ALASKA WORKERS' COMPENSATION BOARD

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

JANE E. SCHUTTER (fka STARR),	)	
Employee, Applicant	)	FINAL DECISION AND ORDER
v.	)	AWCB Case Nos. 200911455M 201014041 20104042
STATE OF ALASKA, DEPARTMENT OF CORRECTIONS	)	AWCB Decision No. 13-0089
Self-Insured Employer, Defendant.	)	Filed with AWCB Anchorage, Alaska on July 31, 2013

Jane E. Schutter's workers' compensation claims for permanent total disability, permanent partial impairment, medical expenses, interest, attorney fees and costs, were heard in Anchorage, Alaska on February 27, 2013, a hearing date selected on September 25, 2012. Attorney William Erwin represents Jane Schutter (formerly known as Jane Starr) (Employee), who testified in person. Assistant Attorney General M. David Rhodes represents self-insured employer State of Alaska (Employer or State). Dennis Stumpp, M.D., and insurance adjuster Roberta Highstone testified in person. Witnesses appearing by deposition included physician's assistants Brent Ursel, PA and David Norcross, PA. The record was held open to receive the deposition transcript of PA Norcross. On February 28, 2013, the designated chair was called out of state on a family

emergency. The Norcross deposition transcript was filed on April 2, 2013. The record closed when the Board next met on May 21, 2013.

ISSUES

Employee contends she developed "multiple chemical sensitivity" after exposure to chemicals on several occasions between August 10, 2009 and February 4, 2010, while employed as a licensed practical nurse at Spring Creek Correctional Center in Seward, Alaska. As a result of workplace chemical exposures, Employee contends, she continues to suffer symptoms when exposed to a myriad of other common chemicals. She seeks an award of permanent total disability (PTD) from November 3, 2010 and continuing, permanent partial impairment (PPI), medical benefits, interest, attorney fees and costs. Employer contends Employee's work-related symptoms were acute minor irritations including nausea, headache, subjective sensation of lip swelling, cough and burning sensation of the eyes, which resolved shortly after the August 2009 spill, and no further benefits are due.

1. *Were workplace chemical exposures the substantial cause of Employee's claimed disability or need for medical treatment?*
2. *Is Employee entitled to continuing medical benefits?*
3. *Is Employee entitled to PTD benefits? If so, in what amount?*
4. *Is Employee entitled to PPI benefits? If so, in what amount?*
5. *Is Employee entitled to interest, attorney fees and costs?*

FINDINGS OF FACT

The following facts and factual conclusions are established by a preponderance of evidence:

1. While employed as a licensed practical nurse (LPN) for Employer at its Spring Creek Correctional Center (SCCC) in Seward, Alaska, Employee reported experiencing physiological symptoms following a series of chemical exposures between August 10, 2009 and February 4, 2010. (Reports of Injury, for exposures on August 10, 2009 [AWCB Case No. 200911455]; January 21, 2010 [AWCB Case No. 201014041]; and February 4, 2010 [AWCB Case No. 201014042]).
2. In August 2007, Employee began working at SCCC in a part-time/non-permanent LPN position. She began working permanently for SCCC in approximately December 2007. (All Reports of Injury list hire date as December 1, 2007; Schutter Deposition at 21, 25-26).

3. On August 24, 2007, Employee completed a "Study of Symptoms" intake questionnaire and among other complaints reported feeling "sluggish or tired," "low exercise tolerance," "occasional double vision," "blurred vision without glasses," "cry easily," "hot flashes" and "pitting edema" in the extremities. (SIME 0006; SIME report at 13).
4. On April 14, 2008, Employee saw Brent Ursel, PA, of Glacier Family Medicine (Glacier) in Seward, Alaska, complaining of swollen eyelids. Employee reported redness and swelling of the eyes for two weeks. Mr. Ursel diagnosed blepharitis.[1] (SIME 0009).
5. On July 28, 2008, Employee saw Mr. Ursel, complaining of a facial rash. She reported a rash breaking out on the right side of her face. Employee had swollen upper and lower eyelids and splotchy areas on her forehead, which Ursel stated, "appear to be hives." Ursel assessed allergies and blepharitis, and prescribed Clarinex and Erythromycin ophthalmic, respectively. (SIME 0010; SIME report at 13).
6. In December, 2008, Employee was prescribed Lisinopril and Dyazide for hypertension. (Progress Note, Ray L. Robinson, Jr., M.D., December 22, 2008).
7. On August 10, 2009, a chemical spill occurred during scheduled maintenance of the SCCC boiler system. SCCC maintenance personnel drained several hundred gallons of ethylene glycol mixture from the main SCCC boiler. After the system was drained, the lines were flushed with cold water to remove all residual glycols. During the flushing process, it was discovered that maintenance personnel had inadvertently left a drain-valve open, causing a release of liquids into an overhead crawlspace directly over the patient treatment station in SCCC's medical wing. The liquids migrated into and through ceiling tiles and down walls, subsequently dripping onto a workstation and the floor. (Survey Report, Nortech Environmental Engineering, September 18, 2009). Employee was on duty in the medical

[1] Blepharitis is an inflammation of the eyelids, usually caused by an excess growth of bacteria that is ordinarily found on the skin, blockage of the eyelid's oil glands, and occasionally allergies.

Blepharitis is a common eye condition, causing the eyelids to be reddened, itchy, and somewhat swollen and scaly-appearing at the base of the eyelashes. As scales become coarser, the surface of the eye becomes irritated and forms crusts, which may cause the lids to stick together when waking up in the morning. If this crust falls into your eye, you may feel like you have "something in your eye" or experience a gritty sensation. The eyes may become dry due to inflammation of moisture-producing tissues and this can cause a gritty sensation as well. *http://www.webmd.com/eye-health/blepharitis.*

wing at the time of the spill. She assisted in the rescue of medical records before evacuating the area, then left work for home. (Schutter Deposition at 48-53).

