

# ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

|                           |   |                                |
|---------------------------|---|--------------------------------|
| JEFFREY J. JUSTICE,       | ) |                                |
|                           | ) |                                |
| Employee,                 | ) |                                |
| Claimant,                 | ) |                                |
|                           | ) | FINAL DECISION AND ORDER       |
| v.                        | ) |                                |
|                           | ) | AWCB Case No. 202305313        |
| ALASKAN BREWING, LLC,     | ) |                                |
|                           | ) | AWCB Decision No. 26-0057      |
| Employer,                 | ) |                                |
| and                       | ) | Filed with AWCB Juneau, Alaska |
|                           | ) | on August 3, 2026              |
| ALASKA NATIONAL INSURANCE | ) |                                |
| COMPANY,                  | ) |                                |
|                           | ) |                                |
| Insurer,                  | ) |                                |
| Defendants.               | ) |                                |
|                           | ) |                                |

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Alaskan Brewing, 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 J. Justice (Employee) appeared in person, testified, and represented himself. Attorney Martha Tansik appeared in person and represented Employer. The record closed on July 7, 2026.

## ISSUES

Employee contended that 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 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 the 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 claims 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 April 20, 2023, Employer reported Employee was injured on April 12, 2023, and described the injury as, "About 6 days ago he was going to sit down at the computer to fill out paperwork and the chair kicked out behind him causing him to fall to the ground on to his buttocks/left hip and he hit the back of his head on the concrete floor" and he had "a knot on his head that is getting smaller." (First Report of Injury, April 20, 2023).
- 2) On June 14, 2023, Employer denied all benefits after June 14, 2023 for failing to sign and return releases or file a petition for a protective order. It mailed the controversion notice to Employee's mailing address of record by first-class mail. 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, June 14, 2023).

- 3) On June 27, 2023, Tansik entered her appearance of behalf of Employer. (Entry of Appearance, June 27, 2023).
- 4) On July 26, 2023, Employer denied all benefits for failing to sign and return releases or file a petition for a protective order. It mailed the controversion notice to Employee's mailing address of record by certified mail, article number 9414 7266 9904 2211 0075 14. (Controversion Notice, July 26, 2023).
- 5) On August 4, 2023, Employee signed the green card for receipt of the July 26, 2023 controversion notice, article number 9414 7266 9904 2211 0075 14. (United States Postal Service (USPS) Certified Mail green card, August 4, 2023).
- 6) On August 9, 2023, Employee filed signed releases he stated he already faxed to Employer's attorney. (Releases, August 9, 2023).

- 7) On August 11, 2023, Employee did not feel like his back pain has gotten any better and he was frustrated workers' compensation is not covering all of the interventions he thinks he needs. His depression has been pretty unbearable. Bradelle Padon, ANP, diagnosed depression and chronic low back pain. (Padon record, August 11, 2023).
- 8) On September 14, 2023, Employee reported feeling better with decreased low back pain symptoms for two to four days after second recent L5-S1 transforaminal epidural steroid injection. He continued to work with physical therapy with a targeted rehabilitation program. He was to follow up for reevaluation in three to four weeks. (John Bursell, MD, record, September 14, 2023). Meghan Lindquist, PA-C, released Employee to "Light Work" defined as "Lifting 20 pounds maximum with frequent lifting and/or carrying of objects weighing up to 20 pounds. Even though the weight lifted may be only a negligible amount, a job in this category when it requires walking or standing to a significant degree, or when it involves sitting most of the time." He would be reevaluated on October 12, 2023. (Lindquist Return to Work Recommendations, September 14, 2023).
- 9) On September 14, 2023, Employee sought temporary total disability benefits for injuries to his back and head because he "didn't receive benefit payment." (Claim for Workers' Compensation Benefits, September 14, 2023).
- 10) On September 14, 2023, Kymberly LaRose emailed Joy Will and Curtis Holmes at Alaskan Brewing, LLC:

One of the benefits available to injured workers is time loss. This benefit can end a variety of ways including medical stability or an employer's ability to accommodate restrictions. In the case of employee's who have been terminated for cause, if the employer would have been able to accommodate the restrictions if the person was still employed, the time loss benefits can also be ended. It is important that Employers are truthful and accurate about their abilities to accommodate.

