ALASKA WORKERS' COMPENSATION BOARD

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

HEIDI M. FORSTER (fka KELLEY), Employee, Claimant,	FINAL DECISION AND ORDER
v.	AWCB Case Nos. 201003982M, 200912215, 201014356, 201014357, 201014358
	AWCB Decision No. 14-0146
STATE OF ALASKA, Self-insured Employer, Defendant.	Filed with AWCB Anchorage, Alaska on November 3, 2014

Heidi M. Forster's April 23, 2012 claim for medical and indemnity benefits was addressed on September 23, 2014 in Anchorage, Alaska, a date selected on August 8, 2014. Heidi M. Forster (formerly known as Heidi Kelley) (Employee) represented herself. Assistant Attorney General M. David Rhodes represented the State of Alaska (Employer). The matter was heard on the written record at Employee's request. Witnesses included Employee, Michael B. Lax, M.D., Brent Ursel, P.A., David Norcross, P.A., Dorothy Locke, Mary Jane Irland, and Jane Schutter. All testimony was by deposition. The record closed on October 1, 2014, when the panel completed its review of the voluminous record.

ISSUES

Employee contends she developed "multiple chemical sensitivity" (MCS) after exposure to chemicals on several occasions between August 10, 2009 and February 8, 2010, while employed as a registered 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 common chemicals as well as electro-magnetic fields. She seeks an award of temporary total disability (TTD) from November 4, 2010 through medical stability, medical benefits, interest, attorney fees and costs. Employer contends Employee's work-related symptoms consisted of acute minor irritations, cough, and subjective sensations of lip swelling, burning eyes, nose and throat, nausea and headache 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 TTD benefits from November 4, 2010 and continuing? If so, in what amount?*
4. *Is Employee entitled to interest, attorney fees and costs?*

FINDINGS OF FACT

The following findings of fact are either undisputed or established by a preponderance of the evidence:

1) Several months into her employment as a registered nurse for Employer at Spring Creek Correctional Center (SCCC) in Seward, Alaska, Employee reported experiencing physiological symptoms following a series of chemical exposures between August 11, 2009 and February 8, 2010. (Reports of Injury [ROI], for exposure August 11-13, 2009 [AWCB Case No. 200912215]; January 14, 2010 [AWCB Case No. 201014356]; January 20-21, 2010 [AWCB Case No. 201014357]; February 4, 2010 [AWCB Case No. 201013982]; and February 8, 2010 [AWCB Case No. 201004358]; Employee work history, Neuro-Test, Inc., SIME binder 433).

2) The August 11-13, 2009 exposure reportedly was to fumes or odors after an August 10, 2009 spill of diluted ethylene glycol following a flush of SCCC's HVAC (heating, ventilation, air conditioning) system. Employee reported "Eyes, nose, throat, stomach – burning, nausea, metallic taste in mouth, coughing/raspy/dry throat." Employee missed work on August 14, 2009. She returned to work on August 20, 2009, not missing more than three scheduled work days. (ROI, August 13, 2009).

3) The January 14, 2010 exposure reportedly was to fumes or odors following a spill of x-ray processing chemicals in SCCC's x-ray room. Employee reported "Burning eyes & nose." Employee suffered no time loss from work. (ROI, January 20, 2010).

4) The January 20-21, 2010 exposure was reportedly to fumes or odors from use of "Diamond Germicide," a commercial cleaning product, in SCCC's pharmacy. Employee reported "Burning nose, irritated eyes/throat." Employee suffered no time loss. (ROI, January 21, 2010).

5) A fourth reported exposure in February, 2010, was to an "unknown" agent which Employee alleged caused symptoms similar to the ethylene glycol exposure, including burning nose, fatigue, difficulty breathing. February 4, 2010 has been assigned the date of this exposure. (Employee hearing brief at 12).

6) The February 8, 2010 exposure was reportedly to welding fumes coming from a hallway outside the medical unit, and from chemicals dumped in a janitor's closet sink reportedly not draining properly. Employee alleged she "[f]elt funny, very sleepy after leaving work, lower lip swelling, tingly, blisters inside, red line across it." Employee suffered no time loss from work. (ROI, February 10, 2010).

7) Employee last worked work for Employer on or about February 11, 2010. (Forster deposition at 16; Ursel chart note, February 15, 2010).

8) Employee contends she can no longer work because the exposures in 2009 and 2010 sensitized her to react to a myriad of other common chemicals, and to electro-magnetic fields created by computers, cellphones and landline telephones, which continue to cause her eye pain, swelling eyes, blurry vision, raspy throat, burning lungs, memory and concentration problems, fatigue, right arm and leg weakness, hair thinning, stuffy nose and skin abscesses or infections. (Forster deposition at 18-20).

9) Prior to her workplace exposures in Alaska, and dating back to at least 1994, Employee's medical records include complaints, diagnoses and treatment for fatigue or chronic fatigue (SIME binders 0020, 0025, 0030, 599), blurred vision (SIME binders at 0014, 0020); eye pain or irritations, including history of episcleritis[1] in both eyes (SIME binders 123, 171, 598); right arm weakness or reduced strength (SIME binders 172, 175); rash and skin infection including impetigo (SIME binders at 0070, 157; Employee brief at 14); allergies causing nasal and eye

[1] Episcleritis, inflammation of the sclera, the tough white outer coat of the eyeball, and of the tissues covering the sclera. *Dorlands Illustrated Medical Dictionary*, Twenty-Fifth Edition (1974).

symptoms (SIME binders at 076); four year history of headaches reported in 1994 (Holmes report at 6); cat allergy causing sore throat and sneezing (SIME 599); headaches (SIME binders at 0030); anxiety (SIME binders 0043); thinning hair or alopecia diagnosed in 1998 and 1999 (Holmes Report at 7), and reduced sleep patterns (SIME binders 0052, 599). Employee testified she also suffers fatigue from Epstein Barr virus, requiring her to nap most afternoons, although an Epstein Barr diagnosis is not evident from her medical records. (Forster deposition at 68; observation). In 1995 Employee reported anxiety due to job stress (SIME binders 600). On October 21, 1997, Employee was admitted to Safe Harbor Cope House in Kodiak for alcohol, marijuana and cocaine use and blackouts. (Stumpp EME Report at 13). She was first diagnosed with bipolar disorder at age 17, with regular prescription for and adjustment of her lithium carbonate levels beginning in August, 1998, at age 25, and depression beginning in 2001. (SIME binders 051-052, 059, 061, 064, 071, 074, 078, 080, 083, 085, 094, 102-104, 106-110, 115-122, 128, 130 150-156, 159-162, 181-182; Stumpp EME Report at 13).

10) Employee described a child and early adulthood characterized by parental unemployment, poverty, neglect, divorce, sexual abuse by a family member, deprivation, hunger, homelessness, abandonment, untreated depression, domestic violence, a boyfriend's violent suicide and a spouse's death. (Employee Brief at 90-96).

11) In an August 6, 1998 psychiatric evaluation, Employee described her problems with depression since age 17, and admitted to difficulties with what the examiner believed were manic episodes:

> About once a year she goes through a period which can last up to three months during which she sleeps only four or five hours a night, is extremely outgoing and people think she is on cocaine. She talks very rapidly and has the feeling that her thoughts are racing and is extremely distractible. She becomes "over-involved in everything," i.e. spending time with friends, volunteering working, exercising. She will spend a lot of money to the point where she maxes out her credit cards, will quit jobs spontaneously and go travelling and "act irresponsibly." During these times she will also tend to drink up to 10 to 12 drinks a day. Just prior to her DWI, she had been drinking all day for a two week period, which is the most severe alcohol binge that she has experienced. . .
>
> She describes other periods of feeling fairly neutral and "in-between," which then give way to feeling very depressed. She is currently in the depressed period, and describes her mood as very sad and "numb." . . .

> Ms. Forster's fiancé killed himself in June, 1997 . . . She then got involved with an abusive boyfriend and got into a physical altercation with him and was charged with trespassing and there was a restraining order against her. She was jailed at Wildwood briefly . . .
>
> She saw a school psychologist when she was 17 years old and was diagnosed with Bipolar Depression at that time . . .
>
> Her father was diagnosed with Bipolar Disorder but was never on medications. Her brother was hospitalized for two weeks as an adolescent for depression and suicidal ideation. Her grandmother made several suicide attempts . . .
>
> Diagnosis: Axis 1: Bipolar I, Alcohol Dependence Secondary to Bipolar Disorder, R/O Post Traumatic Stress Disorder.
> (Psychiatric Evaluation, Carol M. Rader, M.D.)

12) Psychiatric treatment notes for medication management reflect reports of Employee doing well at the prescribed lithium level, but later decreased energy, increased anhedonia, feeling sluggish, decreased interest in future plans, and would like her meds (Lithium and Prozac) adjusted. (Progress notes, September 29, 1999, October 26, 1999, January 7, 2000, January 23, 2002).

13) In 2004, following a violent assault on her while a floor nurse at Alaska Psychiatric Institute, Employee was diagnosed with paranoid behavior and post traumatic signs. Poor follow-up for Employee's mental health issues following the attack was noted. (SIME binders at 134; medical record).

14) Later in 2004, Employee reported having been on Lithium treatment for her bipolar disorder for seven years which has "always been very effective," fluoxetine[2] for four years, and was "doing quite well." (SIME binders at 150 156). At an appointment for her blood Lithium level draw in July 2006, Employee reported no manic or depressive episodes and "very stable on Lithium." (SIME binders 181). The last medical record reflecting Employee receiving medication management for her bipolar disorder is from July 28, 2006, with no refills received after October 27, 2006. (SIME binder 182). Consistent with her medical records Employee

[2] Fluoxetine is the generic for Prozac. It is an anti-depressant approved for the treatment of major depressive disorder, obsessive compulsive disorder, panic disorder, bulimia nervosa, and premenstrual dysphoric disorder. http://www.nami.org/Template.cfm?Section=About_Medications&Template=/TaggedPage/TaggedPageDisplay.cfm&TPLID=51&ContentID=20817.

admits to having stopped taking the prescribed Lithium and Prozac at some undetermined time. (Employee Brief at 97).

15) No medical records reflect Employee ever receiving mental health counseling, and Employee concedes she has never received counseling for any of her mental health issues. (Record; Employee Brief at 96).

16) On Monday, August 10, 2009, a spill occurred during scheduled maintenance of the SCCC boiler system. SCCC maintenance personnel drained several hundred gallons of Dowtherm SR-1, an ethylene glycol mixture, from the main SCCC boiler system. 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 not on duty at the time of the spill, but returned to work the following day. She did not assist in the spill clean-up. (Forster deposition at 27-28).

17) On Thursday, August 13, 2009, Employee reported to family practitioner Rebecca Moore, PA, of Family Medicine PC, complaining of burning eyes, nausea, irritated throat and coughing following exposure to chemical fumes or odors at work on August 11-13, 2009. Ms. Moore diagnosed chemical exposure, and prescribed saline nasal spray, albuterol and artificial tears. Chest x-ray showed lungs clear, blood testing was normal. Electrocardiogram noted one inverted T wave, otherwise no other ischemic changes. (Test results, SIME binder 217-224).

18) Employee's regular days off were Friday, Saturday and Sunday. (All ROIs). On Friday, August 14, 2009, Employee returned to Ms. Moore for follow-up, reporting burning throat and lungs, fatigue and stupor. Dr. Moore conveyed Employee's normal test results, including "no bradycardia-normal T wave," and continued her prescription for rest, fluids, and eye drops. Ms. Moore recommended Employee refrain from work until Monday. (Chart note, Ms. Moore, August 14, 2009).

