ALASKA WORKERS' COMPENSATION BOARD

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

MANUEL HERNANDEZ, Employee, Claimant, v. OCEAN BEAUTY SEAFOODS, LLC, Employer, and LIBERTY INSURANCE CORPORATION, Insurer, Defendants.	)	FINAL DECISION AND ORDER AWCB Case No. 201711427 AWCB Decision No. 26-0074 Filed with AWCB Anchorage, Alaska on September 16, 2026

Manuel Hernandez's (Employee) August 3, 2026 petition for a second independent medical evaluation (SIME) was heard on September 16, 2026, on the written record, in Anchorage, Alaska, a date selected on September 2, 2026. The August 3, 2026 petition gave rise to this hearing. Employee is self-represented. Attorney Krista Schwarting represents Ocean Beauty Seafoods, LLC and its insurer (Employer). The record closed on September 16, 2026.

ISSUE

Employee contends there are medical disputes between his treating doctors and employer medical evaluators (EMEs) regarding his chronic back and shoulder pain and depressive disorder. He attributes his ongoing related symptoms and disability to his August 7, 2017 injury with Employer. Employee requests an SIME.

Employer contends that *Hernandez v. Ocean Beauty Seafoods, LLC*, AWCB Dec. No. 25-0036 (June 13, 2025) (*Hernandez XV*) already addressed all of Employee's alleged physical and mental injuries and symptoms. It argues that *Hernandez XV* found the work injury with Employer was not the substantial cause of any ongoing issues. Since *Hernandez XV* denied Employee's claims as not work-related, *Hernandez v. Ocean Beauty Seafoods, LLC*, AWCB Dec. No. 25-0040 (July 2, 2025) (*Hernandez XVI*) denied reconsideration and modification and Employee never appealed from those decisions, Employer argues there is no basis for an SIME.

Should Employee's August 3, 2026 petition for an SIME be denied?

FINDINGS OF FACT

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

1) On August 7, 2017, Employee injured his upper back pushing a heavy cart of canned salmon while working for Employer. (First Report of Injury, August 10, 2017).

2) On August 9, 2017, Employee's supervisor completed an incident report stating, "Employee says he hurt his stomach & groin area from pushing 500# Bussy carts." The injury was a "strain" from pushing the "heavy wheeled carts." Employee's human silhouette drawings showed injuries only in his right-groin area. (Supervisor's Incident Report, August 9, 2017).

3) By February 4, 2019, Employee's injuries and symptoms had gradually expanded to other body parts. Eventually, Employer had Employee seen by an orthopedist EME, which created medical disputes and Employee's first *pro se* SIME request. Employee based his first *pro se* SIME request on a report from his attending physician Jon Van Ravenswaay, MD, who stated:

> I have obtained a history and examination as well as reviewed medical records from the case including: OMAC Assessment from Dr. Bauer 6/22/18, Arctic Physical Therapy notes from 6/28/18 - &/03 2018 [*sic*], and Wide [*sic*] Physical Therapy notes from 9/28/2018 - Present.
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> It is my opinion that Mr. Hernandez's left shoulder injury was work-related and occurred on roughly 8/7/17 and is still active. (Petition, February 4, 2019).

During the initial SIME process, Employee retained experienced counsel who completed the SIME form and assisted with the process. Employee requested only an orthopedist for his SIME. (SIME Form, filed February 11, 2020).

4) On October 17, 2019, *Hernandez v. Ocean Beauty Seafoods, LLC,* AWCB Dec. No. 19-0107 (October 17, 2019) (*Hernandez I*) ordered an SIME. (*Hernandez I*).

5) On January 21, 2020, Paul Murphy, MD, orthopedic surgeon, examined Employee for an SIME. Dr. Murphy cited voluminous medical records in his 63 page report, from Employee's injury date in 2017 through 2020. He also reviewed a 1.25 inch high stack of additional medical records that in his view had no relevance. Dr. Murphy opined, "After careful, comprehensive review of all medical records and history and performing a comprehensive physical examination, it is my medical opinion that the work-related disability is no longer present." He also addressed Employee's mental health issues and stated the work injury was not the substantial cause of any mental health symptoms. Dr. Murphy found that Employee's work injury became medically stable on September 17, 2018. He stated that Employee needed no further medical treatment for his work injury. Dr. Murphy found no substantial evidence for an industrial injury to Employee's left shoulder given multiple negative diagnostic images. Employee needed no surgery and had a two percent impairment rating. (Murphy report, January 21, 2020).

6) On June 24, 2020, Employee through his former counsel filed his second SIME request. He requested a psychiatric examination based on Dr. Van Ravenswaay's May 17, 2020 letter detailing his opinion that the work injury was the most likely cause of not only Employee's orthopedic issues but also his mental health complaints. (Petition; SIME Form, June 24, 2020).

7) On September 24, 2020, *Hernandez v. Ocean Beauty Seafoods, LLC,* AWCB Dec. No. 20-0085 (September 24, 2020) (*Hernandez II*) denied Employee's second request for an SIME. *Hernandez II* found Employee had counsel and had nearly a year to add mental health as an issue for his first SIME, but did not. It also held that SIME Dr. Murphy had already opined about all of Employee's conditions, including his mental health, and had stated that the work injury was not the substantial cause of Employee's mental health issues. *Hernandez II* decided another SIME was unnecessary, would not assist the fact-finders, would delay the case and would impose an unnecessary cost on Employer. (*Hernandez II*).

