# ALASKA WORKERS' COMPENSATION BOARD

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

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| KENNETH RIZER, Employee, Claimant, | ) | FINAL DECISION AND ORDER |
| v. | ) | AWCB Case No(s). 200823031 |
| REDI ELECTRIC INC., Employer, and LIBERTY NORTHWEST INSURANCE CO., Insurer, Defendants. | ) | AWCB Decision No. 14-0034 |
| | ) | Filed with AWCB Fairbanks, Alaska on March 17, 2014 |

Kenneth Rizer's (Employee) May 31, 2011 claim for benefits under the Alaska Workers' Compensation Act (Act) was heard on February 13, 2014, in Fairbanks, Alaska. The hearing date was selected on January 13, 2014. Attorney Chancy Croft appeared telephonically and represented Employee. Attorney Nora Barlow appeared telephonically and represented Redi Electric, Inc. and Liberty Northwest Insurance Corp. (Employer). The record closed at the conclusion of the hearing, on February 13, 2014.

## ISSUES

Employee contends the December 3, 2008 work injury is the substantial cause of his current need for medical treatment related to his cervical and lumbar conditions. He seeks an order finding his conditions compensable and ordering continued reasonable and necessary medical treatment.

Employer contends Employee's need for treatment for his cervical and lumbar spine conditions is unrelated to work and is instead caused by Employee's preexisting degenerative arthritis.

*Is Employee entitled to medical benefits and transportation costs for treatment for his cervical and lumbar spine conditions?*

## FINDINGS OF FACT

Evaluation of the record as a whole establishes the following facts and factual conclusions by a preponderance of the evidence:

1) On January 17, 2014, the parties filed a stipulation of facts, which is incorporated herein in its entirety:

> I. CLAIM BACKGROUND
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> The parties stipulate to the following facts for purposes of a hearing on the record limited to the issue of whether the employee's work injury is the substantial cause of employee's disability and need for medical treatment for his cervical and lumbar spine.
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> On 12/03/08 Kenneth Rizer filled out a Report of Injury indicating that he had been injured that day when he slipped on ice. He was "not sure" what part of his body was injured but he did report that his shoulder and neck were sore. At the time of the injury Rizer was 59 years old and was working as a Senior Foreman. He had been working for Redi Electric since 09/10/07.
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> Employee continued to work for employer until he quit on 03/26/09 and began collecting unemployment benefits.
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> On 11/09/09 Dr. Cobden assigned a 19% permanent partial impairment rating for the cervical spine and a 2% rating to the lumbar spine for a 21% whole person impairment. Because employee had previously received a 10% PPI rating for the cervical spine, 11% ($19,470) was paid out on 12/14/09.
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> On 05/31/11, employee filed a workers' compensation claim seeking: 1) temporary total disability from 03/09/09 – 10/15/09; 2) and temporary total disability from 12/01/09 through present; 3) re-characterization of PPI paid in November 2009 to TTD; 4) payment of prescriptions as prescribed by attending physician; 5) second independent medical evaluation; 6) reimbursement of out of pocket expenses; 7) PPI greater than 7%; 8) payment of medicals; and 9) attorney fees and costs.
>
> On 06/24/12 (sic, 06/24/11), employer filed its answer and post claim controversion in which employer specifically controverted all further Botox injections, all benefits for the

lumbar spine, TTD or re-characterization of PPI as TDD (sic, TTD), PPI in excess of 7%, medicals, out of pocket expenses, and attorney's fees and costs.

On 10/10/11 employer filed a controversion of physical therapy that exceeded the frequency standards and all physical therapy other than physical therapy to teach employee a home exercise program and physical therapy for biofeedback. On 03/29/12 employer filed a controversion of all benefits related to the cervical spine.

Mr. Rizer was deposed in AWCB No. 200319072 on 09/12/05 and then in this case on 11/30/11.