Please let me know if, were Mr. Justice still employed, Alaskan Brewing LLC would be able to accommodate the attached restrictions.  
If so, would this accommodation be on a full-time basis and at the same pay rate?  
If not, please disregard the second question. (Email, September 14, 2023).

- 11) On September 16, 2023, Holmes, Plant Manager, emailed LaRose and Will:

Apologies for not getting back to you on Friday, I think Joy and I both were assuming the other would respond and then neither of us did.

Joy and I both feel that we could have accommodated Jeffrey in a light duty work position in our packaging shop after his injury. We would have had options for forklift driving, or there are two positions where he could have monitored a case packing machine with minimal lifting needed.

Let me know if that's what you needed to have for your files. (Email, September 16, 2023).

12) On September 18, 2023, adjuster LaRose sent Employee a letter which stated:

You have been released to light duty work. Under the Alaska Workers' Compensation Act, employers are given an opportunity to accommodate restrictions in order to help employees return to work. Your restrictions would have been able to be accommodated by Alaskan Brewing, LLC, had you not been terminated for cause earlier in the year. Because of this termination, you are considered voluntarily removed from the work force and are not entitled to additional time loss benefits at this time. We will continue to reevaluate the situation as additional medical records become available. If you have any questions, the Alaska Workers' Compensation Board has Technician's available to assist you. . . . (Letter, September 18, 2023).

13) On September 26, 2023, Employee said the second injection for his back went better than the first and physical therapy was helping. He had been drinking a little bit too much; he had been trying not to, but he gets frustrated and it makes him feel like he needs to have a drink. Employee has been working on quitting for 18 years. He drank a fifth on Friday and Saturday. His stepmother and father passed away, and it was stressful; then he spent two years taking care of his mother. Employee started drinking heavily then. He had five "AA" meetings a week in the mornings. ANP Padon diagnosed chronic back pain and depression. (Padon record, September 26, 2023).

14) On September 28, 2023, Employee sought temporary total disability (TTD) benefits, transportation costs, a finding of unfair or frivolous controversion, penalty for late paid compensation, and interest stating "Denial of benefits without an [sic] medical opinion. My therapist and treating PA has not released me for any work." He attached the September 18, 2023 letter from LaRose. (Claim for Workers' Compensation Benefits, September 28, 2023).

15) On October 4, 2023, Employer denied TTD benefits after September 14, 2023 "as employee voluntarily removed himself from the workforce due to termination for cause. Otherwise, his light duty restrictions could have been accommodated." It contended he was paid time loss benefits through September 17, 2023, Employee was "terminated for cause per verbal report from

Employer to Insurer” for “his own behavior and actions”, and he was released to light duty effective September 14, 2023. Employer also denied penalty and interest. The controversion notice was mailed to Employee’s address of record by certified mail, return receipt requested and 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.**

(Answer to Employee’s Workers’ Compensation Claim and Controversion Notice, October 4, 2023).

**16) On October 17, 2023, the parties attended a prehearing conference:**

The Board designee advised Employee he must serve and file an ARH requesting a hearing or additional time as Employee has not completed all discovery but still wants a hearing within two years of Employer’s October 4, 2023 Controversion to avoid possible dismissal of his claim. AS 23.30.110(c). A hearing or additional time must be requested by **Tuesday, October 7, 2025** (October 4, 2023 + 2 years + 3 days under 8 AAC 45.060(b) = Tuesday, October 7, 2025). (Prehearing Conference Summary, October 17, 2023).

17) On October 17, 2023, Employer denied TTD after September 17, 2023, an unfair or frivolous controversion, transportation costs, penalty, and interest:

Employee was released to light duty work on 9/14/23 by the PA-C at Juneau Bone and Joint. Employer confirms that had Employee not been terminated for cause they would have been able to accommodate those restrictions. Employee has voluntarily removed himself from the work force and is not entitled to any additional time loss benefits at this time. As such, no penalty or interest are due or owed.

As the denial is based on facts, this is not unfair and frivolous. No itemized mileage log has yet been provided related to medical treatment, once one is submitted it will be reviewed for payment of transportation costs.