8. On August 20, 2009, Employee sought medical care for symptoms related to the exposure. She saw Mr. Ursel at Glacier, reporting she "was exposed to glycol at work." She complained of headache, nausea, cough, burning sensation in eyes, swollen and irritated lips, dizziness, and tiredness. On examination Mr. Ursel noted, "Nasopharynx with mild congestion, right greater than left" and "Oropharynx with small, erythematous petechial lesions, adjacent to her right tonsillar crypt." Employee's examination was otherwise normal. Mr. Ursel assessed "Chemical exposure," and stated Employee should return to clinic "prn," as needed with no specific return date. (SIME 0022, 0023). On a completed Physician's Report Form 07-6102 Mr. Ursel noted Employee was medically stable, could return to regular work, and would not sustain permanent injury. (SIME 0024).
9. On August 21, 2009, in response to the ethylene glycol spill, Nortech Environmental Engineering, Health & Safety (Nortech) performed an Indoor Air Quality Survey and investigation. The purpose of the assessment was to quantify the airborne concentration of ethylene glycol, assess exposures to workers and inmates, assess cleanup efforts, and identify and recommend procedures for minimizing worker exposures. (Nortech Report, September 18, 2009, at 2). Nortech personnel conducted interviews with maintenance personnel, senior management, and medical staff, conducted thorough visual inspection of the impacted work areas, as well as any area with any potential for exposure, defined as all areas on the same HVAC (heating, ventilation, air conditioning) system, reviewed Material Safety Data Sheets (MSDS), and conducted air quality sampling. (*Id.* at 2-3, 5). Ethylene glycol was found to be the only listed hazardous material contained in the spilled fluid. (*Id.* at 2). Nortech noted in its report that at the time it conducted its investigation 11 days after the spill, no signs of glycol were noted, and the cleanup efforts "appeared to be very thorough." Nortech reported "All impacted materials that were not hard-surface had been removed from service, including approximately fifty square-feet of ceiling tile at six different locations. One work station in the medical treatment general areas was noted as being removed completely from the wall. . . All impacted materials were removed from the area and . . . processed by SCCC hazardous material personnel, in concert with the ADEC." (*Id.* at 4). Nortech concluded contamination on the walls was superficial, migrating down

the outside of painted blocks, and inspection showed concrete wall cavities were not impacted. It found no additional materials were impacted or required removal or additional efforts. (*Id.* at 6). Nortech was informed the State of Alaska, Division of Occupational Safety and Health (AKOSH) had inspected the day following the spill, but AKOSH's investigation was pending, and no report was available. No report from AKOSH has been filed with the Board. (*Id*. at 3, Record).

10. Nortech noted the ethylene glycol product used in the SCCC boiler system is obtained as a concentrate for dilution with water depending on intended use location. The manufacturer's recommendations for use in most Alaska environments is a 62% glycol, 38% water ratio. The investigation concluded, however, that the release occurred after the 62/38 mixture had been successfully drained and the line was being flushed with cold water in order to purge any residual ethylene glycol remaining. (Nortech Report at 5). Nortech was told the total volume of liquid released during the flushing involved between six and ten gallons. (*Id.*). This volume of spillage was corroborated by David Norcross, PA, the facility's physician's assistant, who arrived when called about the spill. Mr. Norcross saw fluid draining down one wall, through a sprinkler, and estimated there were between five to ten gallons of fluid which spilled. (Norcross Deposition at 5-6). Nortech noted that a ten gallon spill of the mixture would result in a six gallon spill of glycol, but since the spill occurred after the glycol mixture had been flushed, and during a flush of the empty lines with cold water, the amount of glycol spilled was less. At her deposition, Employee estimated the spill volume as being between 50 and 75 gallons. At hearing, Employee stated it was more than six to ten gallons. (Schutter Deposition at 50; Schutter Hearing Testimony).
11. Nortech collected air samples for ethylene glycol analysis in ten locations: the main patient treatment room, Nurse 3 patient treatment room, two overhead crawlspaces, east and west ends, medical records room, mental health office, staff break room, education office, property room, and Post 5-A corridor. Air sampling chain of custody was maintained. (Nortech Report at 6-7). Airborne concentrations of ethylene glycol were not detected at nine of the ten sampling locations. At one location, the main patient treatment room, ethylene glycol was present at a level of less than two percent of the industry standard recommended ceiling limit for exposure. Nortech noted ethylene glycol is not a carcinogen, and poses no exposure risk at room temperature because of its low vapor pressure, although

adverse effects including irritation of eyes, skin, nose, throat, lassitude, headache, dizziness, central nervous system depression, abnormal eye movements and skin sensitization have been reported as a result of exposure to heated aerosolized mists. (*Id.* at 8-9).

12. The August 10, 2009 spill occurred during a cold water flush of the HVAC system following SCCC maintenance's purge of the 62%/38% ethylene glycol/water mixture, and thus involved hyper-diluted ethylene glycol at or below a 70 degree room temperature. (Nortech Report at 8-9; Schutter Deposition at 51).
13. Nortech noted that international ethylene glycol standards vary, individuals may have different sensitivities to chemicals, and may become hyper-sensitive, more susceptible and/ or develop allergic reactions to certain chemicals from ethylene glycol exposure. (Nortech Report at 8-9).
14. The initial cleanup from the glycol spill was performed by maintenance employees, guards and inmates, none of whom complained of symptoms. (Norcross Deposition at 6-8).
15. On August 24, 2009**,** Employee completed a Report of Injury (ROI) reporting having suffered "Eyes - Throat - Lungs – general fatigue" following an August 10, 2009 chemical spill at work. In the ROI, Employer, through nursing supervisor Heidi Kelley, described the details of injury as "Maintenance drained the boiler system with Dowtherm® SR-7, then flushed it without closing the valve. Joint leaked near x-ray later. Clean-up cabinetry removal – Both caused more fumes." Employer later identified the chemical as Dowtherm® SR-1. Employee's injury was assigned AWCB Case No. 200911455. (Report of Injury, filed September 1, 2009).
16. On September 1, 2009, Employee returned to Mr. Ursel with complaints of laryngitis and constant headache since the glycol spill. Employee reported her symptoms are worse when she is at work. Employee reported itchy, watery, blurry eyes, sore and irritated throat, mouth/tongue ulcerations, and a feeling of being drunk/lethargic. On physical examination Mr. Ursel noted, "Pt. has froggy voice. HEENT – Supple w/o lymphadenopathy. TMs grey with good LR. No pain over sinuses. Nasal turbinates swollen. Mouth – normal dentition. No swelling of lips noted. Tongue – normal. Lungs – CTA[2]." He assessed "Glycol exposure, airway irritation." (SIME 0026).

[2] Clear to auscultation.

