ALASKA WORKERS' COMPENSATION BOARD

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

TIFFANIE SMITH, Employee, Claimant, v. UNISEA, INC., Employer, and ALASKA NATIONAL INSURANCE COMPANY, Insurer, Defendants.	)	FINAL DECISION AND ORDER AWCB Case No. 202509994 AWCB Decision No. 26-0078 Filed with AWCB Anchorage, Alaska on September 30, 2026

Tiffanie Smith's (Employee) May 29, 2026 petition to review the reemployment benefit administrator (RBA) designee's ineligibility determination was heard on the written record on September 9, 2026, a date selected on August 6, 2026. The petition gave rise to this hearing. Employee represents herself. Attorney Jeffrey Holloway represents Unisea, Inc., and Alaska National Insurance Company (Employer). The record closed on September 9, 2026.

ISSUE

Employee contends she was unable to timely request review of the RBA designee's ineligibility determination and to timely return the election form because she underwent a second surgery and was homeless. She requests an order granting her petition for review.

Employer contends Employee filed her petition to review the RBA's determination late. It contends the Board has no jurisdiction to review the RBA's decision under the Act because the legislature did not include the right to seek review of a determination under §.041(c) and §.041(f)(5). Alternatively, Employer contends the RBA designee did not abuse her discretion because Employee filed her election form late and she failed to provide a credible legal excuse. It requests Employee's petition for review be denied.

Should Employee's May 29, 2026 petition be denied?

FINDINGS OF FACT

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

1) On January 24, 2024, Senator James Kaufman issued a statement regarding Senate Bill 147, which proposed changes to §.041:

> This bill seeks to address critical shortcomings in Alaska's Workers' Compensation system.
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> Alaska's worker's compensation premium rates are the 4th highest in the nation. However, the maximum plan cost of $13,300 set in the year 2000 has not been adjusted for inflation, making the amount often insufficient in meeting statutory requirements. The current system also limits workers' flexibility in moving to different occupations.
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> Alaska's attempts at ensuring quick, efficient, fair, and predictable compensation to injured workers at a reasonable cost to employers has not been working. In recent years, an average of 140 out of 550 evaluations performed each year were found eligible for the current systems rehabilitation plan, yet only an average of 13 workers fully finished the plan.
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> The Alaska workers' compensation plan has spent an average of ten million dollars supporting these injured workers over the same period. This is clearly not an efficient system. The Alaska Workers' Compensation Act last was updated in 2000 and again in 2005 with the addition of job relocation benefits, but it is long past due that we address the other shortcomings of the system.
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> The primary objective of this legislation is to ensure that injured workers receive swift and fair access to indemnity and medical benefits while also promoting efficient return-to-work programs. SB 147 would transition from an emphasis on retraining to an emphasis on stay-at-work/early return-to-work. By updating the system to better align with modern realities, we can reduce the economic burden

> of workplace injuries and illnesses on Alaskans, improve employment retention, and get more Alaskans back to work in our communities.
>
> Employees and employers have a shared desire to get a worker rehabilitated and back to work as quickly as possible after an injury occurs. This legislation intends to facilitate this by setting clearer guidelines regarding the responsibilities of all stakeholders.
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> Alaska can be a tough place to work, and injuries do occur. It is important we as a state help these injured workers rehabilitate with fair and predictable compensation. That way, we can hopefully keep these workers in our state and do our duty as a government of protecting its citizens. (Sponsor Statement, January 24, 2024).

2) On February 14, 2024, Senator Elvi-Gray Jackson issued a statement regarding Senate Bill 206, which proposed changes to §.041:

> Each year, countless workers face the challenges of injuries, illnesses, or changes in their disability status, often leading to significant time away from work. This not only affects their livelihoods but also impacts the workforce and economy at large. Senate Bill 206 seeks to restore Alaska's once strong and healthy workforce. Through the creation of this program, an injured worker may elect assistance to return-to-work with their employer at the time of injury. The Program is optional and can be declined by a worker or an employer.
>
> These programs focus on strategies that retain or reengage workers experiencing such changes, aiming to swiftly reintegrate them into the workforce. By providing necessary support and resources, SAW/RTW programs ensure that workers can continue their careers despite new health challenges, thereby maintaining a robust and resilient workforce.
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> The goal of the program is to return the worker to the same position with the same employer or to a modified position with the same employer after an injury or an occupational disease occurs. Furthermore, services provided as part of the assistance program are provided in lieu of reemployment services. Changes under this bill would be optimized by the ability of the insurer, rehabilitation specialist, and the Department of Labor and Workforce Development to provide one another necessary information. The services offered as part of the Program are available as a service apart from a determination regarding indemnity benefits.
>
> Across the United States, states like Oregon and Montana, have made significant strides in implementing SAW/RTW initiatives. These programs have demonstrated success in reducing the time employees spend away from work due to disabilities or injuries, offering financial incentives, and facilitating necessary workplace adjustments. The adoption of similar legislation in Alaska promises

> substantial benefits. It can enhance our state's workforce stability, reduce the economic impact of prolonged employee absence, and promote a more inclusive and supportive work environment. By passing this legislation, Alaska can join other states in leading the way towards a more adaptable and supportive workforce, ultimately benefiting both our economy and the wellbeing of Alaskan workers. (Sponsor Statement, February 14, 2024).

