

ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

JEFFREY JUSTICE,

Employee,
Claimant,

v.

TOBIN & RIEDESEL LOGGING, LLC,

Employer,
and

ALASKA NATIONAL INSURANCE,

Insurer,
Defendants.

)
)
)
)
) FINAL DECISION AND ORDER

)
) AWCB Case No. 201913738

)
) AWCB Decision No. 26-0056

)
) Filed with AWCB Juneau, Alaska
) on August 3, 2026

Tovin & Riedesel Logging, LLC's, and Alaska National Insurance Company's (Employer) April 22, 2026 petition to dismiss under AS 23.30.110(c) was heard on July 7, 2026, in Juneau, Alaska, a date selected on May 26, 2026. A May 12, 2026 request for hearing gave rise to this hearing. Jeffrey Justice (Employee) appeared, testified, and represented himself. Attorney Martha Tansik appeared and represented Employer. The record closed on July 7, 2026 after Employee filed a May 12, 2026 email.

ISSUES

Employee contended because one of Member Sara Faulkner's companies uses Alaska National Insurance Company as a carrier, she should be disqualified from hearing his case based on a conflict of interest and to avoid the appearance of impropriety.

Employer argued there is no evidence Member Faulker is biased or has a conflict of interest. It contended Alaska National Insurance Company is one of the largest insurance companies in the state and they insure a lot of businesses and there would be no impact on Member Faulker's insurance dependent upon the outcome of this case. An oral order denied Employee's request to disqualify member Faulkner.

1) Was the oral order denying Employee's request to disqualify member Faulkner correct?

Employer contends Employee failed to request a hearing or additional time to prepare before the §110(c) deadline. It requests an order dismissing Employee's March 26, 2024 claim for failing to comply with §110(c).

Employee contends the Board failed to remind him of his §110(c) deadline. He contends he is unfamiliar with workers' compensation law, and it is unfair to expect him to remember a two-year deadline. Employee contends the two-year deadline is unfair. He requests an order denying Employer's petition to dismiss.

2) Should Employee's claim be denied for failing to timely request a hearing?

FINDINGS OF FACT

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

- 1) On October 4, 2019, Employer reported Employee injured his left eye on September 22, 2019. (First Report of Injury, October 4, 2019).
- 2) On February 5, 2020, Employee called the Alaska Workers' Compensation Division (Division) and spoke with staff:

EE received a letter from us indicating the ADJ had terminated his benefits. He wanted to know why we waited so long to let him know his benefits had been terminated. I explained that we do not terminate benefits. Anything related to finances/benefits is the purview of the ADJ. When they choose to let us know is up to them. I asked if he had a copy of his letter in front of him. The letter states that EE is to call the ADJ and gives both the name and the contact number to discuss any issues related to the termination of benefits. Gave EE the name and contact information for the ADJ. (Incident Claims and Expense Reporting System (ICERS), Communications, Phone Call, June 9, 2020).

3) On February 27, 2020, Employee called the Division and spoke with staff, EE wants another pair of glasses. Explained that we are a court. EE will need to speak with his ADJ about the glasses. EE lives in Juneau. He was not aware that there was an office besides the Anchorage WC office. I gave him the physical address of the Juneau office. . . .” (ICERS, Communications, Phone Call, February 27, 2020). Employee then went into the Juneau office:

EE came into the JNU office. EE says he needs new glasses but ADJ won’t talk to him about it, and ADJ just wants to settle his case. Explained EE doesn’t have to settle if he doesn’t want to. EE says he’s supposed to go to ANC on Wednesday to see the ophthalmologist, but is waiting for ADJ to arrange his travel. Explained that ADJ is not required to arrange travel, and usually EE would seek reimbursement for medical travel. EE says ADJ has been arranging his travel the whole time, and has agreed to do so for this trip too. EE said if ADJ makes him seek reimbursement, he will fly first class and stay at expensive hotels and eat at expensive restaurants. Discussed 8 AAC 45.084, specifically EE’s responsibility to use reasonable and efficient methods of travel. Explained ADJ most likely require a doctor’s note necessitating a 1st class ticket. EE says he can get that. EE says he hasn’t been able to work since he was released to work because his glasses don’t work making him not fit for duty. Suggested EE discuss that with his physician. Explained TTD ends when EE is released to work, and requires a work ability note showing dates of disability. EE says his comp rate is low. EE says he earns \$12,000 per month. Explained how comp rate is calculated, discussed maximum compensation rate. EE did not ask many questions, mostly wanted to talk and interrupt me. I was not able to identify any problems happening in his case, EE’s first statement that ADJ is not providing him with glasses now appears to be untrue. Gave EE WC&You and an attorney list because he kept bringing up wanting legal advise [sic]. Notified EE of WCC process in the event of a dispute. Gave EE a WCC form. (ICERS, Communications, Phone Call, February 28, 2020).

4) On June 9, 2020, Employee called the Division spoke with staff, “EE called to get a form for WCC. EE stated that the adjuster is not paying his medical bills. I explained the claim process and sending him the WCC form, WC&U, EE’s Guide, and updated attorney list.” (ICERS, Communications, Phone Call, June 9, 2020). Staff sent Employee a workers’ compensation claim form, the Workers’ Compensation & You pamphlet, an Employee’ Guide to Workers’ Compensation, and a list of claimant attorneys. (Letter, June 9, 2020).

5) On October 15, 2020, Employee called the Division and spoke with staff:

EE stated he needs a PPI rating but his provider doesn’t do them. Explained to EE that he can ask his provider to refer him to one. EE asks if we know someone in

town to do PPI rating in his eye. Informed EE that he can search on the internet eye specialist but to coordinate with his provider to refer him to one. EE asked what if ADJ disagree with PPI if he gets one, explained to EE the overall claims and adjudications process as well the SIME. EE asks if he can get an attorney. Explained to EE his right to representation with fee limitations. EE confirmed that he has the claim form and packet mailed to him before. (ICERS, Communications, Phone Call, October 15, 2020).

6) On December 21, 2020, Employee updated his address to PO Box *****, Juneau, AK 99801. (ICERS, Communications, Phone Call, December 21, 2020).

7) On January 6, 2021, Employee called the Division and spoke with staff, “EE called regarding his PPI. EE stated that he needs to have a PPI rating and nobody has responded. I explained the claim process and mailed him a claim form only. EE stated he had the attorney list and he received the mail with the WC packet back in June 2020.” Staff mailed him a claim form. (ICERS, Communication, Phone Call, and Envelope, January 6, 2021).

8) On February 17, 2021, Employee called the Division and spoke with staff:

Wanted to know why he cannot receive the \$13,300.00 due him, explained that ER had sent back saying he had not missed the time loss and was released back to work and one has to be found eligible for RB by going thru an evaluation or the ER stipulating to his eligibility. He was very agitated and when he told me that “I just suck up to what ever the insurance company wants” I cut him off and said that I would not tolerate that language and he said “that I heard what he said[”] and that is when I ended the conversation. I tried to tell him that he needs medical documentation from his doctor to state that he would not be able return to job of injury, that is when he became insulting and that was my job to get that information. He kept using foul language referring to how do I expect him to return to work when he has no vision in one eye. Reported to RBA. (ICERS, Communications, Phone Call, February 17, 2021).

9) On February 19, 2021, Employee called the Division and spoke with staff:

EE called and left msg for RBA regarding questions he has around reemployment benefits. Called EE and he said he wanted help with finding a job or possibly some of that “\$13,000” to purchase a computer so he could gain the skills he needs to use his college degree. EE was calm and appropriate during our conversation. He voiced frustration around his situation but was able to converse in an appropriate manner. EE was informed he needed to file a claim with adjudications if he feels he is entitled to further benefits. EE was provided contact information to D. Byers in Juneau Adjudications office for assistance with this process. (ICERS, Communications, Phone Call, February 19, 2021).

