ALASKA WORKERS' COMPENSATION BOARD

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

PROMISE HILER, Employee, Claimant,	)	FINAL DECISION AND ORDER
v.	)	AWCB Case No(s). 201115143
ICE SERVICES, INC., Employer,	)	AWCB Decision No. 13-0143
and	)	Filed with AWCB Fairbanks, Alaska on November 4, 2013
LIBERTY MUTUAL INSURANCE CO, Insurer, Defendants.	)	

Promise Hiler's (Employee) November 8, 2012 workers' compensation claim (WCC) was heard on October 3, 2013 in Fairbanks, Alaska. The hearing date was selected on May 22, 2013. Attorney Robert Mason represented Employee. Attorney Martha Tansik represented Ice Services, Inc. and Liberty Mutual Insurance Co. (Employer). Employee appeared by telephone and testified. Jane Miller, Employer's Human Resources Director and Angela Riddick, Aurora Camp Hotel Manager, testified by telephone for Employer. The record closed at the hearing's conclusion on October 3, 2013.

ISSUE

Employee contends she experienced back pain for three days while working as a housekeeper at the Aurora Camp, a remote worksite in Prudhoe Bay. She further contends on the morning of the fourth day, she was taking a shower, raised her arms above her head to wash her hair, and felt

excruciating back pain. She seeks an order finding she was injured in the course and scope of her employment with Employer.

Employer contends Employee never reported she had back pain in the days prior to the incident in the shower until she testified at the October 3, 2013 hearing, but that the reported mechanism of injury had consistently been that she felt sudden pain while taking a shower on the morning of September 23, 2011. As such, Employer contends the incident falls squarely into the "getting ready for work" exception to the remote site doctrine. Employer seeks an order finding Employee was not injured in the course and scope of her employment with Employer.

Was Employee injured in the course and scope of her employment with Employer?

FINDINGS OF FACT

1) In 1994 Employee was involved in an auto accident and suffered whiplash to her neck. (Employee hearing testimony, October 3, 2013).

2) On July 19, 1998, Employee injured her upper back and neck in a work-related accident while employed with a different employer. Employee received medical treatment in the form of physical therapy and pain medications for approximately two years. (Eric Carlsen, M.D. report, February 15, 1999; physical therapy records, 1998-2000).

3) On April 3, 2000, Employee reported she was injured at work on March 16, 2000. "The patient was reaching to put some cigarettes up high and twisted her back, and started having pain which has been localized in the lumbosacral area, and radiates to the right hip. The patient has continued having pain since then. The patient complained that approximately last October she had an injury of the lumbosacral area." (Gonzalo Fraser, M.D. report, April 3, 2000).

4) On June 7, 2000, Dr. Fraser noted Employee's MRI showed degenerative disc disease, small central disc bulge at L4-L5 and stenosis in the levels secondary to the disc bulge. He provided pain medication and restricted Employee from lifting more than 20 pounds for one month. (Dr. Fraser report, June 7, 2000).

5) On June 19, 2001, Employee saw Ellen Lentz, ARNP, complaining of low back pain. Employee reported she had a history of degenerative disc disease and had recently completed a course of physical therapy without improvement. (NP Lentz report, June 19, 2001).

6) On April 8, 2002, Employee completed a patient questionnaire at Rehabilitation Medicine Associates, stating:

> I injured my back in October of 1999 I thought it was just a pulled musal (sic) so I never went to a doctor Reinjured in March of 2000 (I was working in soda cooler I had my back brace on went to lift empty crates felt a pull in my back. 1st time Second time I was at counter went to reach up to get customer cigeretts (sic) felt pull and sharp pain. After about 1 week went and saw doctor.

(Rehabilitation Medicine Associates Patient Questionnaire, April 8, 2002).

7) Employee continued to receive medical treatment for her low back pain until October 2002. (NP Lentz reports, April – October 2002).

8) In 2005, Employee was involved in an auto accident, but was not injured. (Employee hearing testimony).

9) In 2006, Employee suffered a repetitive motion wrist injury while working for a different employer. She received medical treatment and time loss benefits. (NP Lentz reports, December 2006; record).

10) In 2006, Employee suffered an arm, shoulder and facial injury when she "got hit with a wrench by one of my mentally and physically challenged children and adults." (Employee deposition, April 16, 2013, at 35-36).

11) Employee was involved in a motor vehicle accident in February 2010, but was not injured. (Employee hearing testimony).