3) On February 14, 2024, Workers' Compensation Division (Division) Director Charles Collins testified before the Alaska State Legislature Senate and Labor Commerce Committee on Senate Bill 206:

> He explained that currently, workers' compensation has a rehabilitation process that provides for benefits when a worker is injured. He said workers' compensation provides medical benefits for injured workers as needed; however, there are times when employees just need a little incentive to get back to work. Sometimes, this means returning to a modified job -- which employers worry will cost them money. He stated that the average cost of a modified job is a few hundred dollars. He pointed out that technological advances have made it easier to make the necessary modifications. He explained the goal with the SAW/RTW program is to shorten the time it takes for people to return to work. He surmised that, for many people, their job is a large part of their identity and keeping them in the workforce is a win for the employee, employee, and for society. He explained that the current process of returning to work after injury takes 205 days; the SAW/RTW program would cut this to 49 days.
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> Mr. Collins said that currently, the biggest problem is communication. He shared an example of what happens when an employee is injured and communication between employer and employee breaks down over time. He noted that the employee will also hear from the insurance adjuster; however, they are primarily on their own. He explained that *SB* 206 would enable the department to step in -- about 20 days after the injury -- and be the primary communication hub for the employee, communicating with their doctor, employer, etc. This would allow the department to work with the employee to determine when they can return to work -- and what they are able to do once they return. He said that *SB* 206 creates a voluntary process that employers and employees can take advantage of. He noted that the cost to the employer is minimal. He stated that this would not replace the current rehabilitation program, because there will still be employees who are not able to return to work due to the severity of their injuries and/or the type of job they have (and potential modifications). He suggested that even helping a small number of people return to work more quickly would be of great value to all. (Committee Minutes, February 14, 2024).

4) On July 25, 2025, Employer reported that Employee was vacuuming with a built-in vacuum system in the central building and attempted to pull a 20 foot long hose out of the wall when she

twisted her left arm and later felt extreme pain in her left bicep and triceps and developed pain in both arms on June 28, 2025. (First Report of Injury, July 25, 2025).

5) On August 14, 2025, Employee underwent right shoulder surgery. (Kevin Paisley, DO, Operative Report, August 14, 2025).

6) On November 18, 2025, Employer reported Employee had been totally unable to return to her employment at the time of injury for 25 consecutive days beginning on July 22, 2025. (Employer's Notice of 25 Consecutive Days of Time Loss for Injuries Occurring on or After July 1, 2005).

7) On November 21, 2025, the Stay-At-Work Program Coordinator informed Employee:

> This office has been notified that as a result of your work injury on 06/28/2025, you have been totally unable to return to your employment for 25 consecutive days. This office is required to notify you of your rights under AS 23.30.041(c). You must elect to receive stay-at-work benefits or reemployment benefits. If your medical provider has released you to work with no restrictions and [*sic*] have returned to work, please mark the appropriate box.
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> **If you do not return the election form or have it postmarked within 10 days of receipt you risk forfeiting stay-at-work and reemployment benefits unless the parties agree to a reemployment benefits eligibility evaluation or agree to the employee's eligibility for reemployment benefits or stay-at-work benefits per AS 23.30.041(f)(5) and AS 23.30.043(m).**
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> If you choose stay-at-work benefits (also known as Return-to-Work), your insurer will pay for these benefits, and the Reemployment Benefits Administrator (RBA) will oversee their delivery. The RBA will select a rehabilitation specialist to prepare a stay-at-work plan designed to ensure you return to work with your employer in the safest and shortest possible time. A stay-at-work plan may involve work accommodations, training, or a combination of these elements. Stay-at-work plan costs are limited to $3,000 and a maximum time frame of two years. If a dispute arises regarding stay-at-work benefits, the RBA will make a determination to resolve the issue.
>
> If you or your employer chooses not to participate in the stay-at-work process, you may be evaluated for reemployment benefits if you miss 120 consecutive days of employment. If you choose not to participate in the stay-at-work program, you must make that election **within 10 days of receipt of this letter.** If you do not make an election, you risk forfeiting stay-at-work and reemployment benefits.
>
> If you choose reemployment benefits and miss 120 consecutive days of employment as a result of your work injury on 06/28/2025, you will be evaluated

> for reemployment benefits eligibility. If you are currently receiving benefits under the Alaska Workers' Compensation Act, you will continue to receive these benefits. For example, if you are currently receiving temporary total disability (TTD) compensation this may continue until your work injury is medically stable or if you are entitled to a Permanent partial impairment (PPI) compensation you may be paid at your weekly TTD compensation rate until exhausted and once exhausted you may be paid compensation that is 70% of your spendable weekly wage.
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> If you accept stay-at-work benefits, your entitlement to future reemployment benefits may be affected. If you return to work, get injured, and request reemployment benefits, the physical demands of that work will be evaluated. If you complete a stay-at-work plan, you will not be eligible for reemployment benefits. Please complete the attached form and return one copy to our office and another to your employer/insurer.
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> You must elect to receive stay-at-work benefits or reemployment benefits. If your medical provider has released you to work with no restrictions and you have returned to work, please mark the appropriate box. **If you do not return the election form or have it postmarked within 10 days of receipt you risk forfeiting stay-at-work and reemployment benefits unless the parties agree to a reemployment benefits eligibility evaluation or agree to the employee's eligibility for reemployment benefits or stay-at-work benefits per AS 23.30.041(f)(5) and AS 23.30.043(m).**
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> If you have any questions about this process, please contact our office at 907.269.4985 or email us at workerscomprb@alaska.gov. (Letter, November 21, 2025).

