ALASKA WORKERS' COMPENSATION BOARD

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

OLGA KUZMIN, Employee, Claimant, v. FIRST STUDENT, Employer, and AIU INSURANCE COMPANY, Insurer, Defendants.	FINAL DECISION AND ORDER AWCB Case No. 202402773 AWCB Decision No. 26-0061 Filed with AWCB Anchorage, Alaska on August 14, 2026.

Olga Kuzmin's (Employee) September 22, 2025 and May 12, 2026 claims for workers' compensation benefits, October 17, 2025 claim for reemployment benefits, and June 23, 2026 claim for a compensation rate adjustment were heard on July 8, 2026 in Anchorage, Alaska, a date selected on May 12, 2026. An April 27, 2026 hearing request gave rise to this hearing. Attorney Keenan Powell appeared and represented Employee. Attorney Krista Schwarting appeared and represented First Student and AIU Insurance Company (Employer). A Second Independent Medical Examination (SIME) was ordered on November 19, 2025 in *Kuzmin v. First Student*, AWCB No. 25-0079. (*Kuzmin I*). The record closed on July 17, 2026 after receiving additional documentation from the parties.

ISSUES

The parties at hearing stipulated to benefits on certain issues for hearing. Employee requested a hearing and decision on her request for penalties and a finding of an unfair or frivolous controversion.

Employer did not object.

1) **Should the parties' hearing stipulation be memorialized in an order?**

Employee contends her compensation rate should be based upon her 2024 gross earnings; she requests the rate adjustment be applied to the date of injury.

Employer did not object to the proposed compensation rate adjustment.

2) **Is Employee entitled to a compensation rate adjustment?**

Employee argues John Ballard's, MD, employer's medical evaluation (EME) report fails to rise to the level of "substantial evidence" sufficient to rebut the presumption of the need for ongoing treatment, disability, medical stability, and entitlement to reemployment benefits. She requests a finding of an unfair or frivolous controversion.

Employer contends Dr. Ballard's opinion is sufficient to rebut the presumption and should not be considered unfair or frivolous.

3) **Did Employer unfairly or frivolously controvert benefits?**

Employee requests a penalty on all late paid compensation to include indemnity benefits.

Employer denies any late paid compensation.

4) **Should Employer pay a penalty on late paid compensation?**

Employee contends her attorney was instrumental in securing her benefits and she should be awarded full fees and costs.

Employer contends Employee's attorney is only entitled to fees and costs on issues she was successful in obtaining for her client.

5) Is Employee entitled to attorney's fees and costs?

FINDINGS OF FACT

All factual findings in *Kuzmin I* are incorporated here by reference and may be repeated below. A preponderance of the evidence establishes the following facts and factual conclusions:

1) On February 14, 2024, Employee slipped on ice in the parking lot at work and had right heel pain. (First Report of Injury, February 21, 2024).

2) On February 26, 2024, providers at Homer Medical Center saw Employee for "an injury that occurred at [her] place of employment" on February 14, 2026. Employee explained that she was getting into her car when she slipped and fell, bruising her right heel. The provider charted, "There is a lump on heel that wasn't previously there." Employee reported that she had right heel pain since the incident and could not walk flatfoot but had to "tiptoe." On examination, her provider found a "lump at calcaneus near insertion point of Achilles," that was laterally displaced. There was concern for a calcaneal fracture or Achilles disruption. X-rays confirmed the suspicion for a "fractured enostosis at the insertion of the Achilles tendon." The clinic referred Employee to Brent Adcox, MD, orthopedic surgeon. (Homer Medical Center record, February 26, 2024).

3) On February 26, 2024, Dr. Adcox examined Employee and stated:

> [Employee] is a very pleasant woman that is here for a fracture of a calcaneal spur. The injury occurred approximately 10 days ago. She can weight bear on her tip toes but has a hard time with complete plantar grade placement of her foot.
> . . .
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> Fracture of a calcaneal spur on the right calcaneus. I placed her in a fracture boot and made her non-weightbearing for the next 6 weeks. I will see her back at 6 weeks to start progressive weight bearing. (Adcox report, February 26, 2024).

4) By March 25, 2024, Employee had not improved. "She has a broken osteophyte in the posterior calcaneus which is causing a significant amount of pain," despite her being not

weightbearing for the previous four weeks. Her swelling had worsened and she had attempted weight-bearing on two occasions, unsuccessfully. Dr. Adcox found a "swollen mass" at the back of her Achilles insertion into the calcaneus. (Adcox report, March 25, 2024).

5) On April 11, 2024, when Employee had still not improved, Dr. Adcox referred her to Eugene Chang, MD, orthopedic surgeon. (Adcox report, April 11, 2024).

6) On May 20, 2024, Dr. Chang opined that Employee had a work-related injury and described two work-related incidences: about a month prior she had stumbled in the parking lot and quickly thereafter developed a "bony prominence" on her right heel; thereafter, Employee may have had a small avulsion in her distal Achilles tendon and had pain while driving her bus, just from "pressure on her heel." He diagnosed a Haglund's deformity on the right foot. He charted that Employee did not have that prominence before she stumbled in the parking lot at work. "Thus, it does appear to be a work-related injury." Dr. Chang recommended a Haglund's decompression surgery and evaluation and repair of the Achilles tendon as needed. Thereafter, she would be non-weightbearing for approximately three weeks and her recovery would be roughly eight weeks. (Chang report, May 20, 2024).

7) On July 16, 2024, Dr. Chang performed an Achilles tendon debridement and repair and excised the Haglund's deformity on Employee's right heel. (Operative Report, July 16, 2024).

8) On August 5, 2024, Employee told Dr. Chang that her right foot was numb on the inside and on the dorsum aspect of her foot and ankle. He noted that she did not receive a "block" prior to surgery. She had difficulty wiggling her toes. Dr. Chang recommended progressive weight-bearing in a boot. (Chang report, August 5, 2024).

9) On August 22, 2024, following a phone visit with Employee, Dr. Change attributed her numbness around the feet to "just some swelling from disuse." Employee said she "felt a little bit of a pop in the back of the heel." He could not assess this virtually and suggested she try physical therapy (PT) and see him in-person in two weeks. (Chang report, August 22, 2024).

10) By September, 2024, on referral from Dr. Chang, Employee began participating in PT. (PT note, September 9, 2024).

11) On September 16, 2024, Dr. Chang evaluated Employee again for numbness on her right foot and decreased sensation in the plantar aspect. He noted Employee did not have "a lot of discoloration and no real swelling," and had not gotten a popliteal block before surgery. He

ascribed "disuse" as the likely cause of her subjective sense of numbness. He recommended continued PT. (Chang report, September 16, 2024).

