ALASKA WORKERS' COMPENSATION BOARD

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

BRENDA L. STEIN, Employee, Claimant v. SOUTH PENINSULA HOSPITAL INC., Employer, and WAUSAU UNDERWRITERS INSURANCE COMPANY, Insurer, Defendants.	FINAL DECISION AND ORDER AWCB Case No. 200906588 AWCB Decision No. 13-0088 Filed with AWCB Anchorage, Alaska on July 29, 2013

Brenda L. Stein's August 12, 2011 workers' compensation claim was heard March 19, 2013 at Anchorage, Alaska. The hearing date was selected at the October 23, 2012 prehearing conference. Attorney Jonathan Hegna represented Ms. Stein (Employee). Attorney Martha Tansik represented South Peninsula Hospital, Inc. and Wausau Underwriters Insurance Co., (collectively, Employer). Employee and Jeff Stein testified. The record was left open to allow the deposition of Samuel Heck, D.O. Dr. Heck's deposition was filed May 6, 2013, and the record closed June 17, 2013, when deliberations concluded.

ISSUES

Employee contends a work injury is the substantial cause of her disability and need for medical treatment. Employer concedes Employee suffered a work injury, but contends it is no longer the substantial cause of her disability or need for medical treatment.

1. *Is the work injury the substantial cause of Employee's current disability and need for medical treatment?*

Employee contends she is entitled to attorney fees. Employer contends that as Employee is not entitled to any benefits, she is not entitled to attorney fees.

2. Is Employee entitled to attorney fees?

FINDINGS OF FACT

The following findings of fact and factual conclusions are established by a preponderance of the evidence:

1. On May 8, 2009, Employee, a registered nurse, was injured at work when a newly installed automatic operating room door closed too quickly, catching her right hand. (Employee, Report of Injury, May 13, 2009).

2. Employee was treated in Employer's emergency room that day. The report notes Employee self-repaired a small laceration with superglue, but had some persistent pain. There was no evidence of infection, and an x-ray was normal with no evidence of a fracture. Employee was released to work with no restrictions. (South Peninsula Hospital, Emergency Room Report, May 8, 2009).

3. On June 22, 2009, Employee was seen by Matthew K. Wise, M.D. Employee reported the work injury had become infected, but had been successfully treated with antibiotics and had healed, although there was still some swelling. She also reported her whole right arm hurt, with the worst pain in the palmar aspect of her forearm, and Dr. Wise noted some tenderness. Dr. Wise recommended Employee continue anti-inflammatories for a couple of weeks and see an occupational therapist. (Homer Medical Clinic, Progress Notes, June 22, 2009).

4. Employee's pain kept getting worse, and on July 29, 2009, she saw J. Paul Sayer, M.D. Dr. Sayer diagnosed possible tenosynovitis, ascending tendonitis, and ascending lymphangitis. He was unsure what else could be done, but referred Employee to Michael James, M.D., in Anchorage. (South Peninsula Hospital, Consultation Report, July 29, 2009).

5. On August 11, 2009, Employee saw Dr. James. After electrodiagnostic testing, Dr. James stated the findings suggested sympathetic dystrophy, or complex regional pain syndrome II (CRPS). He also diagnosed unrelated bilateral carpal tunnel syndrome. A stellate ganglion block was done,

resulting in a substantial reduction in Employee's right shoulder and arm pain. (Alaska Spine Institute, Initial Evaluation, August 11, 2009).

6. Employee returned to Dr. James on August 17, August 31, September 8, and September 14, 2009 for repeat stellate ganglion blocks, each of which resulted in improvement in Employee's shoulder and arm pain. At each visit, Dr. James repeated his diagnosis of CRPS. (Dr. James, Visit Reports, August 17, 2009, August 31, 2009, September 8, 2009, and September 14, 2009).

7. On October 15, 2009, Employee returned to Dr. James. His diagnosis was right upper extremity RSD (reflex sympathetic dystrophy, a synonym for CRPS type I), which was stable. He noted incomplete relief from the series of stellate ganglion blocks. (Dr. James, Visit Report, October 15, 2009).