10) On April 27, 2021, Employer filed a controversion notice dated April 19, 2021 denying temporary total disability (TTD) benefits effective January 1, 2021. It stated:

All medical and related transportation benefits from April 13, 2021 continuing with the exception of consultation with a corneal specialist for possibility of corneal transplant and, if recommended, medical benefits related to corneal transplant.

TTD based on medical stability of 1/1/21, but if claimant does see corneal transplant the condition could become un-stable and TTD may be owed.

11) Employer served the controversion notice on Employee's previous mailing address, not his current mailing address. The controversion notice provided the following information:

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

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

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TIME LIMITS

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2. When must you request a hearing?

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

IF YOU ARE UNSURE WHETHER IT IS TOO LATE TO FILE A CLAIM OR REQUEST A HEARING, CONTACT THE NEAREST AWCB OFFICE.
(Controversion Notice, April 27, 2021).

12) On September 28, 2022, Employee called the Division and spoke to staff:

EE called. Says ADJ is pressuring EE to settle his case and told him the statute of limitations is running out. Explained settlement is voluntary. Discussed .105 deadline and 4/27/21 contro, which EE says he doesn't have a copy of. Explained contro seems to be denying some medical and TTD, but also offering to cover corneal transplant and associated disability for recovery from surgery. Explained if EE disagrees with the contro, he must file a WCC by 4/27/23. EE says corneal transplant, transportation, and associated TTD would be reasonable. Suggested EE contact ADJ or ER atty to discuss this option outlined in the 4/27/22 contro. EE doesn't have ER atty's contact info. Will mail EE the contro and ER atty's EoA. EE asked about his prior TTD rate being so low. Explained maximum comp cap. EE says he was found medically stable by an IME and wants a 2nd opinion about his PPI rating. Explained EE can get a PPI rating from his treating physician or referral, but EE might have to file a WCC if ADJ denies the treating physician's PPI rating. Explained if EE gets surgery, he will become medically unstable again, so if he's going to have surgery, the best time to do another PPI rating would be when he becomes medically stable again post-surgery. EE has been sent a WCC packet previously, but isn't sure where it is. EE will first contact ER atty to discuss surgery, and will call back to request a WCC packet if needed. (ICERS, Communications, Phone Call, September 28, 2022).

13) On October 4, 2022, Employee called the Division and spoke with staff, "EE called in, wanting to dispute 4/27 contro. Explained 2yr deadline to file WCC which EE is aware of. Told EE I will send him WCC w/ letter on process. EE stated he cannot get any legal help from attnys list he rec'd 1-2 yrs ago; will include WCC & letter." (ICERS, Communications, Phone Call, October 4, 2022). Staff mailed Employee a workers' compensation claim form, a medical summary form, a claimant attorney list, and the Workers' Compensation & You pamphlet with a letter by first-class mail to his mailing address of record stating:

AS 23.30.110(c) provides: "If the employer controverts a claim on a board-prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied." In other words, when Employee files a workers' compensation claim and Employer controverts the claim, to avoid possible dismissal of Employee's claim, Employee must file with the board and serve on all opposing parties an affidavit of readiness for hearing within two years of the controversion. The board has an affidavit of readiness for hearing form Employee can complete and file. If Employee has not completed all discovery and cannot file the affidavit of readiness for hearing within two years of Employer's controversion, but still wants a hearing, Employee should provide written notice to the board and serve the notice upon all opposing parties.

If you do not have an attorney (and many claimants do not), we will schedule you for a prehearing following your filing of a WCC. This is done to provide pro se (unrepresented) claimants information and attempt to resolve the parties' disputes.

It is not necessary for a claimant to be in Alaska and many injured workers participate telephonically in their proceedings.

I am including the attorney list we discussed, which was updated in September. The attorneys have expressed an interest in assisting injured Alaska workers. There is no guarantee an attorney will agree to take your case. Alaska workers compensation statutes and regulations provide for the payment of an attorney if they prevail at a hearing. If an attorney representing you does not prevail at a hearing, the attorney is precluded by regulation from charging more than \$300 total in attorney's fees for representation of you, plus necessary costs, such as postage, copies and deposition expenses. Most attorneys on the Board's list do not charge an initial consultation fee or waive the fee if injured workers are unable to pay. (Letter, October 4, 2022).

14) On October 14, 2022, Employee called the Division and spoke to staff, "EE called in, stating he hasn't been able to get attny to take on case and that a lot of the ph #'s are disconnected. Explained that we cannot guarantee that an attny will take on case, and that they have to let us know when they update their contact #. Told EE that we recently updated attny list few days ago and will mail him one." (ICERS, Communications, Phone Call, October 14, 2022).

15) On August 14, 2023, Employee called the Division and spoke with staff, "EE called w/ questions re this WC case. EE stated that he rec'd paperwork stating that his was going to be closed if he didn't take any action. Expl 4/27/21 contro, and that he can file WCC to dispute it but it is passed the 2-year deadline so no guarantee on whether or not it will be accepted. Verified address; mailed contro w/ WCC to EE. (ICERS, Communications, Phone Entry and Envelope, August 14, 2023).

16) On March 19, 2024, Employee emailed Division staff stating, "I'd like to get the recommended procedure to restore my eye to previous condition before my injury for claim jy53500. I've made an appointment with Don Davis in Anchorage for 5/28/2024. What are the necessary steps to do this?" (Email, March 19, 2024). Division staff replied, "You can get in contact with the attorney, Jeffrey Holloway who is representing your former employer and adjuster. Here is his contact information. . . . Please reference your AWCB 201913738 or your claim # JY53500." (Email, March 19, 2024).

17) On March 26, 2024, Employee sought medical costs for an "eye injury repair." (Claim for Workers' Compensation Benefits, March 26, 2024).

18) On April 16, 2024, Tansik entered her appearance for Employer. (Substitution of Counsel, April 16, 2024).

19) On April 16, 2024, Employer denied “Medical and related transportation benefits as of 4/13/21, except for consultation with a corneal specialist and a possible corneal transplant” and “if recommended, medical benefits related to the corneal transplant.” The controversion notice provided the following information:

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

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

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TIME LIMITS

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2. When must you request a hearing?

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

IF YOU ARE UNSURE WHETHER IT IS TOO LATE TO FILE A CLAIM OR REQUEST A HEARING, CONTACT THE NEAREST AWCB OFFICE.

Employer served the controversion notice to Employee’s mailing address of record by certified mail, return receipt requested, article number 9414 7266 9904 2211 0047 73. (Controversion Notice, April 16, 2024). It reiterated the same in its answer to Employee’s claim. (Answer to Employee’s Workers’ Compensation Claim, April 16, 2024).

20) On April 23, 2024, Employee signed the green card for receipt of the April 16, 2024 controversion notice, article number 9414 7266 9904 2211 0047 73. (United States Postal Service (USPS) Certified Mail green card, April 23, 2024).

21) On April 24, 2024, the parties attended a prehearing conference:

This prehearing conference was scheduled because Employee filed a claim to explain the adjudication process to Employee and his rights under the Alaska Workers' Compensation Act (Act). Employee confirmed receiving the list of attorneys the Division provides injured workers in the past and that he does not need another copy because it is not helpful because no attorney on the list will agree to take his case.