17. On November 23, 2009, Employee was seen by Darin M. Bell at Providence Seward Medical Center Emergency Room for nausea and vomiting. Dr. Bell opined Employee's nausea and vomiting were secondary to viral gastritis/gastroenteritis. (SIME 0029-0030).
18. On January 21, 2010, Employee reported suffering "Respiratory – SOB (shortness of breath)," as body parts affected from another exposure occurring on January 21, 2010. Employer, through Ms. Kelley, noted the exposure resulted from vapors emanating from the x-ray room when the x-ray processor was being tested. This case was assigned AWCB Case No. 201014041. (Report of Injury for January 21, 2010).
19. On January 22, 2010, Employee returned to Mr. Ursel reporting she had headache, lightheadedness, shortness of breath, wheezing, and hoarseness following an exposure the previous day, caused when another nurse was cleaning with a detergent mixed with bleach. On physical examination Mr. Ursel noted Employee was extremely hoarse and very short of breath. There was no cyanosis around her lips or fingers and no wheezing in her lungs. Employee's HEENT examination was normal. Mr. Ursel assessed "multiple chemical sensitivity syndrome." On a completed Physician's Report Form 07-6102, Mr. Ursel noted Employee could return to work. (SIME 0034-0035).
20. On January 28, 2010, Employee returned to Mr. Ursel in follow up to her previous visit and reported being very tired, achy, and short of breath and of having hand and arm weakness. Mr. Ursel again assessed "multiple chemical sensitivity syndrome" and referred Employee to a pulmonologist. On a completed Physician's Report Form 07-6102, Mr. Ursel noted Employee was not medically stable and could not return to work for one to three days. (SIME 0038-0039).
21. On January 29, 2010, a chest x-ray showed no acute cardiopulmonary findings. (SIME 0046).
22. On February 1, 2010, Employee returned to Mr. Ursel and reported she started feeling better over the weekend. Her laryngitis was improving and her breathing was not as rapid. Mr. Ursel stated, "overall, she is getting better." He referred Employee to Gregory Gerboth, M.D., for a pulmonary evaluation. On a completed Physician's Report Form 07-6102, Mr. Ursel noted Employee was not medically stable, but could return to modified work. (SIME 0047-0048).

23. On February 10, 2010, Employee completed an ROI for a February 4, 2010 exposure. She reported suffering coughing, hoarseness, and trouble breathing. She described the mechanism of injury as coming from fumes somewhere in the medical department. She reported after going home, she continued to experience hoarseness and shortness of breath and the top of her mouth was swollen and tender. The next day Employee noticed the top of her mouth was blistered and continued to remain swollen. This case was assigned AWCB Case No. 201014042. (Report of Injury for February 4, 2010).
24. On February 25, 2010, Dr. Gerboth evaluated Employee, diagnosed "irritant-related lung exposure," and opined Employee should "avoid subsequent exposures to any kind of agents that might be causing ongoing problems." He recommended increasing Advair use. (SIME 0054).
25. On March 30, 2010, Mr. Ursel examined Employee for reported voice hoarseness and neurological symptoms including forgetfulness, memory problems, and trouble concentrating. On physical examination Mr. Ursel noted swollen nasal turbinates. Mr. Ursel assessed "exposure to glycol, SOB, memory issues." On a completed Physician's Report Form 07-6102, Mr. Ursel noted Employee was not medically stable, but could return to regular work. (SIME 0056-0057).
26. On April 8, 2010, Mr. Ursel treated Employee in follow up. Employee reported, "Everything is about the same." (SIME 0061-0062).
27. On April 9, 2010, a Cardiolite stress test showed normal perfusion and normal left ventricular wall motion and function. (SIME 0065).
28. On May 10, 2010, Employee returned to Mr. Ursel reporting shortness of breath, fatigue and wet cough following an incident on April 29th and May 3rd where maintenance crews were working on the sewers and "took many of the p-traps off, which allowed the fumes to flow into the area." No ROI was filed for this reported exposure. Mr. Ursel noted nasal turbinates very swollen with clear mucous, post pharynx and lungs clear. He assessed "shortness of breath, hypotension, chemical exposure." On a completed Physician Report form he noted Employee was not medically stable but released her to regular work on May 13, 2010. (SIME 0070-0072).
29. On May 25, 2010, Mr. Ursel treated Employee for mouth sores, hoarse voice, sore throat and shortness of breath and assessed "Mouth lesions-uncertain etiology," "glycol exposure,"

and "hoarse voice, worsening." He recommended Employee follow up with an ear, nose and throat specialist (ENT). (SIME 0076-0077).

30. On June 3, 2010, Mr. Ursel met with Employee to review paperwork. Employee reported her mouth lesions had cleared but she continued to have short term memory problems and laryngitis. Mr. Ursel noted Employee would be seeing Grace Ziem, M.D., in Maryland later in the month. He assessed laryngitis and occupational exposure to glycol and referred Employee to Dr. Ziem and an ENT for chronic laryngitis. (SIME 0079).
31. On July 19, 2010, Employee had her blood drawn at Glacier, per Dr. Ziem's request her blood be drawn before her August 31, 2010 appointment. On a completed Physician Report form Mr. Ursel noted Employee was not medically stable but was released to work. (SIME 0083-0084, 0088-0089).
32. A July 29, 2010 laboratory report from SpectraCell labs showed asparagine, glutathione, and Spectrox™ deficiencies. (SIME 0084-0085).
33. On August 2, 2010, on referral from Mr. Ursel for persistent hoarseness and cough, Employee saw Bret Rosane, M.D., an otolaryngologist. On physical examination by flexible fiberoptic laryngoscopy Dr. Rosane noted vocal cords thickened without lesions, with normal mobility. No evidence of gastroesophageal reflux disease, epiglottis normal, piriform sinuses normal, adequate airway above level of vocal cords, and enlarged thyroid gland. He recommended testing for thyroid stimulating hormone (TSH), T3 and T4. (Dr. Rosane note, August 2, 2010).
34. On August 9, 2010, Employee was seen by Mr. Ursel with difficulty breathing, coughing and puffy eyes. Mr. Ursel ordered her to stop her blood pressure medicine, Lisinopril, which he suspected might be contributing to her cough. Blood testing requested was returned normal. (SIME 0098-00100).
35. On August 31, 2010, Employee was seen by Dr. Ziem. Dr. Ziem obtained a social and medical history from Employee and performed a physical examination. It is not apparent Dr. Ziem reviewed any of Employee's medical records. Dr. Ziem states she performed neurologic, neurocognitive, and neurophysiologic exams using "U.S. Government recommended methods for neurotoxicity," but does not identify what testing methods were implemented. Dr. Ziem diagnosed toxic encephalopathy, upper and lower reactive airway disease, peripheral neuropathy, and "other effects resulting from the widespread

inflammation process of numerous exposures and lack of proper remediation." (SIME 0107-0111).

36. Dr. Ziem prescribed a checkbox neural protocol including nebulized glutathione, hydroxycobalamin drops, sensitization capsules containing a variety of vitamin supplements and herbal extracts. (SIME 000150, 000152, 000168).
37. In her August 31, 2010 report, Dr. Ziem made the following assertions:
    (a) Employee was "in good health until August 10, 2009." (SIME 0107).
    (b) This patient has no past history of allergies…" (*Id.*).
    (c) Employee's toxic encephalopathy, upper and lower reactive airway disease, and peripheral neuropathy are caused by her workplace exposure to DowTherm. (*Id.* at 0110).
    (d) There was a large spill of Dowtherm® SR-1 (over 90% ethylene glycol) at the Spring Creek Correction Center in Seward, Alaska on August 10, 2009. (*Id.* at 0107).
    (e) "I am concerned that there has been inadequate remediation and a pattern of harassment that has affected multiple patients from the Spring Creek Correctional Center. The lack of remediation is a violation of the OSHA General Duty Clause which requires the employer to maintain a safe and healthy workplace." (*Id.* at 0110).
    (f) "I have been practicing medicine for forty three years, focusing largely on chemical illness and this is one of the most serious situations of employee harassment I have ever encountered." (*Id.* at 0111).
38. Dr. Ziem opined Employee was unable to return to work "for medical reasons and failure of medically necessary reasonable accommodations, for which she is a qualified individual." (*Id.* at 0133).
39. On August 30, 2010, Employer began paying Employee TTD benefits of $855.03 per week. (Compensation Report, November 8, 2010).
40. On October 6, 2010, Employee returned to Mr. Ursel. Reason for Visit is listed as "Follow up from Dr. Ziem, MD visit, blood work." The chart note states, "Employee has been put on a protocol to try and detoxify her system and repair the damage done by the glycol." (SIME 0158).