12) On October 18, 2024, Employee told her physical therapist that when she stood up after leaving the bathtub recently she "put too much weight on the [right] foot and then fell over." She had an increase in heel pain thereafter. (PT report, October 18, 2024).

13) On November 6, 2024, Employee reported to her physical therapist that she was "kicked in the back of the right foot on Monday by a drunk person at a wedding." The therapist noted tenderness in the area where Employee reported having been kicked but no unusual masses or textures noted. (PT report, November 6, 2024).

14) On November 8, 2024, PT charted that Employee's foot the day prior was "a little swollen" because she was "moving furniture around." Her hip hurt from "putting chains on buses." (PT report, November 8, 2024).

15) On November 19, 2024, PT recorded that Employee still reported pain when stepping even while using a cane to reduce weight-bearing. Walking remained "difficult," with her foot "occasionally giving out, leading to instability and comments from others about her gait." Driving exacerbated pain in the Achilles area, an activity which Employee described as "not a good idea." (PT report, November 19, 2024).

16) On November 26, 2024, Employee reported to PT that walking and driving were still difficult and her lower back pain had been "very bad, describing it as crunching when walking and requiring her to lay down and stretch frequently." (PT report, November 26, 2024).

17) On December 11, 2024, Employee told her physical therapist that her pain felt "like the same pain as before the surgery." She had tried swimming on the previous Sunday and "it did not go well." (PT report, December 11, 2024).

18) On December 16, 2024, Timothy Borman, DO, orthopedic surgeon, saw Employee for an EME. She explained her injury and symptoms and stated she used a cane to help walking. "She also tells me that she thinks that due to her gait disturbance she is developing low back pain." Employee described right-foot numbness over most of her foot, which she thought developed following her foot surgery. She denied similar symptoms on the left foot. Employee said that when she stands a long time intermittently during the day her right foot will turn "purple." She did not feel that she had gained any pain relief since her injury. On examination with a topical

thermometer, Dr. Borman found Employee's right foot and ankle were "cooler to touch than the left foot and ankle." (Borman EME report, December 16, 2024).

19) Dr. Borman diagnosed a preexisting Haglund's deformity; Achilles tendinitis; status post-surgery of the right calcaneus and Achilles tendon; peroneal nerve palsy; and possible complex regional pain syndrome (CRPS), all in the right foot and ankle. (Borman EME report, December 16, 2024).

20) Dr. Borman opined that the February 14, 2024 work injury aggravated the Haglund's deformity and caused the Achilles tendinitis and the need to operate on the Haglund's deformity. It also caused peroneal nerve palsy in the right foot and possible CRPS. Dr. Borman said the work injury was the substantial cause of the need for medical treatments Employee had to her right foot. The work injury also caused a permanent aggravation of the Haglund's deformity. Treatment to date had been appropriate but was not yet completed. Dr. Borman recommended she continue her PT and home exercises and gradually lift her weight-bearing restrictions. In his view, Employee should be encouraged to stop using her lace-up style ankle brace or ankle boot and begin weight-bearing in comfortable shoes. He also recommended a posterior relief ankle-foot orthosis. Dr. Borman opined that using her ankle-cast-boot intermittently for pain control was appropriate. He recommended a physical medicine and rehabilitation or neurology consultation regarding the numbness and weakness in the right foot and ankle. This would confirm the possible CRPS diagnosis. He also suggested electromyography and nerve conduction velocity testing. As for medications, Dr. Borman suggested Tylenol 1000 milligrams three times a day and naproxen 500 mg twice-daily. Employee's conditions were not medically stable, but he anticipated they would be by July 16, 2025, one year post-surgery. He predicted Employee would eventually have the physical capacities to drive a school bus. Meanwhile, however, he restricted her to lift, carry, push, and pull up to 10 pounds only and avoid weight-bearing activities that intensified her pain. She could not safely operate a school bus at the time of Dr. Borman's evaluation. (Borman EME report, December 16, 2024).

21) On January 23, 2025, Employee reported to PT that the previous Saturday she noticed her right foot was purple and the color did not dissipate with elevation. When she started massaging the foot, the color started to return. (PT report, January 23, 2025).

22) On February 5, 2025, Employee reported to PT that her toes on the right foot felt cold, particularly the little one, "which [felt] ice cold." (PT report, February 5, 2025).

23) On February 10, 2025, Dr. Chang saw Employee and administered a "very dilute" cortisone injection into the ankle. (Chang report, February 10, 2025).

24) On March 11, 2025, Anna Williams, whose credentials are not given, but who is affiliated with SPH Clinic Services, saw Employee, who reported that on March 9, 2025, she was walking down three sets of stairs and her right foot "gave out or slid out" on her. It was, "Hard to know." She previously had surgery on her right heel in July 2024 for a heel fracture and torn Achilles tendon. Employee had been using a cane to help her ambulate. Her leg was still weak, and her right foot still numb. When Employee fell, she said she landed on her back. Her neck hit one step, her ribs the next one, and her hip the third step. " Everything hurts." Her neck was achy and painful to move, and she thought she had a rib fracture on her left mid-back. Her right hip was tender, and it was painful to lift her right leg forward. Williams stated, "[Employee] is recovering from right heel surgery 7/24 and has residual right leg weakness and right foot numbness which contributed to her fall." Williams assessed a fall from stairs or steps; a concussion syndrome causing a mild headache and irritability with trouble concentrating; neck pain; rib pain on her left side; and acute right-hip pain and spasms. She endorsed x-rays and medication. (Williams report, March 11, 2025).

25) On March 11, 2025, Employee attended her 39th PT visit. She described the March 9, 2025 slip and fall on the steps where she "missed the step" and hit her "head and thoracic spine." Employee described "another fall recently as well when her foot gave out, causing her to fall but not injure herself." She stated that having a blanket on her foot or wearing a brace and sock caused "a throbbing pain in the heel; the symptoms are worsening." (PT report, March 11, 2025).

26) On March 13, 2025, while at PT, Employee described significant neck and hip pain, a possible rib fracture and a confirmed concussion. (PT report, March 13, 2025).

27) On March 21, 2025, Employee told her physical therapist that she had been experiencing "falls and foot giving out, which she attributes to her recent concussion and whiplash." She also experienced memory loss and could not remember if she had washed the dishes the previous evening. (PT report, March 31, 2025).

28) On March 26, 2025, Dr. Chang stated Employee was issued an ankle brace on February 10, 2025, to address her ankle issue. (Chang report, March 26, 2025).