8) On November 28, 2025, Employee called and spoke with the Stay-At-Work Coordinator:

> EE stated she has an appt. next week w/her doctor but will be discussing surgery for the other arm. So, she is not sure if she can RTW but she doesn't want to not select it because she doesn't want ER to stop benefits by not selecting it. I explained the 3 options and EE stated she will discuss with her doctor next week and send the form after. Reminded EE to copy adjuster either email or mail. (ICERS Phone Call, November 28, 2025).

9) On November 28, 2025, Employee completed physical therapy for her shoulders. (Cameron Samrai, PT, November 28, 2025).

10) On December 3, 2025, Employee was seen for a preoperative evaluation of her left shoulder. (Leland Grohs, PA-C record, December 3, 2025).

11) On December 4, 2025, Employee underwent left shoulder surgery. (Paisley operative report, December 4, 2025).

12) On December 16, 2025, Employee underwent a post-operative check for her left shoulder. She had not started physical therapy but planned on starting when she was going to California the next day. Employee's pain was constant in both shoulders and she took hydrocodone every day. She denied numbness, tingling, and swelling. Employee was "doing well." Employee was restricted from working for 10 weeks. (Paisely record, December 16, 2025).

13) On December 19, 2025, Employee began physical therapy. (Cameron Samrai, PT, record, December 19, 2025).

14) On April 21, 2026, Employer reported that Employee had been totally unable to return to her employment at the time of injury for 120 consecutive days beginning on July 22, 2025. (Employer's Notice of 120 Consecutive Days of Time Loss for Injuries Occurring On or After January 1, 2026, April 21, 2026).

15) On May 4, 2026, Employee called and spoke with the RBA designee, "EE called wanting to get the info for turning in the form (5 months after due), told her she could still turn it in with the election. Did not tell her it was already slated for determination of ineligible." (ICERS Phone Call, May 4, 2026).

16) On May 4, 2026, RBA designee informed Employee:

> I have determined you are ***not eligible*** for reemployment benefits per AS 23.30.041(f)(5) because you failed to timely notify the administrator and the employer of your election to either stay-at-work benefits or reemployment benefits.
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> AS 23.30.041(c) requires the employee to make an election within 10 days of receiving the administrator's notification of your rights. On November 21, 2025, we notified you of your rights via letter and enclosed the election form. After reviewing your case file, I have found you did not return the election form within the required time limits.
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> Additionally, you contacted our office on November 28, 2025, and spoke to Program Coordinator Grace Morfield inquiring about what needs to happen with the form and what the different choices meant on the form, you at that time indicated you were going to make an election, however the form was not received in our office.

> Additionally, your employer is required to notify our office if you have missed 120 consecutive days of work due to the work injury. On April 21, 2026, we received the employer's notice you have missed 120 consecutive days of work.
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> Based on the information available to me, you are not eligible for reemployment benefits at this time per AS 23.30.041(f)(5).
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> If you disagree with my decision that you are not eligible for reemployment benefits, then you must complete and return the attached Petition form (Form 07-6111) within 10 days of the date of this letter. Please pay particular attention to section 14 of the Petition form. Please contact a Workers' Compensation Technician at (907) 465-2790 (Juneau), (907) 269-4980 (Anchorage) or toll free at (877) 783-4980, if you have any questions about this process or questions about how to complete Board forms. (Letter, May 4, 2026).

17) On May 11, 2026, Employee emailed the reemployment benefits section email with her election of reemployment benefits that was signed on May 7, 2026. (Employee's Stay-At-Work or Reemployment Benefits Election Form, May 11, 2026).

18) On May 26, 2026, Employee called and spoke with Division staff:

> EE called to ask how she can appeal the RBA evaluation determination. I explained the Petition form and the options to select from. EE stated she is currently homeless and her email address is the best way to serve her any documents. EE stated she has been trying to get all of her records and mail but was worried about the deadline to file the petition for reconsideration. I explained that I would pre fill the petition form out for her and she needs to serve it to the adjuster (ADJ) and to the WC board. That would prompt a prehearing conference and EE can discuss with the ADJ and a Board Designee her case and options. The prehearing would be scheduled approximately, 30 days after submitting the petition form and serving it to all parties. (ICERS Phone Call, May 26, 2026).

19) On May 27, 2026, Division staff emailed Employee a prefilled-out petition form. (Email, May 27, 2026).

20) On May 29, 2026, Employee emailed the Division with an email entitled "Petition for Tiffanie Smith" with no attachment. (Email, May 29, 2026).

21) On May 29, 2026, Employee emailed the Division stating, "Hi this is Tiffanie Smith this is in regards of filing my petition due to hardship not having a steady place to live and due to my second surgery forgot to email my reemployment papers in the time frame." She attached a petition form stating, "This reason for this petition is I was doing my second surgery and

honestly forgot to email within the time frame. Im [*sic*] also late sending the petition because im [*sic*] having hardship no where to live." (Email and Petition, May 29, 2026).

22) On June 4, 2026, the Division served the parties with notice of a July 2, 2026 prehearing conference. (Prehearing Conference Notice Served, June 4, 2026).

