ALASKA WORKERS' COMPENSATION BOARD

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

MARIE MATEO APONTE, Employee, Claimant, v. COPPER RIVER SEAFOODS INC., Employer, and LIBERTY NORTHWEST INSURANCE CORP., Insurer, Defendants.	)	INTERLOCUTORY DECISION AND ORDER AWCB Case No. 201717033M AWCB Decision No. 26-0076 Filed with AWCB Anchorage, Alaska on September 21, 2026

Copper River Seafoods Inc.'s and Liberty Northwest Insurance Corp.'s (Employer) August 23, 2023 petition to strike and June 16, 2026 petition to dismiss were heard in Anchorage, Alaska on August 25, 2026, a date selected on July 16, 2026. A June 17, 2026 hearing request gave rise to this hearing. Attorney Michael Flanigan appeared and represented Marie Mateo Aponte (Employee) who appeared telephonically and testified. Attorney Adam Sadoski appeared and represented Employer. The record closed at the hearing's conclusion on August 25, 2026.

ISSUES

Employee requested her attorney fees and costs for time spent reviewing the file and defending against Employer's petitions be added as an issue. She contended her attorney should be awarded fees if she is able to successfully defend against Employer's petitions.

Employer contended Employee's attorney fees and costs were not listed as an issue in the prehearing conference summary and cannot be added as an issue for hearing. An oral order declined to add Employee's attorney fees and costs as a hearing issue.

1) Was the oral order declining to add Employee's attorney fees and costs as an issue correct?

Employee objects to consideration of the phone call logs in the Alaska Workers' Compensation Division's (Division) Incident Claims and Expense Reporting System (ICERS). She contends the phone call logs are hearsay, and she is entitled to cross-examination of Division staff.

Employer contends the ICERS logs fall under the business record exception. It also contends the Board regularly relies on phone call logs in ICERS in its decisions, as it did in the previous decision in this case.

2) Can ICERS phone call logs be considered?

Employee objects to consideration of Employer's hearing brief exhibits. She contends that Employer filed its evidence after the deadline set in the prehearing conference summary. Employee requests an order finding that Employer's hearing brief exhibits cannot be considered.

Employer contends its hearing brief exhibits were already filed in the record. It requests an order that its hearing brief exhibits can be considered.

3) Should Employer's hearing brief exhibits be considered?

Employer contended that failing to strike the second independent medical report (SIME) report would violate Employer's due process rights because the SIME physician died before he was examined at deposition. It also contends Employee's failure to oppose its petition to strike for 27 months constituted a waiver of her right to oppose its petition. Employer requests an order granting its petition to strike the SIME report.

Employee contends the SIME physician's report falls under a hearsay exception. She requests an order denying Employer's petition to strike the SIME report.

4) Should Employer's petition to strike the SIME report be granted?

Employer contends the SIME did not toll the two-year period and Employee failed to actually and substantially comply with §.110(c) because she filed an affidavit of readiness for hearing (ARH) more than seven years after her claim was first controverted. Alternatively, it contends Employee filed her ARH more than four-and-a-half years if the SIME process tolled the time period. Employer contends the Board went above and beyond its obligation to advise Employee how to preserve her claim because she had been represented by an attorney, informed her to file an ARH, and provided her the "workers' compensation and you" pamphlet. Employer contends Employee's earlier ARH was defective because she failed to identify a pleading and it was not actionable. It requests an order granting its petition to dismiss Employee's claim under §.110(c).

Employee contends the SIME process tolled the two year period in §.110(c). She contends the Board first advised Employee of her §.110(c) deadline after it had already passed and her case is like *Bohlmann*. She contends she filed a subsequent ARH within two years of receiving advice on how to calculate the deadline. Employee requests Employer's petition to dismiss under §.110(c) be denied.

5) Should Employer's petition to dismiss Employee's claim under §.110(c) be granted?

FINDINGS OF FACT

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

1) On August 4, 2017, Employer reported Employee injured her lower back area on August 1, 2017 in an "unspecified incident causing unspecified injury." (First Report of Occupational Injury 201711094, August 4, 2017).

2) On December 14, 2017, Employer reported Employee injured her back on June 23, 2016 lifting a heavy metal sheet filled with frozen salmon and throwing fish into a processing machine. (First Report of Occupational Injury 201717033, December 14, 2017).

3) On January 25, 2018, Employer denied chiropractic treatment "beyond" January 25, 2018 based upon James Schwartz, MD's, EME report. (Controversion Notice, January 25, 2018).

4) On March 12, 2018, medical provider Core Kinetics sought medical costs, interest and a penalty for services rendered on December 30, 2017. (Claim for Workers' Compensation Benefits, March 12, 2018).

5) On March 27, 2018, Core Kinetics sought medical costs, interest and penalty for services rendered on January 12, 2017 and January 22, 24 and 25, 2018. (Claim for Workers' Compensation Benefits, March 27, 2018).

6) On April 2, 2018, Employee requested an SIME. (Petition, April 2, 2018).

7) On April 3, 2018, Employer answered Core Kinetics claims, denying medical costs which were not performed in accordance with a treatment plan, those which exceeded the frequency standards and did not comply with the fee schedule. (Answer, April 3, 2018).

8) On April 23, 2018, Employer opposed Employee's April 2, 2018 petition for an SIME, contending the matter is not ripe for an SIME. It contended it needed additional time to conduct discovery of medical records to fully develop any potential medical disputes once Employee returned executed releases. (Opposition to Petition for SIME, April 23, 2018).

9) On May 1, 2018, Employee attended a prehearing conference scheduled on Core Kinetics claims. The Board designee stated, "Designee explained the adjudications process noting that once discovery is complete, and if a settlement has not occurred, either party may file an Affidavit of Readiness for Hearing (ARH) form to notify the Alaska Workers Compensation Board (AWCB) that a Hearing is necessary." (Prehearing Conference Summary, May 1, 2018).

10) On June 6, 2018, Employer controverted all benefits from May 21, 2018 forward, for Employee's failure to execute releases or alternatively file a petition for a protective order. (Controversion Notice, June 6, 2018).

11) On June 7, 2018, Employee, a representative for Core Kinetics, and Erica Ivy for Employer attended a prehearing conference. The designee stated, "Designee explained the adjudications process noting that once discovery is complete, and if a settlement has not occurred, either party may file an Affidavit of Readiness for Hearing (ARH) form to notify the Alaska Workers Compensation Board (AWCB) that a Hearing is necessary." (Prehearing Conference Summary, June 7, 2018).

12) On June 13, 2018, Employer withdrew its June 6, 2019 controversion notice. (Notice of Withdrawal of June 6, 2018 Controversion, June 13, 2018).

13) On June 26, 2018, Employee filed an "amended" claim for interest and attorney fees and costs. (Claim for Workers' Compensation, June 26, 2018). Her first attorney also entered his appearance on her behalf. (Entry of Appearance, June 26, 2018).

14) On July 24, 2018, Core Kinetics sought medical costs, interest, and penalty for services rendered on April 26 and 30, May 18, 23 and 30, June 1, 2, 7, 8, 13, and 14, 2018. (Claim for Workers' Compensation Benefits, July 24, 2018).

15) On July 24, 2018, Employer controverted all benefits from July 24, 2018 forward, contending Employee failed to attend a properly noticed EME scheduled on July 24, 2018. (Controversion Notice, July 24, 2018).

16) On August 17, 2018, Employer answered and controverted Core Kinetics July 25, 2018 claim, denying all benefits sought, contending all medical benefits for which required documentation was received were timely paid pursuant to the fee schedule or controverted. (Answer and Controversion Notice, August 17, 2018).

17) On August 30, 2018, Employee followed up with Hyon J. Joo, DO, regarding lumbar pain:

> Patient was last seen On July 11, 2018 with Dr. Larry Levine. It was noted that the patient has sub ligamentous disc herniation at L4-5 with pars abnormality at L5-S1. Patient describes her symptoms as an aching pain from the base of her neck all the way down to her back where turns into pain and needle sensation along the lumbar spine and numbness down the posterior Portion of her bilateral legs down to her feet. . . .
>
> Since her last visit with Dr. Levine patient stated that she had been [controverted] by her worker's compensation company. Patient stated that she was scheduled for an IME in Seattle, but the worker's compensation company did not provide enough finances for the patient to be able to go, stay at a hotel and eat especially since she has a child. Later, patient found out that the worker's compensation company had sent her a check for these expenses, but she thought it was her disability check and she spent it. She found this out from her attorney. . . . (Joo progress note, August 30, 2018).

18) On September 25, 2018, Theresa McFarland, MD, evaluated Employee for an EME. (McFarland EME report, September 25, 2018).

19) On October 10, 2018, Employer filed a medical summary with Dr. Joo's August 30, 2018 medical record. (Medical Summary, October 10, 2018).

20) On October 25, 2018, Employee orally amended her claim to add temporary total disability (TTD) benefits. Employer withdrew its July 24, 2018 controversion notice. (Prehearing Conference Summary, October 25, 2018).

21) On November 14, 2018, Employee amended her claim to add penalty. (Claim for Workers' Compensation Benefits Amended, November 14, 2018).

22) On December 5, 2018, Employer answered Employee's November 14, 2018 claim, admitting TTD benefits were owed during periods of disability "for which the [work] injury is the substantial cause and for which uncontradicted supporting medical documentation exists." Employer also admitted medical costs were owed for reasonable and necessary work injury related treatment that did not exceed the frequency standards and for which timely proper and complete medical records and bills were provided pursuant to the fee schedule. It denied attorney fees and costs, penalty, interest, TTD benefits not admitted, and medical treatment costs not admitted. (Answer, December 5, 2018).

23) On December 19, 2018, Employee orally amended her claim to add TTD benefits. The parties asked to continue the prehearing conference to give them a chance to review the pending EME report and see if an SIME is warranted. (Prehearing Conference Summary, December 19, 2018).

24) On December 21, 2018, Employer controverted all benefits for Employee's lumbar spine from September 25, 2018 forward and all benefits related to the cervical spine based upon Dr. McFarland's September 25, 2018 EME report. It emailed Employee's attorney a copy. (Controversion Notice, December 21, 2018).

25) On January 10, 2019, the parties agreed to an SIME. (Prehearing Conference Summary, January 10, 2019).

26) On February 1, 2019, Employee's first attorney withdrew. (Notice of Withdrawal, February 1, 2019).

27) On February 5, 2019, Employee requested the discovery process, including the SIME and her deposition, be placed on hold. Employer's representative agreed to postpone both to allow Employee time to request her file and review it. The designee stated, "Designee confirmed that once discovery is complete, and if a settlement has not occurred, either party may file an Affidavit of Readiness for Hearing (ARH) form to notify the Alaska Workers Compensation Board (AWCB) that a Hearing is necessary." The prehearing conference summary included the following notice:

> **Notice to Claimant:**
> AS 23.30.110(c) provides: "If the employer controverts a claim on a board-prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied." In other words, when Employee files a workers' compensation claim and Employer controverts the claim, to avoid possible dismissal of Employee's claim, Employee must file with the board and serve on all opposing parties an affidavit of readiness for hearing within two years of the controversion. The board has an affidavit of readiness for hearing form Employee can complete and file. If Employee has not completed all discovery and cannot file the affidavit of readiness for hearing within two years of Employer's controversion, but still wants a hearing, Employee should provide written notice to the board and serve the notice upon all opposing parties. (Prehearing Conference Summary, February 5, 2019).

28) On February 28, 2019, Employee and Employer agreed to restart the SIME process. The prehearing conference summary included the following notice:

> **Notice to Claimant:**
> AS 23.30.110(c) provides: "If the employer controverts a claim on a board-prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied." In other words, when Employee files a workers' compensation claim and Employer controverts the claim, to avoid possible dismissal of Employee's claim, Employee must file with the board and serve on all opposing parties an affidavit of readiness for hearing within two years of the controversion. The board has an affidavit of readiness for hearing form Employee can complete and file. If Employee has not completed all discovery and cannot file the affidavit of readiness for hearing within two years of Employer's controversion, but still wants a hearing, Employee should provide written notice to the board and serve the notice upon all opposing parties. (Prehearing Conference Summary, February 28, 2019).

29) On April 3, 2019, Employee and Employer attended a prehearing conference:

> Employee requested additional time to find legal counsel before continuing with the SIME process and suggested 6/1/2019 as a new deadline for the submission of the necessary SIME Binders, Form, and Questions. Employer representative did not agree and suggested 4/19/2019 as a new deadline for submission of the necessary SIME documentation. Parties were unable to reach an agreeable resolution regarding a new SIME deadline so Designee set a new SIME deadline of 5/17/2019 over the objections of both Employee and Employer representative.

The prehearing conference summary included the following notice:

> **Notice to Claimant:**

> AS 23.30.110(c) provides: "If the employer controverts a claim on a board-prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied." In other words, when Employee files a workers' compensation claim and Employer controverts the claim, to avoid possible dismissal of Employee's claim, Employee must file with the board and serve on all opposing parties an affidavit of readiness for hearing within two years of the controversion. The board has an affidavit of readiness for hearing form Employee can complete and file. If Employee has not completed all discovery and cannot file the affidavit of readiness for hearing within two years of Employer's controversion, but still wants a hearing, Employee should provide written notice to the board and serve the notice upon all opposing parties. (Prehearing Conference Summary, April 3, 2019).

30) On April 17, 2019, Employer and Core Kinetics and Excellence in Health Chiropractic Care stipulated Employer would pay Core Kinetics an additional $551.03 and Excellence in Health Chiropractic Care an additional $72.74 and in exchange the providers accepted the amounts in full and agreed to final discharge of the providers' claims for medical treatment, penalty, and interest. The parties agreed that the provider claims were dismissed with prejudice. (Stipulation Regarding Resolution of Provider Claims, April 17, 2019).

31) On August 29, 2019, Employee's second attorney entered his appearance on behalf of Employee. (Entry of Appearance for Employee, August 29, 2019).

32) On October 31, 2019, the parties again stipulated to conduct an SIME and deadlines were set for the SIME and binders. (Prehearing Conference Summary, October 31, 2019).

33) On January 22, 2020, Employee's second attorney updated her mailing address of record. (Letter, January 22, 2020).