8) On June 17, 2021, Arthur Williams, PhD, psychologist and neuropsychologist, examined Employee for an EME and offered numerous opinions previously cited in Board decisions, including *Hernandez XV*, all of which are incorporated herein by reference. (Williams report, June 17, 2021; observations).

9) On January 21, 2022, *Hernandez v. Ocean Beauty Seafoods, LLC,* AWCB Dec. No. 22-0005 (January 21, 2022) (*Hernandez IV*), a final decision, denied Employee's request for a compensation rate adjustment. (*Hernandez IV).*

10) On November 6, 2023, in a document dated November 7, 2023, Employee claimed temporary total disability (TTD), temporary partial disability (TPD), permanent total disability (PTD), and permanent partial impairment (PPI) benefits, a compensation rate adjustment, an unfair or frivolous controversion finding, medical costs, a penalty for late-paid compensation, interest and "other," which requested a labor investigation against Employer. (Claim for Workers' Compensation Benefits, November 7, 2023).

11) On February 24, 2025, Employee re-filed his November 7, 2023 claim. (Claim for Workers' Compensation Benefits, November 7, 2023).

12) On June 13, 2025, *Hernandez v. Ocean Beauty Seafoods, LLC,* AWCB Dec. No. 25-0036 (June 13, 2025) (*Hernandez XV*), a 148 page final decision, decided Employee's claims. It considered voluminous medical and lay evidence and addressed 13 possible causes of Employee's continuing physical and mental health symptoms, conditions and diagnoses:

> In summary, the panel carefully evaluated the relative contribution of all possible causes of Employee's alleged "chronic pain" it could find in the record. AS 23.30.010(a). Given Employee's credibility problems, premeditated preparation for future litigation, and evidence that he has "secondary gain" motivation, one could conclude that Employee is simply malingering and does not want to go back to work. Nevertheless, giving him the benefit of the doubt, the above analyses show consistent and credible medical evidence demonstrating that Employee repeatedly told his medical providers that his thoracic back pain, which he clarified was the basis for his "chronic pain" claim, originates from the area near his stab wound. The undisputed MRI evidence shows muscle and tissue damage at the location of Employee's stab wound. There is no opinion suggesting his mild scoliosis is causing any pain, much less "chronic pain." There is no other objective medical evidence of anything physically wrong with him. The overwhelming weight of expert medical opinion, and even Employee's own reports to his medical providers, show that his stab wound is the substantial cause of any "chronic pain" he may be experiencing. It is undisputed that Employee's stab wound did not arise out of or in the course of his employment with Employer. *Thus, since the stab wound, and not Employee's August 7, 2017 muscle strain work injury with Employer, or any other possible cause, is "the substantial cause" of his "chronic pain" complaints, his "chronic pain" is not covered under the Act. AS 23.30.010(a). His claim for benefits related to "chronic pain," will be denied.*
> . . . .

> Employee attributed his alleged "panic attacks" to his work injury with Employer. His significant credibility issues concerning his "panic attacks" and "anxiety and depression," analyzed above, are incorporated here by reference. In short, he had anxiety and depression issues before he worked for Employer, and these continue. He had preexisting panic, anxiety and depression, which Drs. Koller, Bauer and Murphy and PA-Cs all identified and charted from Employee's own history. *This preexisting condition is the alternate explanation for Employee's mental health conditions and any related disability and need to treat his "panic attacks." AS 23.30.010(a). According to the credible medical evidence, any possible aggravation or combination these preexisting mental health conditions had with the work injury has long since resolved. Moore*.
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> Employee made it clear at the May 8, 2025 hearing, as well as to Dr. Williams in both his examinations, that his "panic attacks" resulted from his pain, and not the other way around. In other words, Employee has always claimed a "physical-mental" relationship between his work injury with Employer and his "panic attacks." Physical pain precedes his anxiety and depression. He has never claimed a "mental-mental" relationship where his employment with Employer itself caused mental stress that resulted in "panic attacks."
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> *Given the above analyses, this decision found that Employee's stab wound is the substantial cause of his "chronic pain." Since the stab wound is undisputably not work-related, his "chronic pain" is not work-related either. AS 23.30.010(a). Since the non-work-related chronic pain is the substantial cause of Employee's alleged "panic attacks," those are also not work-related. Therefore, Employee's claim for benefits related to alleged "panic attacks" will be denied* (emphasis added).
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> . . . .
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> It is unclear if Employee still contends that his "generalized anxiety" and "depression" are work-related. If so, the entire analysis from a subsection "B," above, is incorporated here by reference. *Based on that analysis, which also applies to his "general anxiety and depression," Employee's claim for benefits related to "generalized anxiety" and "depression" will be denied*.
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> . . . .
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> The entire analysis from a subsection "B," above, is also incorporated here by reference. *Based on that analysis, Employee's claim for benefits related to a diagnosed "somatoform disorder" including a "Somatoform Symptoms Disorder" will be denied*. (*Hernandez XV* at 104-124) (emphasis added).

Hernandez XV reviewed all of Employee's back photos and cited them on pages 66, 73, 77, 113 and 115 through 117. *Hernandez XV* denied Employee's March 16 and December 26, 2018; January 8, May 20 and December 23, 2019; March 18 and August 17, 2021; November 7 and

December 4, 2023; December 4, 2024; and January 13, February 3, February 5, February 19 and February 24, 2025 formal and informal "claims" in their entireties. (*Hernandez XV*).