41. On October 25, 2010, Employee was seen for an Employer's Medical Evaluation (EME) by Dennis Stumpp, M.D., M.S. Dr. Stumpp is Board Certified in Occupational Medicine. (EME Report, October 25, 2010; SIME 0163).
42. Dr. Stumpp obtained from Employee a history of her present illness, and past medical, family, social and occupational history. Employee denied any past history of odor intolerance, allergies, asthma or hay fever. (SIME 0165). Dr. Stumpp did a chronologic medical records review of records from April 14, 2008 through September 10, 2010. (SIME 0167-0172). He examined the MSDS for Univar Caustic Soda Anhydrous; Dowtherm® SR-1 Heat Transfer Fluid containing ethylene glycol 95% and potassium hydrogen phosphate less than 3%; Dowfrost® 40 Heat Transfer Fluid containing propylene glycol 37 to 43%; Kodak RP X-OMAT Developer containing potassium sulfite, hydroquinone, glutaraldehye bis (potassium bisulfate), glutaraldehyde, sodium sulphite and 1-phenyl-3-pyrazolidinone; Kodak RP X-OMAT LO containing ammonium thiosulphate, sodium thiosulphate, ammonium bisulphate, acetic acid and sodium bisulphate; and trisodium phosphate. (SIME 0172-0173). He reviewed an oil and hazardous substances spill notification about the August 10, 2009 spill, reporting the spill was sucked up with a 12 gallon wet vac, large fan placed to disperse fumes, all spilled material recovered, with none going down the drains, a citation and notification of penalty regarding an August 19, 2009 inspection, presumably by AKOSH, for failure to implement respiratory protection program including fit testing when different respirators were used for ethylene glycol and dipotassium hydrogen phosphate, and because hazardous materials training was not provided. Dr. Stumpp also reviewed the AWARE Consulting industrial hygiene monitoring report, noting air samples obtained showed no detectable level of sodium bromide, hydroquinone, ammonia or particulates. He also reviewed the Nortech report, noting primarily non-detectable levels of ethylene glycol but for one sample at a level of .65 mg per meter cubed. (SIME 0173-0174).
43. Dr. Stumpp assessed (1) vocal cord dysfunction with hoarseness and dyspnea not causally related to nor exacerbated by workplace factors on a more probable than not basis, (2) symptom complex with coughing, shortness of breath, upper respiratory irritation, difficulty concentrating, problems with balance in response to a variety of odorous challenges both at and away from work, also occurring in absence of challenges, and non-work related, (3)

preexisting history of high blood pressure and leg edema, (4) preexisting history of insomnia, and (5) preexisting history of blepharitis and facial rashes. (SIME 0174-0175).

44. From his examination Dr. Stumpp reported Employee located Dr. Ziem online, and traveled to Maryland to see her. He stated Dr. Ziem is well known for her advocacy of multiple chemical sensitivity as a diagnosis who is notorious for validating subjective symptomatology and placing patients on total disability in the absence of significant objective findings. He noted Dr. Ziem ordered micronutrient testing which has no demonstrated efficacy for a diagnosis of toxic injuries. (SIME 0176). Examining Dr. Ziem's website, Dr. Stumpp reported Dr. Ziem espouses "neurosensitization as the medical key to treatment of chemical injury." He opined that in spite of the extensive bibliography Dr. Ziem provides for this treatment, the prescribed intervention with vitamins and nutrients have not been shown in any randomized trials to be effective in treatment of MCS or other chemical related illness. Dr. Stumpp stated Dr. Ziem diagnosed reactive airway disease on the basis of a questionnaire, ignoring normal spirometry testing in the chart at the time the patient was complaining of shortness of breath, the absence of exams documenting wheezing, negative response to bronchodilators, and a negative methacholine challenge test. He criticized Dr. Ziem's failure to recognize reactive airway disease cannot occur with a negative methacholine challenge test, and opined a negative test "completely rules . . . out [reactive airway diseases]". Dr. Stumpp labeled Dr. Ziem's theories and treatment "twentieth century snakeoil." He explained "multiple chemical sensitivity" has been relabeled "idiopathic environmental sensitivity" because there is no evidence it is related to chemical exposure nor does it represent a sensitivity as defined in the medical sense. Dr. Stumpp noted Employee's symptoms have occurred both at and away from work in response to a variety of exposures which would be expected to be common in everyday life. (*Id.*). He noted Employee has not shown any significant improvement in her symptomatology nor her disability conviction by being off work since August. He opined this is not consistent with occupational causation. (*Id.*). Dr. Stumpp opined there is no objective evidence of an occupational disease, Employee's employment was not the substantial cause of any condition or symptoms, nor did the air quality at SCCC aggravate, accelerate or combine with a preexisting condition to produce the need for any specific treatment for a specific disability. (SIME 0177). Dr. Stumpp opined Dr. Ziem's treatment

and testing were not warranted by objective findings, Dr. Ziem's recommended treatment is not an acceptable medical option, there is no scientific basis for the treatment Dr. Ziem has prescribed, and it is outside the tenets of mainstream medicine and toxicology. (*Id.*). Dr. Stumpp further opined Dr. Ziem's treatment would not promote recovery from individual attacks caused by a chronic condition, and no further diagnostic tests nor any further treatment is recommended. (SIME 0177-0178). He opined Employee does not have a diagnosable occupational condition. He concluded Employee has the physical capacities to perform the job of LPN at SCCC, noting Employee continued working at SCCC following the August 10, 2009 spill, until taken off work by Dr. Ziem in August, 2010, and there is no evidence she was unable to perform her job due to air quality conditions during that time. (SIME 0178).

45. On November 3, 2010, based on Dr. Stumpp's report, Employer controverted all benefits after November 2, 2010. (Notice of Controversion, November 2, 2010).

46. On December 8, 2010, Employee returned to Mr. Ursel. The reason for the visit was to "document reaction to visit at SCCC today at 2:30 PM." Employee reported:

> she went to the admin building at Spring Creek today to drop off paperwork for her retirement. As soon as she walked in, she noted some strong odors. She immediately started coughing and feeling short of breath. Now, she is extremely tired, has a headache, is short of breath.