34) On February 28, 2020, Employee's second attorney withdrew. (Notice of Withdrawal of Attorney, February 28, 2020).

35) On March 2, 2020, William Curran, MD, examined Employee for an SIME and made findings based upon his examination. He reviewed and summarized the medical records provided by the parties and provided Employee's current complaints, past history, and injury description as explained by Employee at the exam. Dr. Curran diagnosed an L4-5 herniated disc, an L4-5 annular disc tear, and stable lumbosacral grade 1 spondylolisthesis. He opined Employee became medically stable on January 8, 2018, he believed she required additional medical treatment for her work-related injuries "as needed," and recommended a "[h]ome exercise program, lumbar spine support, over-the-counter medications, medical reevaluations if repeat [magnetic resonance

imaging] MRI scan, facet injections, lumbar epidural steroid injections, and acupuncture are deemed necessary." Dr. Curran stated Employee's work-related injury would not benefit from surgery to assist in the process of recovery because "duration of symptoms too long and [Employee] is too young to undergo major lumbar spine surgery. Also, she has not exhausted all nonoperative treatment modalities." He assessed a 12 percent whole person impairment. (Curran SIME report, March 2, 2020).

36) On March 20, 2020, the Division received Dr. Curran's SIME report along with a March 13, 2020 invoice, which had also been mailed by first-class mail to Employer and Employee. A copy of the envelope was not retained so the mailing date is not known. (SIME Report Entry, March 20, 2020).

37) On April 8, 2020, Employer noticed its intent to take Dr. Curran's deposition at a date and time to be determined following substantial resolution of the Covid-19 pandemic. (Notice of Taking Video Deposition, April 8, 2020).

38) On April 14, 2020, Employee called the Division to update her mailing address of record. (Phone Call Entry, April 14, 2020).

39) On April 29, 2020, Employee called the Division and spoke with Division staff:

> EE called to find out when her deadline is to file and [sic] ARH. I explained that it is after the denial, after she submitted the claim, so gave her the date of 12/21/2018 and deadline is 12/21/2020. I also explained that she needs to be ready to go to hearing with her evidence and all, I also explained the petition for extension should she not be ready. . . . (Phone Call Entry, April 29, 2020).

40) On July 28, 2020, Employee call the Division and spoke with staff, "EE called to find out what to do next on her case, I explained the ARH next step, EE asked me to please mail her an ARH form." (Phone Call Entry, July 28, 2020).

41) On March 31, 2021, Employee called the Division to update her mailing address of record. (Phone Call Entry, March 21, 2021).

42) On January 28, 2022, Employee called the Division and said she was unhappy with Dr. Curran's SIME opinion and wants a hearing on her case. Division staff emailed her the "Workers' Compensation and You" packet and an ARH. (Phone Call Entry and Email Entry, January 28, 2022).

43) On May 19, 2022, Employee came into the Anchorage Division location and voiced concerns about the SIME and stated she wished to contest the SIME findings. "EE will file ARH, but made informal request for conference to discuss her concerns 'on the record.'" (Walk In Entry, May 19, 2022).

44) On June 14, 2022, Employee stated she did not agree with Dr. Curran's SIME opinion and said she would either request a hearing on her November 14, 2018 amended claim and address the SIME opinion in her merits argument or file a petition to strike Dr. Curran's SIME report with an ARH. The prehearing conference summary included the following notice:

> **Notice to Claimant:**
> AS 23.30.110(c) provides: "If the employer controverts a claim on a board-prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied." In other words, when Employee files a workers' compensation claim and Employer controverts the claim, to avoid possible dismissal of Employee's claim, Employee must file with the board and serve on all opposing parties an affidavit of readiness for hearing within two years of the controversion. The board has an affidavit of readiness for hearing form Employee can complete and file. If Employee has not completed all discovery and cannot file the affidavit of readiness for hearing within two years of Employer's controversion, but still wants a hearing, Employee should provide written notice to the board and serve the notice upon all opposing parties. (Prehearing Conference Summary, June 14, 2022).

45) On March 23, 2023, Employee filed a petition checking the "Petition Type" box for "Compel Discovery" and wrote the following in the "Reason for Petition" box, "I do not agree with his conclusion, due to him using dark MRI and xray [sic] images that don't even show my injury site completely and nerve damage." She included a new mailing address on the petition. Employee requested an oral hearing but did not indicate which claim or petition she wanted to be heard. Her ARH was signed in front of a notary. She provided a new mailing address and telephone number on her petition and ARH, her last mailing address and telephone number of record. (Petition and ARH, March 23, 2023). The petition and ARH were emailed to Employer's attorney. (Email, March 23, 2023).

46) On April 25, 2023, the Board designee tried to call Employee at her telephone number of record for a prehearing conference. Employee did not answer, and a voicemail message could not be left. Employer's attorney's office stated it did not receive copies of Employee's March 24, 2023 petition and ARH and requested copies. The Board designee noted Employee's March 24, 2023

petition confirmed her disagreement with the SIME physician and a specific MRI but did not "make a request of the Board" and her ARH did not identify which pleading she wanted to be heard. The prehearing conference summary included the following notice:

> **Notice to Claimant:**
> AS 23.30.110(c) provides: "If the employer controverts a claim on a board-prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied." In other words, when Employee files a workers' compensation claim and Employer controverts the claim, to avoid possible dismissal of Employee's claim, Employee must file with the board and serve on all opposing parties an affidavit of readiness for hearing within two years of the controversion. The board has an affidavit of readiness for hearing form Employee can complete and file. If Employee has not completed all discovery and cannot file the affidavit of readiness for hearing within two years of Employer's controversion, but still wants a hearing, Employee should provide written notice to the board and serve the notice upon all opposing parties. (Prehearing Conference Summary, April 25, 2023).

The Division served Employee with a copy of the April 25, 2023 prehearing conference summary to her address of record on April 25, 2023. (Prehearing Conference Summary Served, April 25, 2023; Envelope, April 25, 2023).

47) On May 12, 2023, Employer filed a Notice of Scheduling Deposition to depose Dr. Curran on August 17, 2023, which was served upon Employee at her address of record. It also served Employee with its affidavit of opposition to her March 23, 2023 ARH at her last address of record. (Notice of Scheduling Deposition, May 12, 2023).

48) On July 5, 2023, Employer cancelled Dr. Curran's August 17, 2023 deposition and served the cancellation notice to Employee's last known mailing address. (Notice of Cancellation of Deposition, July 5, 2023).

49) On July 5, 2023, Employer sent Employee a letter by certified mail, return receipt requested, to her address of record requesting she sign and return releases within 14 days. The releases included three Authorizations to Release Medical Information, two Pharmacy Records Releases, an Employment Records Release, a Social Security Administration Consent for Release of Information, a Request for Social Security Earnings Information, an Insurance Records Release, and a Division of Workers' Compensation Request for Release of Information. (Letter, July 5, 2023).

50) On July 7, 2023, Employer sent Employee a letter by first-class mail to her address of record:

> This is to inform you that the employer and carrier have scheduled an employer's medical examination ("EIME") for you, pursuant to the authority granted them in AS 23.30.095(e). Under this statute, you are required to attend this evaluation. Failure to attend may affect your right to future benefits under the Alaska Workers' Compensation Act.
>
> The examination will be conducted by Dr. Theresa McFarland on 7/19/23, at 9:00 a.m. **Please arrive at 8:30 a.m.** Dr. McFarland's office is located at 411 Strander Boulevard, Suite 301, Tukwila, Washington 98188.
>
> If for any reason, you are unable to attend the EIME, please contact me immediately.
>
> Travel arrangements, including air, ground, and lodging will be made by the claims examiner at no cost to you. The travel information will be provided prior to your departure. You will receive an expense check to cover meals and ground transportation, if necessary. Please keep all receipts and provide them to the claims examiner, along with any unused funds, on your return home. Also note that ancillary expenses such as alcoholic beverages, in-room movies, and the like, are not covered or reimbursable. (Letter, July 7, 2023).

51) On July 12, 2023, Employee called the Division several times:

> EE Called back and I scheduled her for an appointment at 2pm on 7/13/23. EE called upset and was forwarded to someone but got VM. She called right back even more upset and yelled at the person who answered. She came and got me. I took the call. The EE went on for a while about how unfair the process is, made several accusations about doctors on the SIME list, and stated how unfair it is that we won't do anything (such as schedule an appointment) without the adjuster's ok. Eventually I cut off the EE and told her I would get her to my supervisor, Shannon. Transferred her. (Phone Call, July 12, 2023).

52) On July 13, 2023, Employee visited the Division's Anchorage office in person:

> EE came in extremely upset that the ER ATT is able to make her go out of state for an EIME appointment at the "drop of a dime" I let EE know that they have to let her have 10 days notice and they did, but we can call to see what they will do to help accommodate her if. I called the ADJ office with EE on speaker phone and ADJ asked us to contact the Attorney on file, so I called the ATT office, when Adam Sadoski got on the phone I tried to talk to him but the EE got extremely emotional and started yelling at him when he tried to explain to her that they gave the notice that they are required to and she told him she is not going cause they are not paying for her daughter and she is not leaving her then she reached over grabbed the phone and hung up on the attorney. I talked to EE about what she is wanting to

> do EE said she is just wanting to get new images on her back so she can get treatment. I let her know she can file a claim requesting that, and that will trigger a prehearing and they can talk about everything in the prehearing, I did recommend that EE try to keep her composure and let the other party speak and they will give her the same respect. EE was very upset just want all of this done and just wanting new imaging of her spine. I typed up most of the claim form so EE had the correct info, and then she finished filling it out, I also notarized the releases that she signed for the ER ATT office. (Communications, Walk-In, July 13, 2024).

53) On July 13, 2023, Employee filed the 10 releases she signed. Division staff entered the 10 releases Employee signed as "Evidence." There was no proof of service indicating the releases had been served upon Employer. (Releases, July 13, 2023; Observations).

54) On July 13, 2023, Employee filed medical documents for an August 30, 2018 visit with Dr. Joo, and June 28, 2018 results from blood and urinalysis, a June 2, 2020 letter from Employer's attorney's office requesting Employee's medical records from Alaska Spine Institute, a medical release signed by Employee on September 18, 2019, a Statement of Custodian of Records signed by Tamara R. at Alaska Spine Institute on July 26, 2020, and a copy of a $75 check from Employer's attorney's office to Alaska Spine Institute with a Medical Record Request receipt dated June 29, 2020 charging $75 for Employee's medical records. There was no medical summary attached and no proof of service indicating any of the documents had been served upon Employer. Division staff entered the medical records as "Evidence." (Medical documents, July 13, 2023; Observations).

55) On July 14, 2023, Employee filed the following letter:

> I have meet with Amanda with the workers comp board, to call liberty mutual Yvette Delaquito regarding planning flight and hotel without including my child nor fundings money to travel through to airports, I gave notice to her, and Adam Sadoski that I will not be attending as no one bother to call me to arrange with me this nor ask, if I could afford travel to two airports this month being homeless with my minor child and pay on my own tickets for my daughter. As I have not received any money from liberty mutual and have 8 years waiting to get care. (Letter, July 14, 2023).

There was no proof of service indicating the letter had been served on Employer. Division staff entered the letter as "Evidence." (Agency record; Observations).

56) On July 14, 2023, Employee sought "other" and under the "Reason for filing claim" and wrote, "Lumbar spine MRI with contrast to view all of the nerves on my spine including my sciatic nerve for L4 and L5." (Claim for Workers' Compensation Benefits, July 14, 2023).

57) On July 19, 2023, Employer petitioned for reimbursement of EME fees for Employee's unreasonable failure to attend a July 19, 2023 EME, which was properly noticed and scheduled, and for an order compelling Employee to attend an EME. It served Employee with the petition by first-class mail to her address of record. (Petition, July 19, 2023). Employer controverted all benefits for her failure to attend the July 19, 2023 EME. It served Employee with the controversion notice by certified mail, return receipt requested to her address of record. (Controversion Notice, July 19, 2023).

58) On July 20, 2023, the Division served Employee's July 14, 2023 claim. (Claim Served, July 20, 2023).

59) On July 24, 2023, Employer filed an invoice for no-show costs for the July 19, 2023 EME totaling $597.50; it served Employee with a copy to her address of record by first-class mail. (Affidavit of Service, July 24, 2023).

60) On July 26, 2023, Employer petitioned for an order compelling Employee to return signed releases; it served Employee with the petition by first-class mail to her address of record. (Petition, July 26, 2023). Employer controverted all benefits for Employee's failure to return signed releases or to file a petition for a protective order; it served the controversion notice on Employee by certified mail, return receipt requested, to her address of record. (Controversion Notice, July 26, 2023).

61) On August 8, 2023, Employer controverted and answered Employee's July 14, 2023 claim contending it had "not received any medical bills and supporting documents indicating that the requested medical treatment is reasonable and necessary or that [the] work injury is the substantial cause of the need for the requested medical treatment." It served Employee with the answer by first-class mail to her address of record. (Answer to Employee's Workers' Compensation Claim and Controversion Notice, August 8, 2023). Employer also controverted all benefits for Employee's failure to return signed releases or to file a petition for a protective order. It served Employee with the controversion notice by certified mail, return receipt requested, to her address of record. (Controversion Notice, August 8, 2023).

62) On August 9, 2023, Employer again controverted all benefits for Employee's failure to attend a properly noticed EME. It served Employee with the controversion notice by certified mail, return receipt requested, to her address of record. (Controversion Notice, August 9, 2023).