12) On September 24, 2011, Employer filed a report of occupational injury stating on September 23, 2011, "while taking a shower Promise turned to pick up her towel and a sudden sharp pain caused her to fall to her knees." Employee worked at the Aurora Camp, a remote worksite in Prudhoe Bay, as a housekeeper. Employee did not sign the report of injury, as she had been sent home and was unavailable for signature. (Report of Occupational Injury or Illness, September 24, 2011).

13) On September 26, 2011, Employee was seen at Providence Health, where a lumbar spine x-ray revealed mild disk space narrowing and scoliosis. (Imaging Result Report, September 26, 2011).

14) On September 27, 2011, Employer filed a controversion notice, denying all benefits and asserting Employee's injury occurred while she was preparing for work, which is excluded from the remote site doctrine and thus not compensable. (Controversion Notice, September 27, 2011).

15) On September 28, 2011, Employee saw NP Lentz, who stated "Promise presents today for follow-up on her Workman's Comp injury. On the 23rd she bent over and reached to pick up a towel at work when she suddenly could not feel her legs. She felt as though her hips went out." (NP Lentz report, September 28, 2011).

16) On October 13, 2011, Employer took Employee's recorded statement by telephone. When asked how the injury occurred, Employee stated: "I was in the shower…. I had had two really long days and I was kind of sore and I was taking a shower and the next thing I know I can't feel my legs and I was laying on the floor in pain…. I went to bend over to pick up a towel and the next thing I know my legs went out from underneath me and I actually had to call for help…. I was getting out of the shower…." When asked how many hours she worked the two days before the injury, Employee stated she worked twelve hours each day, which was typical. When asked if she had any prior injuries to her back or any accidents, Employee stated she could not remember. When asked directly whether she was in an auto accident in February 2010, she stated "probably." When asked to describe it she gave a detailed description of the accident. When asked whether this accident was the same one in which she "swerved to avoid a moose," Employee described another accident in which she hit a telephone pole, "but I wasn't going that fast." She described the damage to the vehicle in detail. (Employee's Recorded Statement, October 13, 2011).

17) On October 19, 2011, Employee saw NP Lentz for a follow-up appointment. NP Lentz noted: "Promise presents today for follow-up on her Workman's Comp claim. She was bending over in the shower to pick up a towel at work when she felt some discomfort as though her hips went out and she could not feel her legs." (NP Lentz report, October 19, 2011).

18) Employee treated with Frank Brach, D.C. for low back pain until December 2011, with little improvement. (Dr. Brach reports, September – December 2011).

19) On December 16, 2011, Employee saw Kim Wright, M.D., who diagnosed a central disk protrusion/herniation at L4-5. (Dr. Wright report, December 16, 2011).

20) On January 24, 2012, Employee reported to Carra Stewart, PA-C, she had a "sudden onset of bilateral leg pain with numbness on September 23, 2011. She was working as a housekeeper at the time up on the North Slope and was flown home emergently due to this sudden onset of pain and weakness in the legs." (PA-C Stewart report, February 3, 2012).

21) On March 12, 2012, Dr. Wright performed a left L4-5 laminotomy discectomy. (Dr. Wright operative report, March 12, 2012).

22) On November 9, 2012, Employee filed a WCC, alleging she "slipped while taking a shower in employer provided facility." (WCC, November 8, 2012).

23) On December 4, 2012, Employer filed its answer to Employee's WCC and another controversion notice, contending because Employee's injury was not caused by a limitation of the remote site, it was not compensable. (Employer's Answer, December 4, 2012).

24) On April 16, 2013, Employer took Employee's deposition. When asked how the injury occurred, Employee stated:

> A. I got up that morning. I went down to the smoke shack, smoked a cigarette.
>
> Q. About what time was this?
>
> A. 3:30.
>
> Q. Okay.
>
> A. I went back to my room, got my folded clothes, my towel, my shampoo and everything and I went to the shower rooms and I went to take a shower. And I went to put shampoo in my hair and I hit the ground.
>
> Q. So, you were –
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> A. I was in the shower.
>
> Q. You were in the shower and you had picked up your shampoo and put shampoo in your hand and you started to shampoo your hair, is this correct?
>
> A. I went to shampoo my hair, I didn't make it that far.
>
> Q. Okay. And your back went out?
>
> A. Yes.
>
> …
>
> Q. I'm still trying to get kind of a mental picture of how you moved when your back went out. And so I'm just trying to understand exactly what happened in terms of the actual injury.
>
> A. Okay. The shampoo and the cream rinse were off to the right on the shelf.
>
> Q. Okay.