It served Employee to his address of record with the controversion notice by certified mail, return receipt requested, article number 9414 7266 9904 2211 0066 92. The controversion notice provided the following information:

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**IF YOU ARE UNSURE WHETHER IT IS TOO LATE TO FILE A CLAIM  
OR REQUEST A HEARING, CONTACT THE NEAREST AWCB OFFICE.**  
(Controversion Notice, October 17, 2023).

18) On November 1, 2023, Employee said he had two episodes where he fell down a week apart. The first time he was in the shop where he lived and walking from his deck to his couch and then the next thing he knew, it was really dark and he did not know where he was and it was four hours later. A week later, he hit his head on a bumper when he fell. Employee has also been having headaches. His back pain has improved. Employee was still feeling depressed. He has been “on the wagon” for five-and-a-half weeks; he was “on the wagon” before the first fall happened. Employee said he is a binge drinker. He agreed to start a medication for depression. (Padon record, November 1, 2023).

19) On November 7, 2023, Employee signed the green card for receipt of the October 4, 2023 controversion notice, article number 9414 7266 9904 2211 0066 47. (USPS Certified Mail green card, November 7, 2023).

20) On November 7, 2023, Employee signed the green card for receipt of the October 17, 2023 controversion notice, article number 9414 7266 9904 22110 0066 92. (USPS Certified Mail green card, November 7, 2023).

21) On November 21, 2023, a head computed tomography (CT) found no evidence for an acute intracranial abnormality. (CT report, November 21, 2023).

22) On November 28, 2023, Employee went to the emergency room at the recommendation of his primary care provider. He said that late Sunday night and early Monday morning he suspected he was getting up to use the bathroom but woke up later on the floor. Employee adamantly denied significant recent alcohol use. He stated he sometimes does binge drink, but he had not really done that for about three-and-a-half months. Employee had a shot of alcohol earlier today. He reported a similar episode of passing out and then waking up on the ground nine weeks ago. A head CT was performed about a week ago with no acute findings. Employee was prescribed Keppra and it was recommended he stay in the hospital for a brain magnetic resonance imaging (MRI) and electroencephalogram (EEG). He refused to stay in the hospital and left against medical advice. (Carrington Sedgwick, PA, November 28, 2023).

23) On December 12, 2023, Employee said his headaches have improved significantly and he has not had any further syncopal or near syncopal episodes. He was going to wait until he qualified

for Medicaid before completing the MRI and EEG. Employee continued not to drink alcohol. He noted he continued to have significant life stressors. Employee will continue to take Keppra and sertraline. (Padon record, December 12, 2023).

24) On January 8, 2024, Employee presented to the emergency room with the chief complaint of “death,” stating he felt like he was dying. Employee thought about it every day and has felt like this for the last one to two years. He has been trying to kill himself daily by drinking heavily and intermittently thinks about shooting himself. Employee had been diagnosed with a seizure disorder several months ago and started on Keppra. His speech was slurred and he smelt of alcohol; he was acting liable and belligerent. Employee was admitted to the mental health unit. (Cailey Neary, ANP, record, January 8, 2024).

25) On January 9, 2024, Employee was admitted for depression with suicidal ideas and feeling hopeless about his situation. He said he has many problems including falling at his workplace and hitting his head and developing seizures, incurring a great deal of medical bills. Employee had been going to “AA” for 20 years, had been sober for over 16 weeks, and then went on a bender. He had stopped drinking in September 2023 and then started to develop seizures. Employee said the seizure had nothing to do with drinking and denied drinking at the time. He said he felt suicidal when drinking. Employee had been outpatient diagnosed with depression and prescribed Zoloft and had psychotherapy. He was assessed with suicidal ideation, major depression, and alcohol use disorder. Employee was prescribed Zoloft and would continue “AA.” (Genova Stearns, DO, record, January 9, 2024).

26) On January 10, 2024, Employee said the hospital was making him more depressed and he felt like he was in jail. He denied suicidal or homicidal ideas. Employee was discharged. (Stearns record, January 10, 2024).