The Board designee informed Employee that there is no guarantee of representation, the list is provided as a courtesy and many injured workers are able to proceed on their claim without an attorney.

A few minutes into the prehearing conference, the background noise in Employee's line became very [loud]. The Board designee asked the parties to mute their line unless they are talking in an effort to reduce the background noise, but the loud background noise continued. The Board designee informed the parties she would end the call and immediately call the parties back to continue the prehearing conference and see if it would resolve the background noise issue. The designee called Employee back at (907) 957-**** and left a voicemail asking him to call back to continue the prehearing conference at 10:41 a.m. Employee did not return the designee's call and the designee [proceeded] with the prehearing conference without the participation of Employee at 10:52 a.m.

Employee is informed that should he wish to retain an attorney and the attorney agrees to take Employee's case, Alaska workers' compensation statutes and regulations provide for the payment of Employee's attorney if Employee prevails at hearing. If Employee does not prevail at hearing, the attorney is precluded by regulation from charging more than \$300 in fees for representation of Employee. Most attorneys on the Board's list do not charge an initial consultation fee or waive the fee if employees are unable to pay.

Discovery is the gathering, sharing and filing of information between the parties and with the Alaska Workers' Compensation Board (Board). Both parties are responsible for conducting discovery. Employee must file information he wishes the Board to consider at a hearing on his claim and serve it on Employer. After discovery is complete, Employee may file a formal request for a hearing on his claim called an affidavit of readiness for hearing (ARH). Another prehearing conference would be scheduled to set the hearing date after an ARH is filed. After evidence and argument is presented by both sides at hearing, the Board would issue a written Decision and Order deciding the disputed issues.

The parties may also resolve the claim by reaching an agreement regarding the disputes and submit a compromise and release settlement agreement written by Employer and signed by both parties, settling all or some of the benefits under the. If Employee is not represented or the settlement agreement waives his entitlement to future medical benefits, the settlement agreement must be reviewed to be

determined if it is in his best interest and approved by the Board. Once a settlement agreement is approved, it is final and virtually impossible to undo. The Board designee cannot participate in settlement negotiations and Employee should contact Employer regarding the possibility of settlement negotiations if interested.

Employee is reminded a petition is the form used to request the Board to take some particular action in a proceeding. A notice of intent to rely form must accompany non-medical documents filed with the Board and provides notice to the Board a party will be relying at hearing on the documents listed in the notice. Medical documents must be filed with a medical summary form. An ARH is a formal request for a hearing and is filed once discovery is complete and the parties are fully prepared for hearing. The Board designee will include a petition, notice of intent to rely, affidavit of readiness for hearing and medical summary form with this prehearing conference summary. Board forms are also available at http://www.labor.alaska.gov/wc/pdf_list.htm

The Board designee advised Employee he must serve and file (1) an ARH requesting a hearing or (2) a petition requesting an extension of time to request a hearing within two years of Employer's April 16, 2024 Controversion to avoid possible dismissal of his claim. AS 23.30.110(c). A hearing or additional time must be requested by **Monday, April 20, 2026** (April 16, 2024 + 2 years + 3 days under 8 AAC 45.060(b) = Sunday, April 19, 2026 = Monday, April 20, 2026 under 8 AAC 45.063(a)).

Employer asked the Board designee to inform Employee about travel cost reimbursement under the Act. Employee is advised he should keep receipts for medicine, actual travel expenses (including mileage) and other costs of his medical care and give copies of the receipts and the mileage record to the insurer for reimbursement. If Employee does not keep receipts, he may not be eligible for reimbursement.

Employer stated is unsure whether Employee is seeking medical costs in his claim for medical treatment Employer is controverting and noted Employer's controversion notice partially denies medical costs. Employee is advised Employer is obligated to pay medical expenses for up to two years following the injury. Medical expenses may be paid thereafter if ordered by the Board after a hearing on Employee's claim. Employers/Insurers usually pay for medical care beyond two years if necessary for the process of recovery from the injury. If the parties are unable to resolve a dispute regarding medical treatment, the Board can decide the issue after a hearing as described above. Employee is reminded he has the responsibility to file and serve medical records for medical treatment for his work injury during the pendency of his claim. AS 23.30.095(h).

The Board designee encourages the parties to seek the assistance of a Workers' Compensation Technician at (907) 465-2790 (Juneau), (907) 269-4980

(Anchorage) or toll free at (877) 783-4980, if a party has any questions pertaining to this case.

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You may file your documents electronically at workerscomp@alaska.gov, pursuant to 8 AAC 45.020(d) and Department of Labor and Workforce Development Commissioner's Order No. 001, located at: <http://www.labor.alaska.gov/wc/legaldir.htm>. All documents filed electronically must be sent as attachments in .pdf format and state in the subject line the AWCB case number and a brief description of the document to be filed. Attachments may not exceed 10 MB. If you have any questions regarding document filing, please contact a workers' compensation technician for assistance.

The Division served Employee with the prehearing conference summary to his mailing address of record by first class mail along with a petition, medical summary, notice of intent to rely, and ARH form. (Prehearing Conference Summary, April 24, 2024).

22) On June 20, 2024, Employee walked into the Juneau Division office and filed a notice of intent to rely forms with receipts for reimbursement for travel to see "Don Davis." (ICERS, Communication, Walk In and Notice of Intent to Rely, June 20, 2024).

23) On April 22, 2026, Employer requested an order dismissing Employee's March 26, 2024 claim for failing to comply with §110(c). (Petition, April 22, 2026).

24) On April 24, 2026, Employee called the Division and spoke with staff:

EE called in today in regard the petition that was filed by the ER atty on 4/22/26. He is confused on why they are allowed to petition to dismiss when his eye is not healed. I looked up his case using his AWCB and saw that he had a PHC back in April of 2024 that stated he had two years to file an ARH or PET for an extension. I explain all of his to EE, and his response is that we should have sent out a notice to him. I explain that we do not do that as it was written in the PHC Summary and verbally stated to him in the PHC. EE asked if he can still file for an extension. I state yes, but explain that it was supposed to be filed before 4/20/2026, and that there is no guarantee that his request will be granted. EE asks how he can go about filing one. I offered to send him one over via email and confirmed the email we have on file for him is still current. (ICERS, Communications, Phone Call, April 24, 2026).

25) On April 24, 2026, Division staff emailed Employee a petition form and the attorney's list. (Email, April 24, 2026).

26) On May 12, 2026, Employer requested a hearing on its April 22, 2026 petition. (Affidavit of Readiness for Hearing, May 12, 2026).

27) On May 12, 2026, Employee emailed the Division staff person that sent him the forms on April 24, 2026 stating, “I’m responding to petition to dismissed 2 claims between Alaska National insurance and Jeffrey Justice. I dispute these petitions due dismiss these cases because I’m still pursuing benefits from these claims. I have not abandoned these claims and request the board to deny the petition.” (Email, May 12, 2026).

28) On May 26, 2026, the parties attended a prehearing conference:

Designee asked if there were objections to joining or consolidating both cases because the Employee, Adjuster and Employer’s Attorney are the same. Ms. Tansik stated she opposed the action to join because the Employer, dates of injury and body parts those injured are not the same in both cases. Mr. Justice also opposed to joining the cases.

Designee asked Mr. Justice if he had received Ms. Tansik’s 4/22/2026 Petition to dismiss the cases and the 5/12/2026 Affidavit of Readiness for Hearing (ARH). Mr. Justice stated he did not. Ms. Tansik explained that they were sent via mail and email. Mr. Justice claimed he does not keep up with his email and checks his mail approximately once a month.