A. I put the shampoo in my hand and I went to reach my hands up above my head and then I hit the ground. There was just no…

Q. Okay.

A. It was immediate, boom.

Q. Okay. And the shampoo and the cream rinse were on the shelf?

A. Yes.

Q. Okay.

A. And it took me about 45 minutes to crawl out of the shower.

Q. Okay.

A. And to actually reach up and get the shower turned off and get rolled out and get dried off.

When asked at her deposition if she had any other accidents or workers' compensation claims, Employee described several incidents in detail, including one in 1998 in which "the parking lady ran me over with the four wheeler and I went up over the handlebars and then 20 minutes later I got slammed by a truck on the same side and got put between two 250 engines on a boat." She also described a claim for low back injury in 2000 while working for Tesoro when "somebody stacked all the soda around and I had over 30 cases land on me in the cooler." (Employee's Deposition, at 48-49, 36-37).

25) Employee testified at hearing she never had any back pain before the September 2011 injury. She then clarified she had hurt her back in 1999 while working for Tesoro when soda cases fell on her. She had swelling and pain, went to the hospital, and then completed a course of physical therapy. She had pain "off and on" for two months and then she had no back pain again until September 2011. (Employee).

26) Employee testified there had "been a lot of turnover in those three days" before September 23, 2011, and she "had double the work." She testified she was stiff and sore and had told Angela Riddick about her back pain on September 21 and September 22. She testified she worked "14-15 hour days" the three days before September 23 and got off work on September 22 at 8:00 pm. That evening her back "was swelling and sore, throbbing and cramping." She testified she did not take any medication for her pain, including over-the-counter pain medication, but applied ice and

heat the evening of September 22. When asked where she obtained the heating pad, she testified Riddick gave it to her on September 22. She testified she "told the adjuster" about the "cramping, swelling and heating pad." When asked if that statement could be heard in the recorded statement she made to the adjuster, she said, "it should be on there." Later in her testimony, Employee testified she could not remember if she had told the adjuster about her back pain leading up to the September 23 incident. She further testified she did not tell the adjuster she was bending over to pick up a towel when she felt sudden back pain. (Employee).

27) Employee testified on the morning of September 23, 2011 she woke up at about 4:00 am, was very sore, and headed to the shower rooms. She "went to take a shower, felt excruciating pain and was on the floor." "I was getting ready to wash my hair, reached my hands above my head and hit the ground." (Employee).

28) Employee stated she never told anyone she bent to pick up a towel and fell to the floor, but that Angela Riddick wrote that on the report of injury form. She testified NP Lentz' records are inaccurate. (Employee).

29) Human resources director Jane Miller credibly testified about the housekeeping position at the Aurora Hotel. Employee was not an on-call employee, but had set hours of either 5:00 am to 5:00 pm or 5:30 am to 5:30 pm, with a half-hour lunch break. Employee was paid eight hours of straight time and three and one-half hours of overtime for each shift. On rare occasions employees would be required to work additional hours. (Miller).

30) Aurora Camp Hotel Manager Angela Riddick credibly testified about her position as Employee's supervisor and her knowledge of Employee's work injury. She did not ask Employee to work additional hours beyond her regular shift in the days before September 23, 2011. She did not remember Employee notifying her she was sore in the days before the work injury and is "positive" she did not provide Employee with a heating pad. She does not have any first-aid supplies or equipment on site, and whenever any injury occurs, employees must go to the camp medic. The first she heard of Employee having any discomfort was when another housekeeper told her Employee had an incident in the shower and crawled to her room and was hurt. She and another co-worker helped Employee into the truck and took her to the camp medic. Employee told her she had reached for the towel on the floor and her back seized up. (Riddick).

31) Employee is not a credible witness. (Experience, judgment, observations, unique or peculiar facts of the case, and inferences drawn from all of the above).

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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> **Sec. 23.30.005. Alaska Workers' Compensation Board.**
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> (h) The department shall adopt rules . . . and shall adopt regulations to carry out the provisions of this chapter. . . . Process and procedure under this chapter shall be as summary and simple as possible.

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, 533-534 (Alaska 1987).

> **AS 23.30.010. Coverage**. Except as provided in (b) of this section, compensation or benefits are payable under this chapter for disability . . . or the need for medical treatment of an Employee if the disability . . . 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 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 the need for medical treatment. A presumption may be rebutted by a demonstration of substantial evidence that the . . . 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 . . . 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 the need for medical treatment. Compensation or benefits under this chapter are payable for the disability . . . or the need for medical treatment if, in relation to other causes, the employment is the substantial cause of the disability . . . or need for medical treatment. . . .

