she stated "amend medical 601, 197, 057" [sic]. Employee included a ledger for medical activity she underwent from January 1, 2020, through August 31, 2023, with Southcentral Foundation. She also included a Client History Profile Report from the Department of Health and Social Services for Medicaid billed Services from February 1, 2023, to April 27, 2026. (Petition, May 4, 2026).

121) On June 1, 2026, Employer responded to Employee's May 4, 2026 petition and denied any medical benefits being owed. Employer raised affirmative defenses under AS 23.30.100, and noted Employee failed to provide medical reports and a bill simultaneously for any outstanding medical costs, and Employee's request for medical costs was barred due to her waiver for all past and future medical benefits when she signed the May 20, 2024 C&R agreement. (Employer's Answer to Employee's May 4, 2026 Claim).

122) On June 22, 2026, Employer filed its hearing brief. Employer contends a party seeking to void a C&R for fraud or misrepresentation must show by clear and convincing evidence: (1) a misrepresentation occurred; (2) which was fraudulent or material; (3) which induced the party to enter the contract; and (4) upon which the party was justified in relying. It is Employee's burden to present clear and convincing evidence that fraudulent or material misrepresentations were made to her, upon which she relied, and which induced her to sign the agreement. For Employee to show she was under duress she must by clear and convincing evidence: (1) the party voluntarily accepted the terms of another; (2) circumstances permitted no other alternative, and (3) such circumstances were the result of coercive acts by the other party. Employer notes Employee believes she was "overmedicated" when she signed the agreement and therefore, it should be set aside. Employer argues Employee has presented no evidence to support this contention or any other contention that would justify setting aside the C&R. Employee throughout the pendency of her case and throughout the settlement process, represented she was suffering from Long Covid. Employee over a year after the agreement was signed and approved is now contending she was diagnosed with trigeminal neuralgia, and her entire case should be classified as an exacerbation of a preexisting condition. Employer notes Employee was not diagnosed with trigeminal neuralgia until after the agreement was signed, and under the terms of the agreement, Employee waived her right to contest any latent of undiscovered conditions related to her work with Employer. Further, Employer contends Employee's most recent claim should be denied as the injury date was in April

of 2023, and Employee failed to report said injury until three years later, and Employee's claim is barred based upon the parties' May 20, 2024 C&R. (Employer's Hearing Brief, June 22, 2026).

123) Employee did not file a formal brief. She contends multiple grievances against Employer for failing to preserve her accommodations, forcing her to resign, and difficulties she has encountered receiving care through Southcentral Foundation. Employee believes Employer's attorney is directly responsible for her resignation, and believes Employer's attorney is actively involved in the denial of her medical treatment. Employee recently settled a long term disability suit between herself and Employer, unrelated to workers' compensation and is actively in litigation for short term disability against Employer. (Observations; judgment).

124) At hearing Employee testified the C&R agreement should be set aside because she was "over-medicated to the hilt," when she signed the agreement. She contends Employer's attorney and the mediator indicated she was unlikely to be successful at hearing, and she relied on that information when signed the agreement. She stated she did not have any other options as she was homeless and without money because she had been fired from her job. Employee continued to reiterate the point that she was terminated in October of 2023, despite her resignation email in January of 2024 and confirmation email from her supervisor accepting the resignation. Employee strongly believes her medical records and personnel records have been altered at the direction of Employer's attorney, without evidence. Employee contends she was not diagnosed with trigeminal neuralgia at the time of the agreement and prior to the settlement agreement her diagnosis of Long Covid was ultimately incorrect. Since the agreement resolved what was predominantly Covid related symptoms and complaints from Employee, she believes there has been a factual mistake that would require the agreement to be set aside. She stated at hearing, she did not read the agreement either time it was presented to her. Instead she said she initialed every page and signed both agreements in front of a notary having not read the agreement. (Record, June 24, 2026).