19) On Saturday, August 15, 2009, Employee reported to the Providence Seward Medical Center emergency room and was seen by Anthony Larson, M.D. Employee noted the spill at work, and reported her symptoms as swollen and burning tongue, scratchy throat, fatigue and mild nausea. She reported no difficulty breathing, no cough or wheezing, no vomiting or

abdominal pain, no chest pain or shortness of breath, no difficulty with vision of any kind, and no skin complaints. She conveyed her earlier EKG, chest x-ray and blood labs had been normal. Dr. Larson observed Employee as alert and oriented, in no acute distress. "Non-toxic appearing, non-diaphoretic (not perspiring). She does not appear acutely ill or toxic." He noted no facial or eyelid swelling, pupils equal, round and reactive to light, extraocular muscles intact and sclerae anicteric (clear, not yellowed), oropharynx unremarkable, mucous membranes moist, lungs clear, regular cardiac rate and rhythm. He offered "no specific recommendations . . . other than drink plenty of fluids and not return to the workplace for at least a week until they have adequately ventilated and cleaned the area. Would not expect any long term complications from this exposure." (PSMC ER Report, August 15, 2009).

20) On Monday morning, August 17, 2009, Employee presented to North Star Health Clinic, and saw Eric Zetterman, M.D. She reported she had been to the ER on Saturday, when her tongue was swollen and burnt. She was still feeling ill, lethargic, in a stupor, and with headache. Another chest x-ray was performed and compared with the x-ray from August 13, 2009. On further testing no bradycardia or interval change was noted. Heart and mediastinum were within normal limits, lungs were clear, osseous structures intact. Repeat CBC (Comprehensive Blood Count) and CMP (Comprehensive Metabolic Panel) blood testing were all returned normal. (Chart note, August 17, 2009; X-Ray report, August 17, 2009).

21) On Monday afternoon, August 17, 2009, Employee presented at Glacier Family Medicine where she saw Brent Ursel, PA. Mr. Ursel ordered further CBC and CMP panels which were drawn Monday afternoon. He specifically ordered an ABG (arterial blood gas) "for glycol antifreeze exposure" (ethylene glycol). All of Employee's test results, including for ethylene glycol exposure were normal. (Chart note, Brent Ursel, PA, prescription for ABG, blood test results, August 17, 2009).

22) Employee returned to work on August 20, 2009. (ROI, August 13, 2009).

23) 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 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).

24) 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. (*Id.* at 5). Nortech interviewed SCCC management personnel and medical staff and concluded the total volume of liquid released during the flushing involved between six and ten gallons. (*Id.*). 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. (*Id.*).

25) Jane Schutter, an LPN on duty at the time and a claimant in another case alleging she suffered "multiple chemical sensitivity" as a result of chemical spills at SCCC, estimated the spill volume at 50 to 75 gallons. (Schutter deposition at 50). Mary Irland, LPN, also on duty, and another claimant, estimated the total spill volume at between 50 and 70 gallons. (Irland deposition at 81). David Norcross, PA, and the nurses' supervisor at SCCC, was not at the facility when the spill began, but was called and arrived to observe both the spill and the clean-up by SCCC janitorial staff and inmates. He observed liquid coming down the wall and pooling in front of both his and Employee's

offices. Norcross estimated the total spill at approximately five gallons. He testified credibly he would have examined any inmate with complaints related to the spill, and no maintenance workers nor any inmates involved in the clean-up complained of spill-related symptoms. (Norcross deposition at 4-6). Employee was not at the facility at the time of the spill, and did not participate in the clean-up. (Employee deposition at 27-28).

26) 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, 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 reported it 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).

27) Nortech's assessment of the spill volume at up to ten gallons, made after interviewing facility staff, examining affected areas and taking air quality readings, consistent as it is with Mr. Norcross' estimation, is considered a more reliable assessment of spill volume than the 50 – 75 gallons estimated by claimants Irland and Schutter. (Judgment).

28) It is undisputed the August 10, 2009 spill occurred during a cold water flush of the HVAC system following SCCC maintenance's successful 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; Irland at 71, 83-85).

29) Nortech reported 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).

30) In mid-September, 2009, chemicals utilized in the x-ray lab at SCCC were reportedly spilled. On September 30, 2009, Aware Safety Services, Aware Consulting, LLC (Aware) conducted an

industrial hygiene inspection at SCCC in response to the reported spill. (Aware Safety Services, Aware Consulting, LLC, Report, October 27, 2009)

31) The Aware investigation consisted of an evaluation of the MSDS for the various chemicals used during x-ray film development, potential worker exposure to airborne components of chemicals during routine x-ray film development, and air sampling for hydroquinone, ammonia and sodium bromide, chemicals the investigator noted are also commonly used in x-ray development. Laboratory analysis of all samples revealed airborne concentrations below detectable levels. (*Id.* at 2-3). Aware noted "It is important to understand that not all workers will be protected from adverse health effects even if their exposures are at or below occupational exposure levels . . . a small percentage of the population may experience adverse health effects due to individual susceptibility, a pre-existing medical condition, and/or hypersensitivity. (*Id.* at 3).

32) Employee does not appear to have experienced any adverse effect from this x-ray chemical spill. She did not file a report of injury for a September 2009 exposure, nor in her deposition testimony did she mention any exposure in September, 2009. However, her medical records suggest she was seen at First Care on September 17, 2009, where spirometry testing conducted was normal. (Spirometry Report, September 17, 2009).

33) On January 14, 2010, a second spill of x-ray processing fluid occurred. (Forster deposition at 40; ROI, AWCB Case No. 201014356, January 21, 2010).

34) David Norcross, PA, the senior medical staff person at SCCC, cleaned up the spilled x-ray fluid with a paper towel and suffered no ill effects. (Norcross deposition at 7-8).

35) On January 21, 2010, Employee reported experiencing burning nose and irritated eyes and throat in reaction to the use of Diamond Germicide, a chemical cleaner, in the nearby prison pharmacy. (Forster deposition at 40; ROI, AWCB Case No. 201014357, January 21, 2010).

36) On January 22, 2010, Employee returned to PA Ursel reporting she had recently been exposed to odors from an x-ray machine being serviced, and to nearby use of the chemical cleaner Diamond Germicide. She reported she was doing well following the original ethylene glycol spill in August, but subsequent exposures to x-ray fluid and Diamond Germicide in January have made her very sensitive to smells, causing her nose to burn and throat to become irritated. She admitted to no trouble breathing and no wheezing. PA Ursel noted pharynx and lungs clear, pulmonary function test (PFT) normal, but nasal turbinates very swollen. He diagnosed "multiple chemical sensitivity syndrome" and recommended Nasonex saline nasal

spray, avoidance of cleaning agents and glycol, and return as needed. (Chart note, Ursel, PA, January 22, 2010).

37) It is noteworthy that Mr. Ursel was Mary Irland's and Jane Schutter's primary care provider, but not Employee's, prior to the August 9, 2009 spill. He saw Irland several times in August following the ethylene glycol spill, and again in October, following the first x-ray chemical spill, diagnosing "glycol exposure" and "environmental exposure" respectively. He saw Schutter on September 1, 2009, for complaints she attributed to the "chemical exposure." On January 22, 2010 Mr. Ursel saw all three: Irland, Schutter and Employee, presumably separately, and assessed all three with "multiple chemical sensitivity." (*Irland v. State of Alaska*, AWCB Case No. 13-0078, July 8, 2013 at 5-13; *Schutter v. State of Alaska*, AWCB Case No. 13-089, July 31, 2013 at 3-7; Chart notes, January 22, 2010).

38) Mr. Ursel first heard of "multiple chemical sensitivity" from Ms. Irland and Ms. Kelley, and later from his own internet research. He had never before diagnosed it, nor treated anyone for it. Mr. Ursel has since questioned the accuracy of this diagnosis. (Ursel deposition at 29; *Irland v. State of Alaska*, AWCB Decision No. 13-0078 (July 8, 2013), Finding of Fact 34).

39) On Friday, February 5, 2010, Employee returned to PA Ursel complaining of unspecific exposure at work the previous day, resulting in headache, couldn't take a deep breath, feeling of a hairball in the back of her throat. On examination PA Ursel noted Employee alert and oriented, throat clear, lungs clear, PFT results "excellent," no swollen glands, no sinus pain, but nasal turbinates swollen, particularly on the right. He again diagnosed multiple chemical sensitivity, advised continuing Nasonex spray, and return as needed. (Chart note, PA Ursel, February 5, 2010).

40) On Monday, February 8, 2010, Employee reported to the Providence Seward Medical Center (PSMC) emergency room and was seen by Ray L. Robinson, Jr., M.D. She complained of lip swelling and fatigue. She denied headache, sore throat or nasal congestion. She expressed her belief her symptoms were related to an increased sensitivity from chemical spills at work at SCCC. She reported no new or specific exposure, but opined there may have been another glycol spill somewhere. (ER chart note, Dr. Robinson, February 8, 2010). There is no evidence of a second ethylene glycol spill at SCCC. (Record).

41) On examination Dr. Robinson noted "Her lip is not visibly swollen. . ." He found no rash, eyes clear, no tonsillar enlargement or tongue swelling, throat clear, lymph nodes normal, heart

rate and rhythm regular and lungs clear. Dr. Robinson opined any lip swelling is likely a histamine reaction which tends to appear immediately after exposure to an offending agent. Typical agents tending to trigger this reaction include medications, personal products or environmental exposures such as danders and pollens. He reviewed the data on propylene and ethylene glycol toxicities, and noted no significant toxicity is documented from vapor inhalation. He recommended a one-time dose of Benadryl for lip swelling, and suggested she review her home environmental exposures and personal products. (ER chart note, Dr. Robinson, February 8, 2010).

42) On the morning of February 15, 2010, Employee again saw PA Ursel and reported worsening symptoms. She was tearful and fearful of permanent neurological damage. On examination Mr. Ursel noted chapped lips and swollen nasal turbinates and uvula. Lungs were clear, neurological signs normal, spirometry testing normal. Blood testing, including for ethylene glycol, was normal. Electrocardiogram (EKG) was normal except for rate. Mr. Ursel took Employee off work "until symptoms clear. Unknown date." (Chart note, off work slip, Mr. Ursel, February 15, 2010).

43) In the evening of February 15, 2010, Employee again presented at the PSMC emergency room reporting drowsiness, blurry vision, chest heaviness, decreased focus and attention and decreased appetite. She was seen by Darin M. Bell, M.D. Employee reported her symptoms worsening over the last four to four and one-half days, and attributed it to a possible chemical exposure following a coolant leak at SCCC during the summer of 2009. She reported "feeling fine until she worked last Thursday" (February 11, 2010). She reported her heart rate was low today, as well as during the chemical exposure in August, 2009. An EKG ordered by Dr. Bell and interpreted by Lisa Gray, D.O., of Alaska Heart Institute, showed no abnormalities. (EKG Report, Dr. Gray, February 15, 2010). On examination Employee's nasopharynx and oropharynx were clear, heart rate and rhythm were regular, and lungs clear. Dr. Bell concluded Employee's symptoms were "quite consistent with depression and/or anxiety but the patient adamantly denies that she is depressed or anxious."