Under the Act, compensability is established "if the accidental injury . . . is connected with any of incidents of one's employment, then the injury both would arise out of and be in the course of employment." *Northern Corp. v. Saari*, 409 P.2d 845 (Alaska 1966). The "arising out of" and the "in the course of" tests should not be kept in separate compartments but should be merged into a single concept of "work connection." *Id.*

Another exception to the premises rule is the "remote site" exception. The Alaska Supreme Court articulated the rationale for the exception in *Andersen v. Employer's Liability Assurance Corp.*, 498 P.2d 288, 290 (Alaska 1972):

> Although it is often possible for a resident employee in a civilized community to leave his work and residential premises to pursue an entirely personal whim and thereby remove himself from work-connected coverage, the worker at a remote area may not so easily leave his job site behind. The isolation and the remote nature of his working environment is an all encompassing condition of his employment. The remote site worker is required as a condition of his employment to do all of his eating, sleeping and socializing on the work premises. Activities normally totally divorced from his work routine then become a part of the working conditions to which he is subjected.

In *Norcon, Inc. v. Alaska Workers' Comp. Bd.*, 880 P.2d 1051 (Alaska 1994), the Alaska Supreme Court held a widow's claim for death benefits arising out of her husband's heart attack which occurred while he was preparing for work on a remote work site was not compensable because "[g]etting ready for work is not an activity choice made as a result of limited activities offered at a remote site. It is an activity that most employees engage in before they go to work, regardless of their location. Therefore, it does not fall within the parameters of the 'remote site' theory." *Norcon,* 880 P.2d at 1053.

In *Doyon Universal Services v. Allen*, 999 P.2d 764 (Alaska 2000), the Court affirmed its holding in *Norcon* and explained:

> For the "remote site" doctrine to attach, the employee's activity choices must be limited by the remote site and that limitation must play a causal role in the employee's injury. For example, if we were confronted with a case similar to *Norcon* in which an employee's heart attack was caused by him or her being hit with a sudden burst of cold water while in the shower, we would conclude that the employee's limited choice of showers at the remote site contributed to his or her injury, and that the remote-site doctrine therefore applies.

Doyon, 999 P.2d at 769, n.22.

> **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. . . .

"The text of AS 23.30.120(a) (1) indicates that the presumption of compensability is applicable to *any* claim for compensation under the workers' compensation statute." *Meek v. Unocal Corp*., 914 P.2d 1276, 1279 (Alaska 1996) (emphasis in original). Therefore, an injured worker is afforded a presumption all benefits he seeks are compensable (*id*.). Whether an employee's injuries or his need for medical treatment "arose out of and in the course of employment" is a factual question to which the presumption of compensability applies. *Anchorage Roofing Co. v. Gonzales*, 507 P.2d 501 (Alaska 1973). The Alaska Supreme Court in *Sokolowski v. Best Western Golden Lion*, 813 P.2d 286, 292 (Alaska 1991) addressed the question of whether an exception to a general rule applied to the facts in *Sokolowski* and held three facts must be determined, each prong of this test "contains evidentiary questions," and the claimant "is entitled to the presumption of compensability as to each of those questions."

The presumption's application involves a three-step analysis. *Louisiana Pacific Corp. v. Koons*, 816 P.2d 1379, 1381 (Alaska 1991). First, Employee must establish a "preliminary link" between the "claim" and his employment. In less complex cases, lay evidence may be sufficiently probative to make the link. *VECO, Inc. v. Wolfer*, 693 P.2d 865, 871 (Alaska 1985). Employee need only adduce "some," "minimal" relevant evidence (*Cheeks v. Wismer & Becker/G.S. Atkinson, J.V*., 742 P.2d 239, 244 (Alaska 1987)) establishing a "preliminary link" between the "claim" and the employment. *Burgess Construction Co. v. Smallwood*, 623 P.2d 312, 316. The witnesses' credibility is of no concern in this first step. *Excursion Inlet Packing Co. v. Ugale*, 92 P.3d 413, 417 (Alaska 2004).

Second, once the preliminary link is established, the presumption is raised and attaches to the claim. Employer has the burden to overcome the raised presumption by coming forward with substantial evidence rebutting the evidence Employee adduced to raise the presumption. *Miller v. ITT Arctic Services*, 577 P.2d 1044, 1046 (Alaska 1978). "Substantial evidence" is the amount of relevant evidence a reasonable mind might accept as adequate to support a conclusion. *Id.* at 1046.