8. Employee had a physical capacities evaluation on December 4, 2009 by John DeCarlo. The report concluded Employee was capable of only light physical demands, and, consequently, could not perform her job with Employer, which was in the medium physical demand classification. The report noted Employee scored 100 percent on the validity criteria, meaning symptom magnification did not appear to be present. (Physical Capacities Evaluation, December 4, 2009).

9. On May 13, 2010, Employee returned to Dr. James for electrodiagnostic testing. The testing confirmed complex regional pain syndrome with no evidence of peripheral nerve entrapment. Dr. James noted there had been no change in Employee's condition aside from the initial relief from the stellate ganglion blocks. (Electrodiagnostic Study, May 13, 2010).

10. On May 20, 2010, Employee was seen by Thomas L. Gritzka, M.D., an orthopedic surgeon, for an employer's medical evaluation (EME). Dr. Gritzka noted that Employee's injury and the subsequent development of her pain best fit CRPS type 1, but noted she might have a combined condition. He recommended diagnostic tests to rule out Pancoast tumor, cervical syringomyelia, and other cervical causes of her condition. He stated the condition was caused by the work injury, noting CRPS may follow a relatively minor injury, such Employee's right hand injury. He pointed out that it was unlikely she had a psychiatric or psychological disorder based on the validity score on the physical capacities evaluation, but recommended a psychiatric evaluation as well. (Dr. Gritzka, EME Report, May 20, 2010).

11. Employee moved to Wichita, Kansas, and began treating with Samuel Heck, D.O. (Dr. Sayer, Referral Letter, June 17, 2010).

12. On July 2, 2010, Dr. Heck saw Employee and diagnosed complex regional pain syndrome in her right upper extremity. (Dr. Heck, Office Visit Note, July 2, 2010).

13. Dr. Heck referred Employee to John Babb, M.D. (Dr. Babb, Progress Notes, August 11, 2010). Dr. Babb ordered an electromyograph (EMG), an MRI, and a bone scan, which were done on August 12, 2010, August 13, 2010, and October 20, 2010, respectively. The EMG showed mild nerve entrapment in the region of the right wrist. The MRI was unremarkable, and the bone scan was normal with no evidence of RSD. Dr. Babb diagnosed right hand carpal tunnel syndrome and right elbow biceps tendonitis, but not CRPS or RSD. He recommended right biceps tendon debridement surgery and possible biceps tendon repair. (Dr. Babb, Progress Notes, August 17 and 23, 2010). This was the first diagnosis of biceps tendinopathy, and Dr. Babb did not state whether it was caused by Employee's work injury. (Observation).

14. On December 2, 2010, Employee was seen by Dr. Gritzka and William L. DeBolt, M.D., a neurologist, for another EME. Their review included the EMG, MRI and bone scan done in August and October 2010. Dr. DeBolt noted Employee's right radial pulse was "barely obtainable." He was unable to explain Employee's persistent right extremity pain from a neurological viewpoint, but noted she showed no evidence of RSD at the time. Dr. Gritzka stated the cause of Employee's "bizarre symptomatology" was unclear but he diagnosed chronic pain syndrome, right upper extremity, conditional on ruling out right Pancoast tumor, cervical syringomyelia, cervical diastematomyclia, and other cervical origins. Dr. Gritzka also diagnosed biceps tendonosis, but did not state whether it was caused by work. Drs. DeBolt and Gritzka did not recommend the biceps tendon surgery at that time. They did, however, recommend an apical lordotic chest x-ray, an MRI or CT scan of the cervical spine, and a vascular study to assist in their diagnosis. (Drs. DeBolt and Gritzka, EME Report, December 22, 2010).

15. Employee returned to Dr. Heck on January 4, 2011. Dr. Heck noted Employee's right arm, forearm, and hand were weak, dysfunctional, and painful. Her right hand was cool to the touch. He diagnosed chronic RSD. (Dr. Heck, Office Visit Note, January 4, 2011).

16. On February 7, 2011, Employee had an apical lordotic chest x-ray, which was normal. (Lawrence J. Slutsky, M.D., Final Report, February 7, 2011).

17. Employee had a cervical MRI on February 28, 2011 that showed mild degenerative disc disease most prominent at the C6-C7 level with a mild broad-based disc bulge. No focal disc herniation or spinal stenosis was found. (Eric D. Kater, M.D., Final Report, February 28, 2011).