> I did reassure her that if this were secondary to a chemical exposure . . . I would expect that her symptoms would have improved over the course of the last 4-5 days as opposed to getting worse. To this, the patient very strongly disagreed, stating that she had "a government study which demonstrates that these chemicals break down into toxic metabolites that could build up in her system." We also discussed that ethylene and propylene glycol do not have significant inhalation

> injuries documented, at least according to the MSDS which I have reviewed in the past secondary to other patients coming in with this exposure last summer. The only information I was able to find was regarding high concentrations and irritations to the airways. Again, the patient disagreed with me, stating she had spoken to someone who had done studies on these chemicals and had been told that they had never done any studies in enclosed spaces. We had a rather lengthy discussion regarding the difficulty in terms of pinpointing a certain etiology for her rather nonspecific symptoms. We discussed the possibility of collecting labs, however, since she had a number drawn at an outside clinic today, I recommended that she follow up on these and then further workup be performed as indicated.

(PSMC ER Report, Dr. Bell, February 15, 2010)

44) On February 18, 2010, in Mr. Ursel's absence, Employee was seen by *locum tenens* nurse practitioner Renae Blanton, at Glacier Medical. Employee's complaints included foggy brain, blurry vision and fatigue. Ms. Blanton assessed chemical exposure, recommended consideration of a liver CT scan, blood pressure medicines, force fluids, inhaled glutathione, frequent sauna use, lactulase, thiamine, zinc, and a naturopathic liver detoxification available online. She recommended consideration be given to a referral to a physician specializing in chemical sensitivity. She kept Employee off work for another 22-28 days, and follow up with Mr. Ursel in one to two weeks. (Chart note, Physician's Report, R. Blanton, NP, February 18, 2010).

45) On February 22, 2010, Employee began receiving temporary total disability benefits. (Compensation Report; ICERS, Payment screen, AWCB Case No. 201003982).

46) On February 26, 2010, Employee returned to Mr. Ursel reporting she was feeling "about the same," head swimming, trouble concentrating, nose swollen, exhausted. Mr. Ursel ordered blood and urine samples including for benzene and ammonia levels, continued her off work, and return in one week. Samples showed normal levels for benzene, slightly elevated for ammonia. (Chart note, Mr. Ursel, off work slip, February 26, 2010; blood and urine test results, March 5, 2010).

47) On March 9, 2010, an abdominal CT scan ordered to examine Employee's liver following the increased ammonia level was normal. (Radiology consultation, Christopher L. Kottra, MD, March 9, 2010).

48) On March 11, 2010, Mr. Ursel collected further blood and urine samples to test for trichloroacetic acid and ammonia. He noted a plan to refer Employee to Oregon Health Sciences Institute or other tertiary care facility as no toxicology or occupational medicine specialists were

available in Alaska. Blood and urine testing found Employee's ammonia level was now low, and trichloroacetic acid was absent. (Chart note, March 11, 2010l testing report, March 18, 2010).

49) On March 12, 2010, Employee presented to North Star Health Clinic in Seward reporting "she has not felt well for a month now, nauseas, feels stupor and foggy," with the primary complaint of fatigue. PA-C Moore's review of all systems was normal. (Chart note, North Star Health Clinic, March 12, 2010).

50) On March 17, 2010, Employee reported to Mr. Ursel her symptoms remained the same: lethargic, dulled memory, with no new symptoms reported. Blood and urine samples again taken were returned normal. Despite the March 11, 2010 testing results showing low ammonia (25, with normal reference range <47 umol/L), Mr. Ursel assessed "hyperammoniarenia" (sic, hyperammonemia) based on a previous ammonia level of 64. Employee requested a referral to an internal medicine specialist at Alaska Native Medical Center (ANMC), which he provided. (Chart note, Mr. Ursel, March 19, 2010; Quest Diagnostics testing results, March 18, 2010; referral letter from Ursel, March 17, 2010).

51) On March 19, 2010, Employee was seen for elevated ammonia level at ANMC by Mary Schumacher, M.D. Employee acknowledged her ammonia level was no longer elevated, a CT scan showed a "completely normal liver," and her primary symptoms were excessive somnolence, after eight hours sleep she has trouble keeping her eyes open. The only medication Employee reported taking was lactulose. As to past medical and social history, Employee reported she was diagnosed years ago with bipolar disorder "but she tells me that this has not been a problem for many years and that this was something she had when she was younger," and she took no medications for it. She acknowledged her husband having died in December from H1N1 influenza. Employee reported she "has not been back to work since February and does not plan to go back to work." On examination Dr. Schumacher noted a "sleepy appearing woman in no acute distress." Otherwise her extraocular movements were normal, conjunctivae clear, oropharynx normal, lungs clear, regular heart rate and rhythm, no extremity edema, and intact neurological exam. Allergy to cat dander was noted. Dr. Schumacher ordered new diagnostics, finding normal urinalysis, ammonia of 8, negative for hepatitis, negative for benzene exposure, normal thyroid, and per CT scan, normal abdomen, pelvis and liver. Although finding nothing, Dr. Schumacher ordered further magnetic resonance imaging (MRI), computed

tomography (CT) and electroencephalogram (EEG) in response to Employee's complaints of somnolence, and suggested perhaps a referral to a toxicologist. (Chart note, Dr. Schumacher, March 19, 2010; ANMC Telephone Call note, March 26, 2010).

52) On March 26, 2010, Employee returned to Mr. Ursel for "F/u (followup) Discuss referral to out of state environmental/worker's doctor." Mr. Ursel again diagnosed "multiple chemical sensitivity," noting "will consider sending to neuro or Dr. in Maryland." (Chart note, Mr. Ursel, March 26, 2010).

53) On March 28, 2010, Employee reported to the ANMC emergency room, reporting eyelid swelling and spasm and intermittent blurring of vision for several months, all of which she attributed to chemical exposure at work. Employee denied visual loss, eyelid discharge, foreign body exposure, headache, facial weakness, neck pain, chest pain, shortness of breath, coughing, abdominal pain, nausea, vomiting, diarrhea, dysuria, hematuria, extremity edema, focal extremity weakness and paresthesias. Her past history of bipolar disorder and episcleritis was noted. She reported no current medications. On physical examination, other than high blood pressure, all systems were normal, including heart, lungs and neurologic signs. Slight edema in the upper and lower lids with darkening circles around the eyes was noted. There was no obvious inflammation, no discharge or crusting, and conjuntivae were normal. Uncorrected visual acuity was 20/20 on the right and 20/25 on the left. Daniel L. Korn, M.D. concluded "Clinically her exam is benign." "I have reassured the patient that I do not see any evidence of significant abnormalities on her exam," . . . and opined her reported blepharospasm was attributable to her poor sleeping habits. He referred her to ANMC Ophthalmology for "eye strain." Over the counter eyedrops for discomfort were prescribed. The ophthalmology exam was normal in all respects: uncorrected acuity at 20/20 in both eyes, normal intraocular pressures, pupils equal in response to light, extraocular motility normal, and lids, lenses, corneas and anterior chambers clear (ANMC ER note, March 28, 2010; Ophthalmology consultation note, April 2, 2010).

54) On March 26, 2010, Employee again saw Mr. Ursel. She reported her visit to ANMC for eye-twitching. Mr. Ursel's diagnosis remained "multiple chemical sensitivity." His plan was to arrange a consult for Employee at the University of Washington Medical Center. (Chart note, Mr. Ursel, March 30, 2010).

55) On April 2, 2010, the brain MRI and EEG Dr. Schumacher ordered in response to Employee's complaints of excessive somnolence were conducted. The EEG reflected normal awake and drowsy cycles, with no significant abnormalities detected. The brain CT scan reflected no evidence of an acute intracranial process, with normal appearing computed tomography of the brain. (EEG, CT results, April 2, 2010).

56) On April 5, 2010, Employee was seen at the ANMC Internal Medicine Clinic to follow up on the previously reported high ammonia level. Karl R. Hansen, M.D., noted Employee's report of workplace exposure to "ethylene or propylene glycol at work" and her reported episodes of fatigue and mental status abnormalities. He noted her ammonia levels have since been normal off the lactulose, as have other blood test results, kidney function, neurological status, brain scan and EEG. He noted Employee reporting that "worker's compensation has agree to refer her to a specialist in Seattle or elsewhere in the lower 48 regarding occupational exposure to propylene ethylene glycol," and he concurred with that decision. (Clinic note, Dr. Hansen, April 5, 2010).

57) On April 9, 2010, Employee again saw Mr. Ursel for "recheck." In his review of systems, Employee reported fatigue, eyes feel heavy, lightheadedness, exercise intolerance and tongue feels thick. She denied change in appetite, weight change, fever, chills, night sweats, weakness, difficulty sleeping, headache, head injury, tearing or discharge, decreased vision, blurred or double vision, nasal sinus discharge, pain or pressure, epistaxis, hearing loss, earaches or drainage, tinnitus, dizziness, change in voice, sore throat, ulcers or sores of the mouth, bleeding gums, neck pain or stiffness, chest pain, pressure or tightness, shortness of breath at rest or with activity, palpitations, edema, high blood pressure, weakness, leg cramps, chest congestion, cough, wheezing, blood or change in sputum, pain with breathing, nausea, vomiting, heartburn, abdominal pain, change in appetite, difficulty swallowing, gas or bloating, diarrhea, constipation, blood in stool, change in bowel habits or yellowing of the eyes or skin, joint swelling, stiffness, redness, swelling, weakness, cramping or pain, cold extremities, seizures, tingling or numbness, tremors, fainting, ataxia, paralysis, excessive thirst, hunger or urination, sweating, dry skin, hair loss, glandular or hormone problems, hay fever, hives, rash, pruritis or bites. Employee reported she was seeing a toxicologist in California the following week and had an appointment with Grace Ziem, M.D., in Maryland, in June. On physical examination Mr. Ursel noted all systems normal, although Employee "sits in exam room with eyes partially closed." Mr. Ursel's

assessment remained "multiple chemical sensitivity syndrome." He completed the Physician's Report form for a referral to "Dr. Ziem, Maryland." (SOAP note, April 9, 2010).

58) On April 13, 2010, Employee was seen by Kaye H. Kilburn, M.D., President, Neuro-Test, Inc., and retired professor of medicine at the University of Southern California medical school. (Kilburn Report, April 13, 2010; Kilburn Curriculum Vitae). Dr. Kilburn obtained occupational, exposure, medical, family and social histories from Employee. He did not perform an independent examination of Employee's medical records. Her chief complaints were reported as eye irritation, extreme fatigue, somnolence, insomnia, short and long term memory loss, lack of concentration, loss of appetite and bloated stomach. On physical examination Dr. Kilburn noted Employee's skin, nose, mouth, ears, eyes, cranial nerves, chest, heart, abdomen, deep tendon reflexes, vibration sensation, pulmonary function, spirometry and heart rate were normal. He performed a battery of neurophysiological and neuropsychological tests of his own design, examining reaction time, balance, blink reflex, grip strength, color vision, visual field, verbal recall, perceptual motor speed, and long-term memory, for which he reported abnormal results. (Kilburn Report, April 13, 2010). He diagnosed chemical encephalopathy probably due to exposure to ethylene glycol and other toxic chemicals, and hypersensitivity to many chemical due to these chemical exposures. (Kilburn Report at 6). Dr. Kilburn prescribed Vitamin A, Vitamin C and Vitamin E at high dosages, and between eight and 24 nasal squirts per day of Luminol, and if only modest improvement of symptoms within 24 hours, to add glutathione intranasally with the Luminol. No glutathione dosage was established. (*Id*. at 8). He concluded Employee was "totally disabled at the present time," with the permanence of her disability unknown. He advised she must not be re-exposed to chemicals, particularly glycols and alcohols. (*Id*.).

