ALASKA WORKERS' COMPENSATION BOARD

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

JANE BELANGER, Employee, Claimant, v. LOWER KUSKOKWIM SCHOOL DISTRICT, Employer, and ALASKA PUBLIC ENTITY INSURANCE, Insurer, Defendants.	INTERLOCUTORY DECISION AND ORDER ON RECONSIDERATION AWCB Case No. 202404677 AWCB Decision No. 26-0022 Filed with AWCB Fairbanks, Alaska on March 18, 2026

Lower Kuskokwim School District's (Employer) January 29, 2026 petition for reconsideration of *Belanger v. Lower Kuskokwim School District*, AWCB Decision No. 26-0004 (January 14, 2026) (*Belanger I*) was heard in Fairbanks, Alaska, on the written record, on March 5, 2026, a date selected on February 28, 2026. *Belanger I* found the designee's order granting Employer's petition to compel Employee to travel to Oregon for an employer's medical evaluation (EME) and denying Employee's request for a protective order against that travel was an abuse of discretion. *Belanger v. Lower Kuskokwim School District*, AWCB Decision No. 26-0009 (February 5, 2026) (*Belanger II*) granted reconsideration of *Belanger I* for additional briefing. Employer's petition gave rise to this hearing. Attorney Michael Flanigan represents Jane Belanger (Employee). Attorney Martha Tansik represents Employer. The record closed when the panel deliberated on March 10, 2026.

ISSUES

Employer contends *Belanger I* erred by failing to acknowledge the parties' stipulation to an Oregon EME.

Employee contends the parties did not stipulate to her attendance at an Oregon EME.

1) Did the parties stipulate to an EME location?

Employer contends *Belanger I* erred because it failed to review the designee's determination under the proper standards and created a rule contrary to the Alaska Workers' Compensation Act's (Act) provisions and the Alaska constitution.

Employee contends the Board did not abuse its discretion in *Belanger I* and employed the proper standard of review.

2) Should *Belanger I* be reconsidered?

FINDINGS OF FACT

Belanger I's factual findings are incorporated herein by reference and, in part, reiterated. A preponderance of the evidence establishes the following facts and factual conclusions:

1) On April 4, 2024, Employee slipped on the ice and fell while at work for Employer and fractured her right wrist. (First Report of Injury, April 4, 2024).

2) On July 21, 2025, Employee objected to attending a July 23, 2025 EME because she had a new job, was in training, and would miss three days of work. She requested the EME appointment be scheduled sometime after August 11, 2025, and suggested her flight could be changed for a fee. Employee was willing to attend an EME in Oregon conditioned only upon her ability to "pre-authorize" the date. She did not object to the EME's Oregon location. (Email Exchange, Michael Flanigan and Martha Tansik, July 21, 2025; Observation).

3) On July 21, 2025, Employer did not accept Employee's conditions. There was no agreement between the parties reduced to writing. (*Id.*; Observations).

4) On July 23, 2025, Employer received notice Employee failed to show for the EME appointment and a $712.50 "No-Show Fee" invoice. (OMAC / Emperion Email, July 23, 2025, and Invoice, July 24, 2025).

5) On July 28, 2025, Employer advised Employee that another EME was scheduled on August 27, 2025, in Tigard, Oregon. (Letter, July 28, 2025).

6) On July 28, 2025, Employer sought to "compel discovery" because "Employee failed to appear for her IME on 7/23/25, only informing Employer the day before she was to travel to the IME. This is refusal to submit to examination. In order to prevent additional excess costs, and to ensure attendance, Employer requests an Order compelling her to attend." (Petition, July 28, 2025).

7) On August 5, 2025, Employee's counsel asked Employer's counsel, "Belanger is back at work and is considered stable, so how is she supposed to get reimbursed for her lost wages?" Employer's counsel responded, "As I am sure you know, the case law states that employees are entitled to TTD for the days they miss work because they are traveling and attending an IME, assuming they are not medically stable. Documentation of employment and the days missed would be required for such a time loss claim." (Email Exchange, Michael Flanigan and Martha Tansik, August 5, 2025).