63) On August 17, 2023, the Board designee tried to call Employee at her telephone number of record for a prehearing conference and left a voicemail message. The designee granted Employer's July 19, 2023 petition to compel Employee's attendance at an EME and its July 26, 2023 petition to compel Employee to sign discovery releases. Employee was ordered to attend a properly noticed EME "as soon as possible" and to sign, date and return all ten unaltered discovery releases to Employer's representative "as soon as possible." The designee informed Employee if she refused to submit to an EME, her right to compensation shall be suspended until the obstruction or refusal ceases, and her compensation during the suspension period may be forfeited at the discretion of the Board. The designee also informed Employee, "If a party refuses to comply with an order by the board's designee or the board concerning discovery matters, the board may impose appropriate sanctions in addition to forfeiture of benefits, including dismissal of the party's claim, petition, or defense." Employee was also instructed to either request reconsideration or to appeal the orders if she did not agree with them. The prehearing conference summary included the following notice:

> **Notice to Claimant:**
> AS 23.30.110(c) provides: "If the employer controverts a claim on a board-prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied." In other words, when Employee files a workers' compensation claim and Employer controverts the claim, to avoid possible dismissal of Employee's claim, Employee must file with the board and serve on all opposing parties an affidavit of readiness for hearing within two years of the controversion. The board has an affidavit of readiness for hearing form Employee can complete and file. If Employee has not completed all discovery and cannot file the affidavit of readiness for hearing within two years of Employer's controversion, but still wants a hearing, Employee should provide written notice to the board and serve the notice upon all opposing parties. (Prehearing Conference Summary, August 17, 2023).

64) On August 18, 2023, the Division served Employee with the August 17, 2024 prehearing conference summary by first-class mail to her address of record. It was not returned to the Division as "undeliverable." (Prehearing Conference Summary Served, August 18, 2023; Observation).

65) On August 23, 2023, Employer requested Dr. Curran's report be stricken from the record because he died before he could be deposed, he was unavailable to testify, and Employer did not

cross-examine him. It attached an email dated June 28, 2023, from Dr. Curran's medical office informing Employer Dr. Curran died on June 23, 2023. (Petition, August 23, 2023; Email, June 28, 2023).

66) On November 13, 2023, Employer sent Employee a letter by first-class mail to her address of record stating:

> . . . . This letter is to inform you that the employer and carrier have rescheduled an employer's medical examination (EIME) for you. Pursuant to the authority granted them in AS 23.30.905(e). Under this statute, you are required to attend this evaluation. Failure to attend may affect your right to future benefits under the Alaska Workers' Compensation Act.
>
> This examination will be conducted by Dr. Theresa McFarland on 1/4/24, at 9:00 a.m. **Please arrive at 8:30 a.m.** Dr. McFarland's office is located at 2849 NW Kitsap Place, Silverdale, Washington 98383.
>
> You have been ordered to attend this examination by the Board's designee. A copy of the 8/17/23 Prehearing Conference Summary, which includes the order, is attached for your review.
>
> Travel arrangements, including air, ground, lodging, and advance amounts for food, will be made by the claims examiner at no cost to you. We have made multiple attempts to contact you to make the arrangements but have been unsuccessful. Please reach out to us so we can make the arrangements. If you do not, you will be expected to make your own arrangements—including air travel, ground transportation, lodging, and food—in a reasonable and most cost-effective manner, for which you will be reimbursed by Liberty Mutual. If you elect to make your own arrangements, please retain all receipts and provide them to the claims examiner on your return home. Also note that ancillary expenses such as alcoholic beverages, in-room movies, and the like, are not covered or reimbursable. (Letter, November 13, 2023).

67) On January 4, 2024, claims adjuster Yvette Delaquito was informed by Coordinator Jill Davis that Employee failed to show up for the January 4, 2024 EME appointment and a no-show charge would be billed. (Email, January 4, 2024).

68) On February 7, 2024, Employer petitioned to dismiss Employee's claims for failing to "attend multiple properly noticed employer's medical examinations, despite being ordered to do so." It served Employee with a copy of the petition at her address of record by first-class mail. (Petition, February 7, 2024).

69) On February 28, 2024, Employer requested a hearing on its February 7, 2024 petition to dismiss; it served Employee with a copy of the affidavit of readiness for hearing by first-class mail to her address of record. (ARH, February 28, 2024).

70) On April 4, 2024, the Board designee called Employee's telephone number of record but there was no answer, and she was unable to leave a voicemail message. The designee scheduled an oral hearing for May 21, 2024 on Employer's February 7, 2024 petition to dismiss. The designee ordered the parties to serve and file witness lists and legal memoranda by May 15, 2024 and evidence by May 1, 2024. (Prehearing Conference Summary, April 4, 2024).

71) On April 4, 2024, the Division served Employee with the May 21, 2024 hearing notice by first-class mail at her address of record. It was not returned as "undeliverable." (Hearing Notice Served, April 4, 2024; Observation).

72) On April 5, 2024, the Division served Employee with the April 4, 2024 prehearing conference summary by first-class mail to her address of record. It was not returned as "undeliverable." (Prehearing Conference Summary Served, April 5, 2024; Observation).

73) On May 15, 2024, Employer filed a hearing brief for the May 21, 2024 hearing and served it upon Employee by first-class mail to her address of record. (Employer's Hearing Brief in Support of Petition to Dismiss, May 15, 2024).

74) On May 21, 2024, Employee did not appear in person for the hearing; she also did not answer two calls made to her telephone number of record and there was no option to leave a voicemail. The hearing was continued because the Division did not serve Employee with the May 21, 2024 hearing notice by certified mail. (*Mateo Aponte v. Copper River Seafoods, Inc.*, AWCB Dec. No. 24-0030 (May 29, 2024) (*Mateo Aponte I*).

75) On May 21, 2024, the Division served Employee by certified mail, return receipt requested, with the June 5, 2024 hearing notice. The envelope was properly addressed to Employee's address of record, the green card attached to the back of the envelope was addressed to Employee's previous address. (Hearing Notice Served, May 21, 2024; Envelope, May 21, 2024).

76) On May 24, 2024, Employee's June 5, 2024 hearing notice was returned by the United States Postal Service (USPS) as "RETURN TO SENDER, ATTEMPTED - NOT KNOWN, UNABLE TO FORWARD." (Returned Mail Envelope, May 24, 2024).

77) On May 29, 2024, the Division served Employee by certified mail, return receipt requested with *Mateo Aponte I*. The panel found the oral order continuing the hearing due to the Division's

failure to properly serve Employee with the hearing notice when she did not appear was correct. *Mateo Aponte I* directed the Division to serve Employee with the June 5, 2024 hearing notice by certified mail, return receipt requested. (*Mateo Aponte I*). The Division served Employee by certified mail, return receipt requested, with a copy of *Mateo Aponte I*. The envelope and the green card attached to the back of the envelope were properly addressed to Employee's address of record. (D&O Issued and Served, May 29, 2024).

78) On June 3, 2024, Employee's copy of *Mateo Aponte I* was returned by the USPS as "RETURN TO SENDER, ATTEMPTED - NOT KNOWN, UNABLE TO FORWARD." (Returned Mail Envelope, June 3, 2024).

79) On June 4, 2024, Division staff called Employee's telephone number of record about the June 5, 2024 hearing but did not reach her and could not leave a voicemail. (Phone Call, June 4, 2024).

80) On June 5, 2024, the designated chair called Employee's telephone number of record so she could participate in the June 5, 2024 hearing but did not reach her and could not leave a voicemail. (*Mateo Aponte v. Copper River Seafoods, Inc.*, AWCB Dec. No. 24-0035 (June 18, 2024) (*Mateo Aponte II*)).

81) On June 18, 2024, the Division issued and served Employee by certified mail, return receipt requested, with *Mateo Aponte II* to her address of record. *Mateo Aponte II* concluded the oral order to proceed with the June 5, 2024 hearing in Employee's absence was incorrect due to the Division's failure to properly serve Employee with the hearing notice by certified mail and that her claims should not be dismissed for failure to comply with discovery orders. It continued the June 5, 2024 hearing and provided dates to reschedule. (*Mateo Aponte II*; D&O Issued and Served, June 18, 2024).

82) On June 24, 2024, Employee's copy of *Mateo Aponte II* was returned by the USPS as "RETURN TO SENDER, ATTEMPTED - NOT KNOWN, UNABLE TO FORWARD." (Returned Mail Envelope, June 24, 2024).

83) On June 26, 2024, the Division served Employer and Employee with a July 11, 2024 hearing notice by certified mail, return receipt requested. (Hearing Notice Served; Envelopes, June 26, 2024).

84) On June 28, 2024, Employer requested a prehearing conference to discuss the July 11, 2024 hearing; it served Employee with a copy of the request by first-class mail to her address of record. (Request for Conference, June 28, 2024).

85) On June 28, 2024, the Division served notice for a July 5, 2024 prehearing conference on Employee and Employer by first-class mail. (Prehearing Notice Served, June 28, 2024). The Division also served a copy to Employee's email address of record. (Email, June 28, 2024).

86) On June 28, 2024, Employee responded to the Division's email:

> I moved. What I don't understand is how you are conducting court hearings without me being present. You guys at workmen's[sic] comp are so corrupt. Now you can't even make sure I'm aware of my case. From how bad you want this billionaire employer to not pay the bill. I've requested countless times a new MRI and New Person to over see[sic] my case! As Harvey is corrupt!! I'f[sic] you continue to send mail to an old address and claim you are serving me legally. I will sue your office at the federal court house of Alaska. I've had enough of the corruption. It's disgusting after 8 years. This is not what any of you should be doing. Its[sic] clear that I will never get a fair chance in your office. (Email, June 28, 2024).

87) On June 28, 2024, the Division responded to Employee's email, and copied Employer's attorney:

> I have received your message regarding service of the hearing notice for the July 5, 2024 prehearing. You mentioned in your email that you have moved from your address that we have on file. Per 8 AAC 45.060(f), "Immediately upon a change of address for service, a party or a party's representative must file with the board and serve on the opposing party a written notice of the change. Until a party or the board receives written notice of a change of address, documents must be served upon a party at the party's last known address."
>
> To ensure in the future that you receive your mail or can be contacted by phone and have open communication, please fill out a Change of Address form. For your convenience, I have attached one for you. If your address changes again in the future, you can find the form on our website under "forms" and there you can also list a new contact number as well. Please email the completed change of address form to workerscomp@alaska.gov and send a copy to Mr. Sadoski and your adjuster.
>
> In the future, any written communication you have with me or any other staff member from the Board, must be sent to workerscomp@alaska.gov and served upon Mr. Sadoski. *Ex parte* is communication attempting to influence the Board process and outcomes that is not shared with the opposing side. Such communication is prohibited by AS 44.62.630. To assure that all communications are on the record, any time you send a letter or email to the Board, you are required to serve a copy on Mr. Sadoski. You are, however, permitted to contact a Board Technician if you have questions about your rights and how to pursue them under the Act.

> Finally, you mentioned that you believe Harvey Pullen is corrupt. If you believe Mr. Pullen cannot be fair and impartial, you have a right to request his disqualification. To request disqualification, you must file an affidavit stating with particularity and detail the grounds for claiming that disqualification is warranted. Mr. Pullen will consider your request and make a determination. His determination will set out the facts and reasons for the determination, it will be served upon you and Mr. Sadoski, and become a part of the record.
>
> If you have any questions, please call our office and you will have a chance to speak to a Technician who can advise you of your rights and how to pursue them under the Act.
>
> To access any form you may need, you can utilize this link: Workers' Compensation (alaska.gov). (Email, June 28, 2024).

88) On June 28, 2024, Employer mailed Employee by certified mail, return receipt requested, three authorizations to release medical information, two pharmacy records releases, an employment records release, a Social Security Administration Consent for Release of information, a Request for Social Security Earnings Information, Insurance Records Release, and a Division of Workers' Compensation Request for Release of information along with a letter stating:

> Under Alaska Statute 23.30.107(a) of the Alaska Workers' Compensation Act, you may request a protective order from the Alaska Workers' Compensation Board (Board) if you have an objection to one or more of the releases by filing a petition with the Board. If you choose to seek a protective order from the Board, you must do so within 14 days of the date of this letter. Failure to sign and return the release(s) or file a request for a protective order within the 14-day period may result in a suspension of benefits until the release(s) is/are signed. AS 23.30.108(a). If the employer seeks and obtains a Board order, a failure to comply with that order may result in sanctions imposed by the Board, including the dismissal of your claim or petition. AS 23.30.108(a).
>
> If you have questions about the enclosed materials or questions concerning your rights and responsibilities to provide information, please call the Alaska Workers' Compensation Board at (907) 269-4980. They will be happy to help you. (Letter, June 28, 2024).

89) On July 1, 2024, Employer requested reconsideration of *Mateo Aponte II* and to continue the July 11, 2024 hearing. (Petition, July 1, 2024).

90) On July 5, 2024, at a prehearing conference, the Board designee called Employee's telephone number of record and was unable to leave a voicemail. The designee continued the July 11, 2024

hearing. The prehearing conference summary was served upon Employee by first-class mail to her address of record. (Prehearing Conference Summary, July 5, 2024; Prehearing Conference Summary Served, July 5, 2024).

91) On July 5, 2024, Employee's copy of the July 11, 2024 hearing notice was returned by the USPS as "RETURN TO SENDER, ATTEMPTED - NOT KNOWN, UNABLE TO FORWARD." (Returned Mail Envelope, July 5, 2024).

92) On September 13, 2024, Employer petitioned to compel Employee to sign and return releases which were mailed to her on June 28, 2024. It attached the releases and a green card for the certified receipt for its June 28, 2024 letter with releases to Employee and it shows "Alize Aponte" signed for it. Employer served its petition and attachments on Employee by first-class mail. (Petition and attachments, September 13, 2024). Employer also denied all benefits due to Employee's failure to return signed releases or request a protective order as required by AS 23.30.107 and AS 23.30.108; it served Employee with the controversion notice by certified mail, return receipt requested, to her address of record. (Controversion Notice, September 13, 2024).

93) On September 16, 2024, the Division served notice of an October 1, 2024 prehearing conference; Employee was served by first-class mail to her last address of record. (Prehearing Conference Notice Served, September 16, 2024).

94) On September 25, 2024, the Division served notice the October 1, 2024 prehearing conference was cancelled and rescheduled for October 8, 2024; Employee was served by first-class mail to her address of record. (Prehearing Conference Rescheduled Notice Served, September 25, 2024).

95) On October 4, 2024, Employer requested a hearing on its September 23, 2024 petition to compel; it served Employee with a copy of the request to her last address of record by first-class mail. (ARH, October 4, 2024).