29) By March 31, 2025, Employee was reporting back and neck pain from her fall on the stairs "a few weeks ago," and headache, ringing in her ears, and memory loss from a concussion. She requested an off-work letter stating she could not return to work driving a school bus at that time. The provider assessed a right lower leg spasm; a concussion syndrome and lumbosacral radiculopathy. She recommended x-rays and perhaps magnetic resonance imaging (MRI) and gave Employee an off-work letter. (Homer Medical Center report, March 31, 2025).

30) On April 4, 2025, Employee told her physical therapist that she still had headaches and blurred vision associated with increased activity. She still had difficulty with concentration and word-finding. Employee reported light-sensitivity with bright fluorescent lights. Her neck was doing better but was still painful and had limited motion, as well as lumbar spine pain. Employee said she had no similar symptoms before her March 9, 2025 fall on the steps. She now described right lower extremity symptoms that were not preexisting. (PT report, April 4, 2025).

31) On April 9, 2025, Employee attended her 45th PT visit and reported some improvement. However, she stated that earlier that weekend she was climbing out of the tub and fell. She was not sure if her ankle or foot "gave way" or "what happened," but she hit her left eye on the vanity. She had a blackeye and swelling. (PT report, April 9, 2025).

32) On April 10, 2025, a provider at Homer Medical Clinic evaluated Employee for her concussion and fall "last Saturday in the shower" where she hit her head on the left side. This provider recommended a computerized tomography (CT) scan to rule out abnormalities given that Employee could not recall the events leading up to the fall in the shower the previous Saturday, and because she had blurry vision in her left eye. Employee was removed from work pending the CT scan. (Homer Medical Clinic report, April 10, 2025).

33) On April 11, 2025, Employee's head CT scan was normal. (CT scan, April 11, 2025).

34) On May 2, 2025, Heath McAnally, MD, pain management, saw Employee on referral from Dr. Chang. He stated, "In brief, she apparently sustained an injury at her place of employment on February 14, 2024 comprising [of] slipping and falling on the ice and landing partially in her vehicle." Employee underwent foot surgery in July 2024. Dr. McAnally assessed a "constellation of symptoms certainly consistent with [CRPS]." Employee had numerous falls that she attributed, as did Dr. McAnally, to numbness in her foot and a lack of touch perception. He added, "she is currently unable to drive owing to unreliability of her foot/ankle." Employee

had been undergoing consistent physiotherapy. Dr. McAnally prescribed among other things gabapentin. He diagnosed right-foot numbness; right-foot weakness; right peroneal-nerve neuropathy; and a fall due to slipping on ice or snow "sequela." While Dr. McAnally stated Employee "does technically meet Budapest criteria for CRPS," he added that her disproportionately profound ligament weakness in her foot also suggested an L5 radiculopathy. He recommended electrodiagnostic testing and a CRPS-preventative regimen that included various vitamins and supplements. She was to continue PT with desensitization and "GMI" [Graded Motor Imagery] protocols should be implemented. Dr. McAnally prescribed continued gabapentin but no further interventional care by him until the electrodiagnostic results were available. (McAnally report, May 2, 2025).

35) On May 27, 2025, Eric Kussro, DO, physical medicine and rehabilitation specialist, performed electrodiagnostic studies on Employee and diagnosed right-foot paresthesia and muscle weakness in her lower extremity. He found the electrodiagnostic studies were essentially normal. There was no evidence of lumbosacral radiculopathy or any other kind of neuropathy. However, the findings suggested the presence of an accessory fibular (peroneal) nerve on the right. He referred Employee back to Dr. Chang. (Kussro report, May 27, 2025).

36) On May 30, 2025, after evaluating her, Employee's physical therapist recommended a "Bay Club" membership for a couple of months for Employee to perform her own aquatic exercises. (PT report, May 30, 2025).

37) On June 4, 2025, Employee's PT charted that she had skin sensitivity related to CRPS symptoms due to tape application. She experienced a fall while walking in the hallway without a brace or cane "as the affected area gave way." (PT report, June 4, 2025).

38) On June 6, 2025, Employee told Dr. Chang's PA-C that her electrodiagnostics revealed no nerve issues. She recommended an MRI. "Note given to state patient is unable to work at this time." (Tamara Brothers-McNeil, PA-C report, June 6, 2025).

39) On August 19, 2025, Dr. Ballard, an orthopedic surgeon, saw Employee for an EME. He reviewed Employee's history and selected medical records. Employee's chief complaint was right-heel pain. She stated that for the most part she cannot feel her right foot, falls occasionally, and feels unsteady. Employee advised that she cannot drive a motor vehicle, so she is not working. Dr. Ballard diagnosed a work-related, February 14, 2024 fracture with a Haglund's deformity and right Achilles tendinitis. He did not have an objective explanation for Employee's

global numbness or subjective complaints as she had normal muscle strength in her foot. Dr. Ballard opined that her globally decreased sensation was "nonanatomic." He said, "The cause of the conditions would be the work-related exposure. I do not have any other explanation for her widespread complaints." Dr. Ballard further opined that the work injury caused the calcaneal spur to fracture, causing the Achilles tendinitis and resulting in surgery. Thus, in his view, the work injury was the substantial factor for her surgery. (Ballard report, August 19, 2025).

40) Dr. Ballard did not have an objective explanation for Employee's widespread pain complaints and her global numbness. "I cannot state objectively that her work injury is the cause of a need for any further medical treatment. I do not have an explanation for her persisting subjective symptoms." In his opinion, the work injury was an aggravation of a preexisting Haglund's deformity, which caused that deformity to fracture. "That aggravation is resolved as of today's date, August 19, 2025." Dr. Ballard opined that Employee's medical treatment had been reasonable and appropriate, but there was no further treatment that was going to make any change in her symptoms. In his view, Employee did not have signs of CRPS. Dr. Ballard stated Employee was medically stable on August 19, 2025. He opined that palliative care was not going to make any difference in her symptoms because her symptoms had not improved despite the care she had received. Dr. Ballard provided a two percent whole-person permanent partial impairment (PPI) rating for this injury. He did not find any physical restrictions to prevent her from being a school bus driver, and believed her restrictions were based solely on her subjective complaints, which he opined were not supported by objective findings. (Ballard report, August 19, 2025).

41) On August 29, 2025, Dr. Chang stated, "[Employee] should be off work indefinitely." (Chang Work/School Status Note, August 29, 2025).

42) On August 29, 2025, Dr. Chang also opined that while no further surgery was recommended, he prescribed lidocaine patches to help with Employee's local discomfort. (Chang report, August 29, 2025).