125) At hearing Employer argued Employee failed to prove by clear and convincing evidence a misrepresentation occurred in the agreement, coercion occurred, or Employee was under duress in signing the agreement. Employer contends Employee has continually maintained she was over medicated, but Employer notes Dr. Kimmel's report indicates Employee believed she was overmedicated but Dr. Kimmel did not endorse that opinion. Employer notes Employee's medications were increased after the agreement in her medical records which runs contrary to the

idea Employee was overmedicated. Pertaining to duress, Employer noted Employee was receiving disability at the time of the agreement and has elected to resign from her employment creating her financial situation. Employer argued Employee's multiple lawsuits pertaining to her Guardian Life Insurance policy long term disability, and short term disability, have intermixed into her arguments at hearing and are not relevant to the issue as to whether her C&R should be set aside. Employer stated she had no role in Employee's employment relationship with Southcentral Foundation and that issue is not relevant to the issues before the Board. Employer requests a dismissal of Employee's most recent claim as time barred. It notes Employee has filed over 10 claims in this matter and has previously been engaged in the workers' compensation process, so she is well aware of how to file reports of injury and claims, and the most recent claim should be dismissed. Her attempt to recharacterize symptoms that she previously attributed to long Covid to a repetitive use injury from her job duties to "aggravate" various pre-existing joint and chronic pain conditions is barred by the terms of the C&R. (Record, June 24, 2026).

126) Employee is not credible. It is clear from Employee's testimony she harbors significant ill will towards Employer and believes Meshke is responsible for many if not all issues she faced during her time with Employer. Employee lies to her advantage and continued to do so at hearing. When faced with questions that erode her narrative or run contrary to her statements under oath, she would respond with "I do not recall." Employee has emailed the Division over 30 times in the past six months with hundreds of documents, rarely providing them in accordance with regulations. She has called the Division over 20 times with questions and demanding help with her litigation. Employee has accused Employer's attorney of fraud without evidence on multiple occasions, and Employee's relentless filing of irrelevant documents appears designed to harass Employer's attorney. Her representations that no one helped her and she was forced into a settlement agreement against her will are not reliable. (Observations, experience, judgment).

PRINCIPLES OF LAW

> **AS 23.30.001. Intent of the legislature and construction of chapter**. It is the intent of the legislature that
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> (1) this chapter be interpreted so as to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of this chapter;

> (2) workers' compensation cases shall be decided on their merits except where otherwise provided by statute;
>
> (3) this chapter may not be construed by the courts in favor of a party;
>
> (4) hearings in workers' compensation cases shall be impartial and fair to all parties and that all parties shall be afforded due process and an opportunity to be heard and for their arguments and evidence to be fairly considered.

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

In *Alaska Public Interest Research Group v. State*, 167 P.3d 27, 35-37 (Alaska 2007) (*AKPIRG*), the Court stated, "The legislature may constitutionally delegate some adjudicative power to an executive agency, but it may not delegate judicial power." "Neither the Appeals Commission nor the Board has jurisdiction to hear any action outside of a workers' compensation claim."

In *Richard v. Fireman's Fund Ins. Co.*, 384 P.2d 445, 449 (Alaska 1963), the Alaska Supreme Court instructed the board of its duty with respect to an unrepresented claimant:

> 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.

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

> benefits under this chapter are payable for the disability . . . or the need for medical treatment if, in relation to other causes, the employment is the substantial cause of the disability . . . or need for medical treatment. . . .
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> **AS 23.30.012. Agreements in regard to claims.** (a) At any time . . . after 30 days subsequent to the date of the injury, the employer and the employee . . . have the right to reach an agreement in regard to a claim for injury . . . under this chapter, but a memorandum of the agreement in a form prescribed by the director shall be filed with the division. Otherwise, the agreement is void for any purpose. Except as provided in (b) of this section, an agreement filed with the division discharges the liability of the employer for the compensation, notwithstanding the provisions of AS 23.30.130 . . . and is enforceable as a compensation order.
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> (b) The agreement shall be reviewed by a panel of the board if the claimant or beneficiary is not represented by an attorney licensed to practice in this state, the beneficiary is a minor or incompetent, or the claimant is waiving future medical benefits. . . .