8) On August 6, 2025, Employee filed an emergency request for a prehearing conference, "To Quash 8/27/25 EME scheduled by Employer as contrary to AS 23.30.095(e) (employee's disability ended, she's back at work)." (Emergency Request for Conference, August 6, 2025).

9) On August 28, 2025, the parties attended a prehearing conference with a Board designee to address Employer's petition to compel and Employee's to quash. Employee contended the distance to the two EMEs was unreasonable, any EME should be scheduled in Albuquerque, New Mexico near where she resides, and there are many appropriate experts in New Mexico. Employee said she would not have objected to the EME if it had been scheduled in Albuquerque, New Mexico at a time she pre-authorized, and with enough time to arrange a substitute at work. She contended it was unreasonable to make her miss three days' work and Employer cannot schedule an EME without first checking her availability. Employee admitted she objected to the EME late because she was too busy to read her emails. Employee said she was willing to attend an EME if she could pre-authorize the date. Employer contended it provided over a month's notice of the August 27, 2025 EME. It said the distance to an Oregon EME is about the same as

the distance between Anchorage and Seattle. Employer said it used its right to change of physician and selected an Oregon EME physician. The designee considered the parties' contentions and applied AS 23.30.095(e), which requires employees to submit to an EME without further request or order from the Board. The designee's decision includes the following analysis:

> This prehearing conference was scheduled to address Employer's petition to compel Employee to attend a properly noticed IME. Employee filed a related Emergency Request for Conference to quash the IME, which the designee will treat as a petition for protective order. Both parties filed written arguments on this issue, which are hereby incorporated by reference. . . . The parties agree that board designees have the authority to order employees to attend IMEs through discovery orders made at the prehearing conference level.
>
> Employee objected to the unreasonableness of missing work for the IME. TTD can be claimed for dates an employee is unable to earn wages due to attending an IME only if they are not yet medically stable. *Thoeni* requires "some consideration of the employee's ease in attending the examination." Employee stated she would attend an IME only if she pre-authorized the date and if there is enough notice to arrange a substitute teacher at work. Requiring Employee's pre-authorization to schedule IMEs would be unreasonable and would unfairly limit Employer's right to IMEs per AS 23.30.095(e), which states that employees shall submit to the examination without further request or order from the board. Employer provided 30 days' notice of the 08/27/2025 IME, in excess of the required 10 days. Employee stated the training that was causing the scheduling conflict concluded on 08/11/2025. The distance to the IME in this case is about 1,057 miles, significantly less than the 2,500 miles ordered in *Thoeni*. 1,057 miles is not an uncommon distance to travel for IMEs and board-ordered SIMEs. Unlike *Thoeni*, Employee does not appear to have any travel restrictions. The employer provided 30 days' notice of the 08/27/2025 IME, which demonstrates consideration for Employee's convenience regarding her training schedule and employment concerns. By the time of the 08/27/2025 IME, Employee's training was over and 30 days' notice should have been enough time for Employee to arrange a substitute at work. The Employer previously allowing Employee to select the date of an IME does not create a requirement for it to do so for every IME. The designee cannot order Employee to attend the 07/23/2025 or 08/27/2025 IMEs because Employee has already missed those appointments. However, Employee will be ordered to attend a future properly noticed IME in Oregon should Employer choose to reschedule one.

(Prehearing Conference Summary, September 2, 2025).

10) Neither in the July 21, 2025 email exchanges, nor at the August 28, 2025 prehearing did the parties reach an agreement regarding when and where an EME would occur. They did not

reach a stipulation either in writing via their email exchanges or orally at the prehearing. (Observation, judgment).

11) On September 25, 2025, Employer denied all Employee's benefits because she failed to attend two properly noticed EMEs on July 23, 2025 and August 27, 2025. Her benefits were "suspended until such time as she submits to examination." (Controversion Notice, September 25, 2025).

12) On September 25, 2025, Employee's counsel communicated with Employer's counsel. He said:

> Belanger just lost her job on Friday because she was unable to physically do her job because of continuing hand problems.
>
> Therefore, . . . she is willing to go to the scheduled IME in Portland, if it is scheduled fairly soon before she obtains another job. We request that the scheduling provide for just two days away from her home. For example Southwest has flights from Albuquerque that arrive at 11:55 AM and return flights the next day.