13) On June 13, 2025, the Workers' Compensation Division (Division) served *Hernandez XV* on Employee by certified mail. *Hernandez XV* on page 147 included instructions for how Employee could request reconsideration and modification of *Hernandez XV*. (*Hernandez XV*; agency file: Judicial, Prehearings and Hearings, D&O Issued and Served tabs, accessed September 4, 2026). Accounting for weekends, and adding three days for mail service, Employee had until June 18, 2026, to request modification of *Hernandez XV*. (Observations).

14) On June 17, 2025, Employee timely filed and served a petition expressly seeking "Reconsideration" of *Hernandez XV*. While he did not check the claim-form box for "Modification," Employee contended that *Hernandez XV* ignored "all evidence" supporting his position. Employee attached to his petition a June 17, 2025 medical chart note from Caroline Imiolek, PA-C, at AA Pain Clinic, which stated:

> Dear Oceanview Seafood [*sic*],
>
> Manuel Hernandez Mantera [*sic*] was seen in the office today for management of thoracic back pain secondary to his injury at work. Patient obtained the thoracolumbar paraspinal trigger point injections 6/4/2025 which was necessary in providing relief of his thoracic back pain. Please let us know if you have any questions/concerns. Thank you.

This document included a hand-written date edit between the words "his" and "injury," which PA-C Imiolek signed. The hand-written date appears to have originally been "8/2/2017" and then corrected to "8/7/2017." The fact Employee filed this document with his petition suggested he may have also been seeking "modification" based on this new evidence. Employee's June 17, 2025 petition did not specify the evidence that he alleged the Board "ignored." He did not explain how PA-C Imiolek's June 17, 2025 chart note would affect *Hernandez XV*, were it accepted and considered. Employee in his petition failed to explain why, with due diligence, he could not have obtained this opinion from his providers at AA Pain Clinic until after the hearing was over and after *Hernandez XV* noted the lack of any causation opinion from his medical providers at that facility, who had been seeing him for years. PA-C Imiolek's chart note demonstrate a lack of familiarity with Employee's case: Employee's full name contains "Natera," not "Mantera," his former

employer was "Ocean Beauty Seafoods" not "Oceanview Seafood," and he was injured on August 7, 2017, not on August 2, 2017. (Petition, June 17, 2025; agency file).

15) On July 1, 2025, the Division served a *Hernandez XV* Errata correcting instructions for parties seeking to appeal *Hernandez XV* to the Alaska Workers' Compensation Appeals Commission (Commission or AWCAC). The decision had advised parties how to petition for review of an interlocutory decision. The Errata corrected instructions to how to appeal from a final decision, which pertained to *Hernandez XV*. Accounting for this error and for weekends, and adding three days for mail service, Employee had until August 4, 2025, to appeal *Hernandez XV* to the AWCAC. (Errata, July 1, 2025; observations).

16) On July 2, 2025, *Hernandez v.* Ocean *Beauty Seafoods, LLC*, AWCB Dec. No. 25-0040 (July 2, 2025) (*Hernandez XVI*), a final decision, addressed Employee's June 17, 2025 petition and noted that *Hernandez XV*, on pages 6 through page 83, had exhaustively reviewed, summarized, weighed and credited Employee's medical records including those the parties had filed from: Kayla Gordon, PA-C; Jeffrey Larsen, MD; Janet Abadir, MD; Stephen Smith, MD; Laura Creighton, DC; Cristen O'Grady, MD; Curtis Mortenson, MD; Anne Marie Narog, FNP-C; KANA Mill Bay Clinic; Gregory Culver, MD; John Koller, MD; Welby Jensen, MD; David Bauer, MD; Brady Ulrich, PA-C; William Helmick, PA-C; Jonathan Van Ravenswaay, MD; Wise Physical Therapy; Alaska Behavioral Health; electrodiagnostic, x-ray, computerized tomography and magnetic resonance imaging scans and studies; Martin Glaves, DO; Justin Carricaburu, DO; Paul Murphy, MD; Luke Liu, MD; Anna Sappah, PsyD; John Paff, MA, at Wisdom Traditions; a Functional Capacity Evaluation; Eric Olson, DO; Arthur Williams, PhD; Loretta Lee, MD; Douglas Luther, DC; Michael Dyches, PA-C; Paola Kennah, PA-C, with Neuroversion; Travis King-Weaver, MD; physicians at Anchorage Neighborhood Health Center; Phillippe Lindsay-Thomas, PsyD; Philip Mendoza, MD; Katherine Robins, at Alaska Behavioral Health; Dana Strager, DPT, at Arctic Rehabilitation & Physical Therapy; James Schwartz, MD; and Krista Cook, NP, at Anchorage Neighborhood Health Center. In addition to analyzing hundreds of medical records from medical providers, *Hernandez XVI* found *Hernandez XV* had reviewed, considered, cited and credited opinions from providers' depositions. (*Hernandez XVI*).

17) *Hernandez XVI* found that *Hernandez XV* had applied the proper presumption analysis to each issue and affixed weight and credibility to medical opinions, giving some providers' opinions

less weight and credibility, while giving others' more weight and credibility. (*Hernandez XVI*). In summary, *Hernandez XVI* decided:

> Employee also contends *Hernandez XV*'s decision was based on "doctors' speculations," and not "the truth." To the contrary, *Hernandez XV* carefully considered every possible cause for Employee's continued thoracic back pain, weighed the various medical opinions addressing each possible cause, and concluded *that if Employee continues to have thoracic back pain, the non-work-related thoracic stab wound is the substantial cause of such symptoms. Hernandez XV* was based on unequivocal expert medical opinions and not on mere speculation. *Moore*. (*Id*. at 6; emphasis added).
> . . . .
>
> Therefore, Employee's petition for reconsideration will be denied because he failed to demonstrate a legal error in *Hernandez XV*. To the extent he also requested modification, that too will be denied because he did not identify medical evidence he alleges the panel "ignored." The panel ignored no evidence. Moreover, Employee did not explain why he could not have obtained a medical causation opinion from AA Pain Clinic well before the hearing, or how PA-C Imiolek's report would change the outcome in *Hernandez XV*. Given the above analysis, it would not. (*Id*. at 7).