59) In reaching his diagnosis, Dr. Kilburn relied on Employee's representations she was exposed to Dowtherm SR-1 (ethylene glycol, dipotassium hydrogen phosphate), Dowfrost 40 (propylene glycol, di-potassium hydrogen phosphate); Kodak RP x-omate developer starter, Kodak RP x-omat Lo Filter and Replenisher, and Kodak RP x-omat Developer Replenisher; Diamond disinfectant, bleach and alcohol, and welding fumes for five months. (*Id*. at 1). Dr. Kilburn's opinions are based in part on Employee's reporting an "unremarkable" family history, and no past substance abuse. (*Id.* at 2). He relied on Employee's report of having been diagnosed with depression and bipolar disorder in 1997 following an incident where "someone

you knew shot himself," she was last treated with lithium carbonate in 2002, and she did not take the medication despite its being prescribed and renewed for years after, except before blood draws to see if she still needed them. He accepted her reporting a psychiatrist later told her she was "probably misdiagnosed due to a situational problem." He noted her involvement in three automobile accidents and a fall off a bicycle in the 5th grade from which she suffered amnesia. (*Id*.). There is no evidence Dr. Kilburn was provided with either the Nortech or Aware Reports. (Observation).

60) In reaching his diagnoses and opinion on causation, Dr. Kilburn specifically based his opinions on an absence of psychiatric diseases and of exposure to alcohol in Employee's history. (Kilburn Report at 6).

61) Dr. Kilburn's testing methodology for "chemical encephalopathy" and "hyper-sensitivity to chemicals," utilized in his examination of Employee, and his associated opinions and testimony, have been widely excluded in the federal courts for failure to meet established standards of scientific validity and evidentiary reliability set forth in *Daubert v. Merrell Dow Pharmaceutical, Inc.*, 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1983). *See Schmitz v. Tyson Fresh Meats, Inc.*, 2007 WL 1658686 (D. Nebraska)(June 5, 2007); *Kilian v. Equity Residential Properties Trust*, 191 Fed. Appx. 537, 2006 WL 1876907 (C.A.9 (Ariz)); *Ellis v. Appleton Papers, Inc*., 2006 WL 346417 (N.D.N.Y.); *Nelson v. Tennessee Gas Pipeline Company*, 1998 WL 1297690 (W.D. Tennessee).

62) On May 11, 2010, Employee was seen by Grace Ziem, M.D., in Emmitsburg, Maryland. Dr. Ziem obtained a social and medical history from Employee and performed a physical examination. Dr. Ziem stated she performed "U.S. Government recommended" tests for evaluation of neurotoxicity and toxic encephalopathy, "an instrument developed at Johns Hopkins" for an unstated purpose, and an "instrument developed at the Robert Wood Johnson Medical College of New Jersey for assessment of respiratory inflammatory disease of chemical origin," but did not identify the instruments by name, explain the testing method, or correlate with a particular test or instrument the results reportedly obtained. She reported she conducted specialized testing through SpectraCell laboratories to identify the substances necessary for cell and organ repair, and placed Employee on "an initial test-based prescription to assist the healing process." Her report does not indicate the prescription ordered, or identify its "test-based" origin. Dr. Ziem diagnosed reactive upper and lower airway disease, "toxic encephalopathy," peripheral neuropathy in the right upper

extremity, and opined these were caused by the August 10, 2009 chemical spill. (Dr. Ziem Report, May 11, 2010 at 6). Dr. Ziem appears to have been provided Mr. Ursel's medical records and Dr. Kilburn's report, but not the medical records from Drs. Robinson, Bell, Larson, Schumacher, or Korn, or the lab results reported by Drs. Kottra and Gray, or any medical records pre-dating the August, 2009 chemical exposure. (*Id.* at 5; observation). She was not provided the Nortech or Aware reports. She concurred with Dr. Kilburn that Employee was "totally disabled at present" (*Id.*).

63) In her May 11, 2010 report and later reports, Dr. Ziem made the following assertions:

(a) Employee's health prior to August 10, 2009 was "excellent."

(b) The August 9, 2009 spill was of "50 to 100 gallons of DOWTHERM SR-1, which is 95% ethylene glycol with a corrosion inhibitor."

(c) "She was off work from August 14 until August 20 due to illness."

(d) "Most unfortunately, there was a leak of what was described as DOWFROST 40, which came running down through the fluorescent bulbs above her ceiling areas as pink liquid. (However, the materials from Dow describe DOWFROST as yellow and DOWTHERM as pink)."

(e) "[S]he developed increased blood pressure, irregular heart rate on EKG, slow heart rate (47 beats/min) as documented by a provider on February 15, 2010. On February 16, 2010 she was sent to the emergency room with severe difficulty breathing and was in a a stupor-like state."

(f) "Thirteen other employee also developed symptoms including but not limited to inflammatory effects on the eyes, nose, throat, lower lungs in some cases, and rash in other patients etc."

(g) "There is an ongoing problem of leaks from the glycol ether heat exchange system that preceded the major August 10, 2009 spill. The use of propylene glycol has not ceased." (Ziem letter, June 29, 2010).

64) On June 1, 2010, in follow-up with Mr. Ursel, Employee reported she was feeling better, but needed thyroid studies done at Dr. Ziem's request. Test results showed normal thyroid function. (SOAP Note, Ursel, June 1, 2010; Lab Report, June 3, 2010).

65) In a June 29, 2010 telephone call from Employee, Dr. Ziem recorded Employee reporting she "is gradually getting better." (Clinical Note, Dr. Ziem, June 29, 2010).

66) Employer retained Emil J. Bardana, Professor of Medicine, at Oregon Health & Science University, Division of Allergy and Clinical Immunology, to perform an independent medical evaluation (EME) on Employee and three other nurse-claimants. (Record).

67) On July 28, 2010, Dr. Ziem wrote on a prescription form:

> NAME: Dorothy Locke, Mary Jane Irland, Heidi Kelley, Jane Starr –
>
> > Dr. Bardana is an allergist with no training in toxicology or occupational medicine. Nor does or has he been a treating doctor for chemically injured patients. To use him as an IME creates a danger to these (Alaska) patients : I have seen such doctors because of lack of experience clinically inadvertently order tests which cause serious, prolonged exacerbation and/or have office environments with exposure that causes harm and prolonged exacerbation. Please call per questions. P.S. These patients don't have allergies !!!" (Prescription, July 28, 2010)

In a July 28, 2010 letter to the adjuster Dr. Ziem wrote:

> Dr. Bardana is an allergist. He has no training whatsoever in toxicology or occupational medicine. He has not been a treating doctor for chemically injured patients. To the best of my knowledge, his office environment is not sufficiently safe to prevent significant and very possibly disabling exacerbation for one or more of these patients.
>
> I have had patients seriously harmed by physicians who were practicing outside of their field of expertise, which Dr. Bardana is in this situation . . . Patients have brought malpractice action (sic) against physicians because of prolonged, disabling harm they suffered as a result of exacerbation during the IME process.
> . . .
> As the treating physician for these patients and an expert who has had other patients suffer disabling harm from IME exams done by doctors practicing outside of their expertise, which Dr. Bardana is, it is my ethical responsibility to inform you of my concerns. If such harm occurred, and the patient decided to bring legal action, it would be my ethical responsibility to testify as to my facts and opinions, if so requested. . . . I am referring to my patients Dorothy Locke, Mary Jane Irland and Heidi Kelley. (Letter to Highstone, July 28, 2010).

68) On August 2, 2010, responding to Dr. Ziem's July 28, 2010 letter sent to the adjuster and to Dr. Bardana, Dr. Bardana withdrew as Employer's independent examiner citing perceived threats received from Dr. Ziem:

> "On July 28, 2010 I received an extraordinary letter . . . from Dr. Ziem who is an advocate and provider for individuals with "environmental illness" (EI). In the past this symptom complex was referred to as "multiple chemical

> sensitivity" (MCS) . . . Dr. Ziem expresses serious medical concerns about my selection as an independent medical examiner . . . .
>
> Rather than requesting that I avoid certain tests or exposures that she opines might lead to "extremely severe, longstanding, debilitating exacerbations," she derides my qualification as an examiner by indicating I am only an "allergist" without training in toxicology or occupational medicine who has never treated "chemically injured patients." She also concludes my office is "not sufficiently safe to prevent significant and very possibly disabling exacerbation" . . . She makes these representations without ever visiting my office and with a total lack of insight into my educational background, patient experience, scientific publications, and professional interests over a 40-year career.
> Dr. Ziem describes patients harmed by physicians such as myself which subsequently precipitated malpractice actions because of "disabling harm" that occurred during the evaluation process. In a not so veiled threat, Dr. Ziem proclaims "it would be her ethical responsibility . . . that if such harm occurred and the patient decided to sue for malpractice, she would support the action by offering her testimony against me . . .
>
> After nearly 40 years of practice as an academic physician, I am appalled by Dr. Ziem's threatening letter. Her intent to influence the evaluation process in the name of "patient safety" is a perversion of the traditional process. Though I find Dr. Ziem's intimidating demands lacking in any scientific credibility, I do not doubt her underlying threat . . . At this point in my career I am unwilling to expend the energy, expense, or emotional turmoil of defending my actions in a routine medical evaluation in the judicial arena. Even grossly frivolous suits require a serious and aggressive defense. Hence, I have decided to withdraw as an examiner. I do so with some professional remorse knowing the Workers' Compensation system has been perverted by juristic intimidation . . .

69) On September 29, 2010, by telephone, Employee reported to Dr. Ziem she was suffering eye pain and blurriness, burning tongue, burning nose, fatigue, weak, hair loss and puffy face. (Clinical Notes, Ziem, September 29, 2010).

70) On October 11, 2010, Employee was seen for an employer medical evaluation (EME) by Dennis Stumpp, M.D., M.S. Dr. Stumpp is Board Certified in Occupational Medicine, and as an Independent Medical Examiner. (EME Report, October 11, 2010).

71) Dr. Stumpp obtained from Employee a history of her present illness, and past medical, family, social and occupational history. She described a head injury with amnesia in 5th grade, and a 1997 diagnosis of bipolar disorder following the suicide of her significant other. She stated she was prescribed lithium but only took it for 2 to 4 weeks and would only take it just before blood draws to assess her levels. She admitted drinking heavily for several months following the suicide. She

noted she was divorced in 2009, shortly after which her former husband also died. (EME Report, Dr. Stumpp, October 11, 2010).

72) On physical examination Dr. Stumpp found Employee's eyes, ears, nose and throat normal, with no noted abnormalities, erythema or discharge. Her chest was clear. She exhibited full range of motion of her extremities. Her affect was normal though subdued, she had excellent recall of events and details, there was no evidence of thought disorder. She spelled words forward and backward without difficulty. Neurologic tests were normal. Spirometry was obtained and was normal. Dr. Stumpp noted Employee held her eyes half closed and averted throughout the interview. (*Id*. at 5).

73) Dr. Stumpp reviewed the Nortech and Aware reports, and examined the MSDS for Univar Caustic Soda Anhydrous containing pure sodium hydroxide; 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 replenisher containing potassium sulfite 5 to 10% hydroquinone 1 to 5%, glutaraldehyde bis-potassium bisulfate) 1 to 5%, glutaraldehyde 0.1% to 1%, sodium sulphite 0.1 to 1% and 1-phenyl-3-pyrazolidinon 0.1 to 1%; Kodak RP X-Omat LO containing ammonium thiosulphate 14%, sodium thiosulphate 1 to 5%, ammonium bisulphate 1%, less than 1% acetic acid and sodium bisulphate; and trisodium phosphate. (*Id*. at 14-15).