## II. MEDICAL BACKGROUND

Employee has a history of lumbar and cervical spine pain dating back to 1983 when he was in a motor vehicle accident. In May 1992 he injured his lumbar spine while working and was treated by Dr. Lindig. In 1994 employee slipped on ice falling on his back and suffered lumbar and cervical spine pain with headaches. In January 1996 employee injured his neck, left shoulder and left lower back. In May 1997 employee again injured his cervical spine, as well as his right shoulder and right wrist. In December 1999 X-rays were done due to difficulty with swallowing. The report documented degenerative spondylosis present at C3-4, C5-6 and C6-7. At the documented area of discomfort – the right side of the neck – corresponded with an anterior osteophyte at the C5-6 level. In February 2001 employee complained of degenerative arthritis in the neck causing difficulty swallowing, which Dr. Joosse found to be due to the natural progression of degenerative arthritis.

From 1995 through September 2003 employee's treating physician continually prescribed Xanax and Tylenol for chronic low back pain and spasms.

In September 2003 employee saw Dr. Enlow Walker, his regular doctor, and reported that in August 2003 while stepping up into a truck he hit his head on the overhead door and experienced pain in his neck radiating into his shoulders and upper back. Dr. Walker added Vioxx and Norflex to employee's Xanax and Tylenol #4 and referred him for further evaluation and treatment. Employee first treated conservatively with physical therapy but eventually received occipital nerve injections, cervical epidural injections, medial branch injections and medial branch radiofrequency rhizotomies.

Dr. Lynn Bell, neurologist, and Dr. Stephen Marble, physiatrist, examined employee at the request of the employer in September 2004. Employee was diagnosed with head contusion, cervical strain superimposed on preexisting cervical spondylosis with multilevel degenerative disk disease and degenerative joint disease and prior history of low back complaints requiring narcotic pain medications. It was felt that the 08/04/03 work injury was a substantial factor in bringing about employee's initial pain complaints but his ongoing pain complaints were due to employee's preexisting cervical spondylitic disease. Employee's headaches were attributed to employee's regular usage of narcotic pain medications.

Following the IME, employee was referred for evaluation of post-concussive syndrome. A neurological examination was done, which documented absence of reflexes in bilateral upper extremities. Electrodiagnostic studies showed no evidence of cervical radiculopathy. Ongoing conservative treatment in the form of physical therapy and pain management was recommended. Employee underwent additional medial branch radiofrequency rhizotomy and greater occipital never injections.

In October 2005 another IME was done and an acute cervical sprain/strain was diagnosed and attributed to the 08/04/03 work injury. It was noted that the degenerative process in the cervical spine was well documented in the medical records and would probably continue to progress unrelated to the 08/04/03 work injury. No future medical care for the cervical spine and headaches was recommended because none of the treatment already provided had afforded any positive benefits and it was doubtful that any other medical treatment would afford positive benefits.

In November 2005, Dr. Stinson, employee's treating physician, diagnosed ongoing cervicalgia and occipital neuralgia with headache symptomatology and prescribed Cymbalta for neuropathy-type symptomatology and depression.

On February 11, 2006, the Alaska Workers Compensation Board approved a Compromise and Release wherein employee waived all benefits, indemnity and medical, in the 2003 injury in return for a lump sum payment of $25,000.

Between February 2006 and this injury, the medical records make reference to chronic neck and back pain.

Rizer was seen at Tanana Valley Clinic on 01/08/09 by Scott Conover, PA-C. Rizer reported that he had slipped a few weeks earlier striking his head on the ground and causing an aggravation of his previous injury.

He reported headaches and tingling in the left and right $4^{th}$ and $5^{th}$ fingers. Employee began physical therapy in April 2009 on a biweekly basis.

EMG/nerve conduction studies done on 05/14/09 noted no evidence of acute or subacute cervical radiculopathy. On 05/29/09, an MRI of the thoracic spine documented an essentially normal thoracic spine. An MRI of the cervical spine done the same day documented multilevel degenerative disc disease and uncovertebral arthritis.

Employee established care with Dr. Nancy Cross in June 2009. She performed cervical facet injections in July 2009 and in August 2009, neither of which reduced employee's pain for any significant period of time.

In October 2009 employee began reporting increasing lumbar pain. Dr. Stinson declared employee medically stable as of 10/15/09 and referred employee to Dr. Cobden for a

disability rating. Dr. Stinson then performed bilateral C2 nerve block injections and left paraspinal thoracic trigger point injections on 10/20/09.

An MRI of the lumbar spine done on 11/05/09 documented abdominal aortic aneurysm with common iliac ectasia and mild lumbar spondylosis without spinal canal narrowing, most pronounced at the L2/L3 level.