23) On July 2, 2026, the Board designee explained that Employee missed marking a specific request for Board action on the petition form. The designee advised Employee that based on the information provided in the email and on the petition, it appeared she was requesting reconsideration of the RBA's election denial, which was due to Employee not returning the election form within 10 days. Employee confirmed her request. The designee informed Employee:

> A party is required to serve a copy of a document filed with the board upon all parties or upon the party's representative if a party is represented. Service by mail is complete at the time of deposit in the mail if mailed with sufficient postage and properly addressed to the party at the party's last known address. A party is required to provide "proof of service" for documents filed with the board which includes an affidavit of service, a written statement, or letter of transmittal. A "proof of service" must set out the names of the persons involved, method and date of service, and place of personal service or the address, email or fax number to which it was mailed or sent by fax or email. The board will, in its discretion, refuse to consider a document when proof of its service does not conform to the requirements of the law.
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> Should Employee wish to retain an attorney and the attorney agrees to take Employee's case, Alaska workers' compensation statutes and regulations provide for the payment of Employee's attorney if Employee prevails at hearing. If Employee does not prevail at hearing, the attorney is precluded by regulation from charging more than $300 in fees for representation of Employee. Most attorneys on the board's list do not charge an initial consultation fee or waive the fee if employees are unable to pay.
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> You may file your documents electronically at workerscomp@alaska.gov, pursuant to 8 AAC 45.020(d) and Department of Labor and Workforce Development Commissioner's Order No. 001, located at: http://www.labor.alaska.gov/wc/legaldir.htm. All documents filed electronically must be sent as attachments in .pdf format and state in the subject line the AWCB case number and a brief description of the document to be filed. Attachments may not exceed 10 MB. If you have any questions regarding document filing,

> please contact a workers' compensation technician for assistance. (Prehearing Conference Summary, July 2, 2026).

24) On July 2, 2026, the Division served Employee with the Prehearing Conference Summary by first-class mail and by email, and with notice of an August 6, 2026 prehearing conference and a list of attorneys. (Prehearing Conference Summary Served and Email, July 2, 2026).

25) On July 7, 2026, Employer opposed Employee's May 29, 2026 petition, contending the RBA did not abuse her discretion in finding her ineligible for benefits and that Employee filed her petition late. It requested Employee's petition be denied and dismissed. (Opposition to May 29, 2026 Petition, July 7, 2026).

26) On August 6, 2026, Employee stated she missed the deadline to sign and return the form due to surgeries related to the work injury and personal challenges she had been experiencing. She said she was recovering from surgeries; she did not have time to obtain a doctor's note to include with the form and when she remembered it, she filed the election form. Employee asked for sympathy. The Board designee scheduled a written record hearing on Employee's May 29, 2026 petition for reconsideration of the RBA election form for September 9, 2026, and ordered the parties to file and serve hearing briefs by close of business on September 2, 2026, and to serve and file evidence by close of business on August 20, 2026. Employee was informed:

> Any documents that the parties intend to rely upon at hearing should be filed with the Board and served upon the opposing parties 20 calendar days prior to the hearing. A Medical Summary form is available on the Board's website: http://labor.alaska.gov/wc/pdf_list.htm. The deadline to file evidence for is **8/20/2026.**
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> . . . .
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> A brief is a document submitted by the parties prior to a hearing which outlines the issues in dispute, the party's positions on those issues, as well as why they believe their position is correct. Important supporting evidence referred to in a brief is often attached at the end of the brief. These supporting documents are called exhibits. Briefs may not exceed 15 pages, excluding exhibits. Briefs must be filed with the Board and served upon the opposing parties at least five working days prior to a hearing. The deadline to file briefs is 9/5/2026.
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> . . . .
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> You may file your documents electronically at workerscomp@alaska.gov, pursuant to 8 AAC 45.020(d) and Department of Labor and Workforce Development Commissioner's Order No. 001, located at: http://www.labor.alaska.gov/wc/legaldir.htm. All documents filed electronically

> must be sent as attachments in .pdf format and state in the subject line the AWCB case number and a brief description of the document to be filed. Attachments may not exceed 10 MB. If you have any questions regarding document filing, please contact a workers' compensation technician for assistance. (Prehearing Conference Summary, August 6, 2026).

27) On August 6, 2026, the Division served Employee with the August 6, 2026 Prehearing Conference Summary and with the September 9, 2026 written record hearing notice by certified mail, return receipt requested and by email. (Prehearing Conference Summary Served, Hearing Notice Written Record Served, Envelope, and Emailed, August 6, 2026).

28) On August 17, 2026, Employee called and spoke with Division staff,

> EE called in from 916-308-**** going off about some dates that are coming up. Confirmed that evidence is due 8/20/26 & briefs are due 9/2/26, which EE seemed a little upset b/c dates are coming up soon and she hasn't done anything. Told EE that the dates were provided in the PHC sum, which she confirmed she rec'd by email. EE asked what evidence she needs to submit, which I asked her what the WRH is for and told her that she wants to submit evidence that will support her decision disputing the RBA decision. EE asked about briefs, and how she should start it or where to put it on. Told EE that there is no specific form for briefs, and she can put it on a piece of paper and to make sure to send a copy to us and to ER attny, which EE understood. EE asked who she can talk to re legal assistance for this process which I told her we cannot answer any legal questions or provide legal advice but she can reach out to the attnys on our list. EE req copy of attny list to be sent to her via email on file. (ICERS Phone Call, August 17, 2026).

29) On August 17, 2026, Division staff emailed Employee a list of attorneys. (Email, August 17, 2026).