Ms. Tansik summarized the filings for failure to comply with the AS 23.30.110(c) deadlines in both cases. Designee provided the deadlines for Mr. Justice’s convenience and explained that the Employer has the right to request a dismissal if the Employee does not file an Affidavit of Readiness for Hearing (ARH) by those deadlines. Mr. Justice commented that he thinks it is excessive for someone to remember all those dates. Designee stated the deadlines were on the 4/10/2024 prehearing summary for case 202305313. For case 201913738, the 110(c) deadline was in the 4/24/2024 prehearing summary *(dates of summaries were added after this prehearing by Designee)*.

Designee explained that the board will decide if Mr. Justice’s cases will be dismissed or not. Mr. Justice will have the opportunity at hearing to argue why his cases should not be dismissed. Designee offered some hearing dates in the Juneau venue and explained that hearings in that venue are held every other Tuesday. Ms. Tansik chose the 7/7/2026 date, however Mr. Justice stated he would prefer an August date. Ms. Tansik quoted a sentence in AS 23.30.110(c), “If opposition is not filed, a hearing shall be scheduled no later than 60 days after the receipt of the hearing request.” Designee stated the appropriate statutes and regulations regarding this matter will be included in the prehearing summary and encouraged Mr. Justice to check his mail by the end of this week. Mr. Justice stated he is currently working and cannot just take off work.

Mr. Justice further stated he is not an attorney, does not understand legalese, cannot obtain an attorney for his cases and feels that an attorney should be automatically

assigned to a pro se employee because it is not fair that the employer can get an attorney and he cannot. One of the reasons for prehearings, especially in pro se cases, are so the employee can ask questions and gain better understanding of the Workers' Compensation process. Technicians at the Division are another valuable resource for employees to utilize. Designee also explained that The Act, the statutes and regulations, do not provide for employee attorneys to be automatically assigned to injured workers. The attorneys have the right to accept or reject a case.

The designee scheduled a hearing on July 7, 2026 on Employer's April 22, 2026 petition to dismiss "for failure to comply with AS 23.30.110(c)" and set the deadline to file a hearing brief as June 30, 2026. (Prehearing Conference Summary, May 26, 2026).

29) On May 28, 2026, the Division served Employee with the July 7, 2026 hearing notice and the May 26, 2026 prehearing conference summary to his mailing address of record by certified mail, return receipt requested, article number 9589 0710 5270 4411 9449 43. (Hearing Notice Served, Prehearing Conference Summary Served, and USPS Certified Mail Receipt, May 28, 2026).

30) On June 30, 2026, Employer contended the designee informed Employee of the §110(c) deadline in the April 24, 2024 prehearing conference summary and he took no further action. It contended the Board has no legal basis upon which it can grant an extension of the deadline to request a hearing after the deadline has already passed. Employer contended *Kim* clearly stated that any request for an extension has to occur within the two-year deadline and *Pruitt* reiterated this by citing Kim's holding and stating a claimant cannot ignore the deadline and fail to file anything. It contended to extend the deadline after the deadline has already passed would render the statutory provision meaningless, directly contradict *Kim* and *Pruitt*, and contravene the legislative's intent for quick, fair, efficient, and predictable claim administration. Employer contended Employee's arguments that he should have been assigned an attorney, not wanting Employer to have an attorney, not understanding legalese, and not wanting the claims dismissed, are not valid legal grounds for an extension. It contended the Act does not require that attorneys accept workers' compensation claimants and there is no statutory right to counsel. Employer requested Employee's request to extend the deadline be denied. (Employer's Hearing Brief, June 30, 2026).

31) Employer contended Employee failed to actually or substantially comply with §110(c) because he failed to file an ARH or request an extension prior to the deadline. It contended Employee's statements during the May 26, 2026 prehearing conference after the deadline is not substantial compliance. Employer contended Employee has the burden to establish with substantial evidence

a legal excuse and there is no evidence of mental incapacity or incompetence and the Board informed him of his obligations and how to proceed. It contended the Board has no duty to seek out an employee and urge them to file paperwork on time or volunteer information it may have reasonably assumed he had been told. Employer contended the obligation to give notice to an employee of how to proceed on a claim is satisfied by the controversion forms. It contended allowing Employee to continue to pursue his claims is prejudicial to Employer. Employer requested Employee's claims be dismissed as a matter of law. (Employer's Hearing Brief, June 30, 2026).

32) At hearing, Member Faulkner disclosed one of her companies recently changed insurance carriers and now uses Alaska National Insurance Company. Another person in the company uses a broker to procure insurance; she only talks to the broker to obtain copies of the policy to have them on file. Member Faulkner stated she could be fair and impartial. (Record).

33) Employee contended Member Faulker should be disqualified from hearing his case because one of her companies uses Alaska National Insurance Company as a carrier. He contended she was biased against him, and he should have been informed of this before the hearing. (Employee).

34) Employer contended there is no evidence that Member Faulker is biased or has a conflict of interest. It contended Alaska National Insurance Company is one of the largest insurance companies in the state and they insure a lot of businesses and there would be no impact on Member Faulker's insurance dependent upon the outcome of this case. (Employer).

35) At hearing, after deliberation with the other panel member, the designated chair denied Employee's request to disqualify Member Faulkner, based on Employee's failure to prove that Member Faulker has a personal or financial interest in Employee's case or that she is biased or prejudged his case. (Record).

36) Employer contended Employee failed to comply with §110(c) and his claim must be dismissed. It contended the after-claim controversion contained the standard language on how to appeal and pursue a claim with the deadlines and the Board informed Employee of the actual deadline in the April 24, 2024 prehearing conference and its summary, along with an ARH and petition form. Employer contended the Board fulfilled its requirement to inform a *pro se* claimant of what was needed to prosecute the claim. It contended Employee obtained a letter from his physician in 2024 about the ongoing use of contact lenses being preferable to a transplant but then took no further action on his claim. Employer contended Employee did not file an ARH and did not request

additional time until after the deadline already passed. It contended Employee provided no evidence of mental incapacity or incompetence or equitable estoppel against a government agency. (Employer).

37) Employee contended he could not find an attorney that would agree to represent him and he could not get an explanation why. He contended he has no legal background, and he is on his own against a company that has rooms full of “Martha Tansiks,” which is not fair. Employee contended the Board did not send him a reminder when the deadline was approaching. He contended Employer sat around hoping he was not going to make the statutory deadline, and their request to dismiss is unfair. Employee contended it would be reasonable for someone to notify him when the deadline was approaching. He objected to his claim being dismissed because he has limited knowledge of workers’ compensation laws and he should be provided with a lifetime of anything he needs to keep going for his work injury. Employee contended there should not be a statute or two-year deadline that nobody notifies you of. He contended he has been under mental health care for several years and the issues he has pertain to his injury. (Employee).