On 11/09/09 Dr. Cobden performed a PPI rating for the neck and back. Dr. Cobden noted that in 2000 employee had been struck by a garage door on his head and neck and was briefly knocked out. He had neck pain and other complaints for several months afterwards but these eventually cleared up. Dr. Cobden diagnosed: (1) spinal stenosis in cervical region; (2) displacement of lumbar invertebral disc without myelopathy; (3) spondylosis lumbar region; and (4) abdominal aneurysm without rupture. Dr. Stinson assigned a 19% whole person impairment of the cervical spine and 2% of the lumbar spine. Dr. Cobden noted the aneurysm was not work related.

On 12/01/09, Dr. Stinson performed a caudal epidural steroid injection under fluoroscopic guidance with conscious sedation and employee reported that his back was better and his only remaining problem was his left cervicothoracic region.

On 01/05/10, Dr. Stinson performed multiple trigger point injections in the bilateral trapezius, left rhomboid, and left levator scapulae muscle groups.

In February 2010 employee began using an electrical stimulation unit prescribed by Dr. Stinson. Employee reported to Dr. Stinson on 03/02/10 that the RS muscle stimulator was quite effective for his cervicothoracic pain and muscle spasm, although he was having problems operating the unit and was only able to use it for 12 to 15 minutes. Employee claimed that he contacted the manufacturer and vendor of the unit several times for assistance. Dr. Stinson's office contacted the vendor while employee was in the clinic and the vendor indicated that they had received no calls from employee. Employee then admitted he had not called the vendor. Dr. Stinson diagnosed: 1) depression; 2) questionable historian; 3) inadequate usage of his RS muscle stimulator unit. Dr. Stinson noted that Rizer admitted that when he used the unit, it was quite clinically effective; and 4) sleep difficulty. Dr. Stinson contacted the vendor and they indicated that they would work with employee on how to use the unit.

In March 2010 employee reported that his sleep has not improved due to pain in the neck and lower back and he was continuing to have problems with operation of the RS Unit. His Duragesic was increased and he was started on Lunesta and Paxil.

By April 2010 employee's physical therapy was being tapered and he indicated that if he has the PT at least twice per week his symptoms remained under fairly good control. Dr. Stinson determined that Botox injections were appropriate for the cervical dystonia, cervicalgia and headaches.

On 06/15/10, Dr. Stinson gave employee Botox injections into the bilateral trapezius, left levator scapulae, and left semispinalis muscle groups with conscious sedation. In September 2010 Dr. Stinson administered another round of Botox injections into the left rhomboid and latissimus dorsi muscle groups – a total of 100 units, and L5-S1 translaminar epidural steroid injections.

In November 2010 Dr. Stinson performed L5-S1 translaminar epidural steroid injections and in December 2010 he administered Botox injections into the bilateral trapezius, bilateral semispinalis capitis, left levator scapulae, and left rhomboid muscle group – total of 200 units.

An EIME was performed by Dr. Thomas Williamson-Kirkland on 01/05/11. Dr. Kirkland found that the work injury aggravated employee's previous arthritic changes leading to increased stiffness in the neck and possible additional loss of range of motion. However, Dr. Williamson-Kirkland noted that because employee had undergone aggressive treatment with little improvement, the only recommended medical treatment was strengthening and stretching through a self-directed exercise program. Employee was determined to be medically stable with a 7% whole person impairment of the cervical spine. Dr. Williamson-Kirkland specifically found that the lumbar spine was not related to the work injury and botox injections were not indicated.

On 04/19/11, Dr. Stinson performed bilateral semispinalis capitis, left trapezius, and left rhomboid trigger point injections with conscious sedation.

On 08/02/11, Dr. Stinson performed trigger point injections into the muscle groups on the left side with conscious sedation.

By this time, employee had participated in regular physical therapy, which consisted of "soft tissue mobilization," twice a week from 04/01/09 through 10/18/11 (approximately 140 visits).