As the back-stab wound was not work-related, and the mental health issues arose from that wound as well, Employee's request was again without merit. *Hernandez XVI*, a final decision, denied Employee's petition for reconsideration and possible modification. (*Hernandez XVI*).

18) On July 2, 2025, the Division served *Hernandez XVI* on Employee by certified mail. On page nine, *Hernandez XVI* included instructions advising Employee how to seek modification. (*Hernandez XVI*; Agency file: Judicial, Prehearing and Hearings, D&O Issued and Served tabs, accessed Septembers 4, 2026).

19) One year from July 2, 2025, plus three days added for mailing, and accounting for weekends and two state holidays, was July 9, 2026. (Observations).

20) There were no further material filings in this case until January 2026. (Agency file).

21) On January 15, 2026, in a document dated January 16, 2026, Employee claimed PTD benefits, a compensation rate adjustment, a penalty for late-paid compensation and interest. (Claim for Workers' Compensation Benefits, January 16, 2026). The benefits he requested in his January 16, 2026 claim were the same benefits he requested in previous claims, including his November 7, 2023 claim that Employee had re-filed on February 24, 2025. In those filed and re-filed claims, Employee requested PTD benefits, a compensation rate adjustment, a penalty for late-

paid compensation and interest. Nothing in his January 15, 2026 claim could reasonably be considered a request for modification of *Hernandez XV or XVI.* (Claim for Workers' Compensation Benefits, November 7, 2023, re-filed February 24, 2025; observations).

22) On January 15, 2026, in a document dated January 16, 2026, Employee also filed and served a Medical Summary. He attached 48 pages from "Travis Weaver" beginning April 17, 2025 and continuing through November 10, 2025. Employee also attached his January 16, 2026 pleading he had sent to the Division, photos of his back, pay stubs, a timesheet and an undated note from Dr. Van Ravenswaay. (Medical Summary, January 16, 2026).

23) On February 12, 2026, Employer in a document dated February 11, 2026, controverted Employee's January 16, 2026 claim for benefits. It relied on *Hernandez XV* and *XVI*. (Controversion Notice, February 11, 2026).

24) On February 17, 2026, in a document dated February 16, 2026, Employee filed with the AWCAC a pleading labeled as an "Answer." In this document's caption, directed to the Commission, Employee referred to the AWCAC as the "appeal committee" and said:

> 1: The (AWCB) is playing a game with this case ignoring all pictures and medical records the injured employee shows as evidence to support the claim.
>
> 2: The (AWCB) ignoring letters [with] Dr Van Ravenswaay opinion regarding the injuryd [*sic*] employee [stating his] health conditions is [*sic*] related to the injury, [sic] Dr Van Ravenswaay treated the injured employee since July 2019 to 2024.
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> 3: The injured employee understand [*sic*] (AWCB) it is not following the laws and it is in favor of the other party [and] denied benefits to the injured employee with not valid arguments or evidence to do so.
>
> 4: The (AWCB) bases their decision in favor of the other party not even [*sic*] the other party has no valid arguments to deny the injured employee's benefits, [*sic*] it is against the law and very unfair.
>
> For the above reasons the appeal committee has to review this case and take a decision.
>
> The new claim should be taking as [a] new claim and base [*sic*] on the (AWCB) decision the injured employee will appeal to (AWCEC) [*sic*]. (Pleading, February 16, 2026).

25) Employee's February 16, 2026 document filed with the AWCAC did not request, and could not reasonably be read to request, the Board to modify *Hernandez XV* or *XVI*. The Division

properly treated it as his "Letter to AWCAC to initiate an appeal." (Agency file: Judicial, Appeals, AWCAC Document File with Board tabs, accessed September 4, 2026).

26) On February 24, 2026, the AWCAC emailed Employee a letter stating:

> The Alaska Workers' Compensation Appeals Commission (Commission) received your document, dated February 16, 2026, in which you state that "the appeal [commission] has to review this case and take a decision" on February 17, 2026.
>
> The Commission has jurisdiction to review Alaska Workers' Compensation Board (Board) decisions and orders. Because the document you sent to the Commission does not identify any Board decision or order to be reviewed, it cannot be accepted for filing. (Kathleen D. Morrison, Appeals Commission Clerk letter, February 24, 2026).

27) On February 25, 2026, Employee filed a letter from Dr. Van Ravenswaay who stated he had seen Employee on February 22, 2026, for "chronic thoracic back pain" that in Dr. Van Ravenswaay's opinion resulted from his 2017 work injury. Dr. Van Ravenswaay referred Employee to physical therapy (PT) for evaluation and treatment, and said Employee would likely be able to return to work if he had more PT. He also recommended counseling for anxiety and depression. Employee also filed February 24, 2026 PT records from Arctic Rehabilitation & Physical Therapy, which noted Employee's "10/10" chronic thoracic pain. The therapist attributed the cause for these symptoms and need for treatment to the August 7, 2017 work injury with Employer. (Van Ravenswaay letter, February 22, 2026; PT notes February 24, 2026).