30) On August 17, 2026, Employee emailed Division staff stating, "This is evidence from my doctor any questions please contact Dr Paisley in Anchorage Alaska." (Email, August 17, 2026). Attached to her email was an undated letter from Dr. Paisley which stated:

> To whom it may concern:
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> Tiffanie Smith is a patient of our orthopedic practice and recently underwent shoulder surgery. During [illegible] postoperative recovery, she has been focused on her medical treatment, follow up appointments, and [illegible].
>
> As a result of her surgery and recovery, Ms. Smith inadvertently missed the deadline to complete and [illegible] her reemployment benefits paperwork. We

> respectfully request that consideration be given in excusing [illegible] missed deadline due to the circumstances surrounding her postoperative recovery.
>
> Thank you for your understanding and consideration of this request. If additional [illegible] is required, please contact this office. (Paisley letter, undated; Email, August 17, 2026).

31) On August 18, 2026, Division staff emailed Employee and copied Employer's attorney, "Please serve all your submissions in your case to our main email at workerscomp@alaska.gov and make sure that you are also serving all parties. I noticed Mr. Holloways' office was not served in the email you sent me, so I have CC'd his office in this email." (Email, August 18, 2026).

32) On August 27, 2026, Employer requested cross-examination of Dr. Paisley regarding the basis of his assertions, opinions, and conclusions expressed in the document filed on August 17, 2026. (Request for Cross-Examination, August 27, 2026).

33) On August 31, 2026, Employee filed a hearing brief stating:

> This is Tiffanie Smith. I[']m writing this briefing to why I am being disqualified for not returning my paperwork within the time frame. I had my first arm done on August 13[,] 2025 and my second arm done on Dec. 4, 2025. During this time I forgot about the paper due to healing and trying to recover and also going back and fourth [*sic*] to Anchorage and also going to physical therapy twice a week. Due to also the hardship of having a stable place to live and no one to really help me during this difficult process. This is very stressful especially when there is no guidance to help an employee who has been injured on a job. (Employee Brief, August 31, 2026).

34) On September 2, 2026, Employer filed a hearing brief contending Employee's May 29, 2026 petition was filed late as she had until May 18, 2026, to file a petition for review (May 4, 2026 + 10 days + 3 days = Sunday, May 17, 2026 = Monday, May 18, 2026). It contended the Board has no jurisdiction because §.041(d) does not apply. It contends the plain language of §.041(d) states the RBA shall make an eligibility determination after receipt of the assigned rehabilitation counselor's eligibility evaluation report based upon §.041(d)-(f), not under §.041(c), which occurs first. Employer contended Employee failed to return an election of reemployment benefits eligibility evaluation or a stay-at-work program timely within 10 days of the required notice served on November 21, 2025, which was due by December 1, 2025. Under §.041(c), which became effective January 1, 2025, her failure automatically rendered her ineligible for

benefits. It contended the legislature did not include the right to seek review of the RBA ineligibility under §.041(f)(5) before an eligibility evaluation. Employer contended the RBA had no discretion under §.041(f)(5) to excuse Employee's noncompliance. It argued the RBA did not abuse her discretion because she applied the direct language of §.041(f)(5). Employer contended Employee should not be excused from her statutory obligations and deadlines because she was healing or undergoing medical care; otherwise every injured worker could ignore every deadline under the Act and the deadlines imposed by the legislature would be meaningless. It contended Employee was more than three months out from her first surgery and attending physical therapy twice per week and presumably she could have found the time to check the box on the form and return it. Employer contended Employee's second surgery was on December 4, 2025, and her deadline to return her election form was December 1, 2025. It contended Employee's claims that she did not have a stable place to live and that no one helped her with the process are not credible. Employer contended Employee contacted the Division and spoke with RBA staff on November 28, 2025, so she clearly received the November 21, 2025 letter and form within the 10-day period. (Brief of Unisea, Inc., September 2, 2026).

PRINCIPLES OF LAW

> **AS 23.30.001. Intent of the legislature and construction of chapter**. It is the intent of the legislature that
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> (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;
> . . . .
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> (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 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, 533-534 (Alaska 1987).

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

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

In *Bohlmann v. Alaska Construction & Engineering*, 205 P.2d 316, 319-21 (Alaska 2009), the employer at a prehearing conference provided a §.110(c) deadline that was about two weeks earlier than the accurate date. Division staff failed to correct this error. The Alaska Supreme Court (Court) found the uncorrected error may have dissuaded the injured worker from filing a hearing request timely, thinking the deadline had already passed when it had not. Bohlmann stated based on the record, had the Division corrected this wrong date, the injured worker likely would have filed a hearing request timely as he had done with his other pleadings. The Court said, "Here, the board at a minimum should have informed Bohlmann how to preserve his claim. . . . Its failure to recognize that it had to do so in this case was an abuse of discretion (footnote omitted). . . . ."