On 12/14/11 employee was evaluated by SIME physician Dr. Neil Pitzer, physiatrist. Dr. Pitzer noted that notwithstanding extensive interventional treatment consisting of 140 sessions of physical therapy primarily with massage and the institution of oral narcotics employee had not improved; in fact, he had gotten worse. Because of this Dr. Pitzer did not feel that employee would benefit from further medical treatment. Dr. Pitzer agreed with Dr. Cobden that employee reached medical stability on 11/09/09 when Dr. Cobden performed an impairment rating, although he disagreed with Dr. Cobden's method of performing the rating because there was no evidence of radiculopathy, instability, or significant acute findings on the radiologic imaging. On 02/28/12 Dr. Pitzer provided an addendum to his SIME report because at the time of the SIME examination, Dr. Pitzer did not have the SIME questions. Dr. Pitzer felt that as a result of the work injury employee sustained a cervical strain superimposed on the degenerative disc disease. He did not feel that employee sustained either a left shoulder injury or a low back injury. Dr. Pitzer continued that the work injury aggravated employee's cervical spine condition producing a temporary change requiring repeat injections. He felt that the 12/03/08 work

> injury was not the substantial cause of employee's disability and need for medical treatment. Instead, Dr. Pitzer indicated that the substantial cause of employee's disability and current neck symptoms was employee's preexisting degenerative changes and chronic pain condition. As to future medical care Dr. Pitzer recommended only medical management for chronic pain but made clear that this was not related to the 12/2/08 injury. Finally, Dr. Pitzer found that employee was medically stable by 11/09/09 and assigned a 5% whole person impairment.
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> [On] 08/09/12 employee's attorney authored a letter to Dr. Nancy Cross indicating that she was being contacted because Dr. Stinson was not communicating with Mr. Rizer. Dr. Cross responded to the "check the box" letter but cautioned that she had only cared for Mr. Rizer on a few occasions when Dr. Stinson was not available.
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> On 01/02/13 Dr. Cobden issued a "review of impairment rating" noting that he disagreed with Dr. Pitzer's 5% impairment and felt that his 21% rating was correct. Dr. Cobden authored a memo to Attorney Croft on 03/06/13 noting that he had reviewed employee's medical records. Dr. Cobden indicated that he had contacted Dr. Stinson's office for additional information but had been unsuccessful in getting a response. Dr. Cobden again reaffirmed that he disagreed with Dr. Pitzer's PPI rating and again stated that his rating was correct. Finally, on 06/06/13 Dr. Cobden authored a "to Whom It May Concern Letter" indicating that the 21% permanent impairment was directly and completely related to employee's work injury on 12/03/08.
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> If Mr. Rizer were to testify at hearing he would testify that he believes that his ongoing disability and need for medical treatment is due to the 12/03/08 incident but he also understands that Dr. Stinson, his treating physician, has been unwilling to render any opinions as to the compensability of his claim and that neither Drs. Coben (sic) or Cross have sufficient knowledge of his medical history and current medical condition to render an opinion on whether the December 2008 work injury is the substantial cause of his disability and need for medical treatment.
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> The parties request that the board decide employee's claim based on the record before it including the stipulated facts.
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> (Stipulated Facts, January 14, 2013)(citations omitted).

2) On December 10, 2013, the parties filed a compromise and release agreement (C&R) settling Employee's claim for all past and future indemnity benefits related to his December 3, 2008 work injury. Employee did not waive his entitlement to reasonable and necessary medical benefits attributable to the work injury. The agreement did not require board approval and became effective upon filing. (C&R, December 10, 2013).

## 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;

3) this chapter may not be construed by the courts in favor of a party;

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.**
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 23.30.045. Employer's liability for compensation.**

> (a) An employer is liable for and shall secure the payment to employees of the compensation payable under AS 23.30.041, 23.30.050, 23.30.095, 23.30.145, and 23.30.180 - 23.30.215….
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> **AS 23.30.095. Medical treatments, services, and 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. However, if the condition requiring the treatment, apparatus, or medicine is a latent one, the two-year period runs from the time the employee has knowledge of the nature of the employee's disability and its relationship to the employment and after disablement. It shall be additionally provided that, if continued treatment or care or both beyond the two-year period is indicated, the injured employee has the right of review by the board. The board may authorize continued treatment or care or both as the process of recovery may require….
> …

Under the Act, an employer shall furnish an employee injured at work any medical treatment "which the nature of the injury or process of recovery requires" within the first two years of the injury. The medical treatment must be "reasonable and necessitated" by the work-related injury. Thus, when the board reviews an injured employee's claim for medical treatment made within two years of an indisputably work-related injury, "its review is limited to whether the treatment sought is reasonable and necessary." *Philip Weidner & Associates v. Hibdon*, 989 P.2d 727, 730 (Alaska 1999).