18. On May 5, 2011, Employee was referred to Milton H. Landers, D.O. by Dr. Heck. Dr. Landers diagnosed clinically insignificant cervical changes and probable somatic pain secondary to injury, but ruled out CRPS/RSD/sympathetically mediated pain based on lack of hyperalgia, allodynia, or cutaneous or vascular changes in his physical examination. Dr. Landers did not diagnose biceps tendinopathy. A copy of Dr. Landers' report was sent to Dr. Heck. (Dr. Landers, Consultation Note, May 5, 2011).

19. On May 17, 201, after reviewing the results of Employee's recent test, Drs. DeBolt and Gritzka provided an Addendum to their December 22, 2010 EME report. Dr. DeBolt noted that he still did not understand why Employee's radial pulse was reduced, but diagnosed chronic pain syndrome, cause unknown, bicipital tendonitis, and preexisting degenerative disc disease. Later in the report, Dr. DeBolt stated the work injury appeared to be the substantial cause of Employee's pain syndrome, and deferred to Dr. Gritzka as to the biceps tendinopathy. Dr. Gritzka ruled out Pancoast syndrome based on the apical lordotic chest x-ray, and ruled out syringomyelia and probably cervical diastematomyelia based on the cervical MRI. Dr. Gritzka also concluded thoracic outlet syndrome could be ruled out based on a magnetic resonance arteriogram. Based on the bone scan, he concluded Employee probably did not have clinically significant biceps tendinosis. He diagnosed a history consistent with CRPS type 1, without objective confirmation, mild cervical degenerative spondylosis, and psychological factors affecting her physical condition; he did not diagnose biceps tendinopathy. Dr. Gritzka cited the diagnostic criteria for CRPS in the AMA *Guides to the Evaluation of Permanent Impairment*, 6th Edition, (the *Guides*) in concluding a "CRPS diagnosis [was] not supportable." (Drs. DeBolt and Gritzka, EME Report, May 17, 2011).

20. In a January 25, 2012 "to whom it may concern" letter, Dr. Heck stated Employee continued to suffer from CRPS and tendinosis resulting from the work injury. (Dr. Heck Letter, January 25, 2012).

21. On April 11, 2012, employee was seen by Vincent Boswell, M.D., for an orthopedic second independent medical evaluation (SIME). Dr. Boswell's examination included an evaluation of each of the *Guides'* CRPS diagnostic criteria, and he found none of the criteria were satisfied. Dr. Boswell concluded none of Employee's current symptoms or complaints were caused by or related to the May 8, 2009 work injury. He stated that Employee's clinical findings were not consistent with CRPS and her tendinopathy was degenerative. (Boswell, SIME Report, April 11, 2013).

22. Dr. Heck was deposed on April 9, 2013. When asked about his experience with CRPS, the stated "I don't have a lot of experience with it, and I would rely on a specialist in consultation for that." It was still his opinion that Employee had CRPS or RSD and that she fit the *Guide's* diagnostic criteria for CRPS better than a diagnosis of right upper extremity pain. (Heck Deposition, 21, 44).

23. Employee filed an affidavit of attorney fees on March 13, 2013 and a supplemental affidavit of fees on April 30, 2013 detailing fees and costs of $30,465.90. (Fee Affidavit, March 13, 2013; Supplemental Fee Affidavit, April 30, 2013). Employer did not object to the Employee's attorney's hourly rate or to the time expended. (Record).

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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> (2) workers' compensation cases shall be decided on their merits except where otherwise provided by statute;
> . . .
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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, medical findings, and other tangible evidence, but also on the board's "experience, judgment, observations, unique or peculiar facts of the case, and inferences drawn from all of the above." *Fairbanks North Star Borough v. Rogers & Babler*, 747 P.2d 528, 533-34 (Alaska 1987).