SIME 0183. On physical examination Mr. Ursel noted "rash present right side of neck," "Patient with hoarse voice," "She is tacypnic,"[3] "Nasal turbinates pink and very swollen," and "clear mucous present." He assessed "chemical hypersensitivity syndrome" and advised Employee to go home and stay away from as much chemical exposure as possible. (SIME 0183-0184).

47. On January 31, 2011, Employee returned to Mr. Ursel. The reason for the visit was to "document reaction to visit at SCCC." Employee reported she:

> went to spring creek correctional center to turn in her chits and her employee badge. She went into the lobby to sign her paperwork. They were tearing the ceiling apart while she was there. She was there maybe 10-15 min. She started coughing and feeling short of breath right away. It became

[3] "tacypnic," suffering "tachypnea," Rapid breathing. The American Heritage Medical Dictionary, 2007, Houghton Mifflin Company.

> progressively worse. She has the dry, hacky cough, slight wheeze, light headed, headache, eyes watering, nose running, tickle in the throat. She was fine before going out.

SIME 0188. On physical examination Mr. Ursel noted "patient is coughing almost constantly. She has an audible expiratory phase to respiration." He also noted, "faint rash on neck. It becomes pronounced as she sits in the exam room," "Eyes are watering," and "Nasal turbinates are swollen with clear mucous." He assessed chemical sensitivity reaction and cough. (SIME 0188-0189).

48. On February 22, 2011, Gunnar Heuser, M.D. evaluated Employee and agreed with Dr. Ziem's diagnoses of toxic encephalopathy, peripheral neuropathy, pharyngitis and laryngitis, vocal cord dysfunction, and reactive airway disease. Employee testified she located Dr. Heuser via an internet search. Dr. Heuser did not review Employee's medical records prior to August 2009. He opined "The chemicals which the patient was exposed to are known to have irritating effects and are also known to affect brain function. This is what happened in this case." He also opined, "No cure is available for toxic encephalopathy, nor for the upper respiratory problems she has. Only symptomatic treatment is available." He stated Employee's "upper respiratory problems are a disease and not caused by multiple chemical sensitivity." He further opined Employee developed multisystem complaints, specifically with regard to brain function and upper respiratory function, from exposure at work and opined Employee is "totally disabled from exposure to work." He based his opinion on Employee's medical records following the August 2009 spill and Dr. Ziem's reporting. (SIME 0190-0194; Employee Hearing Testimony).

49. On June 3, 2011, Mr. Ursel testified his experience and training is in general medicine with an emphasis on acute preventative and urgent care, and he has had no toxicology training related to exposure to ethylene glycol or other chemicals. He testified that prior to treating Employee he had no experience treating people with "multiple chemical sensitivity," and in fact had never heard of chemical sensitivity prior to treating Employee. (Ursel Deposition at 5-10). Mr. Ursel admitted the glycol mixture which spilled would have to be at a high temperature to cause symptoms. (*Id.* at 23). Another SCCC nurse gave him the name of Dr. Ziem. Employee and another SCCC nurse and claimant, Heidi Kelley, brought him information regarding multiple chemical sensitivity syndrome, and he did some Internet

research as well. Mr. Ursel stated the treatment Dr. Ziem prescribed for Employee was multivitamins and supplements at a cost of several hundred dollars per month. (*Id*. at 24-25). Mr. Ursel expressed no opinion on whether Employee suffered permanent impairment. (Observation; *See* Box 29 on all Ursel Physician Report forms).

50. On June 8, 2011, clinical psychologist Paul E. Turner, Ph.D., evaluated Employee for social security disability determination purposes. The only medical records he was provided were those from Dr. Ziem and Dr. Heuser. Dr. Turner's Axis I diagnoses included (1) cognitive disorder not otherwise specified secondary to toxic encephalopathy versus dementia, (2) major depression, and (3) major depression affecting medical problems. Axis III diagnoses included (1) general medical conditions: toxic exposure to chemical substance, toxic encephalopathy, left hip replacement, and two C sections. (SIME 0199-0207).
51. On September 28, 2011, Employee filed multiple claims requesting PTD, PPI, medical costs, interest, and attorney's fees and costs. (Claims, September 28, 2011).
52. On October 1, 2011, Dr. Stumpp provided an Addendum to his EME report after reviewing the Aware and Nortech memoranda, stating the additional reports did not alter the conclusions reached and set forth in his initial EME report. (EME Addendum, October 1, 2011).
53. On December 21, 2011, at Employer's request, Employee was seen by psychiatrist S. David Glass, M.D., for a further EME. Dr. Glass diagnosed conversion disorder unrelated to her work with Employer. (EME Report, December 21, 2011; SIME 0236, 0250-0257).
54. On April 6, 2012, Dr. Turner clarified his earlier opinion in a letter to Assistant Attorney General Rhodes. Dr. Turner clarified he is unable to state Employee's cognitive deficits and Axis I diagnoses are a result of her employment with Employer. He explained, "there is no scientific certainty to make such a statement." Mr. Turner stated, "The AXIS I differential diagnoses clearly indicate that my findings do not specify a causal relationship with AXIS III." (SIME 0260).
55. On July 6, 2012, Employee was examined for an SIME by Edward B. Holmes, M.D., MPH, MSc., an occupational medicine and medical toxicology specialist. (SIME Report, Dr. Holmes, August 3, 2012).
56. Dr. Holmes obtained from Employee a history of her present illness, as well as a past medical, social, family and occupational history. (SIME report at 9-12).

57. On physical examination Dr. Holmes reported Employee sat comfortably for the entire interview, and did not display any obvious signs of physical distress or discomfort for over an hour. Employee became teary-eyed and emotional when explaining her current symptoms. Her voice vacillated between cracked and raspy and smooth, albeit congested after she began to cry and tear up; leading to some hoarseness. She exhibited no signs of word finding difficulty or memory dysfunction based upon her detailed medical history recitation. (SIME report at 12).
58. Dr. Holmes diagnosed the following:
    a) Enlarged thyroid, with thyroid nodule, not work-related;
    b) Chronic hoarseness, more likely than not at least partially secondary to thyroid disorder. Also, possibly associated with vocal cord dysfunction, not work-related;
    c) Preexisting systemic osteoarthritis;
    d) Preexisting complaints of low exercise tolerance and fatigue, and memory loss likely associated with her clinical presentation of obesity related hypoventilation and/or sleep apnea, and depression, combined with possible thyroid disease;
    e) Preexisting allergies;
    f) Chronic cough that is most likely a combination of her preexisting allergies and diagnosed conversion disorder. Vocal cord dysfunction cannot currently be ruled out, nor can Lisinopril cough;
    g) Acute, temporary chemical irritant reaction to an industrial chemical exposure episode with associated acute, self-limited, and short-lived symptoms of nausea, headache, subjective sensation of lip swelling, cough, and burning sensation of the eyes, fully resolved by 08/31/09, industrially related, however no chronic residual impairment;
    h) Symptoms and findings suggestive of major depressive disorder; and
    i) Conversion disorder associated with significant subjective symptom complex without objective findings. (SIME report 35).
59. Concerning Dr. Ziem's diagnoses of toxic encephalopathy, peripheral neuropathy, and upper and lower reactive airway disease, Dr. Holmes opined that from his review of the medical records, testing and examination, there is no objective evidence to support Dr. Ziem's diagnoses. (SIME at 46-48).