43) On September 22, 2025, Employee claimed permanent total disability (PTD); PPI, and medical and related transportation benefits; an unfair or frivolous controversion; a penalty for late-paid compensation; interest; attorney fees; and costs. (Claim for Workers' Compensation Benefits, September 22, 2025).

44) On October 16, 2025, Employer denied Employee's claim for all time-loss benefits after August 19, 2025, PPI benefits over two percent and reemployment benefits. It based this denial on Dr. Ballard's August 19, 2025 EME report. (Controversion Notice, October 16, 2025).

45) On October 17, 2025, Employee requested an SIME. The disputed injuries, conditions or body parts included CRPS, a concussion, and her right foot and ankle. (Petition; SIME form, October 17, 2025).

46) On October 17, 2025, Employee amended her pending claim to add denied reemployment benefits. (Claim for Workers' Compensation Benefits, October 17, 2025).

47) On November 6, 2025, Employer again denied Employee's claim on the same grounds set forth in its October 16, 2025 notice. (Controversion Notice, November 6, 2025).

48) On November 19, 2025, an SIME to be conducted by Carol Frey, MD, Orthopedic Surgeon was ordered. (*Kuzmin I*).

49) On March 3, 2026, Dr. Frey found Employee not medically stable, she observed an entrapment of the sural nerve and possible stretch injury to the sural nerve on Employee's date of injury. She predicted medical stability nine months after surgery to release scarring from around the sural nerve with possible debridement of the insertion site of the Achilles' tendon. Dr. Frey estimated a 75 percent chance of improvement in Employee's pain after the sural nerve is surgically released. She noted the treatment would likely reduce Employee's impairment rating, and permit Employee to return to work sooner. (Frey SIME report, April 3, 2026).

50) On May 12, 2026, the parties attended a prehearing conference. They stipulated to an oral hearing on July 8, 2026. Issues for hearing were PPI, PTD, finding of an unfair or frivolous controversion, medical costs, transportation costs, penalties, interest, attorney's fees and costs, and reemployment benefits to include a new determination from the designee. (Prehearing Conference Summary, May 12, 2026).

51) On May 14, 2026, Employer deposed Dr. Frey. Dr. Frey reviewed additional medical imaging provided by Employer. In Dr. Frey's opinion, Employee required additional treatment to include injections, surgery to resect scar tissue around the sural nerve, removal of spurs in the Achilles region, and ultimately physical therapy to aid in recovery. In her estimation, Employee would be medically stable six months after surgery and could return to her job at the time of her injury. (Frey Deposition, May 14, 2026).

52) On June 1, 2026, Employee filed a petition to exclude Employer from filing into evidence any documentation Employee previously requested through discovery which Employer failed to provide. This included adjusters' notes, correspondence between Employer and Employee, correspondence between Employer and medical providers, compensation rate calculations by the Employer, and historical indemnity benefit payments. (Petition, June 1, 2026).

53) On June 3, 2026, Employee claimed a compensation rate adjustment, and temporary total disability (TTD). She included a 2024 W-2 tax form showing gross pay of $34,014.21. She included a calculation of $486.49 as her TTD rate based upon the Alaska Workers' Compensation Benefit Calculator tool. (Claim, June 3, 2026).

54) On July 1, 2026, the parties attended a prehearing conference. TTD and compensation rate were added as issues for hearing, Employee's petition to exclude Employer's evidence was also added as an issue for hearing. The parties stipulated to a later briefing date of July 6, 2026. (Prehearing Conference Summary, July 1, 2026).

55) On July 7, 2026, Employer filed an amended answer to Employee's May 12, 2026 claim. Employer denied PTD, but agreed Employee is entitled to TTD from August 26, 2026. Employer denies PPI benefits until Employee is deemed medically stable. Employer agreed interest is owed on any additional TTD benefits owed to Employee but denied any penalty. Employer agreed Employee is entitled to medical and transportation benefits. Employer requested review of Employee's attorney's fee affidavit prior to agreeing to attorney fees and costs. Employer relied on the IME opinion of Dr. Ballard to deny a finding of an unfair or frivolous controversion. Employer agreed Employee is entitled to a compensation rate adjustment based upon her wages at the time of injury. (Employer's Amended Answer, July 7, 2026).

56) On July 7, 2026, Employee's attorney filed her fee affidavit. Powell listed the factors to be applied under *Rusch* and Alaska Rule of Professional Conduct 1.5 when determining a reasonable attorney fee. Powell requested a rate of $520.00 per hour, and she included an itemization of work performed in this matter totaling 150.1 hours. She also included $6,128.56 in costs. She requests $54,652.00 be awarded in fees and $6,128.56 be awarded in costs. (Affidavit of Counsel Regarding Fees and Costs, July 7, 2026).

57) On July 8, 2026, at hearing the parties stipulated Employee was entitled to TTD from August 6, 2025 and ongoing, interest on any late paid payments, a PPI rating when she is

medically stable, medical and transportation costs, re-employment benefits including a remand to the reemployment benefits administrator (RBA) for a new determination, and a compensation rate calculated by the Board based upon evidence provided by Employee. (Party testimony, observations, July 8, 2026).

58) Remaining issues for hearing were Compensation Rate calculation, a finding of an unfair or frivolous controversion, penalties, and attorney's fees and costs. (Experience, judgment).

59) Employee contended Employer unfairly or frivolously controverted benefits when it relied upon Dr. Ballard's EME report. Employee noted Ballard did not use the most current version of the AMA guides in rendering his PPI rating and therefore, should not be considered. Further, Employee contended Dr. Ballard's opinion does not rebut the presumption of the need for ongoing medical treatment, disability, medical stability, and entitlement to reemployment benefits. Employee requested a finding of an unfair or frivolous controversion be ordered. Employee also requested statutory fees on ongoing indemnity payments in accordance with *Wozniak.* (Employee hearing argument, July 8, 2026).

60) On July 10, 2026, Employer provided a legacy compensation report. The report indicated Employer paid Employee at the statutory minimum rate of $325.00 periodically starting on July 16, 2024. Employer's report did not include calculations explaining how it arrived at $325.00 as the TTD rate. Employer's report showed a $5,460.00 PPI payment based upon Dr. Ballard's two percent rating. (Employer's Compensation Report, July 10, 2026).

61) On July 13, 2026, Employee responded to Employer's compensation report. Employee notes Employer did not provide any calculations as to how it arrived at its TTD rate. Employee asks the board to apply her proposed rate of $486.49 based upon her 2024 earnings. (Employee's response, July 13, 2026).

62) On July 14, 2026, Employee's attorney filed a supplemental fee affidavit. She provided a detailed report of services rendered up to and after the date of hearing. Employee's attorney's updated fees are $58,812.00 and $6,128.56 in costs. (Supplemental Affidavit of Counsel Regarding Fees and Costs, July 14, 2026).