38) Employee testified he contacted at least seven different lawyers, spending an ungodly amount of time doing so, and he could not get anyone to agree to represent him; they would not provide a reason why. He has no legal background. Normal people do not think two years ahead. When his eye injury happened, it was COVID, and it made getting back to work a nightmare because the ophthalmologist closed down for eight or nine months. Luckily, unemployment was paying big and way better than Employer would. He did not know anyone that could make an appointment for two years in the future and remember it. Employee’s left eye still has crappy vision, he cannot get a CDL now because of it which makes him less employable, and Employer should be responsible for fixing that. He used to make \$120,000 to \$140,000 per year, now he makes \$40,000. With a corrective lens, he could probably reapply for his CDL. Insurance companies do not care about people, they only care about their bottom line and they will employ an ungodly number of people, costing thousands of dollars, not to set a precedence. Employee filed an email against Employer’s dismissal four or five weeks ago by emailing a staff member of the Division. The main reason he could not get a lawyer is because the lawyer is not going to make a big payday because he did not want to settle. Employee is dead set against lawyers because they thrive and profit from other people’s misfortune. He did not want a lawyer to get a buy a new boat because he had an eye injury. When Employee meets his maker, he will not see any lawyers there because

none of them are going to heaven because they prey on people for their misfortune. Tansik was “like a vulture coming down on dead meat” waiting to apply for dismissal. Employee said he researched attorney fees and costs because he was not just sitting around waiting for a miracle to happen, and it showed Tansik gets paid for her time and a lawyer that picks up his case is paid on a contingency basis. The whole system is based around making sure that he cannot get back to the best condition he can so he can continue to work and earn a living, “this is red tape at its finest.” Employee makes appointments in his phone for next week, but he probably does not have his phone from two years ago so if he had put the deadline in his phone, he would not have it now. He has no other messaging service to notify him of the deadline, unlike Employer which has a room full of people just hoping you do not make your deadline. Employee has been under mental health care for several years and the issues he has pertain to his injury. He is being penalized when he did nothing wrong. Employee’s medical treatment was delayed for two weeks, and maybe he could have healed up right away and would not be in the position he is in now if he got treatment sooner. Employee was fired from both jobs even though everyone thought he was the greatest person in the world until he got hurt. He disapproves of the whole system because injured workers are treated like objects and insurance companies do not care if you are suffering or whether your life has gotten worse. Employee looked up Alaska National Insurance Company, and they are worth two billion dollars and do not want to pay out two nickels. Tansik is probably going to get a bonus out of winning this case. (Employee).

PRINCIPLES OF LAW

AS 23.30.001. Intent of the legislature and construction of chapter. It is the intent of the legislature that

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

(2) workers’ compensation cases shall be decided on their merits except where otherwise provided by statute; . . .

The Board may base its decision on not only direct testimony, medical findings, and other tangible evidence, but also on the Board’s “experience, judgment, observations, unique or peculiar facts of

the case, and inferences drawn from all of the above.” *Fairbanks North Star Borough v. Rogers & Babler*, 747 P.2d 528, 533-34 (Alaska 1987).

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

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.

In *Bohlmann v. Alaska Construction & Engineering*, 205 P.2d 316, 319-21 (Alaska 2009), the employer at a prehearing conference provided a §110(c) deadline that was about two weeks earlier than the accurate date. Division staff failed to correct this error. The Alask Supreme Court (Court) found the uncorrected error may have dissuaded the injured worker to file a hearing request timely, thinking the deadline had already passed when it had not. *Bohlmann* stated based on the record, had the Division corrected this wrong date, the injured worker likely would have filed a hearing request timely as he had done with his other pleadings. The Court said:

Here, the board at a minimum should have informed Bohlmann how to preserve his claim. . . . Its failure to recognize that it had to do so in this case was an abuse of discretion (footnote omitted). . . .

AS 23.30.110. Procedure on claims. . . .

. . . .

(c) Before a hearing is scheduled, a party seeking a hearing shall file a request for hearing together with an affidavit stating that the party has completed necessary discovery, obtained necessary evidence, and is prepared for the hearing. An opposing party shall have 10 days after the hearing request is filed to file a response. . . . If the employer controverts a claim on a board-prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied. . . .

Certain “legal” grounds may excuse noncompliance with §110(c), such as mental incapacity or incompetence, and equitable estoppel against a governmental agency by a self-represented claimant. *Tonoian v. Pinkerton Security*, AWCAC Dec. No. 029 (January 30, 2007).

AS 23.30.110(c) requires an injured worker to timely prosecute a claim once the employer controverts. *Jonathan v. Doyon Drilling, Inc.*, 890 P.2d 1121, 1124 (Alaska 1995). *Tipton v. ARCO Alaska, Inc.*, 922 P.2d 910, 912-13 (Alaska 1996) noted a statute of limitations defense is “generally disfavored,” and neither “the law [n]or the facts should be strained in aid of it.”

In *Providence Health System v. Hessel*, AWCAC Dec. No. 131 (March 24, 2010), the Alaska Workers’ Compensation Appeals Commission (Commission) held §110(c)’s objective is not for a claimant to “generally pursue” a claim; it is to bring it to a hearing so speed and efficiency goals in Board proceedings are met. But the claimant bears the burden to establish with substantial evidence a legal excuse from the §110(c) statutory deadline. A claimant bearing the burden of proof must “induce a belief” in the factfinders’ minds that the facts being asserted are probably true *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964).

The Court in *Kim v. Alyeska Seafoods, Inc.*, 197 P.3d 193, 196-99 (Alaska 2008) said:

The first and last sentences of AS 23.30.110(c) govern the manner by which hearings are requested before the Board and the consequences of failure to prosecute a claim:

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

The first sentence of the subsection sets out prerequisites for scheduling a hearing: a party must submit a request for hearing with an affidavit swearing that the party is prepared for a hearing (citation omitted). The last sentence of the subsection specifies when a claim is denied for failure to prosecute: if “the employee does not request a hearing within two years” of controversion, “the claim is denied” (citation omitted). The Commission recognized that “[t]he lack of reference to the affidavit in the last sentence of section 110(c), coupled with the use of the verb ‘request,’ hints that filing a hearing request without an affidavit will toll the time-bar.” The Commission nonetheless held that a Board regulation requiring an affidavit to request a hearing was a reasonable interpretation of subsection .110(c) and that the Board could reasonably require an affidavit to toll the time-bar of subsection .110(c) (footnote omitted). But because a statutory dismissal results from failing to *request*

a hearing, rather than from failing to *schedule* one, it was error to conclude that an affidavit of readiness was required to request a hearing and toll the time-bar (*italics in original*). We conclude that strict compliance with the affidavit requirement is unnecessary because subsection .110(c) is directory, not mandatory.

Subsection .110(c) is a procedural statute that “sets up the legal machinery through which a right is processed” and “directs the claimant to take certain action following controversion” (citation omitted). A party must strictly comply with a procedural statute only if its provisions are mandatory; if they are directory, then “substantial compliance is acceptable absent significant prejudice to the other party” (citation omitted). . . .

. . . The first sentence of the statute directs a party to file a request for a hearing with an affidavit of readiness to schedule a hearing, but it does not say what a party or the Board should not do. The last sentence of the subsection also gives an affirmative directive, rather than a prohibition, simply stating that a claim is denied if the employee does not request a hearing within two years following a notice of controversion.

. . . .

Finally, this case aptly demonstrates the serious consequences of a conclusion that the affidavit requirement is a mandatory component of a request for a future hearing -- a party who wants to request a future hearing, but is for legitimate reasons unable to truthfully state readiness for an immediate hearing, faces denial of workers’ compensation benefits.

. . . .

In holding that subsection .110(c) is directory, we do not suggest that a claimant can simply ignore the statutory deadline and fail to file anything (footnote omitted). A determination that a statute is directory instead permits substantial compliance with statutory requirements, rather than strict compliance (footnote omitted). We construe subsection .110(c) to require filing a request for hearing within two years of the date of the employer’s controversion of a claim. If within that two-year period the claimant is unable to file a truthful affidavit stating that he or she actually is ready for an immediate hearing, as was the case here, the claimant must inform the Board of the reasons for the inability to do so and request additional time to prepare for the hearing. Filing the hearing request and the request for additional time to prepare for the hearing constitutes substantial compliance and tolls the time-bar until the Board decides whether to give the claimant more time to pursue the claim (footnote omitted). . . .