28) On February 26, 2026, the parties appeared before a Board designee for a prehearing conference. The designee stated, "Designee confirmed this case is in front of the . . . [AWCAC] and as such . . . [the Board's] jurisdiction is suspended pending a AWCAC decision." (Prehearing Conference Summary, February 26, 2026).

29) On March 10, 2026, Employee emailed the AWCAC clerk stating he had received a letter from her regarding his case but was "wondering if AWCEC [*sic*] still working on my case." He referenced the Board designee's February 26, 2026 prehearing conference statement that his case was before the Commission, and he wanted clarification. (Email, March 10, 2026).

30) On March 10, 2026, the AWCAC clerk responded to Employee's same-dated email:

> On February 24, 2026, I emailed the attached letter to you and Ms. Schwarting regarding your most recent filing with the Alaska Workers' Compensation Appeals Commission. Your documents were not accepted for filing because there was no

> Alaska Workers' Compensation Board decision for the Commission to review. The Commission does not have any current appeals regarding your workers' compensation claim.

The Commission clerk attached to her email her February 24, 2026 letter to the parties. (Email, March 10, 2026).

31) On March 24, 2026, in a petition dated March 25, 2026, Employee requested to "continue," clarified as "Continues Hearing" [*sic*]. He added, "Please continue hearing. [T]he case is not with AWCEC. [S]ee attached sheet." The panel understands Employee's reference to "AWCEC" to mean the AWCAC. Employee attached to his petition: photos of his back from 2024; a January 20, 2025 document filed with the Division, which included photos of his back; a March 8, 2025 document filed with the Division with more photos of his back from 2025; a March 25, 2025 "Answer" regarding his compensation rate, along with photos of his back from 2025; a May 13, 2025 document filed with the Division describing his alleged injuries and disability he contended arose from his work injury with Employer, along with photos of his back from 2025; his January 16, 2026 document filed with the AWCAC, which included photos of his back from 2025; and the Commission's February 24, 2026 rejection letter. Many of the photos depicting Employee's back are duplicates of those previously filed. (Petition, March 25, 2026; observations).

32) Employee's March 25, 2026 petition did not request or suggest reconsideration or modification of any prior Board decision. Employee may have misunderstood what "continue" means in a legal context, and may have intended his petition to inform the Division that his case was not before the AWCAC, and thus could "continue" before the Board. (Petition, March 25, 2026; inferences from the above).

33) On April 13, 2026, in a document dated April 12, 2026, Employee filed and served a notarized pleading entitled an "Answer." He asked that his case be taken under AS 23.30.105(c), alleging his own "incompetence" under that section because of a "mental condition and not having legal representation." Employee asked that his case be reopened and take "new evidence and medical records" and base a new decision on the truth rather than on "lies" he asserts were made by EME physicians. He also requested a labor investigation into whether Employer properly required him to push and pull 1,400 pound containers, which he argued was "not safe for human beings." (Notarized pleading, April 12, 2026).

34) Employee has never presented any medical testimony or evidence suggesting he was mentally incompetent and unable to represent himself in this case. (Agency file).

35) On April 17, 2026, Joseph Cryderman, DPT, saw Employee "for chronic mechanical thoracic pain secondary to a work-related injury sustained on August 7, 2017." He charted Employee's symptoms and advised treatment. (Cryderman reports, April 17, 2026).

36) On May 14, 2026, the parties attended a prehearing conference before a Board designee. After reviewing previous Board decisions, the designee stated Employee's claims had been denied and he is not owed any benefits. Employee stated he wanted his case "re-opened"; the designee advised he would not reopen it. (Prehearing Conference Summary, May 14, 2026).

37) On May 26, 2026, Employee called the Division and spoke to a Workers' Compensation Officer and inquired how to file an SIME request. The staff member gave him explicit instructions on how Employee could file SIME documents. (Agency file: Judicial, Communications, Phone Call tabs, accessed September 14, 2026).

38) On May 26, 2026, in a document dated May 25, 2026, Employee filed and served a petition for an SIME. He stated:

> There is a dispute between the opinions of the doctors treating the injured employee and the opinions of the doctors of the employer. It is necessary for a doctor chosen by the board to conduct an evaluation and issue a report so that the Board can be guided by a fair doctor opinion that can be used to lead to a fair resolution of the case. (Petition, May 25, 2026).

39) On May 26, 2026, Employee filed and served a Medical Summary to which he attached previous Medical Summaries and a host of medical records from various providers spanning from May 18, 2021 through May 22, 2026. He also attached to the Medical Summary non-medical records, including certified mail receipts, correspondence from Schwarting, and a Controversion Notice. The filing totals 370 pages. (Medical Summary, May 26, 2026).

40) On May 28, 2026, Division staff rejected Employee's SIME petition noting he failed to attach the required SIME form and related medical records, and again advised him how to perfect a request for an SIME. The letter added:

> . . . If the opposing party does not stipulate to the SIME, a written record hearing will be scheduled. Parties will be served a written record hearing notice and may file briefs at least five days before the hearing date. The Board will issue its decision and order within 60 days of the date the petition was filed and served upon

> the opposing party, even if the SIME form and medical records reflecting the medical disputes have not yet been filed with the Division. 8 AAC 45.195. (Letter, May 28, 2026).

41) On August 3, 2026, Employee filed and served another petition for an SIME. He stated:

> There are dispute[s] regarding employer's doctor opinions and Employee's treating doctor's opinions[.] [T]he injured employee was referred for Physical therapy evaluation and treatment and counseling for depression for chronic back and shoulder pain as a result of work injury on August 7/2017. The injured employee continues not being able to get back to work because of chronic back and shoulder pain and depression disorder. (Petition, August 3, 2026).