The statute in effect on the date Employee was injured in 2025 states in relevant parts:

> **AS 23.30.041. Rehabilitation and reemployment of injured workers.**
> . . . .
>
> (c) An employee and an employer may stipulate to the employee's eligibility for reemployment benefits at any time. If an employee suffers a compensable injury and, as a result of the injury, the employee is totally unable, for 25 consecutive days, to return to the employee's employment at the time of injury, the administrator shall notify the employee of the employee's rights under this section within 14 days after the 25th day. Within 10 days after the employee receives the administrator's notification of the employee's rights, the employee shall elect, and notify the administrator and the employer of the election, whether to participate in the reemployment benefits process in accordance with this section or the stay-at-work benefits program established under AS 23.30.043. Except as provided in AS 23.30.043, if the employee is totally unable to return to the employee's employment for 90 consecutive days as a result of the injury, the employee or employer may request an eligibility evaluation. The administrator may approve the request if the employee's injury may permanently preclude the employee's return to the employee's occupation at the time of the injury. Except as provided in AS 23.30.043, if the employee is totally unable to return to the employee's employment at the time of the injury for 120 consecutive days as a result of the

> injury, the administrator shall, without a request, order an eligibility evaluation unless a stipulation of eligibility was submitted. . . .
>
> (d) Within 60 days after the referral by the administrator, the rehabilitation specialist shall perform the eligibility evaluation and issue a report of findings. Within 14 days after receipt of the report from the rehabilitation specialist, the administrator shall notify the parties of the employee's eligibility for reemployment preparation benefits. Within 10 days after the decision, either party may seek review of the decision by requesting a hearing under AS 23.30.110. The hearing shall be held within 30 days after the hearing is requested. The board shall uphold the decision of the administrator except for abuse of discretion on the administrator's part.
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> (f) An employee is not eligible for reemployment benefits if
> . . . .
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> (5) the employee fails to timely notify the administrator and the employer of the employee's election under (c) of this section, unless the parties submit to the administrator a stipulation to a reemployment benefits eligibility evaluation or to the employee's eligibility for reemployment benefits;
> . . . .

In *Kim v. Alyeska Seafoods, Inc.*, 197 P.3d 193, 196 (Alaska 2008), the Court held that because §.110(c) is a procedural statute, its application is directory rather than mandatory, and substantial compliance is acceptable absent significant prejudice to the other party. A statute is considered directory if (1) its wording is affirmative rather than prohibitive, (2) the legislative intent was to create "guidelines for the orderly conduct of public business" and (3) "serious, practical consequences would result if it were considered mandatory." *Kim* at 197 citing *South Anchorage Concerned Coalition, Inc. v. Municipality of Anchorage*, 172 P.3d at 772 (Alaska 2007).

In *Adamson v. Municipality of Anchorage*, 333 P.3d 5 (Alaska 2014), the Court addressed requirements in §.121 and 8 AAC 45.093. The employer argued §.121 was substantive rather than procedural and strict compliance was required. The Court noted it did not limit substantial compliance to procedural statutes and in footnote 26 stated,

> We also are not persuaded by the [employer's] argument that our cases discussing compliance with statutory requirements for continuing and multiple treatments under AS 23.30.095(c) required [the employee] to strictly comply with regulatory requirements. *E.g., Burke v. Houston NANA, L.L.C.*, 222 P.3d 851 (Alaska 2010). We did not evaluate in those cases whether strict or substantial compliance was

> the applicable standard. *Id.* at 859-60; *Bockness v. Brown Jug, Inc.*, 980 P.2d 462, 468-69 (Alaska 1999); *Grove v. Alaska Constr. & Erectors*, 948 P.2d 454, 457-58 (Alaska 1997).

The Court did not consider the substantive-procedural distinction critical. The issue regarding substantial compliance arose due to the tension between the legislative's intent to apply a presumption in the statute to claims made before or after the effective date the statute and the Board's regulation created in 2011, which defined language, "qualifying medical examination," that appears in the statute. *Adamson* adopted the substantial compliance doctrine to "carry out the legislative intent and give meaning to all parts of a statute without producing harsh and unrealistic results." Requiring the employee to comply with a requirement that did not exist when he was hired or exposed to toxins earlier in his career as a firefighter would circumvent the legislative intent that the employee's prior exposure could trigger the presumption. *Adamson* at 13. In applying the substantial compliance doctrine, the Court considered the purpose served by the statutory requirements because substantial compliance involves conduct, which falls short of strict compliance, but which affords the public the same protection that strict compliance would offer. *Id* at 14.

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).

The statute in effect on the date Employee was injured in 2025 states in relevant parts:

> **AS 23.30.043. Stay-at-work benefits program.**
> . . . .
>
> (m) An employee is not eligible for stay-at-work benefits if the employee fails to timely notify the administrator and the employer of the employee's election under AS 23.30.041(c), unless the parties submit to the administrator a stipulation that the employee may participate in the program.

Sheehan v. University of Alaska, 700 P.2d 1295, 1297 (Alaska 1985) stated "abuse of discretion" includes "issuing a decision which is arbitrary, capricious, manifestly unreasonable, or which stems from an improper motive." An agency's failure to apply controlling law or follow its own regulations may be an abuse of discretion. *Manthey v. Collier*, 367 P.2d 884 (Alaska 1962).

When applying a substantial evidence standard, a "[reviewer] may not reweigh the evidence or draw its own inferences from the evidence." *Miller v. ITT Arctic Services*, 577 P.2d 1044, 1049 (Alaska 1978). "If, in light of the record as a whole, there is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, then the order . . . must be upheld." *Id.* Whether the quantum of evidence is substantial enough to support a conclusion, in the contemplation of a reasonable mind, is a question of law. *Lynden Transport v. Mauget*, AWCAC Dec. No. 154 at 8 (June 17, 2011).