(Email Michael Flanigan to Martha Tansik, September 29, 2025).

13) On October 2, 2025, the parties attended a prehearing. Employee requested the designee issue an order on her petitions appealing designee's August 28, 2025 EME order and requesting the EME order be stayed. She contended she made a reasonable request due to the long-distance travel, and that is why the designee's order is being appealed. Employee wished to update her circumstances. She said she was back to work and did not want to take three days off to travel to Oregon but had since lost her job and was no longer working. Employee said she contacted Employer and communicated she was willing to undergo an EME as soon as possible now that she is not working and will not lose money. Employer had not responded to Employee's request the EME be rescheduled. Employer said it filed a controversion because Employee failed to comply with the designee's EME order and it would be requesting a hearing on its petition to dismiss. (Prehearing Conference Summary, October 6, 2025).

14) At the October 2, 2025 prehearing, after missing two EME appointments, having her benefits controverted, and receiving Employer's petition to dismiss, Employee agreed to attend an Oregon EME. (*Id.*; Observations).

15) On January 14, 2026, *Belanger I* reversed the designee's August 28, 2025 orders denying employee's petition for a protective order and compelling her to attend an EME in Oregon. *Belanger I* ordered Employer to locate an EME physician in New Mexico. (*Belanger I*).

16) On January 29, 2026, Employer timely filed a petition requesting *Belanger I* be reconsidered. Employer contends *Belanger I* failed to consider the parties' stipulation Employee would attend the EME in Oregon. It contends, in balancing the parties' interests, *Belanger I* could have ordered the Oregon EME to be rescheduled based on Employee's stipulation and issue a stay on PPI payments pending her attendance, rather than inventing a new rule outside of the lawmaking process. Employer contends ignoring the parties' stipulation is a mistake of fact and it has been prejudiced. Employer asserts that unlike *Thoeni v. Consumer Electronic Services*, 151 P.3d 1249, 1254-55 (Alaska 2007), there is no evidence Employee has physical limitations preventing her from traveling, she simply did not want to miss work and *Belanger I* failed to make factual findings regarding these two items. It contends *Belanger I* failed to properly uphold the designee's determination based on controlling law and engaged in inappropriate rulemaking outside the Administrative Procedures Act. (Employer's Petition for Reconsideration, January 29, 2026).

17) On February 5, 2026, *Belanger II* granted Employer's petition for reconsideration of *Belanger I* for additional briefing. (*Belanger II*).

18) On February 18, 2026, Employee opposed Employer's request for reconsideration. She contended no enforceable stipulation existed, that *Belanger I* correctly applied the law and was not improper rulemaking. (Employee's Brief, February 18, 2026).

PRINCIPLES OF LAW

> **AS 23.30.001. Intent of the legislature and construction of chapter**. It is the intent of the legislature that
>
> > 1) this chapter be interpreted . . . to ensure . . . quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to . . . employers. . . .

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

> **AS 23.30.095. Medical treatments, services, and examination**. . . .
> . . . .
>
> (e) The employee shall, after an injury, at reasonable times during the continuance of the disability, if requested by the employer or when ordered by the board, submit to an examination by a physician or surgeon of the employer's choice authorized to practice medicine under the laws of the jurisdiction in which the examination occurs, furnished and paid for by the employer. The employer may not make more than one change in the employer's choice of a physician or surgeon without the written consent of the employee. Referral to a specialist by the employer's physician is not considered a change in physicians. An examination requested by the employer not less than 14 days after injury, and every 60 days thereafter, shall be presumed to be reasonable, and the employee shall submit to the examination without further request or order by the board. If an employee refuses to submit to an examination provided for in this section, the employee's rights to compensation shall be suspended until the obstruction or refusal ceases, and the employee's compensation during the period of suspension may, in the discretion of the board or the court determining an action brought for the recovery of damages under this chapter, be forfeited. . . .
>
> (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. . . .
>
> **AS 23.30.108. Prehearings on Discovery Matters; Objections to Requests for Release of Information; Sanctions for Noncompliance**. . . .
> . . . .
>
> (c) 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 board shall uphold the designee's decision except when the board's designee's determination is an abuse of discretion.