42) Employee's August 3, 2026 petition did not expressly request modification of any prior Board decision. (Petition, August 3, 2026).

43) On August 3, 2026, Employee re-filed an SIME form listing alleged medical disputes between Dr. Van Ravenswaay and DPT Cryderman, versus EME physician Arthur Williams, PhD. The Van Ravenswaay and Cryderman reports were dated in February, April and May 2026. Dr. Williams' EME report was dated June 17, 2021. (SIME Form; observations).

44) On August 24, 2026, Employer filed and served an answer to Employee's last SIME petition:

> . . . The Board has rendered a final decision in this claim denying the employee benefits. At the last prehearing conference, the Board designee informed the employee that his claim is closed and cannot be reopened. The employee should not be permitted to continue litigating this claim.
> . . . .
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> Following the employee's petition for reconsideration, the Board affirmed its prior decision and denied the employee's petition on July 2, 2025 (footnote omitted). The employee failed to timely appeal the board's decision to the [Commission]. As such, the Board's decision became final after the appeal deadline passed.
> . . . .
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> The employer and insurer were previously granted a pre-litigation screening order and request that the Board reminded the employee that they are not required to address his frivolous pleadings.
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> The employee has filed another petition for [an SIME], but has again failed to complete a form. The Board should not order such an evaluation, since it has previously denied and dismissed the employee's claim. . . . (Answer, August 24, 2026).

45) Alaska Medicaid is paying for Employee's medical care. (Arctic Rehabilitation & Physical Therapy report, September 4, 2026).

46) On September 9, 2026, Employee filed two September 4, 2026 photographs of his back. One photograph shows what appear to be circular "cupping" treatment marks, while the other shows red "X" marks digitally drawn on the photograph. His brief states in its entirety:

> **Doctor Van Ravenswaay** treat [*sic*] the injured employee since October 2018 for muscles inflammation, muscles strains chronic pain conditions insomnia and depression as result of the injury on August 7/2017.
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> **Doctor Van Ravenswaay** saw the injured employee on 2/22/2026 for inflation, chronic pain conditions, insomnia and depression. **Van Ravenswaay** referred the injured employee to physical therapy for evaluation and treatment and recommended counseling for conditions related to work injury on August 7/2017.
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> The injured employee was also referred to **A&A spine pain clinic** [*sic*] for treat [*sic*] the chronic pain conditions due muscles tonicity, strains and inflammation.
>
> The injured employee it's [*sic*] being not able to get back to work after work injury on August 7 2017 due to chronic pain condition, muscle tonicity, muscles strains, inflammation and depression condition.
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> Pictures and medical records submitted are evidence enough for the board take a fair decision. (Employee's Hearing Brief, September 9, 2026).

These are the same arguments and issues Employee has raised for years. (Observations).

47) On September 9, 2026, Employer asserted that an SIME is not warranted and should not be ordered. Employer contended *Hernandez XV* and *XVI* were final decisions and Employee appealed neither. Therefore, those decisions are the "law of the case." Employer objected to Employee having "another bite at the apple through procedural requests on a fully denied claim." It also noted that Employee failed to comply with procedural rules for an SIME. Moreover, Employer argued that the medical disputes in this case are not new and were previously addressed in *Hernandez XV* and *XVI*. It objected to an SIME at Employer's expense to generate medical evidence in a case that has already been resolved without an appeal. (Employer's Hearing Brief, September 9, 2026).

48) On September 11, 2026, Employee re-filed Dr. Murphy's SIME report, which had been in Employee's agency file since at least April 2020. (Agency file: Judicial, Party Actions, Evidenced Filed tabs, September 11, 2026; observations).

PRINCIPLES OF LAW

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

> **AS 23.30.007. Workers' Compensation Appeals Commission.** (a) There is established . . . the Workers' Compensation Appeals Commission. The commission has jurisdiction to hear appeals from final decisions and orders of the board under this chapter. Jurisdiction of the commission is limited to administrative appeals arising under this chapter. . . .
>
> **AS 23.30.125. Administrative review of compensation order**. (a) A compensation order becomes effective when filed in the office of the board as provided in AS 23.30.110 and, unless proceedings to suspend it or set it aside are instituted as provided in (c) of this section, it becomes final on the 31st day after it is filed.
>
> (b) Notwithstanding other provisions of law, a decision or order of the board is subject to review by the commission as provided in this chapter.
>
> (c) If a compensation order is not in accordance with law or fact, the order may be suspended or set aside, in whole or in part, through proceedings in the commission brought by a party in interest against all other parties to the proceedings before the board. . . .
>
> (d) Proceedings for reconsidering, suspending, setting aside, or enforcing a compensation order, whether rejecting a claim or making an award, may not be instituted, except as provided in this chapter.
>
> **AS 23.30.127. Appeals to commission.** (a) A party in interest may appeal a compensation order issued by the board to the commission within 30 days after the compensation order is filed with the office of the board under AS 23.30.110. . . .
>
> (b) An appeal is initiated by filing with the office of the commission
>
> (1) a signed notice of appeal specifying the compensation order appealed from;
> (2) a statement of the grounds upon which the appeal is taken; and
> (3) other material the commission may by regulation require.
>
> . . . .
>
> (e) If a request for reconsideration of a board decision was timely filed with the office of the board, the notice of appeal must be filed within 30 days after the

> reconsideration decision is mailed to the parties or the date the request for reconsideration is considered denied in the absence of any action on the request, whichever is earlier. . . .