96) On October 8, 2024, at the prehearing conference, the Board designee called Employee's telephone number of record and was unable to leave a voicemail. The designee reviewed the ten releases and:

> found all 10 Discovery Releases to be standard, relevant, and likely to lead to discoverable information. Designee also found the Discovery Releases to be appropriately limited by date (6/23/2014) and body part (low back and spine). Employer's 9/13/2024 Petition to Compel is granted. Employee is ordered to sign, date, and return the unaltered Discovery Releases (x10) to Employer representative by 10/25/2024.

The designee advised Employee if she does not agree with the order, she may:

> 1. File a Petition for Reconsideration (8 AAC 45.065) within 10 days of service of this prehearing conference summary, at which time, designee will review the file and respond in writing to the Petition advising parties of whether or not the order has changed.
> 2. File a Petition to Appeal today's discovery order (AS 23.30.108) within 10 days of service of this prehearing conference summary, at which time, the AWCB will review the file at a Written Record Hearing and respond in writing to the Petition advising parties of whether or not the designee abused his discretion by rendering the above order.
> . . . .

The designee included the Alaska statute on discovery matters:

> **AS 23.30.108. Prehearings on discovery matters.** . . .
>
> (b) . . . . If the board or the board's designee orders delivery of the written authority and if the employee refuses to deliver it within 10 days after being ordered to do so, the employee's rights to benefits under this chapter are suspended until the written authority is delivered. During any period of suspension under this subsection, the employee's benefits under this chapter are forfeited unless the board, or the court determining an action brought for the recovery of damages under this chapter, determines that good cause existed for the refusal to provide the written authority.
>
> (c) At a prehearing on discovery matters conducted by the board's designee, the board's designee shall direct parties to sign releases or produce documents, or both, if the parties present releases or documents that are likely to lead to admissible evidence relative to an employee's injury. If a party refuses to comply with an order by the board's designee or the board concerning discovery matters, the board may impose appropriate sanctions in addition to any forfeiture of benefits, including dismissing the party's claim, petition, or defense. If a discovery dispute comes before the board for review of a determination by the board's designee, the board may not consider any evidence or argument that was not presented to the board's designee, but shall determine the issue solely on the basis of the written record. The decision by the board on a discovery dispute shall be made within 30 days. The board shall uphold the designee's decision except when the board's designee's determination is an abuse of discretion.

The designee also scheduled a hearing on Employer's February 7, 2024 petition to dismiss "based on the Affidavit of Readiness for Hearing filed by Employer on 10/4/2024" on January 30, 2025,

and ordered parties to serve and file witness lists and hearing briefs by January 23, 2025 and evidence by January 3, 2025. (Prehearing Conference Summary, October 8, 2024).

97) On October 8, 2024, the Division served the hearing notice for the January 23, 2025 hearing on Employer by certified mail, return receipt requested, on Employee by first-class mail, and emailed it to Employee and Employer to their respective email addresses of record. (Hearing Notice Served, October 8, 2024; Email, October 8, 2024).

98) On October 9, 2024, the Division served the October 8, 2024 prehearing conference summary; Employee was served by first-class mail to her address of record. (Prehearing Conference Summary Served, October 9, 2024).

99) On January 15, 2025, the Division served Employee with the January 30, 2025 hearing notice by certified mail, return receipt requested to her address of record. (Hearing Notice Served, January 15, 2025; Envelope January 15, 2025).

100) On January 21, 2025, Employee's copy of the January 30, 2025 hearing notice was returned by the USPS as "RETURN TO SENDER, ATTEMPTED - NOT KNOWN, UNABLE TO FORWARD." (Returned Mail Envelope, January 21, 2025).

101) On January 30, 2025, Employee attended the hearing and updated her mailing address of record. (Record).

102) On February 13, 2025, *Marie Mateo Aponte v. Copper River Seafoods, Inc.*, AWCB Dec. No. 25-0009 (February 13, 2025), (*Mateo Aponte III*), denied Employer's February 7, 2024 petition to dismiss under AS 23.30.108(c), ordered Employee to sign and return releases, forfeited Employee's benefits from October 22, 2024 until the signed releases are returned to Employer for her failure to comply with the October 8, 2024 discovery order, and ordered Employee to attend a properly noticed and arranged EME. It stated in findings of fact number 29, 30, and 32:

> 29) On April 29, 2020, Employee called the Division and spoke with Division staff:
>
> > EE called to find out when her deadline is to file and [sic] ARH. I explained that it is after the denial, after she submitted the claim, so gave her the date of 12/21/2018 and deadline is 12/21/2020. I also explained that she needs to be ready to go to hearing with her evidence and all, I also explained the petition for extension should she not be ready. . . . (Phone Call Entry, April 29, 2020).

> 30) On July 28, 2020, Employee call the Division and spoke with staff, "EE called to find out what to do next on her case, I explained the ARH next step, EE asked me to please mail her an ARH form." (Phone Call Entry, July 28, 2020).
>
> 32) On January 28, 2022, Employee called the Division and said she was unhappy with Dr. Curran's SIME opinion and wants a hearing on her case. Division staff emailed her the "Workers' Compensation and You" packet and an affidavit of readiness for hearing (ARH). (Phone Call Entry and Email Entry, January 28, 2022).

Mateo Aponte III stated in the analysis:

> a) Employee is advised she must serve and file an affidavit of readiness for hearing (ARH) requesting a hearing on her July 14, 2023 claim or request additional time as she has not completed all discovery, within two years of Employer's July 19, 2023 controversion notice to avoid possible dismissal of her July 14, 2023 claim. AS 23.30.110(c). Thus, Employee must request a hearing or additional time by Tuesday, July 22, 2025 on her July 14, 2023 claim (April 16, 2024 + 2 years + 3 days under 8 AAC 45.060(b) = Tuesday, July 22, 2025). *Id*.
>
> b) Employee is also advised the deadline to serve and file an ARH or request additional time for her June 26, 2018 claim, within two years of Employer's December 21, 2018 controversion notice, to avoid possible dismissal of her June 26, 2018 claim was Tuesday, March 1, 2022 (December 21, 2018 (the date the after-claim controversion notice was emailed to Employee's attorney) to January 10, 2019 (SIME stipulation date) = 20 days; 2 years = 731 days; 731 days - 20 days = 711 days; March 20, 2020 (the SIME report receipt date) + 711 days = Tuesday, March 1, 2022). *Narcisse*; *Roberge*. A copy of the ARH form and a copy of the petition form, which can be used to request an extension, will be provided with this decision. (*Mateo Aponte III*).

103) On February 13, 2025, the Division served Employee with a copy of *Mateo Aponte III* by certified mail, return receipt requested to her address of record. (D&O Issued and Served, February 13, 2025).

104) On February 14, 2025, the Division served Employer and Employee with a copy of *Mateo Aponte III* by email. (Email, February 14, 2025).

105) On February 27, 2025, Employee faxed signed releases to the Division. (Releases, February 27, 2025). Division staff emailed them to Employee and Employer. (Email, February 27, 2025).

106) On April 11, 2025, Employer requested an order compelling Employee to provide information necessary to schedule an EME, which she had been ordered to attend. It contended it sought the information informally on February 20, 2025 and March 4, 2025, and Employee failed

to provide the requested information by the deadlines stated in the discovery requests. (Petition, April 11, 2025).

107) On May 14, 2025, Employee did not attend the prehearing conference. The designee granted Employer's April 11, 2025 petition and ordered Employee to provide Employer with a copy of her current Driver's License within 10 days of receipt of the prehearing conference summary. (Prehearing Conference Summary, May 14, 2025).

108) On May 15, 2025, the Division served Employee with a copy of the May 14, 2025 prehearing conference summary by first-class mail to her address of record. (Prehearing Conference Summary Served, May 15, 2025).

109) On June 4, 2025, Employer requested Employee's claims be dismissed for failure to cooperate with discovery, contending she failed to provide a copy of her Driver's License as ordered. (Petition, June 4, 2025).

110) On July 3, 2025, the designee attempted to reach Employee and was unable to leave a voicemail message. Employer advised Employee provided the information needed for scheduling the EME, and it was working to schedule the EME. (Prehearing Conference Summary, July 3, 2025).

111) On October 29, 2025, Employee's third and current attorney entered his appearance on behalf of Employee. (Entry of Appearance, October 29, 2025). Employee also updated her address and telephone number. (Notice of Change of Address, October 29, 2025).

112) On October 29, 2025, Employee requested cases 201717033 and 201711094 be consolidated. (Petition, October 28, 2025).

113) On November 3, 2025, Employee's attorney requested a copy of her "case file" for cases 201717033 and 201711094. (Request for Release of Information, November 3, 2025).

114) On November 7, 2025, Division staff emailed Employee's attorney's office a copy of her case file using ZendTo. (Email, November 7, 2025).

115) The ICERS Log is included in the Division's response to a party's request for a copy of their file. (Knowledge, experience).

116) On November 18, 2025, Employer did not oppose Employee's petition to consolidate the cases. (Employer's Non-Opposition to Petition for Consolidation of Cases, November 18, 2025).

117) On December 9, 2025, Employee updated her mailing address of record. (Change of Address, December 9, 2025).

118) On December 10, 2025, Employee requested a protective order, contending Employer sent a notice of an EME in Tacoma, Washington, over 3,000 miles from Employee's residence in Florida. She contended the long distance and availability of physicians in Florida made it unreasonable. (Petition, December 10, 2025).

119) On December 10, 2025, Employee opposed Employer's August 23, 2023 petition to strike the SIME report, contending the Board received the SIME report on March 20, 2020 and Employer's attorney waited until May 12, 2023 to notice Dr. Curran's deposition which did not occur because Dr. Curran died on June 23, 2023. She also contended Dr. Curran's report is a business record under Alaska Rule of Evidence 803(6), which is an exception to the hearsay rule, and the report was not made in anticipation of litigation because the Board is not a party. Employee contended statements of an unavailable witness are admissible under Alaska Rule of Evidence 807 if the statements are supported by sufficient guarantees of trustworthiness, considering the totality of the circumstances and evidence, if any corroborating the statement, and if it is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts. She contended Dr. Curran's SIME report falls under the exception because the SIME's physician is the Board's selected doctor, it is corroborated by the medical records cited in the report, and Dr. Curran's report is more probative than any other evidence available because it involved a medical exam and evaluation at a specific date that cannot be duplicated after five years have passed. (Opposition to Employer's Petition to Strike SIME report of Dr. Curran, December 10, 2025).

120) On December 15, 2025, Employee contended the statements made in Dr. Curran's SIME report were made for the purpose of medical diagnosis or treatment, which is also an exception to the hearsay rule under Alaska Rule of Evidence 803(4). (Corrected Employee's Opposition to Employer's Petition to Strike SIME report of Dr. Curran, December 15, 2025).

121) On December 30, 2025, Employer contended Employee's December 10, 2025 petition for a protective order is moot. (Answer to Petition to Protective Order, December 30, 2025).

122) On January 6, 2026, Employer stated Employee's December 10, 2025 petition for a protective order was resolved by Employee agreeing to waive any objection to Employer's physician change and Employer agreeing to locate an EME physician closer to Employee's physical location. (Prehearing Conference Summary, January 6, 2026).

123) On April 20, 2026, Employee updated her mailing address of record. (Change of Address, April 20, 2026).

124) On April 22, 2026, Employee attended an EME with Scott Silas, MD. Dr. Curran's SIME report was included in the list of medical records Dr. Silas reviewed. (Silas report, April 22, 2026).

125) On June 15, 2026, Employee requested a hearing on a claim, without providing the date of the claim. (Affidavit of Readiness for Hearing (ARH), June 15, 2026).

126) On June 16, 2026, Employer requested an order dismissing Employee's June 26, 2018 claim for failure to comply with AS 23.30.110(c), as she did not request a hearing until June 15, 2026. (Petition, June 16, 2026).

127) On June 17, 2026, Employer requested a hearing on its August 23, 2023 petition to strike the SIME report. (ARH, June 17, 2026).

128) On June 23, 2026, Employer filed Dr. Silas' April 22, 2026 EME report and served it on Employee. (Medical summary, June 23, 2026).

129) On June 25, 2026, Employer opposed Employee's June 15, 2026 ARH, contending it did not believe the case was ready for hearing because its August 23, 2023 petition to strike and June 16, 2026 petition to dismiss should be addressed before a hearing on the merits of Employee's claims and Employee failed to specify the date of the claim on which she is prepared to proceed to hearing. It requested Employee's ARH be dismissed. (Affidavit of Opposition, June 25, 2026).

130) On June 16, 2026, Employee opposed Employer's June 16, 2026 petition to dismiss, contending Employer failed to provide any evidence that Employee was notified of the AS 23.30.110(c) requirement or that no intervening events precluded application of AS 23.30.110(c). She also contended the Board previously denied multiple petitions to dismiss Employee's claims, "which should preclude the present effort due to Res Judicata and collateral estoppel." (Opposition to Employer's Petition to Dismiss, July 15, 2026).

131) On June 18, 2026, Dr. Silas issued an addendum EME report. (Silas addendum report, June 18, 2026).

132) On July 16, 2026, the designee scheduled an oral hearing on August 25, 2026 on Employer's August 23, 2023 petition to strike the SIME report and June 16, 2026 petition to dismiss. (Prehearing Conference Summary, July 16, 2026).

133) On August 3, 2026, Dr. Silas issued a second addendum EME. (Silas addendum report, August 3, 2026).

134) On August 21, 2026, Employee filed a hearing brief contending the Board first advised her of the §110(c) deadline on February 13, 2025, when *Mateo Aponte III* issued, and she obtained an attorney and filed an ARH. She contended she filed an ARH within two years of receiving advice on how to calculate the deadline. Employee contended the request for an SIME should toll the time period, not the agreement for an SIME, because an employer could limit the tolling period by simply delaying to agree to an SIME. She contended this case is like *Bohlmann* because Employee was unrepresented at multiple prehearings, she was advised of the two year period to file an ARH after a controversion notice but was not advised that the SIME could toll the time period until after the deadline had passed. Employee contended the time period should be equitably tolled because she was not provided with information on how to calculate the date the ARH was due given the SIME tolling rule. She contended *Mateo Aponte III* advised her of the past deadline but did not provide her with a deadline for either filing an ARH or filing a petition for an extension. (Employee's Hearing Brief, August 21, 2026).