63) On July 17, 2026, Employer responded to Employee's attorney's supplemental fee affidavit. Employer did not object to specific entries but requested the Board tailor its fee award in accordance with the benefits secured by Employee's attorney. (Response to Fee Affidavit, July 17, 2026).

64) In 2024 Employee's gross income was $34,014.21 working for Apple Bus Company. Employee's gross earnings are then divided by 50 to determine her gross weekly wage ($34,014.21 / 50 = $680.20). AS 23.30.220(a)(4). Employee claim two dependents at the time of her injury. 8 AAC 45.210(c). Inputting this data into the Alaska Workers' Compensation Benefit Calculator returns a spendable weekly wage of $608.11. Employee's TTD rate is 80% of her spendable weekly wage ($608.11 X 80% = $486.49). AS 23.30.185. Employee's TTD rate should be $486.49. Applying the same gross weekly wage to determine .041(k) reemployment stipend rate results in .041(k) base weekly benefit of $425.68. (Observations, experience, judgment).

65) The Cost of Living Adjustment (COLA) for Bend, Oregon is 94.21. (Alaska Workers' Compensation Bulletin 25-07, "Cost-of Living Adjustment", December 18, 2025).

PRINCIPLES OF LAW

The Board may base its decision not only on 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).

> **AS 23.30.010. Coverage.** (a) Except as provided in (b) of this section, compensation or benefits are payable under this chapter for disability or death or the need for medical treatment of an employee if the disability or death of the employee or the employee's need for medical treatment arose out of and in the course of the employment. . . .

Summers v. Korobkin Construction, 814 P.2d 1369, 1372 (Alaska 1991) stated, "Moreover, we believe that an injured worker who has been receiving medical treatment should have the right to a prospective determination of compensability." A Board order determining compensability will help an injured worker decided whether to pursue medical treatment or procedures.

> **AS 23.30.095. Medical treatments, services, and examinations.** (a) The employer shall furnish medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus for the period which the nature of the injury or the process of recovery requires. . . .

> **AS 23.30.145. Attorney fees**. (a) Fees for legal services rendered in respect to a claim are not valid unless approved by the board, and the fees may not be less than 25 percent on the first $1,000 of compensation or part of the first $1,000 of compensation, and 10 percent of all sums in excess of $1,000 of compensation. When the board advises that a claim has been controverted, in whole or in part, the board may direct that the fees for legal services be paid by the employer or carrier in addition to compensation awarded; the fees may be allowed only on the amount of compensation controverted and awarded. . . .
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> (b) If an employer fails to file timely notice of controversy or fails to pay compensation or medical and related benefits within 15 days after it becomes due or otherwise resists the payment of compensation or medical and related benefits and if the claimant has employed an attorney in the successful prosecution of the claim, the board shall make an award to reimburse the claimant for the costs in the proceedings, including a reasonable attorney fee. The award is in addition to the compensation or medical and related benefits ordered.

The Alaska Supreme Court (Court) in *Wise Mechanical Contractors v. Bignell*, 718 P.2d 971, 974-75 (Alaska 1986), held attorney fees should be reasonable and fully compensatory, considering the contingent nature of representing injured workers, to ensure adequate representation. *State of Alaska v. Wozniak*, 491 P.3d 1081 (Alaska 2021) held a lump-sum award of fees incurred to the date of hearing and a separate award of ongoing fees on Employee's ongoing benefits, under two subsections from the same attorney fee statute, was not "mutually exclusive," and affirmed the lower decisions awarding attorney fees in this manner.

Rusch & Dockter v. SEARHC, 453 P.3d 784, 803 (Alaska 2019), held an award of attorney fees will only be reversed if it is "manifestly unreasonable" and explained "[a] determination of reasonableness requires consideration and application of various factors that may involve factual determinations, but the reasonableness of the final award is not in itself a factual finding." It held the Board must consider all the following eight non-exclusive factors set out in Alaska Rule of Professional Conduct 1.5(a) when determining a fee's reasonableness:

> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
> (2) the likelihood, that the acceptance of the particular employment will preclude other employment by the lawyer;
> (3) the fee customarily charged in the locality for similar legal services;
> (4) the amount involved and the results obtained;
> (5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;
(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
(8) whether the fee is fixed or contingent.

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

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

(b) The first installment of compensation becomes due on the 14th day after the employer has knowledge of the injury or death. On this date all compensation then due shall be paid. Subsequent compensation shall be paid in installments, every 14 days, except where the board determines that payment in installments should be made monthly or at some other period.
. . . .

(e) If any installment of compensation payable without an award is not paid within seven days after it becomes due, as provided in (b) of this section, there shall be added to the unpaid installment an amount equal to 25 percent of the installment. This additional amount shall be paid at the same time as, and in addition to, the installment, unless notice is filed under (d) of this section or unless the nonpayment is excused by the board after a showing by the employer that owing to conditions over which the employer had no control the installment could not be paid within the period prescribed for the payment. The additional amount shall be paid directly to the recipient to whom the unpaid installment was to be paid. . . .
. . . .

(o) The director shall promptly notify the division of insurance if the board determines that the employer's insurer has frivolously or unfairly controverted compensation due under this chapter. After receiving notice from the director, the division of insurance shall determine if the insurer has committed an unfair claim settlement practice under AS 21.36.125.

> (p) An employer shall pay interest on compensation that is not paid when due. Interest required under this subsection accrues at the rate specified in AS 09.30.070(a) that is in effect on the date the compensation is due.

Harnish Group, Inc. v. NC Machinery Co., 160 P.3d 146, 151 (Alaska 2007) said:

> In a workers' compensation case an employer can contest a claimant's entitlement to benefits in two ways. After a report of injury is filed, if an employer disputes its liability and refuses to pay benefits, it must file a notice of controversion (footnote omitted). Whether or not it has filed a notice of controversion, an employer may also deny liability for benefits in its answer to a workers' compensation claim (footnote omitted).

In *Harnish*, the parties were disputing attorney fees. The Court stated:

> To determine whether there has been a controversion in fact in cases where an employer does not file a notice of controversion, the Board needs to look at the employer's answer to a claim for benefits and its actions after the claim is filed to determine whether the employer has controverted in fact the employee's claim for benefits. (*Id.* at 152).