In *Pruitt v. Providence Extended Care*, 297 P.3d 891 (Alaska 2013), an injured worker’s attorney filed a claim on her behalf. The attorney withdrew and mailed his withdrawal notice to the injured worker. The employee later confirmed the mailing address on the withdrawal notice’s service certificate was her mailing address. Subsequently, her employer filed and served on the employee a controversion

denying all benefits. A prehearing conference summary said, “The chair directed Ms. Pruitt to call our office and make an appointment with a Workers’ Compensation Technician for assistance in filing an ARH, if she decides that she wants to continue with the case.” The summary also advised the employee she had to file an affidavit requesting a hearing within §.110(c)’s time limits; the statute’s relevant part was cut and pasted into the prehearing conference summary. The Division served the summary on the employee in 2006; she failed to file a hearing request within two years of the insurer’s controversion; the employer petitioned to dismiss.

At hearing on the employer’s petition to dismiss, the employee testified she had not received her prior attorney’s withdrawal notice. She then said she thought her attorney would submit or had submitted a hearing request. The employee disavowed having ever received notice about the necessity of filing an ARH, and denied she ever received prehearing conference summaries. The Board found the employee had tried to resurrect her workers’ compensation claim only because her long-term disability benefits expired in 2008. It noted many inconsistencies in her testimony and determined she was not credible. Finding the claimant had not established a legal excuse for failing to file a timely ARH, the Board denied her claim under §.110(c). The Commission affirmed, and she appealed.

On appeal, *Pruitt* reviewed prior decisions addressing §.110(c) and stated:

Here, Pruitt failed to file anything within the allotted time. She filed a written application for benefits in February 2005. Providence filed two controversions: one in February 2005, shortly after she filed her written application, and one in July 2005, after her deposition. Pruitt needed to request a hearing by July 1, 2007, at the latest, to avoid the time bar of AS 23.30.110(c). She did not file anything indicating she wanted to prosecute the 2005 written claim until August 2009, well after the statutory deadline expired. *Id.* at 985.

....

The Board found that Pruitt’s ‘assertion she was unaware her attorney withdrew and was relying upon him to file the necessary paperwork lacks credibility.’ The Board ‘has the sole power to determine the credibility of a witness.’ Its credibility findings are binding on the Commission. The Board’s credibility determination disposes of Pruitt’s argument that her reliance on her attorney excused her from complying with the statute. If Pruitt was not truthful in asserting that she relied on her attorney to file the affidavit of readiness for hearing, this purported reliance cannot excuse her noncompliance. The Commission thus correctly concluded that

substantial evidence in the record supported the Board's determination that Pruitt did not substantially comply with AS 23.30.110(c). *Id.*

Roberge v. ASRC Construction Holding Co., AWCAC Dec. No. 269 (September 24, 2019) said, "the idea of a hearing not being held on the merits of a claim is strongly disfavored by the Court and the Board has an obligation to determine if there is a way around the running of the .110(c) defense." It addressed the long-standing debate over how and when the second independent medical examination (SIME) process tolls §110(c). It concluded, "Nonetheless, for purposes of tolling the statute of limitations in .110(c), a bright line for tolling the limitation period in .110(c) is needed. The Commission finds that a stipulation by all parties at a prehearing is the best demarcation for tolling the .110(c) time limitation." *Narcisse v. Trident Seafoods Corp.*, AWCAC Dec. No. 242 (January 11, 2018) stated the two-year period is tolled when "some action" by the employee shows a need for additional time before requesting a hearing, and a request for an SIME is such action.

In *Davis v. Wrangell Forest Products*, AWCAC Dec. No. 256 (January 2, 2019), the employee's claim was controverted. He requested an SIME. He did not timely file an ARH and the Board dismissed his claim. On appeal the AWCAC stated:

. . . He was provided with an ARH form. However, the prehearing officer did not tell Mr. Davis the date by which he needed to file an ARH.

. . . .

. . . If the Board, at any time, had given Mr. Davis a firm date by which he needed to request a hearing, and he did not then timely request a hearing, the Board would have fulfilled its obligation to Mr. Davis.

. . . Mr. Davis never was given a date by which he needed to request a hearing. . . . In the future, the Board could avoid this kind of situation by establishing a practice of advising a claimant at the first prehearing after a claim and controversion have been filed, of the date by which a hearing needed to be requested, absent any extensions of time. It would also be prudent for anyone at the Board assisting a self-represented litigant to know the date by which an ARH needs to be filed. If the date changes for any reason, such as tolling during the SIME process, the new date for requesting a hearing should be clearly communicated to the self-represented litigant. . . .

After *Davis* issued, the Division Director filed a notice to intervene and a petition for reconsideration. In its petition, the Division argued that the Commission had failed to properly consider a relevant Court case as well as conclusions the Commission had reached in one of its own prior §.110(c) decisions. Subsequently, the employer also petitioned for reconsideration to correct “misapplications of law” among other things.

In the Commission’s subsequent order in *Davis v. Wrangell Forest Products*, AWCAC Order on Motions for Reconsideration, (March 1, 2019), the Commission stated:

The Board’s decision itself is strong evidence as to the difficulty for anyone, not just a *pro se* claimant, to calculate the precise date by which a hearing must be requested, or face the possibility of the claim being dismissed for lack of prosecution.

[The employer] is likewise correct that the Alaska Supreme Court (Court) has never held the Board has an obligation to inform a claimant of the exact date by which an affidavit of readiness for hearing (ARH) is required. [The employer] further contends the Court specifically declined to do so in *Bohlmann*. . . . However, the Court, in *Bohlmann*, declined to decide whether the Board had a duty to inform the claimant of an exact date for an ARH because it did not need to do so, choosing to decide *Bohlmann* on the failure of the Board to correct a misstatement of the date by which an ARH was due. . . .

Citing extensively from *Bohlmann*, the *Davis* order stated:

It may be arguable in such a case that the board had a duty to tell the claimant that the two-year period was running; it may also be arguable that it had a duty to tell him when the period began running, or even the specific date on which the deadline would expire. But we do not need to consider the full extent of the duty here. (Emphasis in original). . . .

. . . .

In holding that subsection .110(c) is directory, we do not suggest that a claimant can simply ignore the statutory deadline and fail to file anything. A determination that a statute is directory instead permits substantial compliance with statutory requirements, rather than strict compliance.

. . . .

As noted above, the Court, in *Bohlmann*, raised the proposition the Board has a duty to advise a *pro se* claimant of an actual date by which to file an ARH, although it declined to decide that issue at that time. . . .

After noting that the claimant in *Davis* had not been “sitting on his hands” but pursuing his claim, the *Davis* order held:

The Commission, following the reasoning raised by the Court in *Bohlmann*, now holds that in cases involving a *pro se* claimant, the Board shall advise the claimant at the first prehearing, following a WCC [Workers’ Compensation Claim], employer’s answer, and employer’s controversion, when and how to request a hearing. The Board designee in the first prehearing needs not only to advise the *pro se* claimant as to how to calculate the timeline in AS 23.30.110(c) for requesting a hearing, but must also provide the claimant with an actual date by which an ARH must be filed in order to preserve the claim. . . .

. . . Informing a *pro se* claimant of the date for requesting a hearing at the first prehearing provides the *pro se* claimant with the tools needed to pursue the claim and meets the requirements of the process being “quick, efficient, fair, and predictable” as well as “impartial and fair to all.” Such a requirement at the first prehearing is not onerous to the Board designee and will help ensure that all parties or on a more even playing field.