Injured employees are presumed entitled to benefits; therefore, before an employer may lawfully controvert a benefit the employer must have substantial evidence, sufficient in the absence of additional evidence from the employee, to warrant a decision the employee is not entitled to the benefit at issue. *Harp v. ARCO Alaska Inc.*, 831 P.2d 352, 358 (Alaska 1992). It is important for

employers to thoroughly investigate workers' compensation claims to verify information provided by the claimant, properly administer claims, and to effectively litigate disputed claims. *Cooper v. Boatel, Inc.*, AWCB Decision No. 87-0108 (May 4, 1987).

> **8 AAC 45.050. Pleadings.**
> . . . .
>
> (f) **For stipulations under this subsection,**
> . . . .
>
> (2) stipulations between the parties may be made in writing at any time before the close of the record or may be made orally in the course of a hearing or a prehearing;
>
> (3) stipulations of fact or to procedures are binding upon the parties named in the stipulation and have the effect of an order unless the board, for good cause, relieves a party from the terms of the stipulation . . . .
>
> **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.

The Administrative Procedure Act (APA) provides another definition used by courts in considering appeals from administrative agency decisions. It contains terms similar to those above and expressly includes reference to a "substantial evidence" standard:

> 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. . . . 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 (AS 44.62.570).

While applying a substantial evidence standard a "[reviewer] may not reweigh the evidence or draw its own inferences from the evidence. 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." *Miller v. ITT Arctic Services*, 367 P.2d 884, 889 (Alaska 1962).

An agency's failure to apply properly controlling law may be an abuse of discretion. *Manthey v. Collier*, 367 P.2d 884 (Alaska 1962). A substantial evidence standard is applied to review the Board's designee's discovery determinations. A designee's decision on discovery matters must be upheld, absent "an abuse of discretion." *Sheehan v. University of Alaska*, 700 P.2d 1295, 1297 (Alaska 1985).

In *Leigh v. Alaska Children's Services*, 467 P.3d 222, 228-29 (Alaska 2020), the Board, hearing the employee's appeal from a Board designee's discovery order, considered post-discovery-order briefs and arguments, without objection from any party. *Leigh* in persuasive *dicta* said:

> Under AS 23.30.108(c) 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." Neither party mentioned the procedural deviation here, and we do not discuss it further. *Id*. at 226, n. 2.

Fletcher v. Pike's on the River, Inc., Memorandum Opinion and Judgment (Alaska 2025) (unpublished but available on Westlaw) also addressed an appeal from a Board designee's discovery order. *Fletcher* said in *dicta* in a footnote:

> Workers' compensation discovery disputes are first decided at a prehearing conference; the decision of the prehearing conference officer can be appealed to the Board, but hearings on discovery disputes are limited to the same written record that was before the prehearing conference officer. *Id*. at 3, n. 6.

In *Thoeni v. Consumer Electronic Services*, AWCB Dec. No. 02-0215 (October 17, 2002) (*Thoeni III*) the clamant was injured in Alaska and moved to Florida in 2000. Thereafter, the employer in 2001 scheduled an EME with its selected physician in Utah.

> On December 28, 2001 the employee sent a letter to the employer's attorney and the Alaska Workers' Compensation Board stating she would not attend the scheduled EIME in Utah because round trip travel between Miami, Florida and Utah would result in an unreasonable and unnecessary level of pain; would require she bathe and dress without assistance should her knee fail; would require that she handle luggage either at the airport or the hotel while she is still under treatment for costochondritis; would require she traverse roads and/or walkways under winter conditions while

> experiencing instability of her left knee, exposing her to unreasonable and unnecessary risk of additional injury to her knee; and would interrupt her medical treatment. The employee also claimed travel to Utah from Florida for an EIME was unreasonable and unnecessary due to the abundance of physicians available in Florida. *Id*. at 4.