Robertson v. American Mechanical, Inc., 54 P.3d 777, 778 (Alaska 2002), held *res judicata*, meaning "a thing decided," applies in workers' compensation cases. The Board dismissed the worker's first claim. He re-filed a second claim and the Board denied it as well on grounds it was barred by *res judicata*, collateral estoppel, equitable estoppel and quasi-estoppel. Robertson appealed the second Board decision to the court. The court affirmed the Board, finding the second claim was barred by *res judicata*; he appealed. The Alaska Supreme Court stated, "When applicable, *res judicata* precludes a subsequent suit 'between the same parties asserting the same claim for relief when the matter raised was or could have been decided in the first suit.'" *Roberston* set forth the three-part test to determine when *res judicata*, or collateral estoppel, apply:

> (1) The prior judgment was a final judgment on the merits;
> (2) A court of competent jurisdiction rendered the prior judgment, and
> (3) The same cause of action and same parties or their privies were involved in both suits. *Id*. at 780.

The Commission in *Bah v. Trident Seafoods Corp.*, AWCAC Dec. No. 073 (February 27, 2008), addressed the Board's authority to order an SIME under AS 23.30.095(k), when there is a medical dispute. *Bah* noted that before ordering an SIME, the Board traditionally finds the medical dispute "significant or relevant" to a pending claim or petition, and the SIME will assist in resolving the dispute. It said when deciding whether to order an SIME, the Board considers three criteria, though the statute requires only one:

> (1) Is there a medical dispute between Employee's physician and an EME?
> (2) Is the dispute significant? and
> (3) Will an SIME physician's opinion assist the Board in resolving the disputes?

> **AS 23.30.130. Modification of awards.** (a) Upon its own initiative, or upon the application of any party in interest . . . because of a mistake in its determination of a fact, the board may, before one year . . . after the rejection of a claim, review a compensation case. . . .

When alleging a factual mistake, a party "may ask the board to exercise its discretion to modify the award at any time until one year" after the last compensation payment is made, or the Board rejected a claim. *George Easley Co. v. Lindekugel*, 117 P.3d 734, 743 (Alaska 2005).

> **8 AAC 45.150. Rehearings and modification of board orders.** (a) The board will, in its discretion, grant a rehearing to consider modification of an award only upon the grounds stated in AS 23.30.130.
>
> (b) A party may request a rehearing or modification of a board order by filing a petition for a rehearing or modification and serving the petition on all parties in accordance with 8 AAC 45.060.
>
> (c) A petition for a rehearing or modification based upon change of conditions must set out specifically and in detail the history of the claim from the date of the injury to the date of filing of the petition and the nature of the change of conditions. The petition must be accompanied by all relevant medical reports, signed by the preparing physicians, and must include a summary of the effects which a finding of the alleged change of conditions would have upon the existing board order or award.
>
> (d) A petition for a rehearing or modification based on an alleged mistake of fact by the board must set out specifically and in detail
>
> (1) the facts upon which the original award was based;
> (2) the facts alleged to be erroneous, the evidence in support of the allegations of mistake, and, if a party has newly discovered evidence, an affidavit from the party or the party's representative stating the reason why, with due diligence, the newly discovered evidence supporting the allegation could not have been discovered and produced at the time of the hearing; and
> (3) the effect that a finding of the alleged mistake would have upon the existing board order or award.
>
> (e) A bare allegation of change of conditions or mistake of fact without specification of details sufficient to permit the board to identify the facts challenged will not support a request for a rehearing or a modification.
>
> (f) In reviewing a petition for a rehearing or modification the board will give due consideration to any argument and evidence presented in the petition. The board, in its discretion, will decide whether to examine previously submitted evidence.

ANALYSIS

Should Employee's August 3, 2026 petition for an SIME be denied?

A) Employee's SIME request has no relevance.

The only issue set for this hearing is Employee's request for an SIME. While addressing the SIME request, this decision must consider if the SIME is "relevant" to any pending claim. *Bah*. On June 13, 2025, *Hernandez XV* denied all of Employee's claims for ongoing benefits, both formal and informal, as enumerated in that decision. *Hernandez XV* expressly found that Employee's claims for ongoing physical and mental symptoms, and claims for related benefits, were not covered under the Alaska Workers' Compensation Act (Act). It found the substantial cause of Employee's ongoing symptoms and the need to treat them was no longer the August 7, 2017 injury with Employer. The substantial cause was a non-work-related stabbing wound and its sequala that Employee had suffered years before the work injury. Thus, it denied his claim for ongoing medical benefits. *Hernandez XV* also found that Employee's work-related strain became medically stable effective September 17, 2018, which extinguished his right to ongoing TTD benefits. It denied Employee's claim for PTD benefits as well.

On June 17, 2025, Employee timely filed a petition to reconsider *Hernandez XV*. The panel treated this request as also seeking modification. On July 2, 2025, *Hernandez XVI* addressed Employee's June 17, 2025 petition, on both reconsideration and modification grounds, and denied it. Employee had 30 days from July 2, 2025, to appeal *Hernandez XVI* to the Commission. In fairness to Employee, the panel notes that *Hernandez XV*, a final decision, gave Employee incorrect information regarding his right to appeal. On page 147, *Hernandez XVI* advised Employee how to petition for review, which is not the proper way to seek appellate review from a final decision. An Errata to *Hernandez XV* rectified that error on July 1, 2025. Moreover, *Hernandez XVI* gave him correct advice on how to appeal.