Common law contract formation standards apply to workers' compensation settlement agreements to the extent the Act does not override them. The proof required for setting aside a C&R is "clear and convincing evidence." *Seybert v. Cominco Alaska Exploration*, 182 P.3d 1079 (Alaska 2008). "Clear and convincing evidence" is defined as "evidence that is greater than a preponderance, but less than proof beyond a reasonable doubt." It is evidence "which produces in the trier of fact a firm belief or conviction about the existence of a fact to be proved." *Buster v. Gale*, 866 P.2d 837, 844 (Alaska 1994). The board can set aside a settlement agreement based on fraud; to avoid a contract based on misrepresentation, the moving party must show: 1) a misrepresentation; 2) which was fraudulent or material; 3) which induced the party to enter the contract, and; 4) upon which the party was justified in relying. *Seybert*, 182 P.3d at 1095. The board cannot set aside a settlement contract based on factual mistakes. *Id.* at 1094.

No fiduciary relationship exists between a workers' compensation claimant and Employer's workers' compensation insurer because the Act created an adversarial system, such that claimants' and insurers' interests are in conflict. *Id.* at 1095. While regulations impose some duties on a workers' compensation insurer vis-a-vis a claimant, they do not impose a fiduciary relationship; regulations do not impose duties of loyalty and the disavowal of self-interest that are hallmarks of a fiduciary's role; an insurance contract between an insurer and employer does not create a fiduciary relationship between a claimant and an insurer. *Id.* at 1091. In evaluating a claimant's

assertion that a C&R should be set aside because of misrepresentation, the board is required to consider whether there was an intentional misrepresentation or a material representation on the employer's part. *Id*. at 1094.

> **AS 23.30.095. Medical treatments, services, and examinations . . . .**
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> . . . .
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> (c) A claim for medical or surgical treatment, or treatment requiring continuing and multiple treatments of a similar nature, is not valid and enforceable against the employer unless, within 14 days following treatment, the physician or health care provider giving the treatment or the employee receiving it furnishes to the employer and the board notice of the injury and treatment, preferably on a form prescribed by the board. The board shall, however, excuse the failure to furnish notice within 14 days when it finds it to be in the interest of justice to do so, and it may, upon application by a party in interest, make an award for the reasonable value of the medical or surgical treatment so obtained by the employee. When a claim is made for a course of treatment requiring continuing and multiple treatments of a similar nature, in addition to the notice, the physician or health care provider shall furnish a written treatment plan if the course of treatment will require more frequent outpatient visits than the standard treatment frequency for the nature and degree of the injury and the type of treatments. The treatment plan shall be furnished to the employee and the employer within 14 days after treatment begins. The treatment plan must include objectives, modalities, frequency of treatments, and reasons for the frequency of treatments. If the treatment plan is not furnished as required under this subsection, neither the employer nor the employee may be required to pay for treatments that exceed the frequency standard. The board shall adopt regulations establishing standards for frequency of treatments. . . .
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> **AS 23.30.097. Fees for medical treatment and services.** . . .
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> . . . .
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> (d) An employer shall pay an employee's bills for medical treatment under this chapter, excluding prescription charges or transportation for medical treatment, within 30 days after the date that the employer receives the provider's bill or a completed report as required by AS 23.30.095(c), whichever is later.
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> . . . .
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> (h) A provider of medical treatment or services may receive payment for medical treatment and services under this chapter only if the bill for services is received by the employer within 180 days after the later of
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> (1) the date of service; or
> (2) the date that the provider knew of the claim and knew that the claim related to employment.

> (i) A provider whose bill has been denied or reduced by the employer may file an appeal with the board within 60 days after receiving notice of the denial or reduction. A provider who fails to file an appeal of a denial or reduction of a bill within the 60-day period waives the right to contest the denial or reduction.