60. Commenting on Dr. Heuser's consultation report and dismissing it, Dr. Holmes noted Dr. Heuser's failure to comment on negative findings by Drs. Rosane, Stumpp, Bell, Gerboth and others, his failure to perform any objective tests, his reliance on Dr. Ziem's testing and failure to discuss Dr. Stumpp's, and his use of qualitative statements not found in medical records, such as Employee "was a good worker." (SIME report at 27).
61. Discussing in turn each of the chemicals to which exposure is alleged, Dr. Holmes noted the August 10, 2010 ethylene glycol spill was of a hyper-diluted glycol mixture following a cold water flush of the system resulting in a six to ten gallon spill. He concluded inhalable vapors would have been minimal, with none detectable by August 21, 2010, when the Nortech investigation was done. He noted it important to point out that ethylene glycol irritation occurs mainly with ingestion, not with dermal, ocular or mucosal contact, and no chronic effects have been found associated with inhalation and skin exposure of ethylene glycol, noting millions of people use it in the form of antifreeze every day, with inhalation and skin exposure, without permanent effect. (SIME report at 40-45).
62. Dr. Holmes concluded "there is no evidence of aggravation, acceleration, or a combination of an employment injury with a pre-existing condition, requiring chronic treatment or causing disability." He opined, "There is no plausible physiologic contribution from the 08/10/09 chemical exposure to the development of her complaints and symptoms. Ms. Schutter (Starr) simply has ongoing conditions that pre-existed the exposure and which continue to develop under natural progression of those diseases." He further stated, "Employee suffered an acute reaction or irritation to noxious odors that was self-limited, and short-lived. The 08/10/09 industrial chemical exposure did not plausibly aggravate, accelerate, or combine with pre-existing conditions to create any new or permanent condition, and was not a substantial cause for such." He opined Employee, "does not have a current active diagnosis related to her alleged exposure to chemicals" and "workplace exposure did not cause a chronic disability." (*Id.* at 1-2, 5, 8).
63. Concerning whether Dr. Ziem's prescribed treatment is reasonable and necessary, Dr. Holmes opined Dr. Ziem's treatments rendered including supplements, minerals, and unusual formulations of vitamins, etc. are not recognized by main stream medical scientists as effective treatments for her diagnoses or for any form of chemical exposure. He opined Employee's symptoms were acute and resolved completely on their own and her medical

treatments were not reasonable and/or necessary for the process of recovering from her chemical exposures. (*Id*. at 3, 6).

64. Dr. Holmes concluded Employee suffered an acute irritant chemical exposure episode with acute, self-limited, and short-lived symptoms, which resolved completely by August 31, 2009, with no permanent residuals specifically attributable to the work exposure incident. (SIME at 3).

65. On February 27, 2013, Employee testified every day she was at work following the August 2009 spill, and as soon as she would walk into the building, she would suffer symptoms such as dizziness, unsteadiness on her feet, nose and throat burning, constant coughing, disorientation, and headache. She also began having cognitive and memory problems after the spill. Employee testified she can no longer work and has to be careful where she goes, and what she eats and drinks. As an example, Employee testified she recently went to the emergency room because she had eaten from a salad bar, causing her to have extreme vomiting and diarrhea, explaining that to keep the salad bar fresh "they put something on it." As another example, she reflected, she stopped at a fruit stand and picked up a honey crisp apple, but five minutes after eating it she was passed out and vomiting on the floor because of the pesticides or chemicals used when the apple was grown. She never knows when it will happen. Employee testified she did not have this sensitivity, allergies, or these symptoms prior to the August 2009 spill. She did have a small rash on her face due to shingles, which subsequently healed. (Employee).

66. On February 27, 2013, Dr. Stumpp testified he agreed with Dr. Holmes that Employee suffered an acute reaction or irritation to noxious odors that was self-limited, and short-lived. He agreed the August 10, 2009 industrial chemical exposure did not plausibly aggravate, accelerate, or combine with pre-existing conditions to create any new or permanent condition, and was not a substantial cause for such. He also concurred Employee does not have a current active diagnosis related to her alleged exposure to chemicals, the workplace exposure did not cause any chronic disability, and Employee's medical treatment, including Dr. Ziem's treatments, has not been reasonable and/or necessary for the process of recovering from her chemical exposures. He concurred Dr. Ziem's treatments are not recognized by main stream medical scientists as effective treatments for her diagnoses or for any form of chemical exposure. He also agreed there is

no objective evidence to support Dr. Ziem's diagnoses of toxic encephalopathy, peripheral neuropathy, and upper and lower reactive airway disease. (Dr. Stumpp Hearing Testimony).

67. On March 8, 2013, Mr. Norcross testified Employee had cognitive deficits, fatigue complaints, and mentioned wanting to retire prior to the August 2009 spill. (Norcross Deposition at 12).

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 so as to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of this chapter;
>
> (2) workers' compensation cases shall be decided on their merits except where otherwise provided by statute;
>
> . . .
>
> (4) hearings in workers' compensation cases shall be impartial and fair to all parties and that all parties shall be afforded due process and an opportunity to be heard and for their arguments and evidence to be fairly considered.

The board may base its decision not only on direct testimony, medical findings, and other tangible evidence, but also on the board's "experience, judgment, observations, unique or peculiar facts of the case, and inferences drawn from all of the above." *Fairbanks North Star Borough v. Rogers & Babler*, 747 P.2d 528, 533-34 (Alaska 1987).

> **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.
>
> **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. . . .
>
> **AS 23.30.120 Presumptions.** 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
>
> (1) the claim comes within the provisions of this chapter; . . . .

Under AS 23.30.120(a)(1), benefits sought by an injured worker are presumed to be compensable. The presumption of compensability is applicable to any claim for compensation under the workers' compensation statute, including medical and continuing benefits. *Meek v. Unocal Corp.*, 914 P.2d 1276, 1279 (Alaska 1996); *Municipality v. Carter*, 818 P.2d 661 at 664-665. An employee is entitled to the presumption of compensability as to each evidentiary question. *Sokolowski v. Best Western Golden Lion*, 813 P.2d 286, 292 (Alaska 1991).