27) On January 19, 2024, Employee said he had 16 weeks of sobriety and then went on a bender for a week. He went to the hospital and stayed in the mental health unit for two days and his sertraline was increased. Employee thought it really helped, that he had more energy and his mood was better. He has not drank since his admission. (Padon record, January 19, 2024).

28) On January 27, 2024, Jason Thompson, MD, an orthopedic surgeon, performed a records review EME because Employee failed to attend. He diagnosed a work-related low back sprain or strain and low back, mid back, and head contusion, preexisting lumbar degenerative spondylosis with intermittent back pain and stiffness, alcohol abuse, seizure disorder, and osteoarthritis with

preexisting right hip arthroplasty. Dr. Thompson opined Employee sustained a work injury when a chair he was attempting to sit on slipped out from under him unexpectedly causing him to fall to the ground and hit his low back and head. It is the substantial cause of a brief period of medical care, involving physical therapy, epidural steroid injections, and muscle relaxer medications and disability. By November 2023, Employee had been provided sufficient treatment, and his condition was resolved to baseline at the time his lumbar sprain and strain symptoms had resolved, and he complained of intermittent back pain and stiffness, which he had been complaining about for years. Dr. Thompson opined the work injury is not the substantial cause of the need for medical treatment for seizures as it is related to Employee's alcohol use. He recommended no further medical treatment for the work injury; treatment for Employee's seizure or lumbar spinal stenosis is not work related. Employee reached medical stability on November 21, 2023 with no ratable impairment for the work injury. Dr. Thompson said but for his alcoholism and seizure disorder, Employee could perform the job duties of his packing operator job that he held at the time of injury and other jobs he has held. (Thompson report, January 27, 2024).

29) On January 29, 2024, Employer denied "compensation benefits effective January 27, 2024" as Employee "failed to appear at a properly noticed IME appointment." It served Employee to his address of record with the controversion notice by certified mail, return receipt requested, article number 9414 7266 9904 2211 0070 33. 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, January 29, 2024).

30) On February 7, 2024, Employer denied “Compensation benefits effective 1/27/24,” time loss benefits, PPI, and medical benefits. It reiterated the denial reason from the January 29, 2024 controversion notice. Employer also stated:

The IME report is incorporated in full by reference. Employer and Insurer rely on the medical opinion of Dr. Thompson that Employee was medically stable from the effects of the work-related injury, a lumbar sprain/strain, on 11/21/23. His current need for treatment for his back is substantially caused by a pre-existing back injury and any need for treatment of seizures is substantially caused by his alcohol use. As it pertains to the work injury, Mr. Justice has the physical abilities to return to the job at time of injury. There is no permanent impairment as a result of the injury.

It served Employee to his address of record with the controversion notice by certified mail, return receipt requested, article number 9414 7266 9904 2211 0070 95. The controversion notice provided the following information:

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

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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 AWCBC 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 AWCBC OFFICE.**  
(Controversion Notice, February 7, 2024).

31) On February 13, 2024, Employee said he stopped all of his medication “cold turkey” ten days ago because they were not serving him well and his mood was “shit.” He thought the increase in his sertraline made everything worse and he felt better without it. Employee restarted Keppra a day or two ago on the advice of other staff. He denied recent alcohol use. (Padon record, February 13, 2024).

32) On March 8, 2024, Dr. Thompson examined Employee for an EME. His opinions stayed the same as his January 27, 2024 report. Dr. Thompson said he did not have concerns about secondary gain. Employee’s other medical conditions present their own barriers to his work but are unrelated to the work injury. (Thompson report, March 8, 2024).

33) On March 11, 2024, Employer modified its February 7, 2024 controversion notice lifting the denial of all benefits based on Employee’s failure to appear effective March 8, 2024 because Employee appeared for an EME. It continued to deny retraining stipend benefits from January 27 to March 7, 2024 based on his failure to attend the prior EME and the time loss, medical benefits, and PPI benefits based on Dr. Thompson’s EME report. Employer stated stipend benefits resumed effective March 8, 2024 and the first payment would issue on March 15, 2024 for period ending March 16, 2024. (Modification of 2/7/24 Controversion, March 11, 2024).