The employer contended the claimant was not entitled to temporary disability (TTD) benefits for the period she refused to attend an EME in Utah and controverted her rights partly on that ground. *Id*. Shortly thereafter, Employee's notice to the employer that she had moved from Florida to Alabama crossed in the mail with the employer's notice that it had scheduled another EME in Miami, Florida. Her employer controverted again, based on the employee's failure to attend that EME. *Id*. The employer then scheduled an EME in Alabama, which the claimant attended. She subsequently attended an SIME with a psychiatrist in April 2002, but the decision does not disclose the location. In April 2002, she also attended an SIME with Neil Pitzer, MD, who at that time was located near Denver, Colorado.

The employee eventually moved from Alabama back to Alaska in June 2002. The employer argued that the claimant was not entitled to TTD benefits for several months in part because "she did not attend the EIME in Utah pursuant to AS 23.30.108." *Thoeni III* stated, "Her benefits were also controverted because she failed to attend and fully cooperate with an EIME. We have examined the controversion notices filed by the employer, and find a rational basis exists for each of them in this case." *Thoeni III* explained:

> The employer controverted the employee's benefits for failing to attend and fully cooperate with EIMEs. The employee's refusal to attend the EIME in Utah is not excusable. The employee had recently made a trip by herself from Anchorage, Alaska, to Miami, Florida. No physician had stated the employee was unable to fly due to her knee or chest condition. Although the employer would not provide a companion for the flight from Florida to Utah, certainly the employee could have sought the assistance of the airlines, cab drivers, and hotel personnel in handling her luggage at the various locations. Fear that there may be snowy or icy conditions in Utah also was not a sufficient basis to refuse to attend the EIME. We agree with the employee that the employer could have found a physician in Florida to conduct the EIME. In fact, they eventually did so, but the employee had moved to Alabama. Regardless, the employer is permitted under AS 23.30.095(e) to select its physician for an EIME. An employer does not have to select their EIME physician based on what is the most convenient location for the employee. *Id*. at 21.

Notwithstanding the above findings, *Thoeni III* awarded the employee benefits including TTD benefits during the period she refused to attend the EME in Utah, when she lived in Florida. *Id*. The employer requested reconsideration on various grounds including *Thoeni III*'s award of TTD benefits during the time the employee refused to attend the Utah EME. In *Thoeni v. Consumer Electronic Services*, AWCB Dec. No. 02-0236 (November 14, 2002) (*Thoeni IV*) the employer contended, "First, the employer claims the Board did not take into consideration the fact the employee refused to attend an EIME on January 25, 2001." In response, the employee argued, "she was within her rights to refuse to attend the EIME. . . ." *Id*. at 2. *Thoeni IV* reasoned:

> The employee argued her TTD benefits should not be forfeited because the employer could have scheduled the January 25, 2001 EIME in Florida where she was living at the time, rather than Utah where there may have been icy and snowy conditions which would put her at danger due to the fragile nature of her knee at that time. We previously found the employee did not have a valid excuse for her refusal to attend the January 25, 2001 EIME in Utah. The employee has presented nothing to cause us to reconsider our prior decision on that issue. As a result, we will use our discretion and find the employee has forfeited her right to TTD benefits from January 25, 2001 until February 21, 2001. *Id*. at 6.

The employee appealed to the superior court. *Thoeni v. Consumer Electronic Services*, Ruling on Appeal from the Decisions of the Alaska Workers' Compensation Board Dated October 17, 2002 and November 14, 2002 (March 17, 2005) (*Thoeni VII*) held:

> After an independent review of the evidence, the Board's finding that [Employee's] refusal to attend the EIME in Utah was inexcusable is supported by substantial evidence. The employer scheduled another EIME for February 21, 2001, which was attended by [Employee]. The Board's decision that [Employee] forfeited her right to TTD benefits from January 25, 2001 until February 21, 2001 is supported by substantial evidence. *Id*. at 12.