Irvine v. Glacier General Constr., 984 P.2d 1103, 1106, n. 13 (Alaska 1999) stated §.041(d) vested the RBA-designee with "considerable discretion" in performing an eligibility evaluation. However, *Irvine* also stated:

> We note that, for similar reasons, the "abuse of discretion" standard prescribed by AS 23.30.041(d) must yield to the Board's authority to make de novo determinations under AS 23.30.110 when, on appeal from an RBA decision granting or denying reemployment benefits, the parties present relevant evidence to the Board that the RBA failed to consider. Because the RBA's decision in such cases would not have been based on all of the relevant evidence properly before the Board, the Board's deference to the RBA under the "abuse of discretion" standard would be inappropriate.

AS 44.62.570. Scope of review. . . .

(b) . . . Abuse of discretion is established if the agency has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence. . . .

(c) . . . If it is claimed that the findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by

(1) the weight of the evidence; or
(2) substantial evidence in the light of the whole record.

8 AAC 45.060. Service. . . .

(b) . . . If a right may be exercised or an act is to be done, three days must be added to the prescribed period when a document is served by mail.

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

8 AAC 45.070. 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. A party may request a hearing by using the following procedures:

(1) for review of an administrator's decision issued under AS 23.30.041 or 23.30.043, a party shall file a petition asking for review of the administrator's decision; an affidavit of readiness for hearing form is not required in a petition for review; in reviewing the administrator's decision, the board may not consider evidence that was not available to the administrator at the time of the administrator's decision, unless the board determines the evidence is newly discovered and could not with due diligence have been produced for the administrator's consideration;

8 AAC 45.150. Rehearings and modification of board orders. (a) The board will, in its discretion, grant a rehearing to consider modification of an award only upon the grounds stated in AS 23.30.130.

(b) A party may request a rehearing or modification of a board order by filing a petition for rehearing or modification and serving the petition on all parties in accordance with 8 AAC 45.060.

(c) A petition for rehearing or modification based upon change of conditions must set out specifically and in detail the history of the claim from the date of the injury to the date of filing of the petition and the nature of the change of conditions. The petition must be accompanied by all relevant medical reports, signed by the preparing physicians, and must include a summary of the effects which a finding of the alleged change of conditions would have upon the existing board order or award.

> (d) A petition for rehearing or modification based on alleged mistake of fact by the board must set out specifically and in detail
>
> > (1) the facts upon which the original award was based;
> > (2) the facts alleged to be erroneous, the evidence in support of the allegations of mistake, and, if a party has newly discovered evidence, an affidavit from the party or the party's representative stating the reason why, with due diligence, the newly discovered evidence supporting the allegation could not have been discovered and produced at the time of the hearing; and
> > (3) the effect that a finding of the alleged mistake would have upon the existing board order or award.
>
> (e) A bare allegation of change of conditions or mistake of fact without specification of details sufficient to permit the board to identify the facts challenged will not support a request for a rehearing or a modification.

ANALYSIS

Should Employee's May 29, 2026 petition be denied?

On May 4, 2026, the RBA designee informed Employee she was ineligible for reemployment benefits because she failed to notify the administrator and Employer of her election to either stay-at-work benefits or reemployment benefits timely and that she had the right to seek review of the decision by filing a petition within 10 days of the date of the letter. On May 11, 2026, Employee returned the Stay-At-Work or Reemployment Benefits Election form and on May 29, 2026, Employee filed a petition seeking review of the decision contending it was late because she did not have "a steady place to live." Employer contended this panel has no jurisdiction to review the RBA's decision under the Act because the legislature did not include the right to seek review of a determination under §.041(c) and §.041(f)(5).

AS 23.30.041(c) requires the RBA to order an eligibility evaluation if an employee is totally unable to return to the employee's employment at the time of injury for 120 days. AS 23.30.041(d) provides that the RBA will notify the parties of the employee's eligibility for reemployment benefits and that the parties have 10 days after the decision to seek review. As the RBA designee found Employee ineligible for reemployment benefits on May 4, 2026, after Employee had been totally unable to return to her employment at the time of injury for 120 consecutive days, this panel has jurisdiction to review the RBA designee's decision

under§.041(c) and (d). Employee had until Monday, May 18, 2026 to request review (May 4, 2026 + 10 days under §.041(d) + 3 days under 8 AAC 45.060(b) = Sunday, May 17, 2026 = Monday, May 18, 2026 under 8 AAC 45.063(a)). Employee filed her petition 11 days late on May 29, 2026. Employee's failure to file her petition timely due to personal hardship, such as her housing status, is not a legal excuse. Her petition should be denied.

Employee's petition to review the RBA designee's determination will also be addressed on its merits. The RBA designee's decision is upheld except when the RBA designee abused her discretion. AS 23.30.041(d). As abuse of discretion includes failing to apply controlling law or follow regulations, and issuing a decision which is arbitrary, capricious, manifestly unreasonable, or which stems from an improper motive. AS 44.62.570**;** *Manthey*; *Sheehan*.

AS 23.30.041(c) states that an employee shall elect to either stay-at-work or participate in the reemployment benefits process within 10 days after receiving the RBA's notification of the employee's rights. AS 23.30.41(f)(5) states that an employee is not eligible for reemployment benefits if the employee fails to timely notify the administrator and the employer of her election under §.041(c) unless the parties submit a stipulation to a reemployment benefits eligibility evaluation or to the employee's eligibility for reemployment benefits.