74) Dr. Stumpp assessed multi-symptom complex including nasal and eye irritation, fatigue, lethargy, stupor, difficulty concentrating, shortness of breath, numbness and tingling of the lips, blurry vision, eye pain, numbness of the right hand and right leg. He disagreed Employee's symptoms were a "multiple chemical sensitivity." He opined the symptoms did not represent an objectively verifiable disease process, nor were the symptoms related to her exposure to heat transfer fluids, x-ray chemical or other exposure at work on a more probable than not basis. He further diagnosed a history of manic depressive illness not currently treated, history of alcohol abuse and history of head injury. (*Id.* at 15).

75) Dr. Stumpp opined Employee likely had a sensory but not cytotoxic exposure to the heat transfer chemical spill, but noted ethylene glycol is a substance of very low volatility, meaning it does not get into the air in significant quantities unless heated to boiling or present in a mist. He noted brain imaging, EEG, lab work and urinalysis were normal, including for metabolites of toluene, benzene and trichloroethylene. He opined that in spite of her claims of decreased

mental capacity "she was able to express herself eloquently to multiple doctors, write detailed missives regarding her symptomatology and do copious internet research whereby she found two physicians [Dr. Kilburn and Dr. Ziem] who are well known for their advocacy of multiple chemical sensitivity as a diagnosis and who are notorious for validating subjective symptomatology and placing patients on total disability in the absence of significant objective findings." He criticized Dr. Ziem's micronutrient testing, which he stated is "not proven to be useful in the diagnosis of multiple chemical sensitivity (MCS), chemical injury or any other diseases." He contested her diagnosis of reactive airways syndrome, finding it based solely on a questionnaire while ignoring normal spirometry testing, and overly reliant on subjective complaints while ignoring Employee's substantial psychiatric history. Dr. Stumpp noted Dr. Ziem's recommended interventions for MCS have not been shown in any randomized trials to be effective in treating MCS or other chemical related illness. He termed Dr. Ziem's treatment protocol "twentieth century snakeoil." With respect to Dr. Kilburn's findings and diagnosis, Dr. Stumpp opined that based on the normal mental status exam he conducted, he would expect Employee's neuropsychological testing to be normal if repeated by an unbiased practitioner. (*Id*. at 16-17).

76) Dr. Stumpp opined Employee suffered only an acute irritation of the eyes, nose and throat as a result of chemical exposures, there is no objective evidence she sustained any occupational disease from her employment, or that the air quality conditions within SCCC aggravated, accelerated or combined with a preexisting condition to produce disability or need for continuing treatment. (*Id*. at 18).

77) Dr. Stumpp opined Employee's initial evaluations for irritation of the nose and throat were warranted by her presentation, but further treatment and testing provided by Drs. Ziem and Kilburn was not warranted, and their recommended treatments are outside the tenants of mainstream medicine and toxicology. He concluded no further diagnostics or treatment were recommended, and advised that encouraging avoidance of odors and perceived chemical exposures would lead to increased social isolation and worsening of symptoms. He found no occupationally related impairment. Based on Employee's history of returning to work at SCCC for five months prior to being taken off work by Mr. Ursel in February 2010, with no evidence air quality conditions changed in February, Dr. Stumpp concluded Employee could return to work at SCCC. Dr. Stumpp opined that Employee's having been off work for eight months

before he saw her, with no known significant improvement in her symptomatology, was evidence her complaints were not occupationally related. (*Id*. at 19).

78) Dr. Stumpp noted MCS is not an objectively verifiable disease process recognized by the general medical community. He cited the position statements of the American Academy of Allergy and Immunology (AAAI), the American Medical Association, American College of Occupational and Environmental Medicine, and the National Academy of Sciences. (*Id*.). The AAAI position statement summary reads:

> . . . [M[ultiple chemical sensitivit[y] has been postulated to be a disease unique to modern industrial society in which certain persons are said to acquire exquisite sensitivity to numerous chemically unrelated environmental substances. Allergic immunotoxic, neurotoxic, cytotoxic, psychologic, sociologic, and iatrogenic theories have been postulated . . . but there is an absence of scientific evidence to establish any of these mechanisms as definitive. Most studies to date, however, have found an excess of current and past psychopathology in patients with this diagnosis . . . Rigorously controlled studies to verify the patient's reported subjective sensitivity to specific environmental chemicals have yet to be done. . . A causal connection between environmental chemicals, foods, and/or drugs and the patient's symptoms continues to be speculative and cannot be based on the results of currently published scientific studies.
>
> (AAAI Board of Directors, Position Statement 35).

79) On November 10, 2010, based on Dr. Stumpp's EME report, Employer filed a Controversion Notice, denying all benefits. (Controversion Notice, November 2, 2010).

80) On April 23, 2012, through counsel, Employee filed a claim in AWCB Case No. 201003982, alleging she suffered industrial chemical exposure and seeking temporary total disability benefits from November 4, 2010 through date of medical stability, medical costs, interest and attorney fees. (Claim, April 23, 2010).

81) On July 31, 2012, Employee testified by deposition. She stated she is unable to work due to severe eye pain, swelling and dark circles under her eyes, right arm and leg feel weak and numb, brain feels foggy, occasional burning nose, tongue, a left stuffed nostril, blurry vision, raspy voice, fatigue and thinning hair. (Forster deposition at 18-20). While she attributed these symptoms to chemical exposures while working at SCCC, she conceded she does not go to a doctor for these symptoms, and no physician has told her the perceived extremity weakness or

numbness, blurred vision, thinning hair, burning lungs, raspy voice, or scrambled brain feeling is related to workplace exposure while employed at SCCC. (*Id*. at 23-26).

82) Employee reported developing symptoms when she comes into contact with a long and growing list of items spanning 40 hand-written pages, and including everything from dryer sheets, detergents, and perfumes to light, noise, most stores, most restaurants, most buildings, a sleeping bag, suitcase, backpack, boots, rubber bands, cotton shower curtain, tires, most plastics, washing machine, dryer, a rubberized basketball, foam pads, lampshade, cardboard, soil, aluminum foil, the Rochester New York Memorial Art Gallery, volcanic ash, vinyl, wood smoke, wool, hairdressers, most motels, a hotel in Kasilof, a cabin in Homer, makeup, deodorant, shampoo, conditioner, soap, movie theaters, bathrooms, ink, dye, headphones, carpet, a Kia Sedona, toothpaste, most wood, regular phone, ear buds, headset, dust, Trader Joe's insulated bags, air filters, Nazareth College, Kodak Theater, Kinko's, Barnes & Noble, computers, Toshiba laptop, duvet cover, rubber eraser, postal scale, surge protector, steam cleaner, brown paper bags, electric radiant heater, Avon Fitness Club, Church with Yale Acapella Singers, an oil change place in Geneseo, New York, laundromat, the Marketplace Mall, a new blanket, the Walmart TV and DVD sections, the Kodak Theater, Mansion and Museum, antique stores, a church in Buffalo, New York, her living room, her father's bedroom, the Susan B. Anthony Museum, two churches in Rochester, New York, Blockbuster Video in Kodiak, butcher wrapping paper, apple cider vinegar, aluminum free baking soda, kale, non-organic sweet potatoes, non-organic peaches, fresh pressed apple juice, all pears, and more. (SIME binder 668-669, 687-725).

83) Notably, Employee also reported suffering adverse reactions to supplements prescribed for her by Dr. Ziem in order to treat her multiple symptom complex: Ultimate E, zinc, copper, manganese, selenium, COQ 10, acetyl—carmitine, niacinamide, chromium, sublingual B12, taurine, inhaled glutathione/hyoxocobalamine, which she reported caused stupor, worse eye pain, eye swelling, swelled up eyes, excruciating pain and made brain feel funny. (SIME binder at 667). Other treatments Employee has tried believing they might ameliorate her symptoms she reported instead exacerbated them: a sauna and a rubberized earthing mat, which she reported burned her nose and lungs, and hurt her eyes. (SIME binder at 722).

84) On December 19, 2012, Employee consulted Michael B. Lax, M.D., M.P.H., a board-certified physician in family and occupational medicine. Dr. Lax's consultation report is two and

one-half pages in length, with Employee's subjective history of the events at SCCC and of her symptoms comprising one and one-half pages of the report. The subjective history considered included "50 to 100 gallons came through ceiling," "fourteen workers sought medical care," "inmates cleaned up and also reported symptoms," "technician working on x-ray machines from outside contractor got sick and went to ER," Employee's symptoms included "irregular heartbeat," and "another spill of heat transfer fluid" occurred on February 10, 2010. Employee reported to Dr. Lax she had tried "Dr. Ziem's supplements, water, a special juicing diet with coffee enemas, acupuncture, 'earthing' (which is the only thing that has helped eye pain some), all of which made worse. Also trying sauna with supplements, also brain retraining." (Lax deposition at 4; Progress Note, January 15, 2013; observation).

85) Dr. Lax's findings on physical examination comprise one-half of a page of his report. He noted Employee oriented to person, place and time, well-developed and well-nourished, but appeared distressed in that she had difficulty keeping her eyes open due to trouble with light. Nose, mouth and throat were normal. Eyes were normal, with pupil equal, round and reactive to light, no discharge. Her heart had normal rate, regular rhythm and normal heart sounds. Chest and lung sounds were normal. Abdomen was normal. No musculoskeletal edema, no lymphadenopathy. Neurologically she had normal reflexes, no cranial nerve deficit, normal muscle tone and coordination. Her skin and nails were normal. Her speech, behavior, judgment, thought content, cognition and memory were normal. She was not anxious, angry, blunt, labile or inappropriate, though she exhibited a depressed mood. (*Id.*; Lax deposition at 4-5).

86) Although noting normal physical findings, Dr. Lax assessed "Multiple Chemical Sensitivities" and "Toxic Encephalopathy," concluding "These diagnoses have been caused by workplace exposure at the prison in Alaska where the patient last worked and was exposed to chemicals in the manner described above. All of the described symptoms including the eye burning and cognitive dysfunction are part of the MCS, and are part of the work related illness." He rated Employee with a 100% impairment, and unable to work due to her condition. He described his exam as "more than one hour was spent with the patient of which more than half was spent on counseling/education on issues including: diagnosis, treatment and diagnostic options, workers' compensation issues." (*Id.* at 3). Other than spirometry testing which was normal, he performed no diagnostic testing. (Lax deposition at 6-7, 27). He later testified the

entire exam lasted one and one-half hours. (*Id.* at 7). He did not see Employee again. (Lax deposition at 51).

87) On December 26, 2012, the parties stipulated to consolidate Employee's five reports of injury for hearing. (Prehearing conference summary, December 26, 2012).

88) On January 11, 2013, based on Employee's contention she was unable to travel, the parties stipulated the second independent medical evaluation (SIME) scheduled for Employee with Edward Holmes, M.D., would be performed as a records review, without Employee traveling to Utah. (Stipulation, January 11, 2013).

89) On February 12, 2013, in a letter to Employee's attorney, Dr. Lax opined Employee should not travel to a scheduled SIME in Utah from her home in New York, as she would be exposed to "known and unknown irritants" which "will exacerbate her MCS symptoms." (Letter to Hegna, February 12, 2013).

90) Employee engages in "earthing," "the only thing" she reported to Dr. Lax helps her "eye pain," and to counteract the "brain fog" she believes she suffers from electromagnetic waves, computers, cellular and landline telephones. She described "earthing" as "grounding yourself for the earth's – supposed to decrease inflammation:"

> I have a bed sheet and a pad I clip with an alligator clip to something in the car that's metal . . . I have a pad I sit on and then put my feet on, and when your body perspires – and I just got it. It was like $440. The book, beside the Gersons. It's phenomenal. One guy was very electrically sensitive from double cell phones, massive computers, working on Wall Street, so sick. Those – there are lots of other people, just the testimonials. And I actually feel like a tingling where – where it's touching. So that's what I sleep on. It's only been about a week. One book I read is an engineer who is extremely electrically sensitive, and it does sound really crazy. He would just go out, and your bare feet on the grass is grounding, or touching a tree. But like I said, it's hard to be outside, so I put an electrode on my most painful eye. It's supposed to, like, stop pain.