AS 23.30.095(a) requires employers to pay for treatment necessitated by the nature of injury or the process of recovery up to two years after the injury date. After two years the board may authorize treatment necessary for the process of recovery or to prevent disability. In *Hibdon*, the Alaska Supreme Court noted "when the Board reviews a claim for continued treatment beyond two years from the date of injury, it has discretion to authorize 'indicated' medical treatment 'as the process of recovery may require.'" *Citing Municipality of Anchorage v. Carter*, 818 P.2d 661, 664 (Alaska 1991). "If the treatment is necessary to prevent the deterioration of the patient's condition and allow his continuing employment, it is compensable within the meaning of the statute." *Leen v. R.J. Reynolds Co.*, AWCB Dec. No. 98-0243 (September 23, (1998); *Wild v. Cook Inlet Pipeline*, 3AN-80-8083 (Alaska Super. Ct. Jan. 17, 1983); *see accord Dorman v. State*, 3AN-83-551 at 9 (Alaska Super. Ct., February 22, 1984).

> **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.
>
> (2) notice of the claim has been given;

Under AS 23.30.120, an injured worker is afforded a presumption the benefits he or she seeks are compensable. The Alaska Supreme Court held the presumption of compensability is applicable to any claim for compensation under the workers' compensation statute, and applies to claims for medical benefits and continuing care. *Meek v. Unocal Corp*., 914 P.2d 1276, 1279 (Alaska 1996); *Municipality of Anchorage v. Carter*, 818 P.2d 661, 664-665 (Alaska 1991). 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 to determine the compensability of a claim for benefits involves a three-step analysis. *Louisiana Pacific Corp. v. Koons*, 816 P.2d 1379, 1381 (Alaska 1991). First, the claimant must adduce "some" "minimal," relevant evidence establishing a "preliminary link" between the disability and employment, or between a work-related injury and the existence of disability, to support the claim. *Cheeks v. Wismer & 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 Construction Co. v. Smallwood*, 623 P.2d 312, 316 (Alaska 1981). In less complex cases, lay evidence may be sufficiently probative to establish causation. *VECO, Inc. v. Wolfer*, 693 P.2d 865, 871 (Alaska 1985). The presumption of compensability continues during the course of the claimant's recovery from the injury and disability. *Olson v. AIC/Martin J.V.*, 818 P.2d 669, 675 (Alaska 1991). Witness credibility is not weighed at this stage in the analysis. *Resler v. Universal Services Inc.*, 778 P.2d 1146, 1148-49 (Alaska 1989). If there is such relevant evidence at this threshold step, the presumption attaches to the claim. If the presumption is raised and not rebutted, the claimant need produce no further evidence and the claimant prevails solely on the raised but un-rebutted presumption. *Williams v. State*, 938 P.2d 1065 (Alaska 1997).

In *Runstrom v. Alaska Native Medical Center*, AWCAC Decision No. 150 (March 25, 2011), the Alaska Workers' Compensation Appeals Commission held the 2005 legislative amendment to AS 23.30.010

altered the longstanding presumption analysis: "…[W]e conclude that the legislature intended to modify the second and third steps of the presumption analysis by amending AS 23.30.010 as it did." *Runstrom,* AWCAC Decision No. 150, at 3. The Commission held the second stage of the presumption analysis now requires the employer

> "rebut the presumption with substantial evidence that excludes any work-related factors as the substantial cause of the employee's disability, etc. In other words, if the employer can present substantial evidence that demonstrates that a cause other than employment played a greater role in causing the disability, etc., the presumption is rebutted. However, the alternative showing to rebut the presumption under former law, that the employer directly eliminate any reasonable possibility that employment was *a factor* in causing the disability, etc., is incompatible with the statutory standard for causation under AS 23.30.010(a). In effect, the employer would need to rule out employment as *a factor* in causing the disability, etc. Under the statute, employment must be more than *a factor* in terms of causation. *Id.* at 7 (emphasis in original).