135) Employee contended Employer waited until May 12, 2023, more than three years after the SIME report was received, to notice Dr. Curran's deposition. She contended Dr. Curran's deposition did not occur because he died on June 23, 2023. Employee contended Dr. Curran's report falls under the business record exception to the hearsay rule in Evidence Rule 803(6) because the expert was hired by the Board, who is not a party. She contended the statements in the report were made for the purpose of medical diagnosis or treatment, which is also an exception to the hearsay rule in Evidence Rule 803(4). Employee contended Dr. Curran's report should fall under the exception for an unavailable witness in Evidence Rule 804(a)(4) and 804(b)(5) because as the Board's physician, his report has sufficient guarantees of trustworthiness, corroborated by the medical record in the report, and his report is more probative than any other evidence available because his report involved a medical exam and evaluation at a specific point that cannot be duplicated when five years have passed. (Employee's Hearing Brief, August 21, 2026).

136) On August 24, 2026, Employer filed a hearing brief, with an email dated August 21, 2026 at 5:26 p.m., with 143 pages of exhibits, including an Employee Report of Occupational Injury or Illness to Employer dated August 4, 2017, Employee's June 15, 2026 ARH, Employer's June 16, 2026 petition, Employer's July 7, 2026 ARH, Employee's July 15, 2026 opposition to Employer's petition to dismiss, the July 16, 2026, January 10, 2019, June 14, 2022, April 25, 2023 prehearing conference summary, the January 25, 2028 controversion notice, Employee's June 26, 2018 claim,

Employee's November 14, 2018 claim, Employer's December 21, 2018 controversion notice, the February 1, 2019 notice of withdrawal, the August 29, 2019 entry of appearance, a copy of the ICERS Log, a March 23, 2023 email from Employee to Employer's attorney with her petition and ARH, Employee's March 23, 2023 ARH petition, Employer's May 12, 2023 answer to Employee's March 23, 2023 petition, Employee's July 11, 2023 claim, Employer's August 8, 2023 answer to Employee's July 11, 2023 claim, Employer's August 8, 2023 controversion notice, Employer's May 12, 2023 deposition notice of Dr. Curran, the June 28, 2023 email from Dr. Curran's office, Employer's July 7, 2023 letter, a July 19, 2023 email from Dr. McFarland's office, Employer's July 19, 2023 controversion notice, Employer's August 23, 2023 petition, *Mateo Aponte III*, the October 29, 2025 entry of appearance, Employee's December 10, 2025 opposition to Employer's August 23, 2023 petition, and Employer's June 17, 2026 ARH. (Email, August 21, 2026; Employer's Hearing Brief in Support of Petitions to Dismiss under AS 23.30.110(c) and to Strike SIME Report with Exhibits, August 24, 2026).

137) Employer contended Employee failed to request a hearing on her claim for more than seven years after her claim was controverted. It contended Employee was required to request a hearing no later than December 21, 2020 based on Employer's December 21, 2018 controversion notice. Employer contended Employee's March 23, 2023 ARH was not a request for a hearing on her claim because it was filed without any indication of what the hearing was being requested on and it was filed on the same date she filed a petition disputing the SIME report. It contended it appeared most likely that the ARH was in relation to the March 23, 2023 petition but it cannot be known, because the ARH was defective and not actionable. Employer contended Employee never took any action in pursuing a hearing on any issue, she failed to attend numerous prehearing conferences, and she failed to participate in her claim in any manner, including attending EMEs, returning releases, and appearing for numerous hearings. If the SIME tolled the time period, Employer contended that Employee was required to either request a hearing or additional time by February 28, 2022, and she still waited over four-and-a-half years to request a hearing. It contended the SIME process should not be tolled until Dr. Curran's death, and if it were, Employee was required to request a hearing or additional time by June 3, 2024 but Employee did not request a hearing for more than two years. Employer contended that Employee was advised by the Board on April 29, 2020 when her deadline to file an ARH expired and she was instructed again on July 28, 2020 to file an ARH again. It contended the Division went above and beyond its obligation

because Employee had been represented by an attorney through February 28, 2020, the Rules of Professional Conduct require attorneys to provide this type of information and there is no evidence they did not do so, and Employee's knowledge of §110(c)'s requirement is implied even if the Board had not explicitly given her the information. Employer requested Employee's claim be denied in full. (Employer's Hearing Brief in Support of Petitions to Dismiss under AS 23.30.110(c) and to Strike SIME Report, August 24, 2026).

138) Employer contended Employee forfeited the right to oppose its petition striking the SIME report because an answer must be filed and served no later than 20 days after the date of service of the petition under 8 AAC 45.050. It contended there are no known exceptions to the regulation. Employer contended Employee was required to answer its August 23, 2023 petition no later than September 14, 2023, allowing three days mailing. It contended Employee waited more than two years to answer its August 23, 2023 petition by filing on opposition on December 10, 2025. Employer contended this is a change in position after years and should not be allowed. Employer contended that Employee's failure to timely oppose its August 23, 2023 petition and her March 23, 2023 petition disputing the SIME implied she was in favor of deposing Dr. Curran and she planned to use the deposition as an opportunity to correct perceived errors and only years after Dr. Curran passed away did Employee express any desire to keep the report in evidence. It requested Employee's untimely opposition be rejected and Employer's August 23, 2023 petition be granted. (Employer's Hearing Brief in Support of Petitions to Dismiss under AS 23.30.110(c) and to Strike SIME Report, August 24, 2026).

139) Employer contended failing to strike the SIME report would violate Employer's due process rights. It cited *Boyd v. Arctic Slope Native Ass'n*, 2004 WL 1418682 (Alaska 2004), *Employers Commercial Union Ins. Group v. Schoen*, 519 P.2d 819 (Alaska 1974), *Rollins v. State, Dep't of Revenue, Alcoholic Beverage Control Bd.*, 991 P.2d 202 (Alaska 1999) and Alaska Rule of Civil Procedure 26(b)(4) to contend it has an absolute right to cross-examine medical experts, the relaxed evidentiary rules in the Act were never intended to and cannot abrogate the right to cross-examination in an adjudicatory proceeding, and due process requires access to information through discovery, including examination of witnesses. Employer contended Dr. Curran passed away while his deposition was pending, depriving both parties of the right to cross-examine him on his opinions. It contended that if Dr. Curran's report was allowed to remain in evidence without any ability to cross-examine him, Employer would be entirely deprived of its critical due process right

to cross-examine a medical expert. Employer contended a new SIME would easily prevent and remedy a due process violation, although it would add additional cost and further delay in litigation. It contended Employee stated at the January 3, 2025 hearing that she intended to be as annoying and difficult as she can be and she has done so for more than 10 years. Employer contended any hardship argument should be summarily discarded. Employer contended the only appropriate action, if Employee's claim is not denied in full, is to strike Dr. Curran's SIME report and order a new SIME. (Employer's Hearing Brief in Support of Petitions to Dismiss under AS 23.30.110(c) and to Strike SIME Report, August 24, 2026).

140) As a preliminary issue, Employee objected to Employer's hearing brief exhibits, contending that Employer filed its evidence after the deadline set in the prehearing conference summary. Employee requests an order finding that Employer's hearing brief exhibits cannot be considered. (Record).

141) Employer contended the evidence it attached as exhibits to its hearing brief are already in the record. It contended a party is not required to file all of the evidence it intended to rely upon at hearing by the deadline provided in a prehearing conference summary again if it was already filed. (Record).

142) Employee requested her attorney fees and costs for time spent reviewing the file and defending against Employer's petitions be added as an issue. She contended her attorney should be awarded fees and costs if she is able to successfully defend against Employer's petitions. (Record).

143) Employer contended Employee's attorney fees and costs were not listed as an issue in the prehearing conference summary and cannot be added as an issue for hearing. (Record).

144) Employee objected to consideration of the phone call and walk-in logs in ICERS. She contends the ICERS logs are hearsay, and she is entitled to cross-examination of Division staff. (Record).

145) Employer contended the phone call logs fall under the business record exception. It contended the Board regularly relies on phone call logs in ICERS in its decisions, as it did in the previous decision in this case. (Record).

146) At hearing, Employer contended Employee is rude and annoying on purpose and regularly starts litigation and then disappears. It contended Employee missed the §110(c) deadline by two years, if using the SIME tolling dates most favorable to Employee. Employer contended

Bohlmann is not on point because it involved correcting a misstatement of a deadline by an employer and equitable estoppel for the Board's failure to correct it and the employee filed an ARH weeks late, not years, as in this case. It contended there was no misstatement that the time period has already ran which Employee relied upon. Employer contended Employee was advised how to preserve her claim in prehearing conference summaries, in calls with Division staff in April and July 2020, and in the workers' compensation and you pamphlets she was provided by the Division. It contended the Board is not required to provide Employee with a calculation of the actual §110(c) deadline with the SIME tolling applied. Employer contended Employee was aware of the requirement to file an ARH. It contended Employee was represented twice during the §110(c) time period and the Board does not have a duty to inform Employee of the §110(c) deadline when she is represented. Employer contended the Board exceeded its duty to advise Employee of the important facts of her case and how to pursue her claim. It requested both her 2018 and 2023 claims be dismissed as her 2023 claim amended her 2018 claim. (Record).

147) Employer contended Employee did not oppose the petition to strike the SIME report for over 27 months and did not oppose the deposition it scheduled for Dr. Curran. It contended Employee's March 23, 2023 petition demonstrates Employee wanted to strike Dr. Curran's SIME report, but she changed her mind. Employer contended the legal issue with its petition to strike is not whether the SIME report is hearsay. It contended that the real issue is that it would violate Employer's due process right to consider Dr. Curran's SIME report because he is deceased and could not be cross-examined when his deposition had been scheduled. Employer contended it has absolute right to cross-examine an expert witness. (Record).

148) At hearing, Employee contended that injured workers need to be informed of the rules and deadlines but the problem was that the SIME changed the deadline, which is a rule set out by case law, and the designees and Division staff must inform unrepresented injured workers of the tolling and strictly informing them of the statute does not satisfy the Board's duty when an SIME occurred. She contended she should have been advised of the tolling and the new §.110(c) deadline, but that did not happen until it already passed. Employee contended she was provided with erroneous information when she was not represented by an attorney because she was only provided with the two-year rule in §.110(c). She contended she filed an ARH on March 23, 2023, within one year of the deadline which she was not provided. Employee contended the time period

in §.110(c) does not run until she is provided with the correct deadline on February 13, 2025. (Record).

149) Employee contended Employer sat on its hands for three years when it noticed Dr. Curran's deposition. She contended Dr. Curran's report falls under hearsay exceptions in the civil rules for business records, medical records for treatment and diagnosis, and for a witness unavailable due to death and should not be stricken. Employee contended Dr. Curran's report cannot be replicated and her entitlement to TTD depends on information in the past. She also contended Dr. Curran's report could be considered an exception to hearsay as a dying declaration. (Record).

150) Employee testified at hearing that no one told her that the SIME tolled the time period to file an ARH and changed the deadline to file an ARH. She did not recall the April and July 2020 phone calls with Division staff and did not remember being told to file an ARH. Employee remembered sitting down with Division staff, trying to see if she could get a new MRI since she saw "Dr. Levine at the Alaska Spinal Institute" and he showed her the MRI and said it was super dark and he could not legally report on that. She remembered they would advise her on what to do to fight the SIME report; at no point was she told her case was about to be closed and to file this document by a deadline. Employee believes she would have filed an ARH as instructed if she was told to do so by a deadline. She agreed with Dr. Curran's recommendation for medical treatment, but she believes that no legal medical opinion regarding her MRI can be made because it was completed without contrast, so it is too dark to read, and you cannot tell whether or not she was injured. She had a problem with Dr. Curran's opinion because he relied on the dark MRI and she wanted Employer to pay for a new MRI. (Employee).

PRINCIPLES OF LAW

AS 23.30.001. Legislative intent. It is the intent of the legislature that

> (1) this chapter be interpreted so as to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of this chapter;
>
> (2) workers' compensation cases shall be decided on their merits except where otherwise provided by statute;
>
> . . . .

> (4) hearings in workers' compensation cases shall be impartial and fair to all parties and that all parties shall be afforded due process and an opportunity to be heard and for their arguments and evidence to be fairly considered.

The Board may base its decision not only on direct testimony, 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). The Board's use of "extra-record judicial facts," without providing parties an opportunity to see and respond to it, before the board makes an "individualized decision," violates due process. *Rusch v. Southeast Alaska Regional Health Consortium*, 453 P.3d 784 (Alaska 2019). In *Rusch*, the Board decided a claimant's request for attorney fees by searching its database to derive how many years various claimant attorneys had been practicing before the Board to gauge "experience" and to compare it with the claimant's lawyer's own. The Board did not provide the parties with the data from its database or allow them to comment on it before the Board decided the attorney fee issue. *Id*. at 33-34.

> **AS 23.30.095. Medical treatments, services, and examinations.**
> . . . .
>
> (k) In the event of a medical dispute regarding determinations of causation, medical stability, ability to enter a reemployment plan, degree of impairment, functional capacity, the amount and efficacy of the continuance of or necessity of treatment, or compensability between the employee's attending physician and the employer's independent medical evaluation, the board may require that a second independent medical evaluation be conducted by a physician or physicians selected by the board from a list established and maintained by the board. The cost of an examination and medical report shall be paid by the employer. The report of an independent medical examiner shall be furnished to the board and to the parties within 14 days after the examination is concluded. A person may not seek damages from an independent medical examiner caused by the rendering of an opinion or providing testimony under this subsection, except in the event of fraud or gross incompetence.