The employee then appealed to the Alaska Supreme Court. *Thoeni v. Consumer Electronic Services*, 151 P.3d 1249, 1254-55 (Alaska 2007) (*Thoeni VIII*) on the EME issue cited the Board's findings, including the employee's arguments, and the law:

> Thoeni argues that the board erred in determining, and the superior court in affirming, that she had no excuse for her refusal to travel from her home in Miami to attend the examination in Utah in January 2001. The examination was cancelled after her refusal. Under Alaska law, CES had a right to require the

> examination, and the board had the discretionary authority to order forfeiture of benefits (citation omitted). The board found that Thoeni had recently traveled by herself when she moved from Anchorage to Miami, and held that her refusal to travel unassisted was unwarranted. The board stated that "certainly the employee could have sought the assistance of the airlines, cab drivers, and hotel personnel in handling her luggage at the various locations." The board found that "the employer could have found a physician in Florida to conduct the EIME" but that the employer's statutory ability to select its physician for the examination meant that the selection did not have to be "based on what is the most convenient location for the employee." Thoeni distinguishes the two trips on the basis that the trip to Utah would "require an overnight stay in a hotel," whereas she was met by and lodged with a relative upon her arrival in Miami. Thus, while Thoeni made the trip to Miami alone, she was not alone once she arrived in Miami.

Thoeni VIII evaluated these facts, arguments and the law and held, in a brief analysis:

> The board erred when it found Thoeni's refusal to attend the Utah examination to be unexcused. The board acknowledged that a physician could have been found in Florida. Even though, as the board states, the employer does not have to select the examining physician to be the "most convenient" for the employee, this does not mean that the employee's convenience should be completely discounted. The statute provides that the employer may request examinations "at reasonable times" (footnote omitted). Although the statute does not make any comment on where the examination takes place, its requirement of a "reasonable time" indicates that the legislature intended some consideration of the employee's ease in attending the examination. Furthermore, the board's regulations on selection of physicians for a second independent medical evaluation . . . explicitly direct that "the proximity of the physician to the employee's geographic location" be taken into account (citation omitted). Other jurisdictions have held that even intra-state travel can be unreasonable depending on the circumstances of the case. Requiring Thoeni to travel 2,500 miles from her home was manifestly unreasonable. The board's decision that Thoeni's refusal was unreasonable is not supported by substantial evidence. Accordingly, the board abused its statutory discretion when it determined that Thoeni should forfeit her benefits for the period during which she refused to attend an examination. We reverse the board's determination that Thoeni should forfeit benefits for the period from January 25 to February 21, 2001.

Spears v. Universal Health Services, Inc., AWCB Dec. No. 26-0002 (January 7, 2026), held an employer's request that an injured worker travel from Lansing, Michigan to Portland, Oregon for an EME was "manifestly unreasonable" under *Thoeni*. After the EME appointment notice was served upon the employee, her physician provided restrictions for her injured foot. She was ordered to wear a CAM boot 16 hours per day, was to be non-weight bearing, and use a knee scooter. *Spears* found that the employer failed to prove it could not find a qualified medical

expert willing and able to perform an EME in the employee's home state Michigan, even though Michigan does not use the AMA *Guides* Sixth Edition to rate permanent impairment. It found that, contrary to its argument, the employer had looked only in Michigan for an EME and ignored three bordering states that use the applicable *Guides* to rate impairment. *Spears* ordered the employer to do a more thorough search in Michigan, and if unsuccessful, expand its search to the neighboring 275 mile radius.

> **8 AAC 45.090. Additional Examinations.**
> . . . .
>
> (c) If an injury occurred before July 1, 1988, an examination requested by the employer not less than 14 days after the injury, and every 60 days after that, is presumed reasonable, unless the presumption is overcome by a preponderance of the evidence, and the employee shall submit to an examination by the employer's choice of physician without further request or order by the board. Unless medically appropriate to obtain new diagnostic data, the physician shall use existing diagnostic data to complete the examination.
>
> (d) Regardless of the date of an employee's injury, the employer must
>
> (1) give the employee and the employee's representative, if any, at least 10 days' notice of the examination scheduled by the employer;
>
> (2) arrange, at least 10 days in advance of the examination date, for the employee's transportation expenses to the examination under AS 23.30.095(e), AS 23.30.095(k), AS 23.30.110(g), or this section, at no cost to the employee if the employee must travel more than 100 road miles for the examination or, if the employee cannot travel on a government-maintained road to attend the examination, arrange for the transportation expenses by the most reasonable means of transportation; and
>
> (3) arrange, at least 10 days in advance of the examination date, for the employee's room and board at no cost to the employee if the examination under AS 23.30.095(e), AS 23.30.095(k), AS 23.30.110(g), or this section, requires the employee to be away from home overnight.