The legislature intended the 60-day appeal requirement to "set reasonable time limits to provide certainty for the employer and the insurer as they budget for the future." Anna Latham, *House Labor and Commerce Standing Committee* (*HLCSC*) *Minutes*, February 3, 2014; *Senate Labor and Commerce Standing Committee* (*SLCSC*) *Minutes*, April 1, 2014. It considered losses, clerical errors, and third-party payer systems to determine adequateness of the 60-day period. Andy Josephson commented further that the 180 requirement to submit bills, "it seemed reasonable that six months will allow sufficient time for providers to submit a bill." *HLCSC Minutes*, February 3, 2014.

Greve v. Costco Wholesale, AWCB Dec. No. 17-0121 (October 17, 2017) relying on *Brenner v. Workers' Compensation Appeals Board*, 856 A.2d 213 (Pennsylvania 2004), held a chiropractor's claim was not time barred because the insurer established an alternate "appeal" process through its explanation of benefits (EOB). The claimant submitted additional information to the insurer for review as stated in the EOBs. Because each of its EOBs informed the claimant he could submit additional documentation and explain why he disagreed with the reductions or denials and the claimant did so, the insurer could not later contend it was unreasonable for the claimant to follow that process.

Mills v. State of Alaska, AWCB Dec. No. 19-0108 (October 28, 2019) involved a provider's bill that was reduced by the employer. It held that the claimant did not appeal its bill's reduction within 60 days in accordance with AS 23.30.097(i). The claimant raised multiple grounds to set aside the reduction including the *Greve* alternate appeal process, the employer's denial not constituting a final judgment, leniency granted for unrepresented claimants, lack of prejudice to the employer, statute of limitations being "generally disfavored," increased litigation over disputed bills, and manifest injustice if claimant's request was denied. *Mills* found the claimant waited 16 months to appeal the denial and while the Board may exercise equitable powers, claimant's delay created the exact scenario in which the Alaska legislature codified AS 23.30.097(i) to avoid.

> **AS 23.30.100. Notice of injury or death.** (a) Notice of an injury or death in respect to which compensation is payable under this chapter shall be given within 30 days after the date of such injury or death to the board and to the employer.
> . . . .
> (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.

In *Tinker v. Veco, Inc.*, 913 P.2d 488, 492 (Alaska 1996), the Supreme Court held timely written notice of an injury is required because it lets the employer provide immediate medical diagnosis and treatment to minimize the seriousness of the injury and facilitates the earliest possible investigation of the facts surrounding the injury. A failure to provide timely notice that impedes either of these two objectives prejudices the employer. *Id.* However, where an employer has knowledge equivalent to a legally sufficient written notification, "it would require an exceptional set of circumstances for this difference in the form by which the information was conveyed to prejudice the employer." *Id.*

The exact date when an employee could reasonably discover compensability is often difficult to determine, and missing the short 30-day limitation period bars a claim absolutely, so for clarity and fairness, the 30-day period can begin no earlier than when a compensable event first occurs. *Cogger v. Anchor House*, 936 P.2d 157, 160 (Alaska 1997). It is not necessary that a claimant fully diagnose his injury for the 30-day period to begin. *Id*.

> **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
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> (1) the claim comes within the provisions of this chapter . . . .
>
> (b) If delay in giving notice is excused by the board under AS 23.30.100(d)(2), the burden of proof of the validity of the claim shifts to the employee notwithstanding

> the provisions of (a) of this section. . . .

For claims arising after November 7, 2005, employment must be the substantial cause of the disability or need for medical treatment. *Runstrom v. Alaska Native Medical Center*, AWCAC Decision No. 150 (March 25, 2011). If an employer produces substantial evidence work is not the substantial cause, the presumption drops out and the employee must prove all elements of the "claim" by a preponderance of the evidence. *Louisiana Pacific Corp. v. Koons*, 816 P.2d 1381 (*citing Miller v. ITT Services*, 577 P 2d. 1044, 1046). The party with the burden of proving asserted facts by a preponderance of the evidence must "induce a belief" in the fact-finders' minds the asserted facts are probably true. *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964).