> **AS 23.30.110. Procedure on claims.**
> . . . .
>
> (c) Before a hearing is scheduled, the party seeking a hearing shall file a request for a hearing together with an affidavit stating that the party has completed necessary discovery, obtained necessary evidence, and is prepared for the hearing. An opposing party shall have 10 days after the hearing request is filed to file a response. If a party opposes the hearing request, the board or a board designee shall

> within 30 days of the filing of the opposition conduct a pre-hearing conference and set a hearing date. If opposition is not filed, a hearing shall be scheduled no later than 60 days after the receipt of the hearing request. The board shall give each party at least 10 days' notice of the hearing, either personally or by certified mail. After a hearing has been scheduled, the parties may not stipulate to change the hearing date or to cancel, postpone, or continue the hearing, except for good cause as determined by the board. . . . Within 30 days after the hearing record closes, the board shall file its decision. If the employer controverts a claim on a board-prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied.
> . . . .
>
> (h) The filing of a hearing request under (c) of this section suspends the running of the two-year time period specified in (c) of this section. However, if the employee subsequently requests a continuance of the hearing and the request is approved by the board, the granting of the continuance renders the request for hearing inoperative, and the two-year time period specified in (c) of this section continues to run again from the date of the board's notice to the employee of the board's granting of the continuance and of its effect. If the employee fails to again request a hearing before the conclusion of the two-year time period in (c) of this section, the claim is denied.

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

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

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

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

> The first and last sentences of AS 23.30.110(c) govern the manner by which hearings are requested before the Board and the consequences of failure to prosecute a claim:
>
> > Before a hearing is scheduled, the party seeking a hearing shall file a request for a hearing together with an affidavit stating that the party has completed necessary discovery, obtained necessary evidence, and is prepared for the hearing. . . . If the employer controverts a claim on a board-prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied (citation omitted).
>
> The first sentence of the subsection sets out prerequisites for scheduling a hearing: a party must submit a request for hearing with an affidavit swearing that the party is prepared for a hearing (citation omitted). The last sentence of the subsection specifies when a claim is denied for failure to prosecute: if "the employee does not request a hearing within two years" of controversion, "the claim is denied" (citation omitted). The Commission recognized that "[t]he lack of reference to the affidavit in the last sentence of section 110(c), coupled with the use of the verb 'request,' hints that filing a hearing request without an affidavit will toll the time-bar." The Commission nonetheless held that a Board regulation requiring an affidavit to request a hearing was a reasonable interpretation of subsection .110(c) and that the Board could reasonably require an affidavit to toll the time-bar of subsection .110(c) (footnote omitted). But because a statutory dismissal results from failing to *request* a hearing, rather than from failing to *schedule* one, it was error to conclude that an affidavit of readiness was required to request a hearing and toll the time-bar (italics in original). We conclude that strict compliance with the affidavit requirement is unnecessary because subsection .110(c) is directory, not mandatory.
>
> Subsection .110(c) is a procedural statute that "sets up the legal machinery through which a right is processed" and "directs the claimant to take certain action following controversion" (citation omitted). A party must strictly comply with a procedural statute only if its provisions are mandatory; if they are directory, then "substantial compliance is acceptable absent significant prejudice to the other party" (citation omitted). . . .
>
> . . . The first sentence of the statute directs a party to file a request for a hearing with an affidavit of readiness to schedule a hearing, but it does not say what a party or the Board should not do. The last sentence of the subsection also gives an affirmative directive, rather than a prohibition, simply stating that a claim is denied if the employee does not request a hearing within two years following a notice of controversion.

> . . . .
>
> Finally, this case aptly demonstrates the serious consequences of a conclusion that the affidavit requirement is a mandatory component of a request for a future hearing -- a party who wants to request a future hearing, but is for legitimate reasons unable to truthfully state readiness for an immediate hearing, faces denial of workers' compensation benefits.
> . . . .
>
> In holding that subsection .110(c) is directory, we do not suggest that a claimant can simply ignore the statutory deadline and fail to file anything (footnote omitted). A determination that a statute is directory instead permits substantial compliance with statutory requirements, rather than strict compliance (footnote omitted). We construe subsection .110(c) to require filing a request for hearing within two years of the date of the employer's controversion of a claim. If within that two-year period the claimant is unable to file a truthful affidavit stating that he or she actually is ready for an immediate hearing, as was the case here, the claimant must inform the Board of the reasons for the inability to do so and request additional time to prepare for the hearing. Filing the hearing request and the request for additional time to prepare for the hearing constitutes substantial compliance and tolls the time-bar until the Board decides whether to give the claimant more time to pursue the claim (footnote omitted). . . .

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

> Here, the board at a minimum should have informed Bohlmann how to preserve his claim or specifically how to evaluate the accuracy of [the employer's] representation that the claim was barred. Its failure to recognize that it had to do so in this case was an abuse of discretion (footnote omitted). . . .

The Court found the Board's failure to correct the employer's erroneous assertion to a *pro se* claimant required the Board to treat the claimant's ARH, which was filed 25 days after the deadline, as timely.

In *Pruitt v. Providence Extended Care*, 297 P.3d 891 (Alaska 2013), an injured worker's attorney filed a claim on her behalf. The attorney withdrew and mailed his withdrawal notice to the injured worker. The employee later confirmed the mailing address on the withdrawal notice's service certificate was her mailing address. Subsequently, her employer filed and served on the employee a controversion denying all benefits. A prehearing conference summary said, "The chair directed Ms. Pruitt to call our office and make an appointment with a Workers' Compensation Technician for assistance in filing an ARH, if she decides that she wants to continue with the case." The summary also advised the employee she had to file an affidavit requesting a hearing within §.110(c)'s time limits; the statute's relevant part was cut and pasted into the prehearing conference summary. The Division served the summary on the employee in 2006; she failed to file a hearing request within two years of the insurer's controversion; the employer petitioned to dismiss.

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

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

> Here, Pruitt failed to file anything within the allotted time. She filed a written application for benefits in February 2005. Providence filed two controversions: one in February 2005, shortly after she filed her written application, and one in July 2005, after her deposition. Pruitt needed to request a hearing by July 1, 2007, at the latest, to avoid the time bar of AS 23.30.110(c). She did not file anything indicating she wanted to prosecute the 2005 written claim until August 2009, well after the statutory deadline expired. *Id*. at 985.
> . . . .
>
> The Board found that Pruitt's 'assertion she was unaware her attorney withdrew and was relying upon him to file the necessary paperwork lacks credibility.' The

> Board 'has the sole power to determine the credibility of a witness.' Its credibility findings are binding on the Commission. The Board's credibility determination disposes of Pruitt's argument that her reliance on her attorney excused her from complying with the statute. If Pruitt was not truthful in asserting that she relied on her attorney to file the affidavit of readiness for hearing, this purported reliance cannot excuse her noncompliance. The Commission thus correctly concluded that substantial evidence in the record supported the Board's determination that Pruitt did not substantially comply with AS 23.30.110(c). *Id*.

Narcisse v. Trident Seafoods Corp., AWCAC Dec. No. 242 (January 11, 2018) stated the two-year period is tolled when "some action" by the employee shows a need for additional time before requesting a hearing, and a request for an SIME is a demonstration that additional time is needed. Since the parties had stipulated to the SIME, and even though it was completed prior to the two-year statutory limitation period running out, the SIME process still tolled the statute's running. *Narcisse* found, "This comports with a long practice by the Board and with the Court's dislike of dismissing a claim for failure to request a hearing timely."

Roberge v. ASRC Construction Holding Co., AWCAC Dec. No. 269 (September 24, 2019) said, "the idea of a hearing not being held on the merits of a claim is strongly disfavored by the Court and the Board has an obligation to determine if there is a way around the running of the .110(c) defense." It addressed the long-standing debate over how and when the SIME process tolls §.110(c). It concluded, "Nonetheless, for purposes of tolling the statute of limitations in .110(c), a bright line for tolling the limitation period in .110(c) is needed. The Commission finds that a stipulation by all parties at a prehearing is the best demarcation for tolling the .110(c) time limitation." It said until a final SIME report was received, the tolling remained in place and found the time for filing an ARH had not yet run under §.110(c) because the SIME report was not completed because requested testing had not yet been performed.

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

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

> . . . If the Board, at any time, had given Mr. Davis a firm date by which he needed to request a hearing, and he did not then timely request a hearing, the Board would have fulfilled its obligation to Mr. Davis.
>
> . . . Mr. Davis never was given a date by which he needed to request a hearing. . . . In the future, the Board could avoid this kind of situation by establishing a practice of advising a claimant at the first prehearing after a claim and controversion have been filed, of the date by which a hearing needed to be requested, absent any extensions of time. It would also be prudent for anyone at the Board assisting a self-represented litigant to know the date by which an ARH needs to be filed. If the date changes for any reason, such as tolling during the SIME process, the new date for requesting a hearing should be clearly communicated to the self-represented litigant. . . .

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

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

> The Board's decision itself is strong evidence as to the difficulty for anyone, not just a *pro se* claimant, to calculate the precise date by which a hearing must be requested, or face the possibility of the claim being dismissed for lack of prosecution.
>
> [The employer] is likewise correct that the Alaska Supreme Court (Court) has never held the Board has an obligation to inform a claimant of the exact date by which an affidavit of readiness for hearing (ARH) is required. [The employer] further contends the Court specifically declined to do so in *Bohlmann*. . . . However, the Court, in *Bohlmann*, declined to decide whether the Board had a duty to inform the claimant of an exact date for an ARH because it did not need to do so, choosing to decide *Bohlmann* on the failure of the Board to correct a misstatement of the date by which an ARH was due. . . .

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

> It may be arguable in such a case that the board had a duty to tell the claimant that the two-year period was running; it may also be arguable that it had a duty

> to tell him when the period began running, or even the specific date on which the deadline would expire. But we do not need to consider the full extent of the duty here. (Emphasis in original). . . .
> . . . .
>
> In holding that subsection .110(c) is directory, we do not suggest that a claimant can simply ignore the statutory deadline and fail to file anything. A determination that a statute is directory instead permits substantial compliance with statutory requirements, rather than strict compliance.
> . . . .
>
> As noted above, the Court, in *Bohlmann*, raised the proposition the Board has a duty to advise a *pro se* claimant of an actual date by which to file an ARH, although it declined to decide that issue at that time. . . .

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

> The Commission, following the reasoning raised by the Court in *Bohlmann*, now holds that in cases involving a *pro se* claimant, the Board shall advise the claimant at the first prehearing, following a WCC [Workers' Compensation Claim], employer's answer, and employer's controversion, when and how to request a hearing. The Board designee in the first prehearing needs not only to advise the *pro se* claimant as to how to calculate the timeline in AS 23.30.110(c) for requesting a hearing, but must also provide the claimant with an actual date by which an ARH must be filed in order to preserve the claim. . . .
>
> . . . Informing a *pro se* claimant of the date for requesting a hearing at the first prehearing provides the *pro se* claimant with the tools needed to pursue the claim and meets the requirements of the process being "quick, efficient, fair, and predictable" as well as "impartial and fair to all." Such a requirement at the first prehearing is not onerous to the Board designee and will help ensure that all parties or on a more even playing field.
>
> **AS 23.30.122. Credibility of witnesses**. The board has the sole power to determine the credibility of a witness. A finding by the board concerning the weight to be accorded a witness's testimony, including medical testimony and reports, is conclusive even if the evidence is conflicting or susceptible to contrary conclusions. The findings of the board are subject to the same standard of review as a jury's finding in a civil action.

The Board's credibility findings and weight accorded evidence are "binding for any review of the Board's factual finding." *Smith v. CSK Auto, Inc.*, 204 P.3d 1001; 1008 (Alaska 2009).

> **AS 23.30.135. Procedure before the board.** (a) In making an investigation or inquiry or conducting a hearing the board is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this chapter. The board may make its investigation or inquiry or conduct its hearing in the manner by which it may best ascertain the rights of the parties. . . .

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

> We hold to the view that a workmen's compensation board or commission owes to every applicant for compensation that duty of fully advising him as to all the real facts which bear upon his condition and his right to compensation, so far as it may know them, and of instructing him on how to pursue that right under the law.

> **8 AAC 45.032. Files.** (a) Upon receiving written notice of an injury, the division will
>
> (1) establish an injury number;
> (2) set up a case file in a format prescribed by the director, using the injury number;
> (3) notify the employee or beneficiary, the employer, and the insurer in writing in a format prescribed by the director of the injury number;
> (4) put the written notice of the injury in the case file together with documents or anything relating to the employee's injury that is filed with the division or board; and
> (5) use the injury number as the claim number if a claim is filed.

> **8 AAC 45.050. Pleadings.**
> . . . .
>
> (c) For answers to claims and petitions under this subsection,
>
> . . . .
>
> (2) an answer to a petition must be filed not later than 20 days after the date of service of the petition and served upon all parties;
> . . . .
>
> (5) the evidence presented at a hearing will be limited to those matters contained in the claim, petition, and answer, except as otherwise provided in this chapter;
>
> (6) upon either a verified petition of a party or its own motion, the board may extend or postpone the time for filing an answer or otherwise continue the proceedings under such terms as may be reasonable.

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

(b) Upon petition by a party and for good cause, the board will, in its discretion, extend any time period prescribed by this chapter.

8 AAC 45.065. Prehearings.

. . . .

(c) After a prehearing the board or designee will issue a summary of the actions taken at the prehearing, the amendments to the pleadings, and the agreements made by the parties or their representatives. The summary will limit the issues for hearing to those that are in dispute at the end of the prehearing. Unless modified, the summary governs the issues and the course of the hearing.

(d) Within 10 days after service of a prehearing summary issued under (c) of this section, a party may ask in writing that a prehearing summary be modified or amended by the designee to correct a misstatement of fact or to change a prehearing determination. The party making a request to modify or amend a prehearing summary shall serve all parties with a copy of the written request. If a party's request to modify or amend is not timely filed or lacks proof of service upon all parties, the designee may not act upon the request.

. . . .

8 AAC 45.070. Hearings.

. . . .

(b) Except as provided in (1) of this subsection and 8 AAC 45.074(c), a hearing will not be scheduled unless a claim or petition has been filed, an affidavit of readiness for hearing has been filed and that affidavit is not returned by the board or the board's designee, and the affidavit is not the basis for scheduling a hearing that is cancelled or continued under 8 AAC 45.074(b). The board has available an Affidavit of Readiness for Hearing form that a party may complete and file. The board or the board's designee will return an affidavit of readiness for hearing and a hearing will not be set if the affidavit lacks proof of service upon all other parties, or if the affiant fails to state that the party has completed all necessary discovery, has all the necessary evidence, and is fully prepared for the hearing. . . .