> **AS 23.30.010. Coverage.** (a) Except as provided in (b) of this section, compensation or benefits are payable under this chapter for disability or death or the need for medical treatment of an employee if the disability or death of the employee or the employee's need for medical treatment arose out of and in the course of the employment. To establish a presumption under AS 23.30.120(a)(1) that the disability or death or the need for medical treatment arose out of and in the course of the employment, the employee must establish a causal link between the employment and the disability or death or the need for medical treatment. A

> presumption may be rebutted by a demonstration of substantial evidence that the death or disability or the need for medical treatment did not arise out of and in the course of the employment. When determining whether or not the death or disability or need for medical treatment arose out of and in the course of the employment, the board must evaluate the relative contribution of different causes of the disability or death or the need for medical treatment. Compensation or benefits under this chapter are payable for the disability or death or the need for medical treatment if, in relation to other causes, the employment is the substantial cause of the disability or death or need for medical treatment.
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> **AS 23.30.095. Medical examinations.** (a) The employer shall furnish medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus for the period which the nature of the injury or the process of recovery requires, not exceeding two years from and after the date of injury to the employee. . . .
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> **AS 23.30.120 Presumptions.**
> (a) In a proceeding for the enforcement of a claim for compensation under this chapter it is presumed, in the absence of substantial evidence to the contrary, that
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> (1) the claim comes within the provisions of this chapter; . . . .
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> (b) If delay in giving notice is excused by the board under AS 23.30.100(d)(2), the burden of proof of the validity of the claim shifts to the employee notwithstanding the provisions of (a) of this section.

Under AS 23.30.120(a)(1), benefits sought by an injured worker are presumed to be compensable. *Meek v. Unocal Corp*., 914 P.2d 1276, 1279 (Alaska 1996). The presumption of compensability is applicable to any claim for compensation under the workers' compensation statute, including medical benefits. *Carter,* 818 P.2d at 665; *Meek*, 914 P.2d at 1279; *Moretz v. O'Neill Investigations*, 783 P.2d 764, 766 (Alaska 1989); *Olson v. AIC/Martin J.V.*, 818 P.2d 669, 675 (Alaska 1991).

Application of the presumption involves a three-step analysis. To attach the presumption of compensability, an employee must first establish a "preliminary link" between his or her injury and the employment. *See, e.g., Tolbert v. Alascom, Inc*., 973 P.2d 603, 610 (Alaska 1999). Medical evidence may be needed to attach the presumption of compensability in a complex medical case. *Burgess Constr. v. Smallwood*, 623 P.2d 312, 316 (Alaska 1981). However, an employee "need not present substantial evidence that his or her employment was a substantial cause of his disability." *Fox v. Alascom, Inc.*, 718 P.2d 977, 984 (Alaska 1986) "In making the

preliminary link determination, the Board may not concern itself with the witnesses' credibility." *Excursion Inlet Packing Co. v. Ugale*, 92 P.3d 413, 417 (Alaska 2004).

If the employee establishes the preliminary link, then "if the employer can present substantial evidence that demonstrates that a cause other than employment played a greater role in causing the [need for medical treatment], etc., the presumption is rebutted." *Runstrom v. Alaska Native Medical Center*, AWCAC Decision No. 150 (Mar. 25, 2011) at 7. Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Fireman's Fund Am. Ins. Companies v. Gomes*, 544 P.2d 1013, 1015 (Alaska 1976). The determination of whether evidence rises to the level of substantial is a legal question. *Id*. Because the employer's evidence is considered by itself and not weighed at this step, credibility is not examined at this point. *Veco, Inc. v. Wolfer*, 693 P.2d 865, 869-870 (Alaska 1985).

If the presumption is raised and not rebutted, the claimant need produce no further evidence and prevails solely on the raised but un-rebutted presumption. *Williams v. State*, 938 P.2d 1065 (Alaska 1997). "If the employer rebuts the presumption, it drops out, and the employee must prove, by a preponderance of the evidence, that in relation to other causes, employment was the substantial cause of the disability, need for medical treatment, etc. Should the employee meet this burden, compensation or benefits are payable." *Runstrom* at 8.

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

The board's finding of credibility "is binding for any review of the Board's factual findings." *Smith v. CSK Auto, Inc.*, 204 P.3d 1001, 1008 (Alaska 2009). The board has the sole power to determine witness credibility, and its findings about weight are conclusive even if the evidence is conflicting. *See, e.g., Harnish Group, Inc. v. Moore*, 160 P.3d 146, 153 (Alaska 2007); *Thoeni v. Consumer Electronic Services*, 151 P.3d 1249, 1253 (Alaska 2007); *Municipality of Anchorage v. Devon*, 124 P.3d 424, 431 (Alaska 2005). The board has the sole discretion to determine the

weight of the medical testimony and reports. When doctors' opinions disagree, the board determines which has greater credibility. *Moore v. Afognak Native Corp.*, AWCAC Decision No. 087 (August 25, 2008) at 11.