Bauder v. Alaska Airlines, Inc., 52 P.3d 166, 176 (Alaska 2002) stated, "When an employer neither timely pays nor controverts a claim for compensation, AS 23.30.155(e) imposes a 25% penalty," but only if "if the employer is ultimately found liable for the disputed compensation." To avoid a penalty, a controversion must be filed in good faith. *Harp v. ARCO Alaska, Inc*., 831 P.2d 352 (Alaska 1992). For it to be filed in good faith, the employer must possess sufficient evidence in support of the controversion that, if the claimant does not introduce evidence in opposition to the controversion, the Board would find the claimant not entitled to benefits. *Id*.

A controversion notice must be filed "in good faith" to protect an employer from a penalty. *Harp* at 358. "In circumstances where there is reliance by the insurer on responsible medical opinion or conflicting medical testimony, invocation of penalty provisions is improper." But when nonpayment results from "bad faith reliance on counsel's advice, or mistake of law, the penalty is imposed." *State of Alaska v. Ford*, AWCAC Decision No. 133, at 8 (April 9, 2010) (citations omitted). "For a controversion notice to be filed in good faith, the employer must possess sufficient evidence in support of the controversion that, if the claimant does not introduce evidence in opposition to the controversion, the Board would find that the claimant is not entitled to benefits." *Harp* at 358 (citation omitted). Evidence in Employer's possession "at

the time of controversion" is the relevant evidence reviewed to determine its adequacy to avoid a penalty. *Id*. If none of the reasons given for a controversion are supported by sufficient evidence to warrant a decision the claimant is not entitled to benefits, the controversion was "made in bad faith and was therefore invalid" and a "penalty is therefore required" by AS 23.30.155. Id. at 359. *Vue v. Walmart Associates, Inc*., 475 P.3d 270 (Alaska 2020), stated valid controversion notices must give notice of disputed issues, which an employee can then use to pursue a claim. *Vue* also adopted *Harp's* standard to evaluate unfair and frivolous controversion claims.

> **AS 23.30.185. Compensation for temporary total disability.** In case of disability total in character but temporary in quality, 80 percent of the injured employee's spendable weekly wages shall be paid to the employee during the continuance of the disability. . . .

> **AS 23.30.190. Compensation for permanent partial impairment; rating guides.** (a) In case of impairment partial in character but permanent in quality, and not resulting in permanent total disability, the compensation is $273,000 multiplied by the employee's percentage of permanent impairment of the whole person. . . .

AS 23.30.220 was amended again in 1988 to consider workers who were "absent from the labor market" for a time. This version stated in part:

> **AS 23.30.220. Determination of spendable weekly wage**. (a) The spendable weekly wage of an injured employee at the time of an injury is the basis for computing compensation. It is the employee's gross weekly earnings minus payroll tax deductions. The gross weekly earnings shall be calculated as follows:
>
> (1) the gross weekly earnings are computed by dividing by 100 the gross earnings of the employee in the two calendar years immediately preceding the injury;
> (2) if the employee was absent from the labor market for 18 months or more of the two calendar years preceding the injury, the board shall determine the employee's gross weekly earnings for calculating compensation by considering the nature of the employee's work and work history, but compensation may not exceed the employee's gross weekly earnings at the time of injury. . . .

The seminal case resulting from this §220 iteration is *Gilmore v. Alaska Workers' Compensation Board*, 882 P.2d 922 (Alaska 1994). *Gilmore* held rigid application of the mechanical formula set out in §220 leads to quick and predictable results, but such an efficiency is gained at the

sacrifice of fairness in result, and struck it down "as applied" to the case on equal protection grounds. It held legislative intent could be gleaned from session laws stating, "[i]t is the intent of the legislature that AS 23.30 be interpreted so as to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of AS 23.30." *Gilmore*.

AS 23.30.220 was amended in 2005 to its present form, which states:

> **AS 23.30.220. Determination of spendable weekly wage**. (a) Computation of compensation under this chapter shall be on the basis of an employee's spendable weekly wage at the time of injury. An employee's spendable weekly wage is the employee's gross weekly earnings minus payroll tax deductions. An employee's gross weekly earnings shall be calculated as follows:
>
> (1) if at the time of injury the employee's earnings are calculated by the week, the weekly amount is the employee's gross weekly earnings;
> (2) if at the time of injury the employee's earnings are calculated by the month, the employee's gross weekly earnings are the monthly earnings multiplied by 12 and divided by 52;
> (3) if at the time of injury the employee's earnings are calculated by the year, the employee's gross weekly earnings are the yearly earnings divided by 52;
> (4) if at the time of injury the employee's earnings are calculated by the day, by the hour, or by the output of the employee, then the employee's gross weekly earnings are 1/50 of the total wages that the employee earned from all occupations during either of the two calendar years immediately preceding the injury, whichever is most favorable to the employee;
> (5) if at the time of injury the employee's earnings have not been fixed or cannot be ascertained, the employee's earnings for the purpose of calculating compensation are the usual wage for similar services when the services are rendered by paid employees. . . .
>
> . . . .

Wilson v. Eastside Carpet Co., AWCAC Dec. No. 106 (May 4, 2009), held an employer may presume that for an hourly worker, AS 23.30.220(a)(4) will provide a spendable weekly wage fairly approximating the employee's wages at the time of injury in most cases. The hourly employee has the burden to challenge the compensation rate established under §220(a) if it does not represent the equivalent wages at the time of the injury. The board "must look at the evidence and decide the facts in each case" when determining the spendable weekly wage. *Id*. at 4. In *Wilson*, the Commission found the Board could not have ascertained the wage equivalent from Wilson's small self-employment record, and therefore was required to use a different

§220(a) subsection to fit these circumstances. *Wilson* further held though tax records may be used to prove reported income, the Board is not limited to federal tax returns as proof of an employee's earnings. *Id*. Once an injured worker claims a compensation rate adjustment, "the board must conduct a broader inquiry" to obtain evidence sufficient to determine the spendable weekly wage. *Id*.

Further, *Straight v. Johnston Construction & Roofing, LLC*., AWCAC Dec. No. 231 (November 22, 2016), held "while not including a fairness provision in AS 23.30.220(a), the legislature codified a fairness provision applicable to the whole Act in AS 23.30.001. The Alaska Supreme Court held on numerous occasions a fair compensation rate must take into consideration the injured worker's probable future earnings capacity. This doctrine may be what the legislature intended when it adopted AS 23.30.220(a)(5), which provides for calculating an injured worker's spendable weekly wage "if at the time of injury the employee's earnings have not been fixed or cannot be ascertained, the employee's earnings for purpose of calculating compensation are the usual wage for similar services when the services are rendered by paid employees" *Straight.* AS 23.30.220(a)(5) in conjunction with AS 23.30.001 and the mandates from the Alaska Supreme Court to look to the future earnings capacity when deciding if an injured worker's compensation rate has been fairly determined requires looking into an employee's probable future earnings capacity before it can be determined whether AS 23.30.220(a)(4) is the proper method for determining the correct compensation rate. *Id*. The burden is on the employee to provide evidence of what his future earning capacity would have been but for the work injury. *Id*.