. . . .

(g) Except when the board or its designee determines that unusual and extenuating circumstances exist, the prehearing summary, if a prehearing was conducted and if applicable, governs the issues and the course of the hearing.
. . . .

8 AAC 45.092. Second independent medical evaluation.
. . . .

(j) After a party receives an examiner's report, communication with the examiner is limited as follows and must be in accord with this subsection. If a party wants the opportunity to

(1) submit written questions or depose the examiner, the party must

(A) file with the board and serve upon the examiner and all parties, not later than 30 days after receiving the examiner's report, a notice of scheduling a deposition or copies of the written questions; if notice or the written questions are not served in accordance with this paragraph, the party waives the right to question the examiner unless the opposing party gives timely notice of scheduling a deposition or serves written questions; and
(B) initially pay the examiner's charges to respond to the written questions or for being deposed; after a hearing and in accordance with AS 23.30.145 or 23.30.155(d), the charges may be awarded as costs to the prevailing party;

(2) communicate with the examiner regarding the evaluation or report, the party must communicate in writing, serve the other parties with a copy of the written communication at the same time the communication is sent or personally delivered to the examiner, and file a copy of the written communication with the board; or

(3) question the examiner at a hearing, the party must initially pay the examiner's fee for testifying; after a hearing and in accordance with AS 23.30.145 or AS 23.30.155(d), the board will, in its discretion, award the examiner's fee as costs to the prevailing party.

(k) If a party's communication with an examiner is not in accordance with (j) of this section, the board may not admit the evidence obtained by the communication at a hearing and may not consider it in connection with an agreed settlement.

8 AAC 45.110. Record of proceedings. (a) Evidence, exhibits, or other things received in evidence at a hearing or otherwise placed in the record by board order and any thing filed in the case file established in accordance with 8 AAC 45.032 is the written record at a hearing before the board. A person may see or get a copy of the written record in accordance with this subsection and after completing and

giving the division a written request, providing identification, and paying the fee, if required under 8 AAC 45.030. . . .

8 AAC 45.120. Evidence. (a) Witnesses at a hearing shall testify under oath or affirmation. The board will, in its discretion, examine witnesses and will allow all parties present an opportunity to do so. . . .
. . . .

(c) Each party has the following rights at hearing:

. . . .

(3) to cross-examine opposing witnesses on any matter relevant to the issues even though the matter was not covered in the direct examination;
. . . .

(e) Technical rules relating to evidence and witnesses do not apply in board proceedings, except as provided in this chapter. Any relevant evidence is admissible if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but it is not sufficient in itself to support a finding of fact unless it would be admissible over objection in civil actions. The rules of privilege apply to the same extent as in civil actions. Irrelevant or unduly repetitious evidence may be excluded on those grounds.

(f) Any document, including a compensation report, controversion notice, claim, application for adjustment of claim, request for a conference, affidavit of readiness for hearing, petition, answer, or a prehearing summary, that is served upon the parties, accompanied by proof of service, and that is in the board's possession 20 or more days before hearing, will, in the board's discretion, be relied upon by the board in reaching a decision unless a written request for an opportunity to cross-examine the document's author is filed with the board and served upon all parties at least 10 days before the hearing. The right to request cross-examination specified in this subsection does not apply to medical reports filed in accordance with 8 AAC 45.052; a cross-examination request for the author of a medical report must be made in accordance with 8 AAC 45.052.

(g) A request for cross-examination filed under (f) of this section must (1) specifically identify the document by date and author, and generally describe the type of document; and (2) state a specific reason why cross-examination is being requested.

> (h) If a request is filed in accordance with (f) of this section, an opportunity for cross-examination will be provided unless the request is withdrawn or the board determines that
>
> (1) under a hearsay exception of the Alaska Rules of Evidence, the document is admissible;
>
> (2) the document is not hearsay under the Alaska Rules of Evidence; or
>
> (3) the document is a report of an examination performed by a physician chosen by the board under AS 23.30.095(k) or AS 23.30.110(g).

In *Schoen*, the employee introduced a medical record and a letter authored by his physician into evidence at hearing and the employer objected because it first received the documents the morning of the hearing and it did not have adequate opportunity to prepare countering material and to cross-examine the employee's physician. The Court held that informal proceedings under AS 44.62.460(d) and AS 23.30.135(a) did not abrogate the right to cross-examine in an adjudicatory proceeding and that the statutory right to cross-examine is absolute and applicable to the Board. *Id*. at 823-24. It found the denial of the opportunity to cross-examine the employee's physician was a prejudicial error because the medical record and letter were the only medical evidence in the record and his conclusions regarding the causal connection between the employee's work and the heart attack were bare and tentative at best. *Id*. at 824-25.

A fair and meaningful hearing entails adequate access to information requested in discovery. *Rollins*.

In *Boyd*, the employee appealed the Board's decision denying her benefits arguing her due process rights were violated because the employer failed to produce discovery materials with enough advance notice prior to depositions to prepare to cross-examine adverse expert witnesses. The Court considered whether the employee was given a meaningful opportunity to cross-examine adverse witnesses because the due process concern was whether she was given a fair opportunity to be heard and to present the quantum of evidence needed for the court to make an informed and principled determination. *Id*. at 5-6. The employer provided substantial discovery, including copies of every expert's report before deposition and the employee adamantly opposed any continuance and she was able to ask questions of all experts at their deposition. The Court found

the employee was able to present significant evidence so that her discovery difficulties did not arise to the level of a due process violation.

ANALYSIS

1) Was the oral order declining to add Employee's attorney fees and costs as an issue correct?

At hearing, Employee requested her attorney fees and costs for defending against Employer's petitions be included as an issue. Employer objected, and an oral order issued declining to add Employee's attorney fees and costs as an issue. The July 16, 2026 prehearing conference summary governs the issues and course of the hearing. 8 AAC 45.065(c). The July 16, 2026 prehearing conference summary included Employer's August 23, 2023 petition and June 16, 2023 petition as issues for hearing and did not include Employee's attorney fees and costs to defend against Employer's petitions. Employee did not request amendment or modification of the July 16, 2026 prehearing conference summary. 8 AAC 45.065(d). The regulations provide that absent unusual or extenuating circumstances, the July 16, 2026 prehearing conference summary governs the issues for hearing. 8 AAC 45.070(g). Employee contended her attorney fees and costs should be added as an issue because her attorney is entitled to be awarded fees and costs if her attorney successfully defends against Employer's petition because it would be of benefit to her. This is not an unusual or extenuating circumstance which would justify adding Employee's attorney fees and costs as a hearing issue when it was not included in the controlling prehearing conference summary. Neither are any such circumstances self-evident. The oral order declining to add Employee's attorney fees and costs as an issue was correct. 8 AAC 45.065(d); 8 AAC 45.070(g).

2) Can the ICERS Log be considered?

At hearing, Employee orally objected to consideration of the phone call logs in ICERS. She contends the phone call logs are hearsay, and she is entitled to cross-examination of Division staff. Employer contended the phone call logs fall under the business record exception. It also contended the Board regularly relies on phone call logs in ICERS in its decisions, as it did in the previous decision in this case.

The Division is required to establish an ICERS file for each injury. 8 AAC 45.032(a). The Division established a file in Employee's case. Anything filed in the case file established in accordance with 8 AAC 45.032 is the written record at a hearing. 8 AAC 45.110(a). Division staff place letters, emails, and summaries of conversations between Employee and staff in phone calls and walk-in visits in her file, as it does for communications between Employer's attorney's office and Division staff. Such information is not "extra-judicial" information and can be relied upon. *Rusch*.

Additionally, the Division "owes to every applicant for compensation that duty of fully advising him as to all the real facts which bear upon his condition and his right to compensation, so far as it may know them, and of instructing him on how to pursue that right under the law" and must inform unrepresented claimants how to preserve their claim. *Richard*; *Bohlmann*. Employee contacted the Division in person and by phone and email for advice on how to pursue and preserve her claims. Division staff preserved their advice in summaries and emails in Employee's agency file. This did not constitute *ex parte* or otherwise improper communication because Division staff members are not decision-makers and they were giving Employee procedural advice. By doing this, the Division satisfied its duty to Employee as a self-represented litigant. *Richard*; *Bohlmann*.

Mateo Aponte III, issued on February 13, 2025, included direct quotations from Employee's ICERS file for communications Employee had with Division staff for which Division staff summarized their communications. Employee was provided notice that the Board relies upon those summaries and of the actual summaries she objected to at hearing. Employee's attorney also requested a copy of her case files on November 3, 2026, and the ICERS Log is included in the Division's response to the request on November 7, 2026. 8 AAC 45.110(a); *Rogers & Babler*. The ICERS Log can be considered.

3) Should Employer's hearing brief exhibits be considered?

At hearing, Employee objected to Employer's hearing brief exhibits, contending Employer filed the evidence it intended to rely upon at hearing after the evidence deadline set by the designee in the July 16, 2026 prehearing conference summary. Employer contended all of its exhibits were already filed with the Board before the evidence deadline.

Anything filed in the case file established in accordance with 8 AAC 45.032 is the written record at a hearing. 8 AAC 45.110(a). Any document that is served upon the parties and is in the Board's possession 20 or more days before the hearing may be relied upon by the Board unless a written record for cross-examination is filed and served upon all parties. 8 AAC 45.120(f). The July 16, 2026 prehearing conference summary ordered the parties to file and serve evidence in accordance with the regulations by August 7, 2026. The panel reviewed Employer's exhibits and the case file and found all of the documents, with the exception of July 19, 2023 email from Dr. McFarland's office was filed in the case file. Therefore, Employer's hearing brief exhibits should be considered, except for the July 19, 2023 email from Dr. McFarland's office.

4) Should Employer's petition to strike the SIME report be granted?

Employer sought to strike Dr. Curran's SIME report because it did not depose Dr. Curran before he died. It contended it would violate its due process rights to consider Dr. Curran's report because it did not cross-examine Dr. Curran before he died. Employer also contended Employee waived her right to oppose its August 23, 2023 petition to strike Dr. Curran's report because she waited until December 10, 2025 to oppose it. Employee contended that Dr. Curran's report is admissible because it falls under the business record exception and it was made for the purpose of medical diagnosis or treatment, and because Dr. Curran is unavailable because he is deceased.

While the Act states that an answer to a petition must be filed no later than 20 days after the date of service of the petition, it does not state that a late-filed answer results in waiver of a party's right to oppose the petition. 8 AAC 45.050(c)(2). Furthermore, the Board may extend or postpone the time for filing an answer under such terms as may be reasonable. 8 AAC 45.050(c)(6). Employee was unrepresented when Employer filed its August 23, 2023 petition. She had clearly stated that she has problems with Dr. Curran's SIME report when she stated on March 23, 2023, that "I do not agree with his conclusion, due to him using dark MRI and xray [sic] images that don't even show my injury site completely and nerve damage." However, that does not prove that Employee agreed to strike Dr. Curran's SIME report. Therefore, Employee did not waive her right to oppose Employer's August 23, 2023 petition and the evidence presented at hearing will be limited to those

matters contained in its August 23, 2023 petition and Employee's December 10, 2025 answer. 8 AAC 45.050(c)(5).

The parties and the Board received Dr. Curran's SIME report on March 20, 2020. On April 8, 2020, Employer noticed that it would take Dr. Curran's deposition at a date and time to be determined following substantial resolution of the Covid-19 pandemic. Over three years later, on May 12, 2023, Employer again noticed Dr. Curran's deposition for August 17, 2023. Unfortunately, Dr. Curran died on June 23, 2023, and Employer cancelled his deposition. Because Dr. Curran died before he was deposed and before a hearing occurred, neither Employer nor Employee or the Board were able to examine him regarding his SIME report.

Section .095(k) and §110(g) permit the Board to require an employee to be examined by a Board physician. Technical rules relating to evidence and witnesses do not apply in Board proceedings, except as provided in the Act. 8 AAC 45.120(e). Parties have the right to call and examine witnesses and to cross-examine opposing witnesses. 8 AAC 45.120(c)(1), (3). A medical report may be relied upon by the Board if it is filed and served on the opposing party unless the opposing party properly requests cross-examination and the medical record is not admissible under a hearsay exception under the rules of evidence. However, 8 AAC 45.120(h) states that an opportunity for cross-examination is not required for a document performed by a Board physician under §.095(k) and §.110(g). 8 AAC 45.092(j) permits the parties to depose the SIME physician if properly noticed within 30 days of receipt of the SIME report or to examine the SIME physician at hearing. Thus, unlike medical records for EME and treating physicians, the Act does not require examination of an SIME physician.

Unlike *Schoen*, where the employer first received the medical record and letter authored by the employee's treating physician the morning of the hearing where the employee introduced them, Employer has had Dr. Curran's SIME report for over six years and he is not Employee's treating physician, he is the Board's physician. Dr. Curran's SIME report contains his own findings upon physical examination, a summary of the medical records he reviewed, and Employee's complaints, past history, and injury description as explained by Employee at the exam, and he answered the

questions he was provided; the basis for his opinions are in the record and his opinion is not "bare" or "tentative." *Id*.

Employer waited three years to re-notice and schedule Dr. Curran's deposition. It was provided adequate access and opportunity to depose Dr. Curran. *Schoen*; *Rollins*; *Boyd*. Employer also had the opportunity to rebut Dr. Curran's SIME with adverse evidence by conducting an EME on April 22, 2026 with Dr. Silas, where Dr. Silas reviewed Dr. Curran's SIME report, and filing Dr. Silas' EME report. 8 AAC 45.120(c)(2), (5); *Boyd*. Employer is in the same position as Employee and the Board and is unable to examine Dr. Curran due to his death. *Rollins*. Employer has been given a fair opportunity to be heard and "to present the quantum of evidence needed for the court to make an informed and principled determination." *Boyd*. It would not violate Employer's due process right to consider Dr. Curran's SIME report when he is unavailable to be examined at hearing or deposition due to his death. AS 23.30.001(4). Employer's petition to strike the SIME report should not be granted.

5) Should Employer's petition to dismiss Employee's claim under §.110(c) be granted?