The Stay-At-Work Program Coordinator sent Employee the election form with a letter explaining the form and process on November 21, 2025. Employee called and spoke with the Program Coordinator seven days later, on November 28, 2025, about the letter and form. There is no evidence in the file indicating when Employee received the letter. Therefore, Employee had received the form by at least November 28, 2025. Employee had until Thursday, December 11, 2025, to return the election form (November 28, 2025 + 10 days under §.041(c) + 3 days under 8 AAC 45.060(b) = Thursday, December 11, 2025). The parties have not stipulated to a reemployment benefits eligibility evaluation or to Employee's eligibility for reemployment benefits. Employee returned the election form 151 days later, on May 11, 2026. She failed to comply with §.041(c) and the RBA designee properly found her ineligible based upon her failure to timely return the election form under §.041(f)(5). *Manthey*; *Sheehan*. Employee failed to prove the RBA designee abused her discretion.

Employee contended her failure to timely return the election form should be excused because she underwent surgery when the election form was due and because she was homeless. AS 23.30.041(c) is a procedural statute as it requires an employee to take an action by returning the election form 10 days after receiving the RBA letter notifying the employee of her rights. *Kim*. 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. *Kim v. Alyeseka Seafoods, Inc.*, 197 P.3d 193 (2008) at 196. A statute is considered directory if (1) its wording is affirmative rather than prohibitive, (2) the legislative intent was to create "guidelines for the orderly conduct of public business" and (3) "serious, practical consequences would result if it were considered mandatory." *Id*. at 197.

AS 23.30.041(c) states that an employee shall elect to either stay-at-work or participate in the reemployment benefits process within 10 days after receiving the RBA's notification of the employee's rights. This portion of the statute uses affirmative language as it requires the employee to take an action by a deadline. AS 23.30.041(f)(5) and §.043(m) state that an employee is not eligible for reemployment benefits or the stay-at-work program if the employee fails to timely notify the administrator and the employer of their election under AS 23.30.041(c) unless the parties submit a stipulation to a reemployment benefits eligibility evaluation, to the employee's eligibility for reemployment benefits, or to participation in the stay-at-work program.

This portion of the statute is prohibitive because it forbids an employee from being eligible for reemployment benefits or the stay-at-work program if the employee fails to notify the RBA and employer of her election to either stay-at-work or participate in the reemployment benefits process timely, unless the parties stipulate. Based upon legislative history, the legislative intent was to ensure injured workers are quickly, fairly, and predictably provided return-to-work programs to reduce costs and get them back to work as quickly as possible, and not just "the orderly conduct of public business." Serious and practical consequences result if §.041(c) and (f)(5) are considered mandatory. Because §.041(f)(5) does not satisfy all three criteria, §.041(c) is mandatory, not directory, and substantial compliance is not acceptable. *Kim*.

Furthermore, unlike *Adamson*, where the legislature intended the statute to apply retroactively, the requirement in §.041(c) and (f)(5) to return the election form within 10 days of receipt of the letter was enacted to cover from the effective date forward. Applying the substantial compliance doctrine to allow Employee to return the election form 151 days late would contravene the legislative intent to ensure injured workers are quickly, fairly, and predictably provided return-to-work programs to reduce costs and get them back to work as quickly as possible. Therefore, this decision will not apply substantial compliance to the requirement under §.041(c) and (f)(5) to return the election form within 10 days of receipt of the letter.

Even if substantial compliance was acceptable, Employee did not file anything before the deadline and then filed her election form 151 days late. Employee failed to substantially comply as she failed to file anything by the statutory deadline. *Kim*. Employee failed to actually and substantially comply with §.041(c). The RBA designee did not abuse her discretion in finding Employee ineligible for reemployment benefits.

While certain legal grounds may excuse noncompliance with a procedural statute, Employee has the burden of proving the legal excuse. *Tonoian*. There is no evidence of equitable estoppel against a governmental agency by a self-represented claimant. *Id*. The November 21, 2025 letter properly informed Employee of the 10-day deadline and she was clearly aware of it because she told the Program Coordinator on November 28, 2025 that she would speak with her doctor the following week and return the form afterwards. *Richard*; *Bohlmann*. She had a preoperative appointment on December 3, 2025, and forgot to file the election form. Employee has not argued nor is there any evidence that Division staff or Employer provided an incorrect deadline. *Id*. Employee's failure to remember to return the election form within the time frame due to personal hardship, such as surgery on December 4, 2026, a week before the December 11, 2026 deadline, and her housing status, are not legal excuses. There is no evidence of mental incompetence or incapacity in the record. *Tonoian*. Her failure to return the election form timely will not be excused. Employee's May 29, 2026 petition to review the RBA designee's decision should not be granted.

CONCLUSION OF LAW

Employee's May 29, 2026 petition should be denied.

ORDER

Employee's May 29, 2026 petition is denied.

Dated in Anchorage, Alaska on September 30, 2026.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Kathryn Setzer, Designated Chair

/s/
Randy Beltz, Member

/s/
Pamela Cline, Member

APPEAL PROCEDURES

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

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

RECONSIDERATION

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

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

MODIFICATION

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

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Final Decision and Order in the matter of Tiffanie Smith, employee / claimant v. Unisea, Inc., employer; Alaska National Insurance Compnay, insurer / defendants; Case No. 202509994; 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 30, 2026.

/s/
Frances Basketfield, Workers' Compensation Technician