(Forster deposition at 80).

91) According to Dr. Lax, reasonable treatment for MCS sufferers is (1) avoidance of exposures where possible, (2) making sure symptoms are not related to another medical problem, as MCS sufferers tend to attribute everything to MCS, and (3) attendance to the emotional components, usually depression. He does not ascribe to alternative treatments including the supplements prescribed by Dr. Ziem, or coffee enemas, another treatment Employee wished to

pursue. (*Id.* at 35-38). When asked about "earthing" as a potential treatment for MCS, Dr. Lax conceded he had not heard of it as a treatment for MCS before Employee mentioned it to him, and he had no idea why that might help someone. (Lax deposition at 37).

92) Mr. Ursel had not heard of "earthing" either, and opined it would not be an accepted medical treatment for any condition. (Ursel deposition at 27-28).

93) Dr. Lax's report is brief, conclusory, substantially reliant on patient reporting, does not consider Employee's pre-existing conditions, and fails to offer any differential diagnosis. (Observation; Lax deposition at 23-25, 30).

94) Dr. Lax's opinion Employee is 100% impaired is not a rating based on the American Medical Association Guides to Permanent Impairment, but on his opinion she is incapable of working. (Lax deposition at 48).

95) Dr. Lax based his opinion Employee suffers from MCS on his 25 years as an internist with an occupational medicine certification, and "research [he] has done in the past." (*Id.* at 22). He did not explain the nature of the research conducted, whether it was reproducible or if it was peer-reviewed. (Observation).

96) Dr. Lax was unaware of Employee's bipolar disorder diagnosis, and agreed fatigue and lethargy are symptoms of depression and bipolar disorder. (Lax deposition at 28).

97) While Dr. Lax believes, on a more probable than not basis, that Employee suffers from MCS as a result of workplace chemical exposures, he conceded the mechanism for developing MCS is unknown, and the majority of occupational medicine specialists believe it is of psychological origin. (Lax deposition at 33-34, 42-43, 48).

98) Dr. Lax's opinions, reports and testimony on MCS have been excluded from evidence in at least two federal cases, *Frank v. State of New York*, 972 F. Supp. 130 (N.D.N.Y. 1997), and *Carlin v. RFE Indus., Inc.*, 1995 WL 760739 (N.D.N.Y.). In *Frank*, the court noted "Every federal court that has addressed the issue of the admissibility of expert testimony on MCS under *Daubert* has found such testimony too speculative to meet the requirement of scientific knowledge." (*Frank* at 136).

99) The Alaska Supreme Court has adopted the *Daubert* criteria for admissibility of expert testimony in the trial courts. *State v. Coon*, 974 P.2d 386 (Alaska 1999). However, the workers' compensation board, not subject to the technical rules of evidence, need not subject a witness's proposed testimony to the *Daubert/Coon* standard before admission, provided the testifying

witness relies on his experience as well as his expertise, and the testimony otherwise satisfies standards for admission of expert testimony. *Marsh Creek, LLC v. Benston*, AWCAC Decision No. 101 (March 13, 2009) at 19.

100) On January 5, 2013, under a board-ordered second independent medical evaluation (SIME), Edward B. Holmes, M.D., M.P.H., and board certified in occupational medicine, conducted a medical records review in lieu of Employee's travel to his office in Utah. Dr. Holmes examined more than 2000 pages of Employee's medical records dating back to 1994, Employee's incident reports and reports of injury, the Nortech and Aware reports, Dr. Kaye Kilburn's April 14, 2010 evaluation report, Dr. Grace Ziem's May 11, 2010 consultation report, Dr. Bardana's August 2, 2010 letter, Dr. Stumpp's October 11, 2010 EME report, Employee's deposition testimony, PA Ursel's deposition testimony, Dr. Lax's deposition testimony, Employee's 40-page handwritten list of items which cause symptoms she attributes to work exposure to chemical odors, and hundreds of pages of Employee journal entries. (Holmes SIME report, January 5, 2013).

101) In his 43-page report, Dr. Holmes assessed severe odor anxiety, with pervasive and unwarranted fears of other physical agents such as electricity and magnetic fields, not caused by work exposures, but in need of competent behavioral and mental health treatment to reduce unfounded anxieties; and symptoms and findings suggestive of bipolar disorder with episodes of mania for many years dating back to age 17, that would benefit from psychiatric intervention. (Dr. Holmes report at 30-31).

102) Because Employee requested a written record hearing, the panel has only her deposition responses and her writings to assess her clarity and credibility as a witness. Both her deposition testimony and her hearing brief support Dr. Holmes' assessment Employee suffers serious mental illness and is in need of competent behavioral and mental health treatment. Her 100-page single-spaced brief and her deposition testimony offer countless examples of flights of ideas emblematic of at least a layperson's understanding of mania.[3] (Observation; judgment; facts of the case and inferences therefrom).

[3] Just one example is Employee's response to the question "And so what are you doing in order to get better?" Her response continued for 11 pages of deposition transcript and is reprinted here verbatim:

> I feel almost everything. We have spent about $15,000. My dad bought a Kangen water machine for $4,000, a sauna for $3,300, $660ish of acupuncture, which I wouldn't believe in,

but it's a Korean in Rochester, He's been doing it for 50 years. People are coming from Texas, North Carolina.

My dad's a mechanic, so I have had Epstein-Barr virus and felt fatigue 3, 4 in the afternoon every day and had to lay down, 101, 103 temperature every day. She went to lots of doctors who said she'd have to live with it. She said she didn't want to live with it. She didn't believe in this acupuncture but went and he told her you'd feel sick for about three days. She felt like she had the flu. She whispered to me, like I wouldn't believe that her urine smelled like cleaning chemicals. And the lab showed she had it, and she went back maybe one time. That was seven or eight years ago and has felt fine ever since. I went.

And my dad also bought a $2,500 Norwalk Juicer. I have recently had 153,000. I built a house out of pocket with no mortgage with my husband, and I had saved. I had about $90,000 in savings, and I cashed out one of my 401(k)s.

If it wasn't so expensive, there's a Gerson cancer treatment, but it's $5,000 a week, but you can do it. It's the first time I felt hope. It's a German doctor, Max Gerson, in, like, the 30s figured out they're juicing and detoxifying.

Sounds pretty crazy and I poo-pooed it when I first heard about it, but you feel so bad and in so much pain that you're willing to do anything to get better. It's coffee enemas which stimulate glutathione. There's an Alaskan from Haines who filmed two movies, "The Beautiful Truth" and "Dying to Have Known," and it's amazing healing that if you can get toxins out, even food additives, things out of your body, the body will heal itself.

And with the Gerson, one lady, her cancer was healed in a year, but at 16 years old, she went through a windshield, a car accident, and she had scar tissue on her face and that healed.

Another guy has cancer was healed, but he had four or five fused vertebra and it atrophied his leg so much he could hardly walk. The cancer healed and the leg healed about 90 percent.

And everything I read, I've got 50 or 60 books on chemical injury, on immune system, on healing. I'm determined. And as I have done everything, I've got a list where I have had scholarships, everything I have done I'm determined to get better. It's just finding a way.

It seems everything I've tried, the acupuncture made me feel sick. He's Korean and didn't have real good English, and he put alcohol, you know, all over, but it felt like the original spills. I mean, it felt like I was trying to detoxify and couldn't – red faced and stupor and brain and couldn't lift my arm. And I should have stopped after the first session, but I did six.

So at the same time that's when I was getting all the abscesses. I was – got the juicer last fall. It says don't do the juicing without the enemas or visa versa because you're flooding your body. And I've never really – I've always been healthy. I played sports, I workout – used to workout – and walk. So I was getting an abscess, and I got one, like, every month for the next five or six months. And I still, in that area, every two weeks there's like white pus that comes out.

So I have a book Natural Detoxification that says that skin rashes – when I first got here, I kept getting skin infections, cracked corner of my lip. And I didn't know any better, so I kept going to all these urgent care and got put on antibiotics. And with all the abscesses, the antibiotics didn't help, and then I'm intolerant of them.

For close to four and a half, five months – it just ended in June – I've had a rash where you draw blood on both arms. If I would take sulfur foods like garlic or eggs, it would flare up more. And another bladder pain and urgency, I think were just all bad things.

My dad got a mortgage – he'll be 74 this year – to buy a house. And he extended the mortgage so – we were looking that was what the one thing to help this, because I can't take – I tried the Gerson supplements and, like, my eyes twitching and queasy, want to throw up, I've got a headache, the antibiotics, I'm sick, food smells, supplements. So it's just learning on my own. But I'm determined.

The house – we were going to buy one in Canandaigua on 6.1 acres, because that's what I need. When I got down there November of 2010, I knew I needed to live outside or something, stainless steel trailer, that I'm – to give my body a break and let it heal. But everywhere we've looked it has mold, it's near farmland, it's got Febreze plugged in. The one in Canandaigua was bad. It had black mold and it was just so bad.

New York State has the highest taxes in the nation. It's the third after Connecticut and new Jersey and I think, well, when my dad's not around anymore, we can't afford that mortgage. So I – not too long ago I went to Mansfield near Watertown, and there's a rental for women chemically injured. It's only 200 a month, but it's all the wood in there and she doesn't have a shower. I'd have to drive to Watertown, 25 minutes away, and it's hard driving in the car. It's now the electrical, my eyes. But I'm determined.

There's a porcelain building that's for sale in Arizona. It's 6,900. It's a lot of logistics. You have to buy land, you have to ground it.

And the first step is I just bought a car this past week and I think through prayer, a lot of parents – my parents, a lot of people, prayer groups praying for me. It's pretty amazing. It's a 92-year-old woman selling a 2002 Honda Civic with 22,000 miles, and the woman's daughter, low and behold, is sensitive to perfume and things. So there was no cleaning. Just some Planet on the dashboard. So that was my first step.

I thought you don't know anything. I started off in college as pre-med. And when I was 14, I worked as a nursing assistant at the Kodiak Hospital. I've always been in the medical field. And this is not taught – chemical injury.

So Dr. Bell, I don't hold anything against them, or Dr. Robinson, they just don't know. But now, you know, the HUD, US Social Security Department, the ADA, CDC has a policy for chemically injured people for 50,000 of their employees. Hamburg, Germany, there's a hospital, two rooms, for chemically sensitive. New Mexico, the three-time leader of, I think, it's Norway, came out that she's electrically sensitive. So it's a new paradigm. You know, there's a time that people didn't believe in germs or the world was flat, and my thing is just to get better. You know, I've got enough moxie and gumption.

And I think if I wouldn't have tried to get it cleaned up in Alaska, bring awareness of what I wanted, you know, that was bringing it, like, to the senators and stuff, and I didn't want more people to get hurt, and just investigate what happened, what went wrong, so this didn't happen again.

I think if I wouldn't have spent so much time, you now, trying to fight it and just on my own healing and figuring out, and I'm still learning. I don't know. You know, it's like neuro sensitization, full of toxins.

I returned this one sauna my dad bought because there's plastic heating up and filled up the whole room. And I think through prayer too, amazing, it's a Heavenly Heat Sauna for

chemically injured, my brother picked it up in Connecticut, just $295, and new it's 3,000. So we just got that set up.