34) On March 13, 2024, Employee sought medical costs, penalty for late paid compensation, and “other” stating, “I’d like to appeal denial of retraining benefits for the period of 1/27/2024-03/07/2024. Late payment of benefits due by 1/24/2024. Received on 01/27/2024. Refusal to authorize recommended referrals and treatments.” (Claim for Workers’ Compensation Benefits, March 13, 2024).

35) On March 20, 2024, Employer denied medical treatment after November 21, 2023, medical treatment for which bills were not received timely under AS 23.30.097, time loss benefits after November 21, 2023, and PPI benefits over zero percent. It stated:

Employer and Insurer rely on the opinion of Dr. Thompson that the work-related injury resolved by November 21, 2023, and that the substantial cause of any ongoing need for treatment for seizures is likely EE's alcoholism, but is clearly not the work-related injury. As it pertains to the work-related injury, he is able to return to work at his job at time of injury. However, other personal health factors are barriers to returning to work. Dr. Thompson has opined that EE was medically stable as of 11 /21 /23 with a 0% PPI rating for the work-related injuries.

Employer served Employee to his address of record with the controversion notice by certified mail, return receipt requested, article number 9414 7266 9904 2211 0032 95. The controversion notice provided the following information:

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(Controversion Notice, March 20, 2024).

36) On March 21, 2024, Employee felt a lot better on Keppra. He took Tylenol for headaches. Employee continued to go to counseling. (Padon record, March 21, 2024).

37) On March 28, 2024, Employee signed the green card for receipt of the March 20, 2024 controversion notice, article number 9414 7266 9904 2211 0032 95. (USPS Certified Mail green card, March 28, 2024).

38) On April 3, 2024, Employer denied an unfair or frivolous controversion, medical benefits after November 21, 2023, penalties, interest, retraining stipend benefits from January 27, 2024 through March 7, 2024:

All controversions are made in good faith and are supported by medical and/or factual evidence in the possession of employer or its workers' compensation insurer at the time of controversion.

Employer and Insurer rely on the opinion of Dr. Thompson that the work-related injury resolved by November 21, 2023, and that the substantial cause of any ongoing need for treatment for seizures is likely employee's alcoholism but is clearly not the work-related injury. As it pertains to the work-related injury, he is able to return to work at his job at time of injury. However, other personal health factors are barriers to returning to work. Dr. Thompson has opined that employee was medically stable as of 11/21/23 with a 0% PPI rating for the work-related injuries.

All benefits due to employee, and for which timely and proper documentation has been provided to employer, have been timely paid. Thus, no penalty or interest is owed.

Retraining stipend (.041(k)) benefits were appropriately denied for the period of 1/27/24 through 3/7/24 because employee failed to attend a prior properly noticed IME on 1/27/24. Employee attended a second IME on 3/8/24 and benefits were reinstated.

It served Employee to his address of record with the controversion notice by certified mail, return receipt requested, article number 9414 7266 9904 2211 0034 24. The controversion notice provided the following information:

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

Employer reiterated its denials in its answer. (Controversion Notice and Answer to Employee's Workers' Compensation Claim, April 3, 2024).

39) On April 5, 2024, Employee called and spoke to a Technician at the Alaska Workers' Compensation Division (Division):

EE called in, wanting to know which step to take next after he was denied benefits. ER atny sent email to EE saying they are going to deny his benefits in full, and gave him some options on what he can do next. EE said he wants to file an ARH but still wants to do SIME. Expl to EE that he can do SIME first to get another opinion or he can take IME report to his treating first and have them write up a letter but EE said he's tried to do that but is being ignored by his provider but has an appt sched'd on Tuesday 4/9/24. EE will reach back out after his Tuesday appt. (Incident Claims and Expense Reporting System (ICERS), Communications, Phone Call, April 5, 2024).

40) On April 10, 2024, the parties attended a prehearing conference and the designee explained how to request a second independent medical evaluation (SIME) with a petition and SIME form. The designee also advised Employee:

... he must serve and file an ARH requesting a hearing or written notice he has not completed all discovery but still wants a hearing within two years of Employer's

post-claim Controversions to avoid possible dismissal of his claims. AS 23.30.110(c). Employee has filed three claims, and each has its own deadline to request a hearing:

**Claim dated 09/14/2023:**

**Employee must file an ARH or written notice he has not completed all discovery but still wants a hearing by Tuesday, October 7, 2025** (October 4, 2023 + 2 years + 3 days under 8 AAC 45.060(b) = Tuesday, October 7, 2025).