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

The board's credibility findings and weight accorded evidence are "binding for any review of the Board's factual finding." *Smith v. CSK Auto, Inc.*, 204 P.3d 1001; 1008 (Alaska 2009). If the board is faced with two or more conflicting medical opinions, each of which constitutes substantial evidence, it may rely on one opinion and not the other. *DeRosario v. Chenega Lodging*, 297 P.3d 139, 147 (Alaska 2013). The board alone is charged with determining the weight it will give to medical reports. *Smith v. University of Alaska, Fairbanks*, 172 P.3d 782, 791 (Alaska 2007).

> **AS 23.30.135. Procedure before the board.** (a) In making an investigation or inquiry or conducting a hearing the board is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this chapter. The board may make its investigation or inquiry or conduct its hearing in the manner by which it may best ascertain the rights of the parties. . . .
>
> **8 AAC 45.160. Agreed settlements**. . . .
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> (b) All settlement agreements must be submitted in writing to the board, must be signed by all parties to the action and their attorneys or representatives, if any, and must be accompanied by form 07-6117.
>
> (c) Every agreed settlement must conform strictly to the requirements of

AS 23.30.012 and, in addition, must

> (1) be accompanied by all medical reports in the parties' possession, except that, if a medical summary has been filed, only those medical reports not listed on the summary must accompany the agreed-upon settlement;
> (2) include a written statement showing the employee's age and occupation on the date of injury, whether and when the employee has returned to work, and the nature of employment;
> (3) report full information concerning the employee's wages or earning capacity;
> (4) state in detail the parties' respective claims;
> (5) state the attorney's fee arrangement between the employee or his beneficiaries and the attorney, including the total amount of fees to be paid;
> (6) itemize in detail all compensation previously paid on the claim with specific dates, types, amounts, rates, and periods covered by all past payments;
> (7) include a written statement from all parties and their representative that
>> (A) the agreed settlement contains the entire agreement among the parties;
>> (B) [t]he parties have not made an undisclosed agreement that modifies the agreed settlement;
>> (C) the agreed settlement is not contingent on any undisclosed agreement; and
>> (D) an undisclosed agreement is not contingent on the agreed settlement; and
> (8) contain other information the board may from time to time require. . . .

ANALYSIS

1) Should the May 20, 2024 C&R agreement be set aside?

A workers' compensation C&R is a contract subject to interpretation like any other contract. *Seybert*. Common law contract formation standards apply to workers' compensation settlement agreement formation and rescission to the extent these standards are not overridden by statute. *Id*. A C&R may be set aside for fraud, misrepresentation, coercion or duress. *Id*. A C&R may not be set aside due to a unilateral mistake of fact. *Id*. A party seeking to set aside a C&R for fraud or misrepresentation must show by "clear and convincing evidence": (1) a misrepresentation occurred; (2) which was fraudulent or material; (3) which induced the party to enter the contract; and (4) upon which the party was justified in relying. *Id.*

A party seeking to set aside a C&R for coercion or duress must show by "clear and convincing evidence": (1) a party involuntarily accepted the terms of another, (2) circumstances permitted no

other alternative, and (3) such circumstances were the result of coercive acts by the opposing party. *Id.* In May of 2024 Employee and Employer entered settlement negotiations.

Employee initially sought mediation with Janel Wright, but due to Employee's desire to resolve her case quickly and Janel Wright's schedule, the parties settled on mediation with Amanda Eklund. The settlement agreement was signed by all parties initially but rejected by the Division due to a typographical error that required correction. A subsequent agreement was drafted and again signed by all parties. Employee accepted the terms as proposed by Employer. The agreement was ultimately approved. The C&R agreement became binding on the parties when approved on May 20, 2024. AS 23.30.012(b); 8 AAC 45.160.