And I don't know how much healing. I believe, completely, but I don't know. I don't know how much these vapors damaged my eyes. You know, I don't know, demyelination myelin sheaths in my arm and leg. I don't know, my brain. But I read a book – I have eight books on brain rewiring. One I read called, My Stroke of Insight, and she was a medical doctor. At 37 she had a stroke, and it took her eight years. She couldn't talk; she couldn't do any ADLs; she couldn't do anything.

There's one other thing I just got, it was $200. It's brain rewiring. And people have been getting better from the chemical intolerance. Something to do with your body's full of toxins and it's the amygdala in your brain, and you're trying to rewire it.

So there's things, you know, there's O-zone treatments. There's oxygen. The O-zone sounds scary to me. And I find these supplements, you have to detoxify them too. But avoidance is the main thing. Getting the car was the first thing, and like my brother was saying today, is, the hard thing is the apartment we're in, it's 1,200 square feet. It's the best one we've found, even though I'm reacting in it. Voice raspy. My eyes. There's times I feel better, certain movie theaters if there's no Febreze, and I breath into my sleeve or shirt. But certain ones where I'm feeling better.

And I know, you know, I need to be outside, but the sun, the humidity, I don't want to get Lyme disease from deer ticks.

One last thing I'm trying – and it sounds crazy, all of this does – and with this injury we're saying this morning, unless you have, I would not have believed it. It's surreal. It's like going down a rabbit hole. If somebody were to tell me you can't be around perfume, especially electric, I'd say you're crazy. I wouldn't believe it.

Reading the book I gave – spent like $800 just on sending the author – gave me 24 books for 100, Amputated Lives, to the governor, Mark Baggage (sic), US Congressman Don Young really looked into it. US Senator Lisa Murkowski. Except for reading that where Gulf War veterans, FEMA, mold, 400 EPA employees injured from the carpet. But just for a normal person, this injury is not told on Oprah. You know, you don't walk into an ER – and that's the first thing like Dr. Bell – you're depressed, you're anxious. No. Maybe there's a diesel leak in your home. Maybe there's a clogged drain. And what's scary is more and more people, anybody can get it at any time. But through avoidance people get better.

The last thing, and it does sound really crazy, it's called grounding or earthing. Because I like science with my background, it's pretty fascinating. My step dad is a retired cable splicer, lineman from Alaska. And he knows about grounding things for the cable lines.

And it's the earth and electrons, and the same thing that the juicing and the vitamins are trying to do is fight free radicals, which are from electromagnetic frequency, exhaust and perfume, and what's normally in – you're trying to kind of fight that.

I just know from the different things, microbiotic diets have healed cancer. All the different things – I have five books on microbiotic diets. Time and time again, is when you detoxify, either through juicing, the microbiotic diet or sauna, things heal

On *www.newyorkdetox.org*, 782 firefighters from 911 are still going through all these years later a sauna detox, and their towels are coming out purple and black and blue from what's coming out of them. Then it all goes away, the respiratory goes away, the fatigue goes away. This is not a life sentence. I have things to do, people to see, places to go. I wanted to

103) Dr. Holmes concluded Employee has several other non-industrial medical and psychiatric conditions with similar symptoms to those she complained of following the exposures, which existed for many years prior to the August 2009 exposure, including mania, depression, chronic fatigue, alcohol abuse, eye irritation, eye pain, hair loss, anxiety and PTSD, conditions which could explain all of her current symptoms. Specifically, her subjective reports of difficulty getting a deep breath, lip tingling, stiff face, extreme anxiety and fear over odor exposures are highly characteristic of panic and anxiety. (*Id*. at 32, 35) He noted, for example, that according to Employee's deposition, she was not present at the facility at the time of the major spill incident, around 4:30 p.m., August 9, 2009, but was at home napping due to fatigue. (*Id*. at 31: *see also* Forster deposition at 27). Employee also testified she has suffered from Epstein-Barr virus and felt such fatigue from it she has had to lay down every afternoon around 3:00 or 4:00 p.m. (Forster deposition at 68).

104) Dr. Holmes found no objective medical or scientific evidence to support diagnoses of reactive airway disease, toxic encephalopathy, peripheral neuropathy, or multiple chemical sensitivity. While questioning the neurological testing methodology and abnormal results purportedly obtained by Dr. Ziem and Dr. Kilburn, who he described as "known for their advocacy of MCS," Dr. Holmes opined that if Employee in fact suffered neurological deficits, they could as well be the result of Employee's longstanding bipolar disorder, anxiety, recorded childhood brain injury with amnesia, and her history of alcohol abuse. (*Id*. at 32-33). He noted Employee's ongoing worsening despite removal from work exposures, and her progressive fears

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> volunteer for mercy ships. You know, I've done fun, great things. You know, I started off working in the cannery when I was 14. I've commercial fished. This is not it for me, you know, and through prayer and through different things. But I want to get better.
>
> I will lose my nursing license in November because I don't have – I haven't worked or volunteered 30 hours. And even though I was so brain damaged I could hardly tie my shoes, I struggled to do my CEUs to keep my license. That was in Seward there before – or after I saw Dr. Kilburn – and I still did my CEUs. And now how can I?
>
> I thought I could fall back on my biology. I thought I'd get a job in Homer. I've got enough money to go buy a place, you know. But what's hard is this past winter I've been – the same eye and brain to the electric heater. So in Alaska, even in the summer, you need a little heat. So to me – I need to be somewhere where I can be outside most of the time, you know, to get better. (Forster deposition at 67-78).

and anxieties over virtually all odors, electricity, and magnetic fields, are all indicative of an ongoing, untreated psychiatric illness that would not be caused by any workplace chemical exposures. (*Id*. at 35).

105) Dr. Holmes concluded Employee's workplace odor exposures did not cause any objectively verifiable chronic illness or disability. Any acute nasal, ocular or upper respiratory irritation that might have occurred would have been transient and long since resolved. Employee's initial doctor visits on August 13, 2009, August 15, 2009 and August 17, 2009, including associated laboratory testing were reasonable to rule out any significant pathology from the odor exposure, but after all testing and examination were essentially normal, subsequent treatment after August 17, 2009 was no longer reasonably or necessarily related to any industrial exposure. Employee attained medical stability in August, 2009, and no further treatment or evaluation related to the exposures is warranted. Employee did not suffer any permanent impairment related to the work exposures, and any limitations on her ability to work were due to her non-industrial pre-existing medical and psychiatric conditions. (SIME Report).

106) Dr. Holmes opined that based upon all of the evidence supplied, he believed Employee was not manufacturing complaints and that she indeed was suffering perceived symptoms, but those symptoms were not causally related to workplace chemical exposures, and are best treated through privately obtained psychiatric intervention. (*Id*. at 42).

107) Dr. Holmes cited as the most authoritative statements with respect to MCS those of the American College of Occupational and Environmental Medicine:

> ACOEM continues to support the position that the relationship of MCS to environmental contaminants remains unproven. No scientific basis currently exists for investigating, regulating or managing the environment with the goal of minimizing the incident or severity of MCS

and the American Academy of Allergy, Asthma and Immunology:

> A causal connection between environmental chemicals, foods, and/or drugs and the patient's symptoms continues to be speculative and cannot be based on the results of currently published scientific studies. (*Id*. at 33).

He noted similar consensus statements acknowledging the absence of scientific evidence to objectively support diagnoses of MCS have been released by the American Medical Association, American College of Physicians, and the Environmental Protection Agency. (*Id*. at 39).

108) Employee filed 678 exhibits comprising some 8000 pages in 11 volumes. Her exhibits were gleaned from a considerable amount of internet research, involved countless hours on a computer, using a printer and photocopy equipment, all done by Employee, and cover everything from recognition of MCS or proclamations of scent-free environments by schools, businesses, and cities in the U.S. Canada, Sweden and Australia, to commercial advertisements for porcelain buildings and earthing equipment, and indecipherable lists in untranslated Japanese. (Record; Employee exhibits, brief).

109) A fact sheet Employee obtained from the National Institutes of Health (NIH), National Institute of Environmental Health Sciences, provides the NIH definition of MCS: "chronic recurring disease caused by a person's inability to tolerate an environmental chemical or class of foreign chemicals." It noted MCS has been known by many names, most recently "Idiopathic Environmental Intolerance." The fact sheet continues:

> "One of the difficulties in classifying MCS as a true disease or illness has been the complex nature of chemicals in the environment and the interaction effects. However, these effects are not consistent among all people and not isolated to only MCS. Most symptoms actually are more common to other established illnesses, diseases, stress, and stimuli. The vague nature of this condition has prompted researchers to isolate reasons why MCS should be questioned as a disease . . .

Concerning triggers for MCS, the fact sheet acknowledges:

> As with many illnesses, children seem to be more susceptible to various triggers than adults. MCS is no exception. Patients who are believed to suffer from MCS as adults were exposed to significant amounts of chemicals when they were younger. Throughout their young lives, children are constantly exposed to a variety of common chemicals that may actually be the cause of symptoms that don't actually show up until their adult years . . . While the end result of this may not be immediate, it could potentially show up later in life as research has shown.
> (Employee Exhibit 69).

110) Employee concedes MCS "is a new injury, . . . with people fighting to get it recognized in the courts, media, and fighting for ADA protection. . .[T][he science will be there to back it up one day. It is just not there yet." (Employee Exhibit 382).

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.

Compensation or benefits are owed under AS 23.30.010 if, relative to all possible causes, employment was "the substantial cause" in bringing about the disability or need for medical treatment. *Runstrom v. Alaska Native Medical Center*, AWCAC Decision No. 150 (March 25, 2011).

A finding reasonable persons would find employment was or was not a cause of an employee's disability and impose or deny liability is, "as are all subjective determinations, the most difficult to support." There is no reason to suggest board members who so find, however, are irrational or arbitrary. That "some reasonable persons may disagree with a subjective conclusion does not necessarily make that conclusion unreasonable." *Rogers & Babler*, 747 P.2d at 534.

> **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 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, . . . 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. . . . 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.
> . . .
>
> **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 23.30.155. Payment of compensation.** . . .
> . . .
> (p) An employer shall pay interest on compensation that is not paid when due. Interest required under this subsection occurs at the rate specified in AS 09.30.070(a) that is in effect on the date the compensation is due.
>
> **AS 23.30.185. Compensation for temporary total disability.**
> In case of disability total in character but temporary in quality, 80 percent of the injured employee's spendable weekly wages shall be paid to the employee during the continuance of the disability. Temporary total disability benefits may not be paid for any period of disability occurring after the date of medical stability.

"Once an employee is disabled, the law presumes that the employee's disability continues until the employer produces substantial evidence to the contrary." *Runstrom v. Alaska Native Medical Center*, 280 P.3d 567, 573 (Alaska 2012) citing *Grove v. Alaska Constructors & Erectors*, 948 P.2d 454, 458 (Alaska 1997).

"The concept of disability compensation rests on the premise that the primary consideration is not medical impairment as such, but rather loss of earning capacity related to that impairment. An award for compensation must be supported by a finding that the claimant suffered a compensable disability, or more precisely, a decrease in earning capacity due to a work-connected injury or illness." *Vetter v. Alaska Workmen's Compensation Board,* 524 P.2d 264, 266 (Alaska 1974).

> **8 AAC 45.180. Costs and attorney's fees** . . .
> . . .
> (f) The board will award an applicant the necessary and reasonable costs relating to the preparation and presentation of the issues upon which the applicant prevailed at the hearing on the claim.
> . . .