ANALYSIS

1) Did the parties stipulate to an EME location?

Employer contends *Belanger I* failed to enforce a binding stipulation between the parties that Employee would attend an EME in Oregon. Parties can stipulate to facts or procedures and must

do so in writing or orally at a hearing or prehearing. 8 AAC 45.050(f). A binding stipulation requires mutual assent to definite terms. The parties' July 21, 2025 email communications reflect negotiations and conditional proposals but lack a final agreement and requisite mutual approval. The parties did not execute or sign a written stipulation, nor did the August 28, 2025 prehearing conference summary record that the parties entered an oral stipulation with definite, enforceable terms into the record. The parties did not reach a stipulation either to the EME's time or location. *Id.*

Employee did agree to attend an Oregon EME, but not until October 2, 2025, after Employer had controverted her benefits and requested her claim be dismissed. *Belanger I* could only consider the written record available to, and arguments presented to the designee. *Leigh*; *Fletcher*. Employee's October 2, 2025 agreement was not a part of the record *Belanger I* could consider.

2) Should *Belanger I* be reconsidered?

An employee is presumed entitled to benefits and before an employer can deny benefits without risking a frivolous or unfair controversion finding, the employer must have substantial evidence to support its controversion. *Harp.* If requested by the employer, an employee "shall . . . submit to an examination by a physician or surgeon of the employer's choice." AS 23.30.095(e). This is known as an EME and is a tool the legislature has provided employers. *Rogers & Babler*. It permits an employee's claim to be thoroughly investigated and enables employers to properly administer and effectively litigate disputed claims. *Id.*; *Cooper*.

Employer contends the designee did not abuse her discretion and *Belanger I* failed to properly uphold the designee's determination based on controlling law. Employee contends AS 23.30.095(e) as interpreted in *Thoeni VIII* prevents Employer from requiring her to travel a distance for an EME that is "manifestly unreasonable."

Employee lives in New Mexico and Employer's chosen EME physician is in Oregon. The dispute between the parties is whether attending an Oregon EME is "manifestly unreasonable." The parties' arguments were considered, an analysis was conducted, and the designee ordered

Employee to attend an EME in Oregon. AS 23.30.108. The designee's determination must be upheld absent an abuse of discretion. AS 4462.570; *Sheehan*.

The parties' briefs reflect the evidence and argument presented to the designee in their pleadings and at the August 28, 2025 prehearing conference. *Rogers & Babler*; AS 23.30.108(c). Initially, Employee's did not want to attend an EME in Oregon because she had started a new job and the EME was scheduled for a time that would have required her to miss required job training. Employer took Employee's training requirements into consideration and rescheduled the EME. It gave Employee sufficient notice to arrange with her employer a short absence from work. After the designee's order, and unbeknownst to the designee, Employee's circumstances changed. She continued to contend she should not be required to travel the distance to Oregon for an EME.

Employer is not required to select the most convenient location for Employee, but her ability to reasonably attend the examination must be considered. *Thoeni*. The requirement an EME must occur at a "reasonable time" implies a legislative intent that the logistics of attendance, including travel distance, be considered. *Id.* Excessive travel distance, physical impairment or other circumstances may render an examination manifestly unreasonable. *Id.* *Thoeni* concluded that requiring an employee to travel approximately 2,500 miles for an examination was unreasonable under the circumstances presented in that case, which included the employee's physical limitations, increased pain caused by the travel distance, and lack of assistance at the employer's selected EME location.

Here, the proposed EME location in Oregon requires travel of approximately 1,057 miles. The designee noted such travel distances are not uncommon in Alaska workers' compensation practice. The distance involved is significantly less than the travel distance at issue in *Thoeni*. Unlike the claimant in *Thoeni,* Employee did not allege or demonstrate any medical or physical limitation that would restrict her ability to travel. Employee presented no evidence that the trip's distance or location posed a medical risk or was impractical. The designee noted Employer provided Employee with approximately thirty days' notice of the scheduled EME. This exceeded the ten days minimum notice requirement. 8 AAC 45.090(d)(1).