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

Certain "legal" grounds may excuse noncompliance with §.110(c), including mental incapacity or incompetence. There is nothing in the record demonstrating Employee was mentally incapacitated

or incompetent. Neither mental incapacity nor incompetence will excuse Employee's noncompliance with §110(c). *Id*.

Another legal ground which may exclude noncompliance with §.110(c) is estoppel against a government agency by a self-represented claimant. *Tonoian* At the first prehearing conference, the Board is required to inform a self-represented claimant how to calculate the §.110(c) deadline and to provide the actual date by which an ARH or a request for additional time must be filed in order to preserve the claim and to provide a new date for requesting a hearing should tolling occur during the SIME process. *Davis*. Employee's first attorney withdrew on February 1, 2019 and her second attorney withdrew on February 28, 2020. Her third and current attorney did not enter his appearance until October 29, 2025. Therefore, Employee was self-represented from February 28, 2020 through October 28, 2025. Employer contended the Rules of Professional Conduct required her two previous attorneys to provide the §.110(c) deadline, there was no evidence they did not do so, and Employee's knowledge of the §.110(c) deadline is implied even if the Board did not explicitly give her the information. The Division should not assume a currently self-represented claimant was provided correct information about statutory deadlines by a prior attorney because prior representation of a claimant by an attorney does not release the Division from its duties under *Richard*, *Bohlmann*, and *Davis* for the self-represented claimant.

Division staff first informed Employee of an actual §.110(c) deadline on April 29, 2020 during the time she was self-represented. She was informed the deadline was December 21, 2020 based upon Employer's December 21, 2018 controversion notice which was emailed to Employee's then attorney. However, Division staff failed to toll the §.110(c) time period for the SIME process which is required by *Roberge* and *Davis*. The bright line rule for tolling the §.110(c) time period for the SIME process uses the stipulation at a prehearing conference. *Roberge*. The parties stipulated to conduct an SIME on January 10, 2019. Dr. Curran's final SIME report was received on March 20, 2020. Employer's April 8, 2020 deposition notice did not extend the SIME process under 8 AAC 45.092(j)(1) because Employer failed to comply with the regulation because it include the date and time of his deposition. *Roberge*; 8 AAC 45.092(j)(1). Therefore, the deadline for Employee to serve and file an ARH or request additional time for her 2018 claim was Tuesday, March 1, 2022 (December 21, 2018 (the date the after-claim controversion notice was emailed to

Employee's attorney) to January 10, 2019 (SIME stipulation date) = 20 days; 2 years = 731 days; 731 days - 20 days = 711 days; March 20, 2020 (the SIME report receipt date) + 711 days = Tuesday, March 1, 2022). *Kim*; *Narcisse*; *Roberge*. The Board provided Employee the incorrect deadline to file an ARH on April 29, 2020.

After Employee was provided the incorrect deadline on April 29, 2020 in a phone call with Division staff, she called the Division again on July 28, 2020. Division staff advised Employee again to file an ARH but failed to provide the correct §.110(c) deadline. Employee called the Division on January 28, 2022 and then came into the Division's Anchorage office on May 19, 2022 to voice concerns about the SIME report and stated she wished to contest the SIME findings. She was directed to file an ARH, but Division staff again failed to provide her the correct §.110(c) deadline tolling the two-year time period for the SIME process and failed to advise her of her right to examine Dr. Curran.

At the prehearing conference on June 14, 2022, the first prehearing conference held after Employee's second attorney withdrew and after the actual §.110(c) deadline, Employee again stated she disagreed with Dr. Curran's SIME report and the designee noted she would either request a hearing on her November 14, 2018 amended claim and address Dr. Curran's opinion in the merits argument or file a petition to strike Dr. Curran's SIME report with an ARH. The designee did not provide Employee with the correct §.110(c) deadline at the June 14, 2022 prehearing conference summary. In fact, the June 14, 2022 prehearing conference summary incorrectly stated Employee had only two years from Employer's after-claim controversion notice to file an ARH. Employer had the right to seek correction of the prehearing conference summary to provide Employee with the correct §.110(c) deadline but it failed to do so. 8 AAC 45.065(d).

There was no activity in the case file for a period of approximately nine months until Employee filed a March 23, 2023 petition disagreeing with Dr. Curran's SIME report and an ARH requesting a hearing on an unspecified pleading. Another prehearing conference was held on April 25, 2023 but Employee did not attend. The designee failed to inform Employee of the correct §.110(c) deadline in the April 25, 2023 prehearing conference summary, did not schedule a hearing on either Employee's March 23, 2023 petition or her claim, and did not advise her on her right and the

process to examine Dr. Curran at a hearing in the summary, and then provided her the same incorrect two-year §.110(c) notice. Employee's March 23, 2023 ARH failed to actually comply with the §.110(c) deadline because it was filed after March 1, 2022. *Kim*.

Employer contended Employee's March 23, 2023 ARH was defective because it was filed without any indication of what pleading the hearing was being requested on and it was filed on the same date she filed a petition disputing the SIME report. However, it was not rejected under 8 AAC 45.070(b), which provides that the Board will reject an ARH if it lacks proof of service upon all parties or if the affiant fails to state that the party has completed all necessary discovery, has all the necessary evidence, and is fully prepared for the hearing. Employee signed the ARH with a notary, and the ARH stated the party signing it has completed all necessary discovery, has all the necessary evidence, and is fully prepared for the hearing; the ARH and the March 23, 2023 email prove Employee served Employer with the ARH. Employee's March 23, 2023 ARH was not defective. 8 AAC 45.070(b). Furthermore, if it had been defective, the designee failed to inform Employee how to preserve her claim because the April 25, 2023 prehearing conference said the "ARH did not identify which pleading she wanted to be heard" and did not inform Employee that her March 23, 2023 ARH was defective or rejected or that Employee needed correct any alleged inadequacy. *Bohlmann*. Employer had the right to seek correction of the prehearing conference summary to provide Employee with the correct §.110(c) deadline or to correct the designee's failure reject or find her ARH defective but it failed to do so. 8 AAC 45.065(d).

Employee filed another claim on July 14, 2023, which Employer controverted on July 19, 2023. A prehearing conference was held for the first time after Employee's July 14, 2023 claim on August 17, 2023. The designee incorrectly advised Employee that "once discovery is complete, and if a settlement has not occurred, either party may file an Affidavit of Readiness for Hearing (ARH) form to notify the Alaska Workers Compensation Board (AWCB) that a Hearing is necessary." The August 17, 2023 prehearing conference summary also restated the incorrect statement that Employee had only two years from Employer's after-claim controversion notice to file an ARH.

Employee was first provided with the correct §.110(c) deadline on February 13, 2025 in *Mateo Aponte III*, almost three years after the §.110(c) deadline had already passed. Afterwards,

Employer and Employee worked through two issues regarding scheduling the EME *Mateo Aponte III* ordered Employee to attend, including Employee providing a copy of Driver's License and the distance required for Employee to attend the EME. The Board ordered EME occurred on April 22, 2026, and Employee requested a hearing again on June 15, 2026, this time on her claim. Though the issue in *Bohlmann* was the designee's failure to correct the employer's lawyer's erroneous prehearing conference statement that the limitation statute had already run, the Board's error here was worse, as Division staff provided Employee with incorrect information throughout her case. As a result, Employee filed her first ARH over a year late on August 23, 2023. *Kim*.

Employee credibly testified at hearing that no one told her that the SIME process tolled the time period to file an ARH and changed the deadline to file an ARH. AS 23.30.122; *Smith*. The record shows she was not informed of this until February 13, 2025. Employee also testified she did not remember the April 29, 2020 and July 28, 2020 phone calls and if she had been given a deadline to file an ARH, she believes she would have filed an ARH as instructed if she was told to do so by a deadline. Employee made numerous phone calls to the Division and visited the Anchorage office in person as well. Given how often Employee contacted the Division by phone and in person and was provided erroneous and conflicting information by the Division verbally and in writing, it is unsurprising and understandable she did not remember two phone calls that occurred over six years ago that also provided her incorrect information. *Rogers & Babler*. Despite the Board's mistakes, Employee continued to pursue her claim. Unlike *Pruitt*, where the claimant did not take any action indicating she wanted to prosecute her claim for four years after the statutory deadline expired, Employee continued to pursue her claim herself shortly before and after the March 1, 2022 §.110(c) deadline by contacting the Division on January 28, 2022 and visiting the Division's Anchorage office in person on May 19, 2022 to express her problems with Dr. Curran's report and seek assistance for how to pursue her claim. She was provided with an ARH form but was not informed of the correct §.110(c) deadline. This is worse than *Davis*, where the injured worker did not timely file an ARH after Division staff provided him with an SIME form and did not inform him of his deadline because Division staff had the opportunity to correct its error and did not. Employee was not "sitting on her hands." *Davis*.

The Division "owes to every applicant for compensation that duty of fully advising him as to all the real facts which bear upon his condition and his right to compensation, so far as it may know them, and of instructing him on how to pursue that right under the law" and must inform self-represented claimants how to preserve their claim. *Richard*; *Bohlmann*. Here, the Division clearly failed to fully advise Employee of her §.110(c) deadline and to instruct her on how to pursue her right to a hearing under the law while she was self-represented. *Id*. In *Bohlmann*, the Court said the appropriate remedy when the Board failed to correct information was to deem the claimant's late filed affidavit of readiness for hearing timely filed. The law requires the Act to be interpreted to ensure fair hearings and prefers to have cases decided on their merits. AS 23.30.001(1), (2).

Employer failed to argue how it would be prejudiced by the Board using its equitable powers to excuse Employee's noncompliance with §.110(c). *Kim*. It can be assumed that excusing noncompliance with §.110(c) would prejudice an employer by requiring it to continue to defend against a claim that could have been denied. The only physician that became unavailable is Dr. Curran. However, his report is in the record, and Employer was able to obtain contrary evidence by conducting an EME on April 22, 2026 with Dr. Silas, where Dr. Silas reviewed Dr. Curran's SIME report, and filing Dr. Silas' EME report. Employee's late filed March 23, 2023 ARH will be deemed timely filed to toll the statute due to the Board's failure; her noncompliance with §.110(c) will be excused.

Alternatively, the SIME process tolled the two-year period from the date of the parties January 10, 2019 stipulation until Employer informed her Dr. Curran's deposition was cancelled on July 5, 2023. Employer first noticed that it would take Dr. Curran's deposition at a date and time to be determined following substantial resolution of the Covid-19 pandemic on April 8, 2020. Over three years later, on May 12, 2023, Employer again noticed Dr. Curran's deposition for August 17, 2023. 8 AAC 45.092(j)(1) permits the parties to depose the SIME physician if properly noticed within 30 days, and it could be argued that the deposition process extended the SIME process in this case due to Covid-19, which could constitute good cause to extend the time period. *Roberge*; 8 AAC 45.065(b).

Dr. Curran's office notified Employer by email on June 28, 2023 that Dr. Curran had died. Employer cancelled Dr. Curran's deposition on July 5, 2023 and for the first time informed Employee the SIME process was ended. Therefore, using July 5, 2023 as the day the SIME deposition process ended, Employee had until Monday, June 16, 2025 to file an ARH or request additional time (December 21, 2018 (the date the after-claim controversion notice was emailed to Employee's attorney) to January 10, 2019 (SIME stipulation date) = 20 days; 2 years = 731 days; 731 days - 20 days = 711 days; July 5, 2023 (the date Employer cancelled Dr. Curran's deposition) + 711 days = Sunday, June 15, 2025 = Monday, June 16, 2025). *Kim*; *Narcisse*; *Roberge*; 8 AAC 45.063(a).

On March 23, 2023, Employee filed an ARH and a petition checking the "Petition Type" box for "Compel Discovery" and wrote the following in the "Reason for Petition" box, "I do not agree with [Dr. Curran's] conclusion, due to him using dark MRI and xray [sic] images that don't even show my injury site completely and nerve damage" and she requested a hearing on an unspecified pleading. Employee requested a hearing on March 23, 2023, and, she either intended to request the Board order a new contrast MRI or showed she needed additional time on March 23, 2023 because she disagreed with Dr. Curran's SIME report and needed to obtain evidence to rebut it, either an additional MRI with contrast or by examining Dr. Curran about his report. Therefore, under *Kim*, either the March 23, 2023 ARH would have actually complied with the §.110(c) deadline or the March 23, 2023 petition would have substantially complied with the §.110(c) deadline because Employee filed both well in advance of the June 16, 2025 deadline. Employer's June 16, 2026 petition to dismiss under §.110(c) should not be granted.

CONCLUSIONS OF LAW

1) The oral order declining to add Employee's attorney fees and costs as an issue was correct.
2) The ICERS Log can be considered.
3) Employer's hearing brief exhibits can be considered, except for the July 19, 2023 email from Dr. McFarland's office.
4) Employer's petition to strike the SIME report should not be granted.
5) Employer's petition to dismiss under AS 23.30.110(c) should not be granted.

ORDER

1) Employer's August 23, 2023 petition to strike the SIME report is denied.
2) Employer's June 16, 2026 petition to dismiss under AS 23.30.110(c) is denied.

Dated in Anchorage, Alaska on September 21, 2026.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Kathryn Setzer, Designated Chair

/s/
Sara Faulkner, Member

/s/
Pamela Cline, Member

PETITION FOR REVIEW

A party may seek review of an interlocutory or other non-final Board decision and order by filing a petition for review with the Alaska Workers' Compensation Appeals Commission. Unless a petition for reconsideration of a Board decision or order is timely filed with the board under AS 44.62.540, a petition for review must be filed with the commission within 15 days after service of the board's decision and order. If a petition for reconsideration is timely filed with the board, a petition for review must be filed within 15 days after the board serves the reconsideration decision, or within 15 days from date the petition for reconsideration is considered denied absent Board action, whichever is earlier.

RECONSIDERATION

A party may ask the board to reconsider this decision by filing a petition for reconsideration under AS 44.62.540 and in accordance 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 accordance 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 Interlocutory Decision and Order in the matter of Marie Mateo Aponte, employee / claimant v. Copper River Seafoods Inc., employer; Liberty Northwest Insurance Corp., insurer / defendants; Case No. 201717033M, 201711094J; 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 21, 2026.

/s/
Lorvin Uddipa, Workers' Compensation Technician