**Claim dated 09/28/2023:**

**Employee must file an ARH or written notice he has not completed all discovery but still wants a hearing by Monday, October 20, 2025** (October 17, 2023 + 2 years + 3 days under 8 AAC 45.060(b) = Monday, October 20, 2025).

**Claim dated 03/13/2024:**

**Employee must file an ARH or written notice he has not completed all discovery but still wants a hearing by Monday, April 6, 2026** (April 3, 2024 + 2 years + 3 days under 8 AAC 45.060(b) = Monday, April 6, 2026. (Prehearing Conference Summary, April 10, 2024).

41) On April 10, 2024, Dr. Bursell answered questions in a March 19, 2024 letter from the claims adjuster and stated he agreed with Dr. Thompson's March 8, 2024 report and that the need for mental health treatment and a seizure disorder is unrelated to the work injury and is likely related to Employee's alcoholism. (Bursell response, April 10, 2024).

42) On April 15, 2024, Employee signed the green card for receipt of the March 20, 2024 controversion notice, article number 9414 7266 9904 2211 0034 24. (USPS Certified Mail green card, April 15, 2024).

43) On April 17, 2024, ANP Padon answered questions in an April 15, 2024 letter from the claims adjuster and stated she agreed that the work-related injury is no longer the substantial cause of any need for medical treatment or disability and that any need for treatment is due to personal health conditions and substance use. (Padon response, April 17, 2024).

44) On May 14, 2024, the reemployment benefits administrator designee found Employee ineligible for reemployment benefits. (Letter, May 14, 2024).

45) On May 15, 2024, Employee called and spoke to a Technician at the Division:

EE called in and stated his difficult time through WC process. EE stated he is really in need of an attny. Discussed previous contro, which was based on his treating physicians opinion. EE said he doesn't know why his treating had done so, and hasn't seen her in months. EE said he has a appt with her sometime next week and

will discuss the contro w/ her. Expl to EE that he still has the choice of changing physicians w/o getting approval from ER attny but EE said he's had trouble @ JBJC in the past and refuses to go there. EE expl the issues he has getting an attny and w/ ER attny. EE also mentioned the amount for WC he was receiving should be changed due to inflation. Suggest he participate in the public comment during tomorrows board meeting. Emailed link to meeting and sched'd time. (ICERS, Communications, Phone Call, May 15, 2024).

46) On May 28, 2024, Employee called and spoke to a Technician at the Division:

EE called in, upset at the process still. EE upset at the fact that his treating Bradelle Padon @ SEARHC is a PA-C and not a real doctor and that he needs to make an appt w/ her supervisor. EE also upset at the IME process b/c Dr. Thompson looked at him for 10 mins and made an opinion that messed things up. According to EE, Dr. Thompson is a joint specialist and he shouldn't be making determinations on his head inj. EE said this case is for his back but his head was also inj and ER attnys/adj are refusing to acknowledge that his head needs medical treatment too. EE thinks he is entitled to an SIME and I expl the process to him b/c he thinks the board just automatically conducts their own IME. EE having trouble retaining a lawyer and thinks that it needs to be like criminal court cases were they can be appointed a public defender. EE still upset at ER attny and doesn't sound like he is willing to settle under any circumstance b/c of how has been treated. EE is not in need of \$ but just wants to be treated for his inj. Told EE that he can take IME report to a physician that he change w/o getting approval from ER attny but EE wants to see Bradelle Padon's supervisor b/c they are the real "Dr." and Padon is only a physicians assistant. EE also upset at the fact that he is only aloud one change in physicians but the adjs can change multiple times as they have since the case opened. EE then said if he were to have an attny, this would be over with but he said he will keep trying when he comes back from Anchorage. (ICERS, Communications, Phone Call, May 28, 2024).

47) On June 20, 2024, Employee filed medical bills. (Notice of Intent to Rely, June 20, 2024).