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

In *Harnish Group, Inc. v. Moore*, 160 P.3d 146 (Alaska 2007), the Alaska Supreme Court discussed how and under which statute attorney's fees may be awarded in workers' compensation cases. A controversion (actual or in fact) is required for the board to award fees under AS 23.30.145(a). "In order for an employer to be liable for attorney's fees under AS 23.30.145(a), it must take some action in opposition to the employee's claim after the claim is filed." *Id*. at 152. Fees may be awarded under AS 23.30.145(b) when an employer "resists" payment of compensation and an attorney is successful in the prosecution of the employee's claims. *Id.* In this latter scenario, reasonable fees may be awarded. *Id*. at 152-153.

In *Lewis-Walunga v. Municipality of Anchorage*, AWCAC Decision No. 123 (December 28, 2009), the commission stated "AS 23.30.145(a) establishes a minimum fee, but not a maximum fee. A fee award under AS 23.30.145(a), if in excess of the statutory minimum fee, requires the

board to consider the "nature, length, and complexity of the services performed, transportation charges, and the benefits resulting from the services to the compensation beneficiaries." *Id*.

In determining a reasonable fee under AS 23.30.145(b), the board is required to consider the contingent nature of the work for an employee in workers' compensation cases, the nature, length and complexity of the services performed, the resistance of the employer or carrier, and the benefits resulting from the services performed, *Wise Mech. Contractors v, Bignell*, 718 P.2d 971, 973, 975 (Alaska 1986).

ANALYSIS

1. Is the work injury the substantial cause of Employee's current disability and need for medical treatment?

The presumption analysis under AS 23.30.120 applies to the question of whether employment was the cause of an employee's disability or need for treatment. To attach the presumption, an employee must first establish a preliminary link between his or her injury and the employment. The preliminary link requires only "some," or "minimal," relevant evidence. In complex medical cases, medical evidence may be needed to establish the link, but in simpler cases lay evidence is sufficient. In determining whether the presumption is met, credibility is not considered nor is the evidence weighed against competing evidence.

As is apparent in this case, the diagnosis and cause of CRPS and right biceps tendinopathy are complex medical issues. As to CRPS, Employee has raised the presumption through the Dr. Gritzka's May 20, 2010 report diagnosing Employee with CRPS and stating the condition was caused by the work injury. Drs. James' and Heck's diagnoses of CRPS, coupled with Dr. Gritzka's statement that CRPS can follow an injury such as Employee's would also raise the presumption. As to the biceps tendinopathy, Employee raised the presumption through Dr. Heck's January 25, 2012 letter stating it was a result of the work injury.

To rebut the presumption, Employer was required to present substantial evidence demonstrating that a cause other than employment played a greater role in causing Employee's disability and need for medical treatment. As to the CRPS, Employer did so, through both Dr. Boswell's report that

Employee does not have CRPS and her tendinopathy was degenerative and through Dr. Gritzka's May 17, 2011 report stating Employee does not have CRPS. As to the biceps tendinopathy, Employer did so through Dr. Boswell's report stating the tendinopathy was degenerative.

Because Employer rebutted the presumption, it dropped out, and Employee was required to prove, by a preponderance of the evidence, that in relation to other causes, employment was the substantial cause of her disability and need for medical treatment. As to CRPS, Employee failed to do so. Dr. James' diagnosis of CRPS is given relatively less weight because he last saw Employee on May 13, 2010, and he lacked the results of the later diagnostic testing. In Dr. DeBolt's May 17, 2011 report, he states the work injury appears to be the substantial cause of the pain syndrome, but at another point he states the cause of the CRPS is "unknown." Because of the unexplained inconsistency, Dr. DeBolt's opinion is given relatively less weight. Dr. Heck's opinion is given very little weight. In his deposition, Dr. Heck conceded he had little experience with CRPS, and he would rely on a specialist. However, he referred Employee to both Dr. Babb and Dr. Landers, both of whom ruled out CRPS. Nevertheless, despite those specialists' opinions to the contrary, Dr. Heck continues to maintain that Employee has CRPS due to her work injury; as a result, he appears as more of an advocate for Employee than an impartial witness. In addition, Dr. James', Dr. DeBolt's and Dr. Heck's opinions on CRPS are given somewhat less weight because none of them specified what diagnostic criteria they relied on in reaching their diagnoses.