Employer also attempted to accommodate Employee's scheduling concerns. Employee initially advised that she could not attend the first scheduled appointment because it conflicted with a work training program. To ensure the appointment was at a reasonable time, Employer scheduled a second appointment after Employee's training was expected to conclude. Employee expressed concern that attending the EME could interfere with her new employment and might require her to miss work. The designee acknowledged these concerns. However, the designee concluded that the advance notice provided sufficient opportunity for Employee to make arrangements with her employer for the required time off. The designee noted that temporary work disruption associated with attending an EME is not uncommon and does not, by itself, render the request and required travel unreasonable.

After considering the record as a whole, the designee concluded Employer's request was reasonable. The designee specifically relied on several factors, including the greater than 10 days advance notice provided, Employer's willingness to accommodate Employee's training schedule, the absence of any medical limitation preventing travel, and that the travel distance was substantially less than the distance found unreasonable in *Thoeni*.

The designee determined Employee could not be ordered to attend the July 23, 2025 or August 27, 2025 examinations because those appointment dates had passed. However, the designee ordered Employee must attend a future properly noticed EME in Oregon should Employer elect to reschedule the examination.

The designee properly applied AS 23.30.095(e), 8 AAC 45.090(d), followed the guidance provided in *Thoeni VIII*, considered the specific circumstances presented, and ordered Employee to attend an Oregon EME. *Spears* had not been issued when the designee issued her order but can, like *Thoeni*, be distinguished from the instant case. The employees in both *Thoeni* and *Spears* had physical limitations that affected their mobility. *Thoeni VIII* found persuasive that round trip travel between Florida and Utah would result in increased pain, would require Thoeni to bathe and dress without assistance, and because her knee was unstable, travel to Utah exposed her to risk of additional injury and would interrupt her medical treatment. Spears injured her

foot and, like Thoeni, had mobility impairments. She was ordered to wear a CAM boot 16 hours per day, was to be non-weight bearing, and was required to use a knee scooter.

Employee injured her hand. She does not have impaired mobility or instability. She does not require crutches, a knee scooter, or any assistive technology. Travel does not place her at risk of increased pain or injury. *Rogers & Babler*. Employer considered Employee's convenience; it gave her sufficient notice to notify and arrange her absence with her employer. *Thoeni*.

The Act contemplates examinations, including those under AS 23.30.095(e), may require an employee to be away from home overnight. 8 AAC 45.090(d)(3). Applying a rule prohibiting any travel for EME appointments unnecessarily restricts Employer's right to select a physician when an injured worker's individual circumstances do not render travel "manifestly unreasonable." AS 23.30.095(e); *Thoeni*.

The designee's decision reflects a rational evaluation of the distance involved, the absence of travel-related medical or physical limitations, the notice provided, and the accommodations offered. Applying the abuse-of-discretion standard and distinguishing *Thoeni* and *Spears*, the designee's order compelling Employee to attend an EME was reasonable, supported by substantial evidence, and consistent with applicable authority. It must be upheld. *Manthey*; *Sheehan*; *Miller*.

CONCLUSIONS OF LAW

1) The parties did not stipulate to an EME location.
2) *Belanger I* should be reconsidered.

ORDER

1) Employer's petition for reconsideration is granted.
2) The designee's September 2, 2025 order is reinstated.
3) Employee must attend an EME in Oregon with a physician selected by Employer upon receipt of proper notice.

Dated in Fairbanks, Alaska on March 18, 2026.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Janel Wright, Designated Chair

/s/
John Corbett, 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 Jane Belanger, employee / claimant v. Lower Kuskokwim School District, employer; Alaska Public Entity Insurance, insurer / defendants; Case No. 202404677; dated and filed in the Alaska Workers' Compensation Board's office in Fairbanks, Alaska, and served on the parties by certified U.S. Mail, postage prepaid, on March 18, 2026.

/s/
Trish Palmer, Workers' Compensation Technician