ANALYSIS

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

The Alaska Workers' Compensation Act provides benefits, including medical and associated transportation costs, time loss and impairment benefits, interest, attorney fees and costs, when an employment injury is "the substantial cause" of the disability or need for medical treatment. AS 23.30.010(a). To be the substantial cause of disability or need for medical treatment, in relation to all possible causes, employment must be the greatest cause. In each case this is a factual question to which the presumption of compensability applies.

At the first stage of the three-part analysis, Employee has raised the presumption of compensability through her testimony she developed physiological symptoms following her exposures to workplace chemicals, and through PA Ursel's medical records assessing multiple chemical sensitivity causally related to workplace chemical exposures. The presumption is further supported by Dr. Ziem's, Dr. Kilburn's and Dr. Lax's written reports and opinions that Employee suffered multiple chemical sensitivity also known as toxic encephalopathy, upper and lower reactive airway disease, and peripheral neuropathy as a result of workplace chemical exposures.

At the second stage of the analysis, Employer has successfully rebutted the presumption through Dr. Stumpp's EME report and opinion Employee suffered only an acute irritation of the eyes, nose and throat as a result of chemical exposures, there is no objective evidence she sustained any occupational disease from her employment, or that the air quality conditions within SCCC

aggravated, accelerated or combined with a preexisting condition to produce disability or need for continuing treatment. 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. Only then does the board examine and weigh all of the evidence and assesses witness credibility.

At the third stage of the analysis, Employee has failed to persuade the panel that her symptoms and disability are causally related to chemical spills or odors encountered during her employment at SCCC. While Drs. Ziem, Kilburn and Lax have variously diagnosed Employee as suffering MCS, reactive airway disease and peripheral neuropathy as a result of her employment, their opinions rest primarily on Employee's subjective representations of symptoms and onset history, omissions of significant information concerning Employee's past medical and psychiatric history, and unverified testing methods outside of mainstream science and medicine. On virtually all physical examinations and diagnostic testing conducted in response to Employee's symptom complaints to Drs. Larson, Zetterman, Robinson, Bell, Schumacher and Korn, and to PAs Moore and Ursel, little if any physical signs supported her complaints, and repeated diagnostic testing of multiple body systems was consistently normal. Notable also is Mr. Ursel's admission he is no longer comfortable with his previous diagnosis of multiple chemical sensitivity, and his recognition that Employee's reported reactions to an escalating number of objects, including electromagnetic waves from cell phones, landlines and computers, and her pursuit of bizarre remedies for perceived symptoms, suggests mental illness is playing a significant role in her symptom complex.

Dr. Ziem's diagnosis was premised on several significant mistakes of fact, among them that the August 9, 2009 spill was of 50 to 100 gallons of 95% ethylene glycol, there was a continuing problem with ethylene glycol leaks from the HVAC system after August 9, 2009, thirteen employees in addition to Employee suffered similar symptoms, Employee was sent to the emergency room with severe difficulty breathing and in a stupor-like state on February 16, 2010, and Employee's health prior to August 10, 2009 was "excellent." Dr. Ziem did not examine any medical records prior to Mr. Ursel's August 17, 2009 chart note. She was unaware of Employee's historical complaints of fatigue, irritated eyes, blurry vision, and hair thinning. She was ignorant of the deprivation Employee suffered in childhood, describing it as "raised in a non-polluted fresh air environment on Kodiak Island" rather than marked by poverty, neglect, hunger, abandonment,

sexual abuse, domestic violence, and suicide. Dr. Ziem's report makes no mention of Employee's bipolar disorder diagnosis at age 17, subsequent diagnoses of paranoia and PTSD, her history of binge drinking and institutionalization for alcohol and drug abuse, or her family history of mental illness, including her father's untreated bipolar disorder and suicide ideation or suicide attempts by her brother and grandmother. Dr. Ziem's diagnosis was reached after she performed some unidentified and thus unverifiable testing. She fails to explain her diagnosis of upper and lower reactive airway disease in light of repeated and consistently normal pulmonary function testing. Finally, it is noteworthy Employee reported suffering adverse effects from the very treatments Dr. Ziem prescribed.

Dr. Kilburn, in reaching his diagnosis of "chemical encephalopathy" and "hyper-sensitivity to chemicals" and opining on its work-related causation, specifically and erroneously relied on an absence of psychiatric disease and exposure to alcohol. He assumed Employee was exposed to ethylene and propylene glycol, dipotassium hydrogen phosphate, Kodak developer, starter and replenisher, Diamond germicide, bleach, alcohol and welding fumes for five continuous months, when her reported exposures were on a few discrete occasions, the worst reportedly being in August, 2009, after which she twice reported to different providers she was getting better. Dr. Kilburn's testing methodology for "chemical encephalopathy" and "hyper-sensitivity to chemicals," and his associated opinions and testimony, have been repeatedly dismissed for their failure to meet established standards of scientific validity and reliability.

Finally, Dr. Lax's opinion Employee suffers from MCS as a result of workplace chemical exposures, based entirely on a one and a half hour interview and physical examination of Employee, is likewise unconvincing. Dr. Lax too relied on an unsupported history including a 50 to 100 gallon spill, fourteen workers seeking medical care, inmates cleaning up the spill reporting symptoms, a technician working on the x-ray machines going to the emergency room, and a second spill of ethylene glycol occurring on February 10, 2010. His findings on physical examination were completely normal for all body systems, although he found Employee exhibited a depressed mood. Dr. Lax's report is brief, conclusory, substantially reliant on subjective patient reporting, failed to consider Employee's pre-existing conditions, especially her significant mental health history, and failed to offer any differential diagnosis. His opinion she is 100% impaired is not based on the AMA Guides, but on a subjective opinion she is incapable of working. Significantly, Dr. Lax does

not ascribe to alternative treatments such as those recommended by Dr. Ziem and Dr. Kilburn, but instead counsels avoidance, ruling out other medical problems, and attending to the patient's mental health, usually depression.

The weight of the evidence does not support a conclusion that workplace chemical exposures were the substantial cause of Employee's claimed disability and need for medical treatment. The more persuasive evidence is the medical opinions of treating physicians Drs. Robinson, Bell, Larson and Korn, the normal physical examinations and diagnostic testing results consistently obtained by all of the treating providers, and the comprehensive reports and opinions of SIME and EME physicians Drs. Holmes and Stumpp.

The most comprehensive examination of the medical and other evidence, and thus the most convincing report and opinion was that of Dr. Holmes. Unlike Drs. Kilburn, Ziem and Lax, Dr. Holmes was privy to Employee's thorough medical and psychiatric history reflecting pre-existing physical and mental illness, the depositions of PA Ursel and Dr. Lax, and all of Employee's post-spill medical records. The facts with respect to the spills he gleaned from the objective Nortech and Aware reports, and PA Norcross' deposition testimony. That Dr. Holmes did not perform a physical examination of Employee, only a records review, is immaterial in this instance where the evidence consistently demonstrated a normal physical examination would have been obtained. Rather, and perhaps providing more useful information with respect to Employee's condition, Dr. Holmes reviewed Employee's deposition testimony, her journal entries, and her 40-page list of an increasing number of substances, products and places she reports cause her symptoms. Dr. Holmes persuasively concluded Employee suffered an acute chemical odor exposure on August 11, 2009 which caused self-limited and short-lived eye and nose irritations which would have resolved within days without any objectively verifiable permanent residuals. This was essentially the same conclusion reached by Drs. Robinson, Bell and Stumpp, with Drs. Bell and Stumpp, despite Employee's protestations to the contrary, also diagnosing depression, a diagnosis to which even Dr. Lax concurred.

Dr. Holmes' conclusion Employee suffers a severe odor anxiety, with pervasive and unwarranted fears of other physical agents such as electricity and magnetic fields, not caused by the work exposures but in need of competent behavioral and mental health treatment, comports with the strong weight of objective evidence in the record. That Employee was able to compile 11 volumes

and over 8000 pages of exhibits obtained from conducting countless hours of the internet research, and prepare on a computer a 100-page hearing brief, is a testament to her ability to perform in the presence of computers and printers without serious affect from electromagnetic fields, and to implement relatively high level cognitive function. Virtually all physical examinations and diagnostic testing of Employee has been normal, yet she reports an ever-growing list of products, substances and places which continue to cause her symptoms of "brain fog" and fatigue, including the alternative treatments prescribed by Dr. Ziem. She reports the only treatment of any use has been "earthing," attaching electrodes to her eyelids and grounding herself to the earth or with an alligator clip to her car, a practice even Dr. Lax disavowed and Mr. Ursel believes identifies Employee's complaints as psychological in origin.

Employee endured a child and young adulthood of deprivation and abuse. She has suffered from severe, untreated, mental illness for most of her life, first diagnosed with bipolar disorder when she was 17 years old, was treated only briefly with lithium carbonate and Prozac in her 20s, and has never received mental health counseling. She was later violently assaulted, diagnosed with paranoia and PTSD, and again never appropriately treated. These facts were either entirely unknown to or trivialized by Drs. Kilburn, Ziem and Lax, and were virtually ignored by them in reaching their diagnoses of multiple chemical sensitivity, a significant oversight. The flights of ideas present throughout Employee's deposition testimony and her 100-page brief are further evidence to this panel that Employee's subjective complaints stem from her underlying untreated mental illness and not from workplace chemical exposure.

Employee has failed to prove by a preponderance of evidence that her persistent symptoms were caused by workplace chemical exposure while employed at SCCC.

2. Is Employee entitled to continuing medical benefits?

An employer is responsible for medical and related transportation expenses for workplace injuries. AS 23.30.095(a). Employee, however, 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 little more than a few visits to her primary care provider immediately following exposure was called for. Employee is not entitled to medical and related transportation expenses beyond her initial visits seeking symptomatic relief following exposure.

3. Is Employee entitled to TTD benefits from November 4, 2010 and continuing? If so, in what amount?

An award of temporary total disability benefits is made where a claimant suffered a compensable disability, or more precisely, a decrease in earning capacity due to a work-connected injury or illness." *Vetter*. Although Employee appears incapable of returning to employment at this time, her inability to return to work is based on her pre-existing conditions, primarily her underlying untreated mental illness, and not on any workplace chemical exposure. Accordingly, Employee is not entitled to TTD benefits from November 10, 2010 and continuing.

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

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. AS 23.30.145. Interest is payable when compensation is due and unpaid. AS 23.30.155(p). Here, while Employee is entitled to medical benefits for her initial visits seeking symptomatic relief following exposure, there is no evidence those provider visits were ever controverted. Indeed, Employer only controverted benefits following Dr. Stumpp's November 10, 2010 EME report opining there is no objective evidence of occupational disease requiring further treatment or testing. Since no further compensation is payable, and because Employee has not prevailed on her claim for further medical benefits and TTD, 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 disability and need for continuing medical treatment.
2. Employee is not entitled to medical and related transportation expenses beyond her initial doctor visits for symptomatic relief.
3. Employee is not entitled to TTD benefits from November 4, 2010 and continuing.
4. Employee is not entitled to interest, attorney fees and costs.

ORDER

1. Employee's claim for medical and transportations expenses beyond initial visits for symptomatic relief is DENIED.

2. Employee's claims for TTD, interest, attorney fees and costs is DENIED.

Dated in Anchorage, Alaska on November 3, 2014.

ALASKA WORKERS' COMPENSATION BOARD

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Linda M. Cerro, Designated Chair

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Rick Traini, Member

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Michael O'Connor, 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 HEIDI M. FORSTER (fka KELLEY), employee / claimant; v. STATE OF ALASKA, self-insureed employer; defendant; Case Nos. 201003982M, 200912215, 201014356, 201014357, 01014358; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties on November 3, 2014.

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Pamela Murray, Office Assistant