Employer's evidence is viewed in isolation, without regard to Employee's evidence. *Id*. at 1055. Therefore, credibility questions and weight accorded Employer's evidence is deferred until after it is decided if Employer produced a sufficient quantum of evidence to rebut the presumption. *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).

If Employer, in appropriate cases not involving "work-relatedness," produces substantial evidence rebutting the presumption, the presumption drops out, and Employee must prove all elements of the "claim" by a preponderance of the evidence. *Louisiana Pacific Corp. v. Koons*, 816 P.2d 1379, 1381 (Alaska 1991) (*citing Miller v. ITT Services*, 577 P 2d. 1044, 1046 (Alaska 1978)). The party with the burden of proving asserted facts by a preponderance of the evidence must "induce a belief" in the fact finders' minds the asserted facts are probably true. *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964).

> **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.
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> **AS 23.30.395. Definitions**. In this chapter,
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> . . .
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> (2) "arising out of and in the course of employment" includes employer-required or supplied travel to and from a remote job site; activities performed at the direction or under the control of the employer; and employer-sanctioned activities at employer-provided facilities; but excludes . . . activities of a personal nature away from employer-provided facilities;
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> . . .
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> (24) "injury" means accidental injury or death arising out of and in the course of employment, and an occupational disease or infection that arises naturally out of

> the employment or that naturally or unavoidably results from an accidental injury;
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> . . .

ANALYSIS

Was Employee injured in the course and scope of her employment with Employer?

The issue of whether Employee was injured in the course and scope of her employment with Employer is a factual issue to which the presumption of compensability applies. Employee attached the presumption she was injured in the course and scope of her employment for Employer with her hearing testimony. Specifically, Employee testified she had worked "14-15 hour days" the three days before September 23 and got off work on September 22 at 8:00 pm. That night her back "was swelling and sore, throbbing and cramping." She testified she had reported her back pain to her supervisor Angela Riddick, who provided her with a heating pad on September 22. The following morning, Employee was showering when she experienced severe pain and numbness in her legs.

Without regard to credibility, Employer rebutted the presumption of compensability with the reports of NP Lentz and PA-C Stewart and Employee's October 13, 2011 recorded statement to Employer's adjuster. Specifically, NP Lentz and PA-C Stewart reported the mechanism of injury as a sudden onset of pain while bending to pick up a towel in the shower. Employee stated in her recorded statement to the adjuster "I went to bend over to pick up a towel and the next thing I know my legs went out from underneath me."

The burden now shifts to Employee to prove by a preponderance of the evidence she was injured in the course and scope of her employment. It is undisputed Employee experienced severe pain in the shower on September 23, 2011. It is undisputed she suffered a disabling back injury. Whether Employee's claim is compensable turns purely on which version of events the panel finds most credible. If the panel adopts Employee's testimony she worked 14-15 hours days and as a result had swelling, soreness, throbbing and cramping, which she reported to her supervisor, and in turn

her injury from three days of hard work "manifested" itself in the shower on the morning of September 23, 2011, her case is compensable.

Until the October 3, 2013 hearing, the reported mechanism of injury had consistently been that Employee had felt sudden and excruciating pain while showering that morning. The report of injury completed by Angela Riddick states "while taking a shower Promise turned to pick up her towel and a sudden sharp pain caused her to fall to her knees." On September 28, 2011, Employee saw NP Lentz, who stated "On the 23rd she bent over and reached to pick up a towel at work when she suddenly could not feel her legs. She felt as though her hips went out." On January 24, 2012, PA-C Stewart stated Employee had a "sudden onset of bilateral leg pain with numbness on September 23, 2011." At hearing Employee's counsel characterized the previously reported mechanism of injury "injured in the shower" as a "mistake," and clarified Employee's "injury manifested itself in the shower." Employee testified she had worked "14-15 hour days" the three days prior to September 23rd and the night before her back "was swelling and sore, throbbing and cramping." She testified she had reported her back pain to her supervisor Angela Riddick, who provided her with a heating pad on September 22. She testified she "told the adjuster" about the "cramping, swelling and heating pad." When asked if that statement could be heard in the recorded statement she made to the adjuster, she said, "it should be on there." Later in her testimony, Employee testified she could not remember if she had told the adjuster about her back pain leading up to the September 23 incident. She further testified she did not tell the adjuster she was bending over to pick up a towel when she felt sudden back pain. In the recorded statement, Employee stated "I went to bend over to pick up a towel and the next thing I know my legs went out from underneath me." She told the adjuster she could not remember if she had had any prior accidents or workers' compensation claims, but when asked specifically about them, she provided detailed descriptions of each incident. In 1999, Employee injured her back lifting empty crates in a cooler. She received medical treatment for this injury for approximately two years. At her deposition and at hearing she testified thirty cases of soda fell on her, she had pain "off and on" for two months and then she had no back pain again until September 2011. Given the numerous inconsistencies in Employee's testimony compared to her previous statements to the adjuster and her medical providers, Employee's testimony is not credible.