According to the May 20, 2024 C&R's terms, Employee unambiguously waived all benefits, knowing her injury may be continuing and progressive, and understanding the extent of her injuries and disability may not have been fully known at the time she signed the agreement. She initialed each page in the lower right-hand corner; on page 11, Employee stated under oath that she had read the C&R, was capable of understanding it, knew it released certain benefits, accurately stated the facts, and was binding on her. She specifically agreed she entered into the agreement "I have read the agreement and understand that this is a release of certain workers' compensation benefits. I represent that I am fully competent and capable of understanding the benefits I am releasing and the binding effect of this agreement. To the best of my knowledge, the facts have been accurately stated in this Compromise and Release Agreement. No representations or promises have been made to me by the employer or carrier or their agents in this matter which have not been set forth in this document, and I have not entered into this agreement through any coercion or duress created by the employer or carrier or their agents in this matter. I am signing this agreement freely and voluntarily because I agree that settlement is in my best interest. Employee affirmed under oath that she signed the C&R "freely and voluntarily" because she thought it was in her "best interest."

Because Employee was waiving future medical benefits and was not represented by an attorney, her C&R required approval. AS 23.30.012(a), (b); 8 AAC 45.160. She had a right to settle this case, and she did. AS 23.30.012(a). Employee was aware she could go to a merits hearing on her claims as indicated in the Prehearing Conference Summary, which she attended, setting a date

for hearing. Employee at the instant hearing contended she was overmedicated and homeless and had no other options but to sign the agreement However, Employer noted, no physician found Employee to be overmedicated, and noted Employee was actively pursuing long term disability benefits during settlement negotiations. There is no evidence that Employer pressured Employee to sign the agreement. Employer made an offer, and on May 7, 2024 Employee rejected the offer of $25,000 and stated she would see Employer's attorney at hearing in June. Employee was aware she could proceed to hearing if a settlement was not reached. The parties ultimately settled Employee's case for $30,000. The contemporaneous evidence and Employee's hearing testimony demonstrate she made a deliberate choice between settling her case and continuing litigation. AS 23.30.012(a); *Seybert*; *Rogers & Babler*. Consequently, there is no legal basis for setting aside the C&R and on that basis her request will be denied.

Finally, if Employee was not aware of or misjudged the full extent of her future disabilities and impairment when she signed the C&R or was unaware she could not later change her mind about pursuing additional treatment, she made a mistake of fact. Employee contended at hearing she was "misdiagnosed" prior to the C&R and was correctly diagnosed with trigeminal neuralgia after the C&R was approved. A C&R may not be set aside because Employee made a mistake in her determination of a material fact. AS 23.30.012(a); *Seybert*. The agreement stated "her condition may progress, worsen, be greater in degree, or different in kind or character than that which is known at present, and that there may be latent or undiscovered injuries associated with said incident. Nonetheless, the employee acknowledges her intent to release the employer and carrier from any and all liability for the benefits waived through this agreement."

Employee reported pain in her jaw in 2022, treated for TMJ throughout 2023, and ultimately received a diagnosis of trigeminal neuralgia in September of 2025, well after the agreement was approved. At the time she signed the agreement she was aware she had filed a report of injury indicating face pain in 2024. She was well aware of her symptoms as she reported facial to pain to multiple providers prior to the agreement. The fact that her symptoms were given a new name after the agreement does not change her waiver of liability to Employer in signing the settlement agreement. Employee made a mistake of fact. She signed the proposed agreement, and admitted thereto at hearing. In the document she stated she read and understood it and was signing freely

and voluntarily. At hearing she testified she did not read the document either time it was presented to her and she just signed it. Choosing not to read the settlement agreement was another mistake of fact. Employee received a settlement check. No basis exists in fact or law to set aside the C&R in this case. *Buster*. Employee's petition to modify her agreement to a lump sum contingent on setting aside her C&R will be denied.