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 . . . 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 are “binding for any review of the Board’s factual findings.” *Smith v. CSK Auto, Inc.*, 204 P.3d 1001, 1008 (Alaska 2009).

AS 44.62.450. Hearings. . . .

(c) A hearing officer or agency member shall voluntarily seek disqualification and withdraw from a case in which the hearing officer or agency member cannot accord a fair and impartial hearing or consideration. A party may request the disqualification of a hearing officer or agency member by filing an affidavit, before the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. . . . An agency member may not withdraw voluntarily or be disqualified if the disqualification would prevent the existence of a quorum qualified to act in the particular case.

In *Kling v. Norcon, Inc.*, Superior Court Case No. 3AN-92-1232 (September 2, 1993), an injured worker appeared for his hearing against two defendants before a three-member Board panel. The “labor” panel member immediately recused himself, leaving the hearing officer and the industry

member, a quorum, remaining on the panel. The industry panel member disclosed that his company had retained the employer's attorney "for the last five years to do worker compensation cases." He also disclosed that he had "an active case with her at the moment" that was "actually closing up." The industry panel member said he had also retained the law firm representing the second defendant as well. Despite the injured worker's objections at hearing, the industry member refused to step down "claiming that he could be fair." *Id.* at 2.

The Board ruled against the claimant, and he appealed to the superior court. Relevant to the instant matter, the claimant contended on appeal that the Board's proceedings had violated his state and federal constitutional right to due process because the industry panel member was allowed to sit on the case despite his acknowledged, ongoing, and extensive professional relationship with the employer's attorney. The employer and the Board contended that disqualification is required only in instances of "actual bias." Since the industry member denied he harbored any such bias, and because his presence was required by AS 44.62.450(c), which precludes recusal of an agency member "if disqualification would prevent the existence of a quorum qualified to act in a particular case," *Kling* held the Board acted properly to proceed with the hearing with the industry member seated on the panel. In reviewing the parties' arguments, the superior court in *Kling* concluded:

The court . . . concerned . . . there was at least an appearance of impropriety here, undertook to research additional law. . . . No case directly on point was found.

Despite broad language regarding the importance of preserving the "appearance of justice," the opinions in this area rest on the maxim that adjudicators enjoy a presumption that they are unbiased. Only a direct, usually personal and pecuniary interest can operate to rebut the presumption. *See, Schweiker v. McClure*, 45 U.S. 188 (1982); *Sifagaloa v. Bd. of Trustees*, 840 P.2d 367 (Hawaii 1992); *Airline Pilots Ass'n v. United States Department of Transportation*, 899 F.2d 1230.

8 AAC 45.060. Service. . . .

(b) . . . Except for a claim, a party shall serve a copy of a document filed with the board upon all parties or, if a party is represented, upon the party's representative. Service must be done personally, by facsimile, by electronic mail, or by mail, in accordance with due process. Service by mail is complete when deposited in the mail if mailed with sufficient postage and properly addressed to the party at the party's last known address. If a right may be exercised or an act is to be done, three days must be added to the prescribed period when a document is served by mail.

....

8 AAC 45.063. Computation of time. (a) In computing any time period prescribed by the Act or this chapter, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period is included, unless it is a Saturday, Sunday or a legal holiday, in which case the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday. . . .

8 AAC 45.105. Code of conduct. (a) Nothing in this section relieves a board member's duty to comply with the provisions of AS 39.52.010-39.52.960 (Alaska Executive Branch Ethics Act) and 9 AAC 52.010-9 AAC 52.990. A board member holds office as a public trust, and an effort to benefit from a personal or financial interest through official action is a violation of that trust. A board member is drawn from society and cannot and should not be without personal and financial interests in the decisions and policies of government. An individual who serves as a board member retains rights to interests of a personal or financial nature. Standards of ethical conduct for a board member distinguish between those minor and inconsequential conflicts that are unavoidable in a free society, and those conflicts of interests that are substantial and material.

(b) The provisions of this section do not prevent a board member from following other independent pursuits, if those pursuits do not interfere with the full and faithful discharge of a board member's public duties and responsibilities under AS 23.30 and this chapter.

(c) The recusal of a board panel member for a conflict of interest under the procedures set out in 8 AAC 45.106 may occur only if the recusal is based on clear and convincing evidence that the board panel member (1) has a conflict of interest that is substantial and material; or (2) shows actual bias or prejudgment.

(d) The recusal of a board panel member to avoid impropriety or the appearance of impropriety under the procedures set out in 8 AAC 45.106 may occur only if the recusal is based on clear and convincing evidence that the board panel member (1) has a personal or financial interest that is substantial and material; or (2) shows actual bias or prejudgment.

(e) Unethical conduct is prohibited, but there is no substantial impropriety or substantial appearance of impropriety if, as to a specific matter, the standards of AS 39.52.110(b) would permit participation.

8 AAC 45.106. Procedures for board panel members to avoid conflict of interest, impropriety, and appearance of impropriety. (a) Before conducting a hearing on a case, each board panel member shall be given the names of the parties involved in the hearing and any other appropriate information necessary for the

board panel member to determine if the individual member, or another member, has a conflict of interest as described in 8 AAC 45.105.

(b) If a board panel member determines that the member has a potential conflict of interest, the potential conflict of interest must be disclosed to the board panel chair before the hearing.

(c) Upon notification by a board panel member of potential conflict of interest under (b) of this section, the board panel chair shall request that the board panel member recuse oneself or refer the matter to the remainder of the board panel to determine if recusal is appropriate.

(d) If before a scheduled hearing begins, a party has knowledge of a potential conflict of interest or knowledge that a board panel member's circumstances may present a potential impropriety or appearance of impropriety, the party may file a petition with the commissioner, or the commissioner's designated hearing officer under AS 23.30.005(b), objecting to the board panel member and briefly outline the reasons. If a petition is filed under this subsection, the commissioner, or the commissioner's designated hearing officer, shall forward the objection to the board panel member who is the subject of the petition for the member's review. If the board panel member does not recuse oneself from the proceeding, the remaining board panel members shall determine whether the board panel member who is the subject of the petition may hear the case.

ANALYSIS

1) Was the oral order denying Employee's request to disqualify member Faulkner correct?

At hearing, Member Faulkner disclosed one of her companies recently changed insurance carriers and now uses Alaska National Insurance Company, another person in the company uses a broker to procure the insurance, and she only talks to the broker to obtain copies of the policy to have them on file. Member Faulkner stated she could be fair and impartial. Employee requested Member Faulkner be disqualified, contending that she is biased against him because one of her companies uses Alaska National Insurance Company.

Panel members are presumed to be unbiased. *Schweiker*; *Sifagaloa*; *Airline Pilots*. Employee had the burden to show Member Faulkner is not; he failed to meet that burden. Only a direct, usually personal, and pecuniary interest can operate to rebut the presumption. *Kling*. Unlike *Kling*, there is no evidence that Member Faulkner's company's insurer had any active claims for her company

or retained Tansik. Alaska is a small insurance market, such relationships are “unavoidable.” 8 AAC 45.105(1), (2); *Rogers & Babler*. Absent any reliable, direct, and specific evidence to the contrary, Member Faulkner is presumed unbiased. To disqualify Member Faulkner based on impropriety or the appearance of impropriety Employee had to present clear and convincing evidence showing she had a “substantial and material” personal or financial interest in the case or showed actual bias or prejudgment. 8 AAC 105(d). Employee presented no evidence that Member Faulkner cannot be fair and impartial or that she has a substantial and material conflict of interest or had actual bias or prejudgment. 8 AAC 45.105(c), (d). Therefore, the oral order denying Employee’s recusal request was correct. 8 AAC 45.106(d).