Angela Riddick testified at hearing she did not ask Employee to work additional hours beyond her regular shift in the days before September 23, 2011. She did not remember Employee notifying her she was sore in the days before the work injury and is "positive" she did not provide Employee with a heating pad. She does not have any first-aid supplies or equipment on site, and whenever any injury occurs, employees must go to the camp medic. The first she heard of Employee having any discomfort was when another housekeeper told her Employee had an incident in the shower and crawled to her room and was hurt. Ms. Riddick arranged to have Employee transported for medical care and promptly reported the injury. Her testimony is consistent with the stated mechanism of injury described in NP Lentz and PA-C Stewart's reports, as well as Employee's October 13, 2011 recorded statement to the adjuster. Ms. Riddick's hearing testimony is credible. Weighing the various testimony, medical reports, and prior statements of Employee, the panel finds it is more likely than not Employee's injury occurred when she experienced a sudden onset of pain while showering the morning of September 23, 2011. Having adopted this version of events, the question becomes whether the remote site doctrine applies in this case.

Generally, injuries occurring off the employer's premises are not compensable. However, as addressed in *Norcon*, because "the worker at a remote area may not so easily leave his job site behind," "activities normally totally divorced from his work routine then become a part of the working conditions to which he is subjected." *Norcon.* Nonetheless, not all injuries occurring on remote sites are compensable. In *Norcon*, the Court denied a widow's claim for death benefits related to her husband's death of a heart attack while getting ready for work, holding "[g]etting ready for work is not an activity choice made as a result of limited activities offered at a remote site. It is an activity that most employees engage in before they go to work, regardless of their location. Therefore, it does not fall within the parameters of the 'remote site' theory." *Norcon*, at 1053.

The Court again addressed the limitations of the remote site doctrine in *Doyon,* explaining Employee's activity choices must be limited by the remote site and the limitation must play a causal role in the injury. *Doyon*, at 769, n.22.

Employee contends the facts of her claim are "virtually identical" to those in *Doyon*, "with the sole exception of the fact that Promise was injured while taking a shower instead of eating." However, *Doyon* is distinguishable from the present case because while showering and eating are, as Employee points out, "both normal, everyday activities," the causal link in *Doyon* was created not by the mere act of Employee eating, but by the fact that the specific food he was eating, which was limited by virtue of his employment at a remote site, made him sick. There was nothing about the shower facilities or conditions at the Aurora Camp that caused Employee to injure her back. Had the floor of the shower been slick, causing her to fall and injure herself, or, as suggested in *Doyon,* had the water been excessively cold, shocking Employee and causing a heart attack, Employee's case would be compensable. Employee's reaching for a towel, or reaching for a bottle of shampoo, whichever was the case, was in no way altered or was limited by the employer-provided shower facilities. Employee's case falls squarely into the rare but clear exception to the remote site doctrine the Alaska Supreme Court carved out in *Norcon* and reiterated in *Doyon.*

Accepting the facts of Employee's injury that she experienced a sudden onset of severe pain while showering at employer-provided facilities, Employee's claim is not compensable under the remote site doctrine. Her claim will be denied.

CONCLUSIONS OF LAW

Employee was not injured in the course and scope of her employment with Employer.

ORDER

Employee's November 8, 2012 WCC is denied.

Dated at Fairbanks, Alaska on November 4, 2013.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Amanda Eklund, Designated Chair

/s/
Krista Lord, Member

/s/
Zeb Woodman, 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 PROMISE HILER, employee / claimant; v. ICE SERVICES, INC., employer; LIBERTY MUTUAL INSURANCE CO., insurer / defendants; Case No. 201115143, dated and filed in the office of the Alaska Workers' Compensation Board in Fairbanks, Alaska, and served upon the parties this 4th day of November, 2013.

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Nicole Hansen, Office Assistant II