"Substantial evidence" is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Tolbert v. Alascom, Inc*., 973 P.2d 603, 611-612 (Alaska 1999); *Miller* at 1046.

Since the presumption shifts only the burden of production and not the burden of persuasion, the employer's evidence is viewed in isolation, without regard to any evidence presented by the claimant. *Id.* at 1055. Credibility questions and weight to give the employer's evidence are deferred until after it is decided if the employer has produced a sufficient quantum of evidence to rebut the presumption the claimant is entitled to the relief sought. *Norcon, Inc. v. Alaska Workers' Comp. Bd.*, 880 P.2d 1051 (Alaska 1994); *Wolfer* at 869.

*Runstrom* held once the employer has successfully rebutted the presumption of compensability,

> [the presumption] drops out, and the employee must prove, by a preponderance of the evidence, that in relation to other causes, employment was the substantial cause of the disability, need for medical treatment, etc. Should the employee meet this burden, compensation or benefits are payable. *Id.* at 8.

> **8 AAC 45.050. Pleadings.**
> …
> (f) Stipulations**.**
> …
> (2) Stipulations between the parties may be made at any time in writing before the close of the record, or may be made orally in the course of a hearing or a prehearing.

> (3) Stipulations of fact or to procedures are binding upon the parties to the stipulation and have the effect of an order unless the board, for good cause, relieves a party from the terms of the stipulation….

## ANALYSIS

*Is Employee entitled to medical benefits and transportation costs for treatment for his cervical and lumbar spine conditions?*

This is a factual question to which the presumption of compensability applies. Employee raises the presumption he is entitled to medical benefits and associated costs for treatment of his cervical and lumbar spine conditions with the parties' stipulation that he would testify at hearing his ongoing need for medical treatment is related to the December 3, 2008 work injury. Employee further raises the presumption with the reports of his treating physicians, Drs. Stinson and Cobden.

Once the presumption is raised, Employer must rebut the presumption the work injury is the substantial cause of Employee's need for medical treatment for his cervical and lumbar spine conditions with substantial evidence, which is viewed in isolation and without a determination of credibility. Employer relies on the opinions of EME physician Dr. Williamson-Kirkland and SIME physician Dr. Pitzer, who opined the work injury temporarily exacerbated Employee's preexisting degenerative disc disease in the cervical spine but that the lumbar spine condition was not work-related. They further opined no additional treatment was reasonable and necessary.

Once Employer rebuts the presumption of compensability, employee must prove his claim by a preponderance of the evidence. Employee is unable to meet this burden. While Dr. Cobden opined the 21% PPI rating was work related, he has recommended no additional treatment for the work injury. Dr. Stinson continues to treat Employee's cervical pain, but has been unwilling to provide any opinions concerning work-relatedness. Drs. Williamson-Kirkland and Pitzer opine the work injury temporarily exacerbated Employee's preexisting cervical degenerative arthritis, but any exacerbation has resolved and is no longer the cause of Employee's need for treatment. They further opine any additional cervical treatment would be palliative only. They clearly state the lumbar spine condition is not attributable to any work-related incident. Evaluation of the medical evidence shows it is more likely than not the work injury is not the substantial cause of Employee's need for medical treatment for his cervical or lumbar

conditions. Employee's claim for medical benefits and associated costs for his cervical and lumbar conditions will be denied.

## CONCLUSIONS OF LAW

Employee is not entitled to medical benefits and transportation costs for treatment for his cervical and lumbar spine conditions.

## ORDER

Employee's May 31, 2011 claim is DENIED.

Dated in Fairbanks, Alaska on March 17, 2014.

ALASKA WORKERS' COMPENSATION BOARD

/s/_____
Amanda Eklund, Designated Chair

/s/_____
Sarah Lefebvre, Member

/s/_____
Zeb Woodman, Member

## APPEAL PROCEDURES

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

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

## RECONSIDERATION

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

## MODIFICATION

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

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Final Decision and Order in the matter of KENNETH RIZER, employee / claimant; v. REDI ELECTRIC INC., employer; LIBERTY NORTHWEST INSURANCE CO., insurer / defendants; Case No. 200823031; dated and filed in the Alaska Workers' Compensation Board's office in Fairbanks, Alaska, and served on the parties on March 17, 2014.

/s/_____
Darren Lawson, Office Assistant II