Relatively more weight is given to Dr. Gritzka's opinion. Although Dr. Gritzka diagnosed work-related CRPS in both his May 20, 2010 and December 2, 2010 reports, in both instances he recommended further diagnostic testing. On May 17, 2011, after the recommended testing was done, Dr. Gritzka changed his diagnosis, finding Employee did not meet the *Guides'* diagnostic criteria for CRPS, and did not have tendinosis. Because it was based on more complete diagnostic information, Dr. Gritzka's May 17, 2011 diagnosis is given more weight than his earlier opinions.

The most weight is given Dr. Boswell's opinion. Prior to ruling out CRPS, Dr. Boswell conducted a physical examination that included an evaluation of each of the *Guides'* CRPS diagnostic criteria. From the medical reports, there is no evidence that any of the other doctors performed such a

thorough, organized evaluation based on specific criteria. Given Dr. Boswell's negative findings for each of the criteria, his conclusion that Employee does not suffer from CRPS is well supported.

Only Drs. Heck and Boswell have opined as to the work-relatedness of Employee's biceps tendinopathy. Dr. Heck's opinion the tendinopathy was work-related is given little weight for two reasons. First, as noted above, Dr. Heck's appears to be an advocate for Employee, and for that reason his opinion is given little weight. Second, none of Dr. Heck's chart notes or reports include a diagnosis of biceps tendinopathy; his only mention of the condition is in his January 25, 2012 "to whom it may concern" letter. Based on his thorough exam, Dr. Boswell's opinion the biceps tendinopathy was degenerative rather than work-related is given more weight.

Employee has not shown by a preponderance of the evidence that she suffers from CRPS, or that her biceps tendinopathy was caused by the work injury. The Act provides benefits, including medical treatment and TTD, when an employment injury is the substantial cause of the need for the benefits. Employee's work injury is not the substantial cause of her disability or need for medical treatment, and her claim for benefits will be denied.

2. Is Employee entitled to attorney fees?

Under AS 23.30.145(a), attorney fees may be awarded based on the amount of compensation awarded. Under AS 23.30.145(b), fees may be awarded when a claimant successfully prosecutes a claim. Here, Employee was not awarded any compensation, and she was not successful in prosecuting her claim. There is no basis upon which attorney fees may be awarded.

CONCLUSIONS OF LAW

1. The work injury is not the substantial cause of Employee's current disability or need for medical treatment.

2. Employee is not entitled to attorney fees.

ORDER

1. Employee's August 12, 2011 claim is denied.

Dated at Anchorage, Alaska on July 29, 2013.

ALASKA WORKERS' COMPENSATION BOARD

Ronald P. Ringel, Designated Chair

Patricia Vollendorf, Member

David Kester, Member

APPEAL PROCEDURES

This compensation order is a final decision and becomes effective when filed in the Board's office, unless it is appealed. Any party in interest may file an appeal with the Alaska Workers' Compensation Appeals Commission within 30 days of the date this decision is filed. All parties before the Board are parties to an appeal. 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 because the Board takes no action on reconsideration, whichever is earlier.

A party may appeal by filing with the Alaska Workers' Compensation Appeals Commission: (1) a signed notice of appeal specifying the board order appealed from; 2) a statement of the grounds for the appeal; and 3) proof of service of the notice and statement of grounds for appeal upon the Director of the Alaska Workers' Compensation Division and all parties. Any party may cross-appeal by filing with the Alaska Workers' Compensation 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 grounds upon which the cross-appeal is taken. Whether appealing or cross-appealing, parties must meet all requirements of 8 AAC 57.070.

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 that the foregoing is a full, true and correct copy of the Decision and Order in the matter of BRENDA L. STEIN, employee/claimant, v. SOUTH PENINSULA HOSPITAL INC., employer, and WAUSAU UNDERWRITERS INSURANCE, insurer, defendants; Case No. 200906588; dated and filed in the office of the Alaska Workers' Compensation Board in Anchorage, Alaska, and served upon the parties this 29th day of July, 2013.

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Anna Subeldia, Clerk