2) Should Employee’s claim be denied for failing to timely request a hearing?

Employer contended Employee’s claim should be dismissed for failing to request a hearing or additional time by the §110(c) deadline. Strict compliance is not required. *Kim*. However, a claimant may not ignore the statutory deadline and fail to file anything. *Pruitt*. The law required Employee to prosecute his claim timely once Employer controverted it. *Jonathan*. Statute of limitations-style defenses are “generally disfavored,” and neither the law nor the facts should be twisted to aid them. *Tipton; Roberge*. The panel has an obligation to determine if there is a way around the §110(c) defense as hearings on the merits are required except where otherwise provided by statute. *Roberge*; AS 23.30.001(2). Employee has the burden to establish with substantial evidence a legal excuse from the §110(c) statutory deadline. *Hessel*. The two-year period was tolled only if Employee took “some action” showing his need for additional time before requesting a hearing. *Narcisse*.

Employee was informed by Division staff of the actual §110(c) deadline and that he must file an ARH or request additional time before the deadline or his claim could be dismissed in the April 24, 2024 prehearing conference summary that was served to his mailing address of record. He was also advised of the deadline in the April 16, 2024 controversion notice. Employee also called and spoke with Division staff eleven times before he filed his claim and was provided with information on the claim and adjudication process and the attorney list. Employee filed evidence on June 20, 2024 and then took no further action on his claim until he opposed Employer’s petition to dismiss on May 12, 2026, when he emailed Division staff objecting to Employer’s petition to

dismiss his claim. Employee was informed of the §110(c) deadline and he knew or should have known he had to request a hearing or additional time before the deadline. Therefore, he has not strictly complied with his duty to request a hearing timely or ask for more time to request a hearing after Employer controverted his claim. AS 23.30.110(c); *Kim*.

In the May 26, 2026 prehearing conference, Employee shared his difficulty in finding an attorney to take his case and he also credibly testified to the same at hearing. AS 23.30.122; *Smith*. The case file communications also show he had attempted to find an attorney willing to take his case. However, an attorney is not required by law to pursue a claim. Furthermore, Employee did not request additional time to request a hearing before the §110(c) deadline. He did not file anything suggesting he needed more time to prepare for a hearing. *Narcisse*. Employee did nothing to ask for more time or to request a hearing before the §110(c) deadline. He did not substantially comply with §110(c); he was noncompliant. *Kim; Pruitt*.

Certain “legal” grounds may excuse noncompliance with §110(c), including mental incapacity, incompetence, or equitable estoppel against the Division. *Tonoian*. There is nothing in the record demonstrating Employee was mentally incapacitated or incompetent. Neither mental incapacity nor incompetence will excuse Employee’s noncompliance with §110(c). *Id*.

Employee contended the Division should have sent him a reminder as he is unrepresented and it is unfair to expect him to remember to fulfill a two-year deadline without a reminder. Equitable estoppel against a governmental agency by a self-represented claimant may excuse noncompliance with §110(c). *Tonoian*. The Division is charged with fully advising claimants of all the real facts which bear upon his condition and his right to compensation and of instructing him on how to pursue that right under the law. *Richard*. However, an injured worker’s *pro se* status was not sufficient excuse to excuse a late filing when he was adequately informed of the consequences of his failure to file a request for hearing within two years of the date a claim is controverted. *Bohlmann*. At the first prehearing conference, the Board is required to inform a *pro se* claimant how to calculate the §110(c) deadline and to provide the actual date by which an ARH or a request for additional time must be filed in order to preserve the claim. *Davis*. Division staff provided Employee with the correct date of his §110(c) deadline, April 20, 2026, in the April 24, 2024

prehearing conference summary based on Employer's April 16, 2024 controversion notice (April 16, 2024 + 2 years + 3 days = Sunday April 19, 2026 = Monday April 20, 2026). AS 23.30.110(c); 8 AAC 45.060(b); 8 AAC 45.063(a). He had until April 20, 2026 to either ask for a hearing, request more time to ask for one, file an ARH, or take "some action" reasonably suggesting he needed more time to request a hearing. *Kim*.

Employee was informed of the actual §110(c) deadline at the first prehearing conference and in its summary, which was mailed to his address of record, and was informed of the consequences of his failure to request a hearing or additional time by the deadline. *Richard; Bohlmann; Davis. Tonoian* held the obligation to inform and instruct unrepresented claimants on how to pursue their claim did not require Division staff to seek out the claimant and urge him to file paperwork on time or to volunteer information it may have reasonably assumed he had been told. The Division satisfied its duty to Employee to inform him of how to pursue his claim by providing him the actual §110(c) deadline and it has no requirement to seek him out and remind him to file his ARH or request for additional time on time. *Id.* Employee has failed to provide substantial evidence of equitable estoppel against a governmental agency. *Hessel; Saxton; Richard; Bohlmann; Davis; Tonoian*.

Employee did nothing on or before April 20, 2026 to ask for more time or request a hearing. *Kim; Pruitt*. He failed to strictly or substantially comply with §110(c) and failed to show a legal reason to excuse his noncompliance. Employee's March 26, 2024 claim will be denied under §110(c).

CONCLUSIONS OF LAW

- 1) The oral order denying Employee's request to disqualify member Faulkner was correct.
- 2) Employee's claim should be denied for failing to timely request a hearing.

ORDER

- 1) Employer's April 22, 2026 petition is granted.
- 2) Employee's March 26, 2024 claim is denied under AS 23.30.110(c).

Dated in Juneau, Alaska on August 3, 2026.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Kathryn Setzer, Designated Chair

/s/
Sara Faulkner, Member

/s/
Brad Austin, Member

APPEAL PROCEDURES

This compensation order is a final decision. It becomes effective when filed in the office of the board unless proceedings to appeal it are instituted. Effective November 7, 2005 proceedings to appeal must be instituted in the Alaska Workers' Compensation Appeals Commission within 30 days of the filing of this decision and be brought by a party in interest against the boards and all other parties to the proceedings before the board. If a request for reconsideration of this final decision is timely filed with the board, any proceedings to appeal must be instituted within 30 days after the reconsideration decision is mailed to the parties or within 30 days after the date the reconsideration request is considered denied due to the absence of any action on the reconsideration request, whichever is earlier. AS 23.30.127.

An appeal may be initiated by filing with the office of the Appeals Commission: 1) a signed notice of appeal specifying the board order appealed from and 2) a statement of the grounds upon which the appeal is taken. A cross-appeal may be initiated by filing with the office of the Appeals Commission a signed notice of cross-appeal within 30 days after the board decision is filed or within 15 days after service of a notice of appeal, whichever is later. The notice of cross-appeal shall specify the board order appealed from and the ground upon which the cross-appeal is taken. AS 23.30.128.

RECONSIDERATION

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

MODIFICATION

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

CERTIFICATION

JEFFREY JUSTICE v. TOBIN & RIEDESEL LOGGING, LLC

I hereby certify the foregoing is a full, true and correct copy of the Final Decision and Order in the matter of Jeffrey Justice, employee / claimant v. Tobin & Riedesel Logging, LLC, employer; Alaska National Insurance, insurer / defendants; Case No. 201913738; dated and filed in the Alaska Workers' Compensation Board's office in Juneau, Alaska, and served on the parties by certified U.S. Mail, postage prepaid, on August 3, 2026.

/s/
Lorvin Uddipa, Workers' Compensation Technician