48) On January 13, 2025, Employee called and spoke to a Technician at the Division, "EE called in, wants to sched a time to come in b/c he has spoke w/ attny who might take on his case, and might want to a copy of his file, which he can fill out @ office. EE will come in 1/23/25 @9AM." (ICERS, Communications, Phone Call, January 13, 2025).

49) On August 20, 2025, the reemployment specialist sought \$851.92 for an unpaid invoice, more than 490 days past due and \$212.98 for a 25 percent penalty. (Claim for Workers' Compensation Benefits, August 20, 2025).

50) On September 11, 2025, Employer answered the August 20, 2025 claim apologizing for the delay in payment, stated it paid the bill in full with the requested penalty. (Answer to Rehab Specialist's Workers' Compensation Claim, September 11, 2025).

51) On April 22, 2026, Employer requested an order dismissing Employee's September 14 and 28, 2023 claims contending Employee failed to request a hearing by October 7 and 20, 2025. (Petition, April 22, 2026).

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

53) On May 12, 2026, Employee emailed a Division staff person, "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).

54) 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 h 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).

55) 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 US Postal Service Certified Mail Receipt, May 28, 2026).

56) On June 30, 2026, Employer contended a claim must be dismissed when the employee failed to substantively or actually comply with §110(c) despite being well advised of those requirements. It contended the Board informed Employee of the §110(c) deadlines for his claims in the April 10, 2024 prehearing conference and in the written summary. Employee contended Employee neither filed an ARH nor requested additional time. It cited *Kim* and contended the Board cannot extend the deadline after it has passed. Employer cited *Tonoian* and contended the Board has no duty to seek out an employee and urge them to file paperwork on time or to volunteer information that I might have reasonably assumed they have been told. It contended the controversion notices also informed Employee of the deadline. Employer contended there is no evidence of mental incapacity or incompetence or estoppel against a government agency. It contended that denying its petition to dismiss would render the §110(c) deadline meaningless and undermine legislative intent and to

allow his claim to continue would be prejudicial to Employer. (Employer's Hearing Brief, June 30, 2026).

57) 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).

58) 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 he should have been informed of this before the hearing. (Employee).

59) 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).

60) 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).

61) Employer contended its after-claim controversion notices contained the standard language information Employee of the §110(c) deadline and Employee signed certified mail receipts for those controversion notices. It contended the Board fulfilled its obligation to inform Employee of the actual deadlines in prehearing conference and provided him the ARH and petition forms. Employer contended it waited until Employer missed all three deadlines before it petitioned to dismiss his claims. It contended that Employee has not filed an ARH or a written request for additional time. Employer contended there is no evidence of mental incapacity or incompetence and no evidence of equitable estoppel against a government agency. It contended Employee's statements about Amy are hearsay, and should be excluded without corroborating evidence, which there is none. (Employer).

62) Employee contended two years is a long time for an unrepresented injured worker to remember to file an ARH or request an extension. He contended he was unable to find a lawyer that would take his case and it is unfair that Employer has a lawyer. Employee contended he did not file an ARH because he was still hurt and was not ready for a hearing. He contended he should have been

allowed to go to another doctor to get another opinion from an unbiased doctor. Employee contended Employer did not ask for his mental health records, but he can provide plenty records for that. He contended whether he is competent should be left up to a professional, and not a lawyer. Employee contended he tried to get Don Davis and Dr. Bursell to testify as a witness, but he found out he had to pay witnesses. (Employee).