Application of the presumption involves a three-step analysis. *Louisiana Pacific Corp. v. Koons*, 816 P.2d 1379, 1381 (Alaska 1991). To attach the presumption of compensability, an employee must first adduce "some" "minimal" "relevant evidence" establishing a "preliminary link" between his or her disability or need for medical care and the employment. *Cheeks v. Widmer & Becker/G.S. Atkinson, J.V.*, 742 P.2d 239, 244 (Alaska 1987). The evidence necessary to raise the presumption of compensability varies depending on the claim. In claims based on highly technical medical considerations, medical evidence is often necessary to make that connection. *Burgess Constr. v. Smallwood*, 623 P.2d 312, 316 (Alaska 1981). In less complex cases, lay evidence may be sufficiently probative to establish the connection. VECO, Inc. v. Wolfer, 693 P.2d 865, 871 (Alaska 1985). In making the preliminary link determination, the board does not assess witness credibility. *Excursion Inlet Packing Co. v. Ugale*, 92 P.3d 413, 417 (Alaska 2004).

If the employee establishes the preliminary link, the burden shifts to the employer. If the employer can present substantial evidence demonstrating that a cause other than employment played a greater role in causing the disability or need for medical treatment, 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. *Miller v. ITT Arctic Services*, 577 P.2d 1044, 1046 (Alaska 1978). "It has always been possible to rebut the presumption of compensability by presenting a qualified expert who testifies that, in his or her opinion, the claimant's work was probably not a substantial cause of the disability." *Norcon, Inc. v. Alaska Workers' Compensation Board*, 880 P.2d 1051, 1054 (Alaska 1994) *citing Big K Grocery v. Gibson*, 836 P.2d 941 (Alaska 1992). The employer's evidence is also considered in isolation, with credibility is not examined at this stage in the analysis. *Veco, Inc. v. Wolfer*, 693 P.2d 865, 869-870 (Alaska 1985).

Where 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 or need for medical treatment. 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 has the sole power to determine witness credibility, and its findings about weight are conclusive even if the evidence is conflicting. *De Rosario v. Chenega Corporation,* 297 P.3d 139, 146-147(Alaska 2013)***;*** *Smith v. CSK Auto, Inc.*, 204 P.3d 1001, 1008 (Alaska 2009); *Harnish Group, Inc. v. Moore*, 160 P.3d 146, 153 (Alaska 2007). This tenet also pertains to medical testimony. The board has the sole discretion to determine the weight to be accorded 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.

(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.

AS 23.30.150. Commencement of compensation. Compensation may not be allowed for the first three days of the disability, except the benefits provided for in AS 23.30.095; if, however, the injury results in disability of more than 28 days, compensation shall be allowed from the date of the disability.

AS 23.30.180. Permanent total disability. In case of total disability adjudged to be permanent 80 percent of the injured employee's spendable weekly wages shall be paid to the employee during the continuance of the total disability. . . .

AS 23.30.190. Compensation for permanent partial impairment; rating guides.
(a) In case of impairment partial in character but permanent in quality, and not resulting in permanent total disability, the compensation is $177,000 multiplied by the employee's percentage of permanent impairment of the whole person. The percentage of permanent impairment of the whole person is the percentage of impairment to the particular body part, system, or function converted to the percentage of impairment to the whole person as provided under (b) of this section. The compensation is payable in a single lump sum, except as otherwise provided in AS 23.30.041 but the compensation may not be discounted for any present value considerations.

> (b) All determinations of the existence and degree of permanent impairment shall be made strictly and solely under the whole person determination as set out in the American Medical Association Guides to the Evaluation of Permanent Impairment, except that an impairment rating may not be rounded to the next five percent. The board shall adopt a supplementary recognized schedule for injuries that cannot be rated by use of the American Medical Association Guides.
> (c) The impairment rating determined under (a) of this section shall be reduced by a permanent impairment that existed before the compensable injury. If the combination of a prior impairment rating and a rating under (a) of this section would result in the employee being considered permanently totally disabled, the prior rating does not negate a finding of permanent total disability.

ANALYSIS

1. Were workplace chemical exposures the substantial cause of Employee's claimed disability and need for continuing medical treatment?

The Alaska Workers' Compensation Act provides benefits, including medical costs, PTD, PPI, interest, attorney fees and costs, when a work injury is the substantial cause of disability or need for medical treatment. To be the substantial cause of disability or need for medical treatment, out of all possible causes, employment must be the greater cause. Employee's entitlement to benefits turns on these factual issues to which the presumption of compensability applies.

At the first stage of the presumption analysis, where credibility is not assessed, Employee has raised the presumption of compensability for disability and need for medical treatment through her deposition testimony she developed physiological symptoms following her exposures to workplace chemicals. The presumption is also raised through PA Ursel, whose medical records reflect a belief Employee suffers "multiple chemical sensitivity syndrome" causally related to her workplace chemical exposures, and through Dr. Ziem's written opinion Employee's symptoms reflect her development of toxic encephalopathy, peripheral neuropathy, and upper and lower reactive airway disease as a result of her workplace chemical exposures.

At the second stage of the analysis, again without considering witness credibility, Employer has successfully rebutted the presumption through the testimony and reports of Dr. Stumpp, who opined Employee suffered only an acute reaction or irritation to noxious odors that was self-limited and short-lived, there is no objective evidence she sustained any occupational disease from her employment, and the air quality conditions within SCCC did not aggravate, accelerate or combine

with a preexisting condition to produce disability or need for continuing treatment. He also testified Employee does not have a current active diagnosis related to her alleged exposure to chemicals, the workplace exposure did not cause any chronic disability, and Employee's medical treatment, including Dr. Ziem's treatments, has not been reasonable and/or necessary for the process of recovering from a chemical exposure. Where, as here, Employer has overcome the presumption of compensability, the burden returns to Employee, who must prove all elements of her claim by a preponderance of evidence. At the third stage of the analysis, the board examines and weighs all of the evidence and assesses witness credibility.

The most persuasive evidence in our analysis is the reporting and opinion of SIME physician Dr. Holmes, a toxicologist and occupational medicine specialist, whose evaluation was the most thorough of all involved physicians. In addition to examining Employee, Dr. Holmes reviewed Employee's past medical records, the Nortech and Aware evaluation reports, Mr. Ursel's deposition testimony, the MSDS for Dowtherm® SR-1 heat transfer fluid, and the scientific literature. Also supportive is the reporting and testimony of EME physician Dr. Stumpp, another expert in the field of occupational medicine. In addition to examining Employee, Dr. Stumpp reviewed some of Employee's pre- as well as post-exposure medical records, the Nortech and Aware reports, and the MSDSs for all potentially involved chemicals. Both experts concurred the objective evidence supported a finding Employee suffered an acute reaction or irritation as a result of chemical exposures at work, resulting symptoms were self-limited, short-lived, and resolved with no occupational disease resulting, nor any aggravation, acceleration or exacerbation of a pre-existing condition. Dr. Holmes was convincing in his assertion Employee's subjective post-exposure symptoms were due to her preexisting chronic conditions including preexisting thyroid disorder, allergies, chronic cough, and conversion disorder. Examples of Employee's preexisting conditions include Employee's August 24, 2007 "Study of Symptoms" intake questionnaire, where, among other complaints, she reported feeling "sluggish or tired," "occasional double vision," "blurred vision without glasses," and "cry easily." (SIME 0006). On July 28, 2008, Employee saw Mr. Ursel complaining of a rash on the right side of her face. Mr. Ursel observed swollen upper and lower eyelids and splotchy areas on her forehead, which appeared to be hives, and assessed allergies and blepharitis. (SIME 0010).