> **8 AAC 45.050. Pleadings**. . . .
>
> (f) **Stipulations**.
> . . . .
>
> (2) Stipulations between the parties may be made at any time in writing before the close of the record, or may be made orally in the course of a hearing. . . .

When parties enter into a stipulation regarding compensability of an employee's diabetes, and file the stipulation with the Board, the stipulation has the effect of a board order such that the employer

is required to petition the Board for a modification of the order if it wishes to contest the condition's continuing compensability. *Harris v. M-K Rivers*, 325 P.3d 510, 522 (Alaska 2014).

In *Shirley*, the employer paid TTD benefits and employee sought PTD benefits. The employer did not file a formal controversion notice but disputed PTD in its answer when it stated, "Carrier is awaiting clarification from record review to determine P & T status. Until such time TTD is ongoing" and it "reserve[d] the right to raise further defenses after discovery." The Court observed:

> Alaska Statutes . . . outline the manner by which compensation payments are to be made. Compensation is "payable without an award, except where liability to pay compensation is controverted by the employer." AS 23.30.155(a). If payment of compensation is controverted, the employee is entitled to a hearing and a compensation order "rejecting the claim or making the award." AS 23.30.110(e). If an award is made, then compensation is "payable under the terms of an award." AS 23.30.155(f). . . . . [A]n employer seeking to modify or terminate payments made under a Board order must first seek the approval of the Board. AS 23.30.130(a).

Thus, when an employee sought, and was entitled to, an express award of permanent and total disability benefits, it was an error to not make the award because such an award would require the employer to first seek modification and obtain board approval before terminating benefits. *Id*. at 161.

In *Summers v. Korobkin Construction*, 814 P.2d 1369 (Alaska 1991), an injured worker filed a claim seeking a decision from the Board on whether his work injury was "compensable" because the employer refused to acknowledge the employee had a compensable claim while still paying for the employee's medical bills. His doctor said he might need neck surgery and a major factor in the injured worker's decision whether to pursue surgery was whether the employer would pay for it. The Board declined to hear the case noting there was no actual "controversy," since the injured worker had not received any medical care for over a year, and there were no unpaid work related medical bills or other claims. The superior court agreed. Reversing, the Court stated:

> Here, Korobkin disputed many aspects of Summers' application for adjustment of claim. Korobkin's answer advanced numerous defenses to Summer's claim, including that Summers' injury was not work-related . . . Summers is entitled to a hearing on Korobkin's defenses. If Summers prevails, Korobkin will still be able to controvert Summers' claim at a future hearing, if the grounds for controversion arise after the initial hearing. AS 23.30.130. However, a worker in Summers' position, who has been receiving treatment for an injury which he or she claims occurred in

> the course of employment, is entitled to a hearing and prospective determination on whether his or her injury is compensable.
>
> **8 AAC 45.182. Controversion**. . . .
>
> (d) After hearing a party's claim alleging an insurer or self-insured employer frivolously or unfairly controverted compensation due, the board will file a decision and order determining whether an insurer or self-insured employer frivolously or unfairly controverted compensation due. Under this subsection,
> . . . .
>
> > (1) if the board determines a self-insured employer frivolously or unfairly controverted compensation due, the board will, at the time its decision and order are filed, provide a copy of the decision and order to the commissioner's designee for consideration in the self-insured employer's renewal application for self-insurance.

ANALYSIS

1) Should the parties' hearing stipulation be memorialized in an order?

Employer's July 7, 2026 amended answer accepted many of Employee's claimed benefits. However, it did not address whether it would be required to seek a board order before discontinuing benefits. An order awarding continuing TTD benefits would require Employer to seek modification under AS 23.30.130 before discontinuing benefits, which is what Employee's claims seek. *Harris*; *Shirley*. Employer's "acceptance" through its amended answer does not have the same effect as an order. Injured workers are entitled to a hearing and prospective determination on whether his or her injury is compensable. *Summers*. The parties were unable to reach an agreement prior to hearing regarding TTD, medical benefits, and reemployment benefits. At hearing the parties agreed to stipulate benefits, this decision incorporates the parties' stipulation into an order. 8 AAC 45.050(f)(2).

a) Temporary Total Disability

The parties stipulated Employer would pay TTD benefits at the rate determined by the Board retroactive from August 8, 2025 and on-going. AS 23.30.185. Parties reserve the right to contest a cost of living adjustment, Social Security offsets, and possible over- or under-payments.

b) Permanent Partial Impairment

Employee contends she is entitled to a PPI rating when she is medically stable. AS 23.30.190(a). Employee is currently not medically stable, and PPI ratings are not performed until the injured body part or function is medically stable. *Rogers & Babler*. The parties have agreed Employee is entitled to a PPI rating when medically stable. Employer provided PPI payments for the two percent rating issued by Dr. Ballard. Employee takes issue with Dr. Ballard using the incorrect guides. If Employee's subsequent PPI rating is higher than two percent, Employer will pay the difference from benefits already paid and any additional PPI payments in excess of two percent. Employee's PPI benefit request is held in abeyance until Employee is medically stable and receives a rating. *Egemo*.

c) Medical and Transportation Costs

Employer has agreed to pay for medical treatment costs related to Employee's compensable conditions. AS 23.30.095(a). Employer reserves the right to controvert under bases unrelated to compensability. Employer will continue to pay for medical and transportation costs in relation to Employee's compensable injuries in accordance with the parties' stipulation, the Act, and applicable regulations.

d) Interest

Employer has agreed to pay statutory interest on all benefits awarded in this decision. This includes TTD benefits, medical benefits, transportation costs, and reemployment benefits. Employer will be ordered to pay interest in accordance with AS 23.30.155(p).

e) Re-employment Benefits

The RBA denied reemployment benefits on February 12, 2026 based upon Dr. Chang's prediction. Employee on April 7, 2026 petitioned for modification of the RBA's decision based upon SIME physician Dr. Frey's prediction. The parties have agreed to remand the eligibility evaluation to the RBA for a new determination based upon Dr. Frey's opinion. A new determination will be ordered.

f) Compensation Rate Calculation

The parties have agreed Employee is entitled to a compensation rate adjustment as determined by this decision.

2) Is Employee entitled to a compensation rate adjustment?