Employee had a right to appeal both *Hernandez XV* and *Hernandez XVI* to the Commission in accordance with AS 23.30.007(a), AS 23.30.125(b), and (c) and AS 23.30.127(a). Employee's agency file discloses that he did not perfect an appeal with the Commission. On February 17, 2026, which was obviously more than 30 days after *Hernandez XVI* issued on July 2, 2025, Employee filed a February 16, 2026 pleading with the AWCAC raising several points, and asking the Commission to "review this case and take a decision." The Division treated this as Employee's attempt to initiate an "appeal." AS 23.30.127(e).

On February 24, 2026, the Commission wrote Employee and told him that the document he had filed with the Commission on February 17, 2026, did not identify any decision and order to be reviewed and could not "be accepted for filing." In other words, the AWCAC rejected Employee's filing as not in conformance with applicable statutes. AS 23.30.127(b)(1)-(3). There is no evidence in the Division's file showing Employee ever remedied this deficiency. Employee's "appeal" from *Hernandez XV* and *XVI* to the AWCAC was not only untimely because it was filed months after the 30-day appeal deadline had expired, but it was also deficient procedurally and the Commission rejected it. Thus, *Hernandez XV* and *XVI* remain undisturbed, are "final," and are the law of this case. AS 23.30.125(a).

Since *Hernandez XV* and *XVI* denied Employee's claims on their merits after a full and fair hearing, were final decisions, and he did not appeal, Employee is entitled to no further benefits and his request for an SIME is not relevant. It is not relevant because he has no valid, pending claim. Employee's January 16, 2026 claim seeks PTD benefits, a compensation rate adjustment, a penalty for late-paid benefits and interest. But these benefits were either previously denied or no longer relevant because, according to *Hernandez XV* and *Hernandez XVI*, Employee's work is not the substantial cause of any ongoing disability, impairment or need for any medical or mental health treatment. If his pending claim is not relevant, neither is his request for an SIME to obtain evidence he could use to support his already denied and irrelevant claim. He cannot try a back-door method to re-try his denied claims and obtain benefits by requesting an SIME. Under AS 23.30.125(d) "Proceedings for reconsidering, suspending, [or] setting aside . . . a compensation order . . . may not be instituted, except as provided in this chapter." Employee's SIME request is not made in accordance with the Act, and will be denied on that basis.

B) An SIME is not needed under Bah.

The Commission in *Bah* set forth the test for an SIME:

(1) Is there a medical dispute between Employee's physician and an EME?
(2) Is the dispute significant? and
(3) Will an SIME physician's opinion assist the fact-finders in resolving the disputes?

Alternatively, applying *Bah* precedent to Employee's August 3, 2026 SIME request would result in it being denied. As was the case in *Hernandez II*, Employee had counsel and had nearly a year

to add mental health as an issue for his first SIME, but did not. He also failed to request a mental health SIME for years thereafter, notwithstanding the recurrent medical disputes among his treating and Employer's EME physicians. *Hernandez II* held that SIME Dr. Murphy had already opined about all of Employee's conditions, including his mental health, and had stated that the work injury was not the substantial cause of Employee's mental health issues. *Hernandez II* decided another SIME was unnecessary, would not assist the fact-finders, would delay the case and would impose an unnecessary cost on Employer. The instant panel concurs with *Hernandez II*. An SIME is not needed under *Bah* because the request is irrelevant.

C) Employee's SIME request is barred by the doctrine of res judicata and estoppel.

Alternatively, to order an SIME would require this decision to somehow set-aside *Hernandez XV* and *XVI*. But these were final, un-appealed decisions that ended Employee's claims on their merits. This panel has limited authority to set them aside to facilitate an SIME. *Robertson*. Unless this decision has some basis to modify *Hernandez XV* and *XVI*, Employee's August 3, 2026 SIME petition will be barred by *res judicata* and collateral estoppel by association because his underlying claims have already been decided on their merits. *Rogers & Babler*.

D) Employee's August 8, 2026 petition for an SIME does not avail modification.

Under AS 23.30.130(a), Employee had until July 9, 2026 to request modification of *Hernandez XV* and *XVI*. *Lindekugel*. Employee untimely filed his August 3, 2026 petition nearly a month after the July 9, 2026 deadline to seek modification of *Hernandez XV* and *XVI* under §.130(a). Thus, even if that petition could somehow be read to request modification, which it cannot, it was too late. His pleadings are to no avail and he failed to comply with 8 AAC 45.150(a)-(f).

Since Employee's ongoing physical and mental symptoms are not covered under the Act, they are not compensable under the Act. Thus, any ongoing medical disputes between Employee's treating providers and Dr. Williams, or any other EME physician regarding his ongoing symptoms are not relevant because Employee has no valid claims pending. He provided no basis to modify *Hernandez XV* or *XVI* under §.130(a) either. For all these reasons, his August 3, 2026 petition for an SIME will be denied.

CONCLUSION OF LAW

Employee's August 3, 2026 petition for an SIME should be denied.

ORDER

Employee's August 3, 2026 petition for an SIME is denied.

Dated in Anchorage, Alaska on September 16, 2026.

ALASKA WORKERS' COMPENSATION BOARD

/s/
William Soule, Designated Chair

/s/
Anthony Ladd, 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. The power to order

reconsideration expires 30 days after the date the decision was mailed. If no action is taken on a petition for reconsideration within the time allowed to order reconsideration, the petition is considered denied.

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 Manuel Hernandez, employee / claimant v. Ocean Beauty Seafoods, LLC, employer; Liberty Insurance Corporation, insurer / defendants; Case No. 201711427; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties by certified U.S. Mail, postage prepaid, on September 16, 2026.

/s/
Lorvin Uddipa, Workers' Compensation Technician