Little weight is given the testimony of treating PA Ursel, who diagnosed "multiple chemical sensitivity" (MCS). He readily admitted he has no training in toxicology, had never before treated anyone with chemical sensitivities, and had never heard of MCS before being provided with internet research on the subject by Employee and her co-workers.

Dr. Ziem's opinion Employee developed toxic encephalopathy, peripheral neuropathy, upper and lower reactive airway disease, and disability as a result of workplace chemical exposures is accorded no weight for several reasons, including her failure to review Employee's medical records prior to August 2010, and her reliance on unsupported and inaccurate assumptions for her diagnoses.

Dr. Ziem erroneously believed Employee was "in good health until August 10, 2009" and "has no past history of allergies…" She referred to the spill as "over 90% ethylene glycol," yet it was primarily water, following a water flush of the HVAC system after a 62/38 glycol/water solution had been successfully drained. Based on Employee's erroneous reporting, Dr. Ziem assumed the spill was between 50 and 75 gallons, when impartial eyewitness evidence established it was between six and ten gallons. Dr. Ziem asserted "there has been inadequate remediation," yet the Nortech and Aware reports concluded the remediation was thorough with no measureable traces of toxic chemicals evident by August 21, 2009. Dr. Heuser's opinions are similarly discounted because they rely on the same incomplete record and erroneous assumptions as Dr. Ziem, and on Dr. Ziem's reporting.

Most importantly, Drs. Ziem and Heuser's opinions Employee's workplace exposures caused her to develop toxic encephalopathy, peripheral neuropathy, upper and lower reactive airway disease, are based on hypothesis only, and are unsupported by scientific method, inquiry and evidence. Dr. Ziem's recommended treatment with massive amounts of vitamins, minerals and "micronutrients" are not scientifically supported as treatment for industrial chemical exposure, and are not established effective treatments for ethylene glycol exposure or for exposure to any of the chemicals to which Employee was reportedly exposed. For all of these reasons, no weight is accorded the opinions and diagnoses of Drs. Ziem and Heuser.

Based on the totality of evidence, Employee has failed to prove by a preponderance of evidence her workplace exposures were the substantial cause of any disability or need for medical treatment beyond initial visits to Mr. Ursel for symptomatic relief following the August 10, 2009 exposure. Employee has failed to prove by a preponderance of evidence her workplace exposures aggravated, accelerated or exacerbated her pre-existing recurring chronic ailments causing a new chronic and persisting disease entity. The preponderance of the evidence shows Employee suffered an acute, temporary chemical irritant reaction to an industrial chemical exposure episode with associated acute, self-limited, and short-lived symptoms, which fully resolved by August 31, 2009.

2. Is Employee entitled to medical benefits*?*

An employer is responsible for medical expenses for workplace injuries. AS 23.30.095(a). Because Employee has failed to prove by a preponderance of evidence her workplace exposures were the substantial cause of anything other than acute time-limited symptoms which resolved by August 31, 2009, she is not entitled to medical benefits on or after August 31, 2009. There is no evidence of any unpaid medical expenses prior to August 31, 2009.

3. Is Employee entitled to PTD benefits?

Permanent total disability benefits are payable if an employee can no longer regularly and continuously work because of a work injury. Employee was deemed medically stable and was returned to work after each reported exposure for which she sought medical attention. Employee continued to work for a year following the initial exposure, and through reported successive exposures, until she was taken off work by Dr. Ziem in August 2010, many months after her last reported exposure.

Employer paid Employee TTD benefits for the period August 30, 2010 through November 2, 2010, when it controverted benefits based on Dr. Stumpp's EME report. Because Employee has failed to prove by a preponderance of evidence her workplace exposures were the substantial cause of anything other than acute time-limited symptoms for which no compensable work time was lost, Employee is not entitled to an award of additional disability benefits.

4. Is Employee entitled to PPI benefits?

Permanent partial impairment benefits are payable in the case of an impairment partial in character but permanent in quality. AS 23.30.190. Drs. Stumpp and Holmes opined Employee did not suffer any permanent impairment as a result of workplace exposures. For the reasons outlined above, Drs. Ziem and Heuser's assessment Employee suffers a permanent impairment from workplace exposures is accorded no weight. Employee has failed to prove by a preponderance of evidence her workplace exposures were the substantial cause of anything other than acute time-limited symptoms, for which no permanent impairment has been identified or rated. Employee is not entitled to PPI benefits.

5. Is Employee entitled to interest, attorney fees and costs?

Interest is payable when compensation is due yet unpaid. Attorney fees and costs are payable where an Employer controverts benefits and an employee hires an attorney who is successful in obtaining benefits on the employee's behalf. Here, while Employee is entitled to medical benefits for her visits prior to August 31, 2009, there is no evidence these visits were ever controverted. Since no further compensation is payable, and because Employee has not prevailed on her claim for further medical benefits, PTD, or PPI, no award of interest, attorney fees or costs may be made.

CONCLUSIONS OF LAW

1. *Workplace chemical exposures were not the substantial cause of Employee's claimed disability and need for continuing medical treatment.*
2. *Employee is not entitled to medical expenses on or after August 31, 2009.*
3. *Employee is not entitled to PTD benefits.*
4. *Employee is not entitled to PPI benefits.*
5. *Employee is not entitled to interest, attorney fees and costs.*

ORDER

Employee's claim for medical benefits, PTD, PPI, interest, attorney fees and costs is DENIED. Employee's claim for medical expenses on or after August 31, 2009 is DENIED. Employee's September 28, 2011 workers' compensation claims are denied and dismissed.

Dated at Anchorage, Alaska on July 31, 2013.

ALASKA WORKERS' COMPENSATION BOARD

Linda M. Cerro
Designated Chairperson

Rick Traini, Member

Robert Weel, 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 JANE E. SCHUTTER (STARR) employee / applicant; v. STATE OF ALASKA, self-insured employer; Case Nos. 200911455M, 201014041, 201014042; dated and filed in the office of the Alaska Workers' Compensation Board in Anchorage, Alaska, and served upon the parties this 31st day of July, 2013.

_____

Mariaanna Subeldia, Clerk