Employee requested a TTD compensation rate adjustment. AS 23.30.220(a); *Gilmore*. Employer agreed to a compensation rate adjustment and does not contest Employee's proposed rate. Compensability is not at issue at this juncture, and there is no medical report indicating Employee reached medical stability for her foot. Therefore, the relevant period for determining Employee's lost future earning capacity is from the date of injury, February 14, 2024, to present. *Johnson*.

It is presumed for an hourly worker, §220(a)(4) will provide a spendable weekly wage fairly approximating the worker's wages at the time of injury in most cases. *Wilson*. Therefore, Employee has the burden to challenge the compensation rate established under §220(a) if it does not represent the equivalent wages at the time of the injury. *Id.* On June 3, 2026, she included a 2024 W-2 tax form showing gross pay of $34,014.21. She included a calculation of $486.49 as her TTD rate based upon the Alaska Workers' Compensation Benefit Calculator tool. Employer began paying Employee on July 16, 2024 at the statutory minimum rate of $325.00. Employer did not controvert benefits until October 16, 2025. On July 16, 2025 Employee moved to Salem, Oregon, the COLA adjustment is 94.21 according to AWCB Bulletin 25-07. Employee's adjusted compensation rate to include COLA adjustment is $401.03 ($486.49 X 94.21% = $401.03). Employer is ordered to pay TTD benefits from the date of injury February 14, 2024 to July 15, 2026 at a rate of $486.49 for all periods Employee's disability prevented her from working, less any periods properly controverted. TTD payments from July 16, 2025 and forward will be at the new rate with COLA adjustment of $401.03. Employer is ordered to pay the difference between the rate it paid, $325.00, and the new compensation rate of $486.49 (while Employee was in Alaska) and $401.03 after July 16, 2025 when Employee moved to Oregon.

3) Did Employer unfairly or frivolously controvert benefits?

For a controversion notice to be filed in good faith, the employer must possess sufficient evidence in support of the controversion that, if the claimant does not introduce evidence in opposition to the controversion, the claimant is not entitled to benefits. *Harp.* Evidence in Employer's possession at the time of controversion is the relevant evidence reviewed to determine its adequacy to avoid a penalty. *Id*. If none of the reasons given for a controversion are supported by sufficient evidence to warrant a decision the claimant is not entitled to benefits, the controversion was made in bad faith and was therefore invalid and a penalty is required. *Id.*

On October 16, 2024, Employer denied time-loss benefits after August 19, 2025, PPI benefits over two percent and reemployment benefits based upon Dr. Ballard's August 19, 2025 EME report. Dr. Ballard concluded Employee's work injury likely exacerbated her preexisting Haglund's deformity in her foot, he did not believe Employee had CRPS, and she was medically stable as of the date of his examination. His opinion was sufficient to warrant a denial of Employee's claimed work injury. The October 16, 2024 controversion notice was made in good faith. *Harp*. Employee is not entitled to a finding of unfair or frivolous controversion on the October 16, 2024 controversion. AS 23.30.155(o).

4) Should Employer pay a penalty on late paid compensation?

An employee is entitled to penalties on compensation due if it is not timely paid. AS 23.30.155(a), (b), (e). Employer agrees TTD payments are owed from August 16, 2025 and forward. This decision set Employee's compensation rate, to include a COLA for the period of time Employee is living in Oregon. Employer will be ordered to pay Employee a 25 percent penalty on the difference between the TTD rate it paid Employee, and the correct rate as established in this decision and in accordance with the Act. AS 23.30.155(e). This penalty would also apply to the difference between what Employer paid in TTD and the compensation rate established in this decision from the date of injury to present.

5) Is Employee entitled to attorney's fees and costs?

Attorney fees and costs may be awarded when an employer fails to pay benefits when due and an attorney is successful in prosecuting an employee's claim. AS 23.30.145(b). Employee's attorney obtained a stipulation for past due and future TTD at a newly established rate by this

decision, future PPI when Employee is medically stable, medical treatment and associated costs, and reemployment benefits. Employer did not object to Employee's attorney fees and costs or contend they are unreasonable. Employer did object to any fees of costs associated with benefits Employee's attorney was unsuccessful on but Employer did not specify which tasks this would include. This decision considered the *Rusch* factors based on Powell's affidavit. Powell has obtained valuable benefits for Employee. Powell prepared for a full merits hearings to secure benefits, the day of hearing Employer amended its answer essentially conceding many if not all issues that were set for hearing. Powell was instrumental in securing those benefits for her client. Employee is entitled to reasonable attorney fees of $58,812.00 and $6,128.56 in costs. *Bignell*.

Employee's attorney is also entitled to statutory attorney fees for any ongoing benefits paid to Employee after the July 8, 2026 hearing. *Wozniak*.

CONCLUSIONS OF LAW

1) The parties' hearing stipulation should be memorialized in an order.
2) Employee is entitled to a compensation rate adjustment.
3) Employer did not unfairly or frivolously controvert Employee's benefits.
4) Employee is entitled to a 25 percent penalty on late paid compensation.
5) Employee is entitled to attorney's fees and costs.

ORDER

1) Employer shall pay past and future TTD benefits at the newly established compensation rate, PPI benefits when Employee is medically stable over two percent, and medical and transportation costs in accordance with the Act, regulations and this decision.
2) The RBA-designee's February 12, 2026 determination is remanded to the RBA-designee for a further consideration in accordance with this decision and order.
3) Employer shall pay Employee interest in accordance with the Act for the difference in past paid TTD benefits and the new rate, and TTD benefits from August 16, 2025 and forward.
4) Employer shall pay a 25 percent penalty on the difference between the TTD it paid Employee at the statutory minimum and the new compensation rate established in this decision.

5) Employer shall pay Employee's attorney $58,812.00 and $6,128.56 in costs.

6) Employer shall pay Employee's attorney statutory minimum *Wozniak* fees on ongoing TTD benefits from the date of hearing July 8, 2026, pursuant to the Act.

Dated in Anchorage, Alaska on August 14, 2026.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Kyle Reding, Designated Chair

/s/
Anthony Ladd, Member

If compensation is payable under terms of this decision, it is due on the date of issue. A penalty of 25 percent will accrue if not paid within 14 days of the due date, unless an interlocutory order staying payment is obtained in the Alaska Workers' Compensation Appeals Commission.

If compensation awarded is not paid within 30 days of this decision, the person to whom the awarded compensation is payable may, within one year after the default of payment, request from the board a supplementary order declaring the amount of the default.

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 OLGA KUZMIN, employee / claimant v. FIRST STUDENT, employer; AIU INSURANCE COMPANY, insurer / defendants; Case No. 202402773; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties by certified US Mail on August 14, 2026.

/s/
Trisha Palmer, Workers' Compensation Technician