2) Should Employee's February 17, 2026 and May 4, 2026 claims be dismissed?

For compensation to be payable, the law requires an employee to report a work injury within 30 days, AS 23.30.100(a), and the failure to do so "absolutely" bars a claim, *Cogger*. Here, it is undisputed Employee first complained of her face hurting on January 5, 2022 to Dr. Smith, Employee filed a report of a jaw injury in January of 2024 related to work stress, and in December of 2025, Employee filed a report of injury to her face that occurred over two years prior on April 25, 2023. The first report of injury occurred before the C&R settlement agreement and the second report occurred over a year after the approved C&R. However, the law provides certain exceptions to claim preclusion when an injury is not timely reported. AS 23.30.100(d).

Under AS 23.30.100(d)(1), untimely injury reporting can be excused if the employer had "knowledge equivalent to a legally sufficient written notification." *Tinker*. No evidence suggests Employer did here. To the contrary, Employer contends Employee waived her right to medical benefits when she signed the C&R agreement in May of 2024. Employee on January 5, 2022 complained of face pain, on February 8, 2023 she complained of cold air blowing on her face causing sinus issues, on March 15, 2023 she complained of dusty conditions affecting her sinuses exacerbated by the cold air vent, on April 25, 2023 she reported to NP Witteveen she had facial pain and tingling in her left arm. These records were accounted for in the SIME process, and included as part of her settlement agreement. Additionally, even at the instant hearing, where Employee presented numerous complaints concerning her employment with Employer, the nature of the injury for which Employee sought compensation was unclear outside of her receiving a new diagnosis for trigeminal neuralgia by Dr. Trimble in September of 2025. However, Employee had reported jaw and face pain numerous times to other providers prior to her C&R. Employee's facial pain was considered as part of the settlement agreement.

Timely written notice of an injury is required because it lets an employer provide immediate medical diagnosis and treatment to minimize the injury's seriousness and facilitates the earliest possible investigation of the facts surrounding the injury. *Tinker*. A failure to provide timely notice that impedes either of these two objectives prejudices the employer. *Id.* Since Employee sought medical treatment well after she waived her right to request additional treatment through the C&R, a timely injury report might not have facilitated more immediate medical diagnosis or treatment. However, since Employee had previously complained of similar symptoms well before her settlement agreement and the current claim she has essentially forced Employer to re-litigate a settled issue. By waiting over a year after the settlement agreement to file a claim, and reporting a date of injury occurring over two years prior, Employee is forcing Employer to address settled issues or re-investigate settled claims. *Rogers & Babler*. Since Employer's ability to investigate Employee's claim was prejudiced and barred due to the settlement agreement, Employee's failure to timely report an injury will not be excused under AS 23.30.100(d)(1). *Tinker*.

An employee's failure to timely report an injury may also be excused under AS 23.30.100(d)(2) when, for "some satisfactory reason," a report could not be given. The Alaska Supreme Court has endorsed a "reasonableness" standard under this subsection where the 30-day period begins to run when "by reasonable care and diligence it is discoverable and apparent that a compensable injury has been sustained." *Cogger*. However, since the exact date when an employee could reasonably discover compensability is often difficult to determine, and missing the short 30-day limitation period bars a claim absolutely, for reasons of clarity and fairness, the 30-day period can begin no earlier than when a compensable event first occurs. *Cogger*. Employee initially reported facial pain in on January 5, 2022 to Dr. Smith. Employee was experiencing pain in her face which she attributed to cold air blowing on her face in her workspace in February of 2023. After settling her case, Employee is attempting to relitigate a settled issue by framing it now as an exacerbation of a pre-existing condition. Employee has attempted to fabricate a date of injury in April of 2023, despite reporting to her doctors months prior that she was symptomatic. Thus, since Employee did not report an injury within 30 days of her February8 2023 visit with Dr. Chavarri, her failure to report will not be excused under AS 23.30.100(d)(2) either. *Cogger*.