63) Employee testified he had a lot of problems with the head injury for quite a while but thankfully he healed but it has been very slow. He went to his last neurologist appointment two weeks about and he has to go back in about a year. The head injury has a real effect on his ability to think, especially for about a year and a half. Employee could not remember a lot of things, like people's name that he knew for 30 years. Dr. Bursell did not release him back to work, a gal named Amy did. She told him that her brother has been the head brewer for Alaska Brewing for 31 years, with stock options and all kinds of benefits. Employee believes Amy should have recused herself from returning him to work because her brother has a financial stake in this case; he thinks it is slimy she did not recuse herself. He returned to work in late April 2025, but his back is still messed up; he was definitely not ready to go back to work when she released him. Dr. Bursell did not want to talk about it. Employee can walk about 100 yards before he has to stop. He got help through JAMHI with exercising and stretching. Employee still cannot really do a heavy job and should still be getting treatments for his back, but he can only afford so much. He got a new physician that got him a handicap bus pass because he cannot walk very far. When he told Tansik he wanted to see another doctor, she told him they closed his case. Employee wanted to get another opinion, but Tansik slammed the door in his face, which is what they do to save a couple nickels. Tansik tried to say he had seizures because he was an alcoholic, but he has long periods of sobriety. Employee never had a seizure until the work injury. He emailed a reply about the dismissals to a Division staff person. The Division staff person should have told him to file it correctly and there is no explanation for sending it to a certain address, he just responded to her email. The EME's office had carpet that smelled like a bar, it was dirty and nasty. Employee believes the workers' compensation system is broken, leaning toward the rich powerful insurance company, and Alaska National Insurance Company is a rich, powerful company that employs a lot of very expensive people to fight against people that do not have any money because they were injured. They probably have a lobby that goes to the legislature to affect the laws that are enacted, and the "working class Joe" does not have a lobby. (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 Alaska Supreme Court (Court) found the uncorrected error may have dissuaded the injured worker from filing 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 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 Board medical exam is such action.

In *Davis v. Wrangell Forest Products*, AWCAC Dec. No. 256 (January 2, 2019), the employee’s claim was controverted. He requested a second independent medical evaluation (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 prejudice.

(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 Faulker 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 Faulker'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) deadlines and that he must file an ARH or request additional time before the deadline or his claim could be dismissed in the April 17, 2023 and in the April 10, 2024 prehearing conferences and their summaries, which were served to his mailing address of record. He was also advised of the §110(c) deadline in the June 14, October 4 and 17, 2023, January 29, February 7, March 20, and April 3, 2024 controversion notices. Employee called and spoke with a Technician on April 5, 2024, and said he wanted to file an ARH and wanted to have an SIME. He attended the prehearing conference on April 10, 2024 and the designee explained how to request an SIME with a petition and SIME form. On May 15, 2024, Employee called and spoke with a Technician about changing his physician; and on May 28, 2024, he called again explaining he was having trouble retaining an attorney and he was again informed about the SIME process by Division staff. Finally, Employee filed medical bills on June 20, 2024. But Employee never filed a petition requesting an SIME or an SIME form. He took no further action on his claim until he opposed Employer’s petition to dismiss on May 12, 2026, when he emailed Division staff after Employer petitioned to dismiss his claim. Employee was informed of the §110(c) deadlines and he knew or should have known he had to request a hearing or additional time before the deadlines. 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 claims. 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*. While the record does demonstrate Employee had mental health complaints and treatment, 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) deadlines, October 7, 2025, October 20, 2025 and April 6, 2026, in the April 17, 2023 and in the April 10, 2024 prehearing conferences and their summaries based on Employer’s October 4, 2023, October 17, 2023 and April 3, 2024 controversion notices (October 4, 2023 controversion notice + 2 years + 3 days = October 7, 2025; October 17, 2023 controversion notice + 2 years + 3 days = October 20, 2025; April 3, 2024 controversion notice + 2 years + 3 days = April 6, 2026). AS 23.30.110(c); 8 AAC 45.060(b); 8 AAC 45.063(a). He had until October 7, 2025 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 on his first claim, October 20, 2025 for his second claim, and April 6, 2026 for his third claim. *Kim*.

Employee was adequately informed of the actual §110(c) deadlines at the first prehearing conference on April 17, 2023 and in the April 10, 2024 prehearing conference and their summaries, which were mailed to his address of record, and he 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 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 October 7, 2025, October 20, 2025, and April 6, 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 September 14, 2023, September 28, 2023, and March 13, 2024 claims 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 claims should be denied for failing to timely request a hearing.

#### ORDER

- 1) Employer's April 22, 2026 petition is granted.
- 2) Employee's September 14, 2023, September 28, 2023, and March 13, 2024 claims are 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

I hereby certify the foregoing is a full, true and correct copy of the Final Decision and Order in the matter of Jeffrey J. Justice, employee / claimant v. Alaskan Brewing, LLC, employer; Alaska National Insurance Company, insurer / defendants; Case No. 202305313; 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