Alternatively, under AS 23.30.120(b), if the board were to excuse the delay in reporting, the burden

of proof of the validity of the claim shifts to the employee. AS 23.30.120(b). The presumption analysis does not apply. Employee is required to show by a preponderance of the evidence work was the substantial cause of her disability or need for treatment. On January 5, 2022 Dr. Smith indicated Employee's facial pain could be Bell's Palsy but it would be difficult to determine without a physical exam, Dr. Smith did not attribute Employee's pain to a work injury. Dr. Chavarri on February 8, 2023 performed a nasopharyngolaryngoscopy after Employee reported ear and sinus issues from a cold vent at work, with normal results. Employee on March 15, 2023 told Dr. Chavarri her symptoms were worse due to the cold air and CT scans were ordered. The CT scans were returned normal. On April 25, 2023 Employee reported left side face pain, NP Witteveen did not see any signs or symptoms of stroke. Dr. Trimble's September 26, 2025 diagnosis of trigeminal neuralgia was predicated on Employee's reporting of sudden and intermittent pain in her face which had begun in 2022. None of Employee's physicians directly attributed her work conditions, the cold air blowing on her face, as the substantial cause of her need for treatment. For these reasons, Employee cannot prove her claim.

Employer first objected to Employee's failure to report an injury in its February 19, 2026 Controversion Notice, and has consistently done so ever since, including at this, the first, hearing on Employee's February 17, 2026 claim. Consequently, Employee's failure to report an injury will not be excused under AS 23.30.100(d)(3) for Employer's failure to object. Given that no statutory exceptions excuse Employee's failure to report an injury, her February 17, 2026 claim will be dismissed.

Employee filed a "claim" for medical costs on May 4, 2026. Her claim was filed on a petition form but treated as a claim as Employee is an unrepresented litigant. An employer is required to pay an employee's medical bills within 30 days after the date it receives the provider's bill and a completed report as required by AS 23.30.095(c), whichever is later. AS 23.30.097(d). Providers may receive payment for medical treatment and services only if the bill for services is received by the employer within 180 days after the service date or the date the provider knew of the claim and knew that it was related to employment. AS 23.30.097(h)(1), (2). Within the Alaska Workers' Compensation system a "bill" includes a billing statement or HICF and supporting medical documentation to be compensable. AS 23.30.097(c); *Rogers & Babler*. The supporting medical

documentation should be submitted within 14 days following treatment; however, this deadline can be excused if the "interest of justice" so requires. AS 23.30.095(c).

It is unclear from Employee's claim what exactly she is requesting, Employee failed to provide medical reports or medical bills for the services rendered. Rather, she provided a ledger that indicated treatments, prescriptions, and costs. Many of the items listed were designated as "paid" on her provided documents. Employer asserted defenses under AS 23.30.100 and noted Employee waived her right to contest past and future medical benefits when she signed the May 20, 2024 settlement agreement. The documentation Employee provided does not indicate whether services were paid or not, and ultimately reimbursement for services would go to medical providers unless Employee paid for services out of pocket. This does not appear to be the case. Employee's May 4, 2026 claim for medical costs is denied.

CONCLUSIONS OF LAW

1) The May 20, 2024 C&R agreement should not be set aside.
2) The February 17, 2026, and May 4, 2026 claims should be denied.

ORDER

1) Employee's February 18, 2026, and March 24, 2026 petitions to set aside her C&R are denied.
2) Employee's February 17, 2026, and May 4, 2026 claims are dismissed.

Dated in Anchorage, Alaska on July 24, 2026.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Kyle Reding, Designated Chair

/s/
Bronson Frye, 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 Natasha D. Zanosko, employee / claimant v. Southcentral Foundation, employer; Alaska National Insurance Company, insurer / defendants; Case No. 202123178; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties by certified U.S. Mail, postage prepaid, on July 24, 2026.

/s/
Lorvin Uddipa, Workers' Compensation Technician