ALASKA WORKERS' COMPENSATION BOARD

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

JERRY ELLEN, Employee, Claimant,	)	INTERLOCUTORY DECISION AND ORDER
v.	)	AWCB Case No. 200508739
DURETTE CONSTRUCTION, Employer,	)	AWCB Decision No. 17-0025
and	)	Filed with AWCB Juneau, Alaska On March 2, 2017
ALASKA TIMBER INSURANCE EXCHANGE, Insurer, Defendants.	)	

Durette Construction and Alaska Timber Insurance Exchange's (Employer) October 11, 2016 petition for board approval of the August 16, 2016 reemployment plan was heard on the record on February 7, 2017, a hearing date selected on January 23, 2017. Attorney Nora Barlow appeared and represented Employer. Jerry Ellen (Employee) appeared telephonically and testified. The panel consisted of two members, a quorum under AS 23.30.005(f). As a preliminary issue, Employee requested a continuance to seek legal representation and the panel issued an oral order denying Employee's request for a continuance. Employer filed an objection to the evidence Employee submitted for hearing and the panel reserved judgment. This decision addresses Employee's request for a continuance, Employer's objection to Employee's evidence, and decides Employer's petition. The record closed at the conclusion of the hearing.

ISSUES

As a preliminary issue, Employee requested a continuance to seek legal representation. Employee contended the hearing should be continued to allow him to seek legal counsel. Employee contended he needs an attorney to represent him because he does not understand why there is a hearing. Employee also contended he was not ready for the hearing because he asked for and did not receive a copy of Employer's controversion of medications.

Employer objected to a continuance. Employer contended Employee failed to demonstrate good cause to grant a continuance. Employer contended Employee has already been represented by counsel in the past, has had sufficient time to find an attorney, and the hearing had already been continued once for an unexpected illness. Employer contended there are no complex issues to be decided today and Employer would be significantly prejudiced by a continuance.

1. **Was the oral order denying Employee's request for a continuance correct?**

Employer contends the reemployment benefits administrator (RBA) abused its discretion by failing to timely satisfy its statutory obligation to review the reemployment benefits plan within fourteen days after the plan was submitted. Employer contends the RBA's failure act and fulfill its statutory obligation to issue a decision was a decision under the Workers' Compensation Act (Act) and requests the board review and approve the plan.

Employee opposes approval of the reemployment plan. Employee contends he is unable to complete the reemployment plan and work at this time due to chronic pain.

2. **Should the board approve the reemployment plan when the RBA failed to approve or deny the plan or request additional information within 14 days?**

Employer objects to any consideration of the evidence submitted by Employee for hearing. Employer contended the December 1, 2016 medical report is unreliable and should be excluded because Employee only submitted one page out of four of the medical report. Employer contended the physician letter should be excluded because it is hearsay, Employer has not waived the right to cross-examine Employee's physician, and the physician was not presented for deposition or as a witness at hearing.

Employee contends the evidence he submitted for hearing should be considered for determining whether the reemployment plan should be approved or denied.

3. Should Employee's evidence for hearing be excluded?

FINDINGS OF FACT

All findings in *Ellen I*, AWCB Decision No. 08-0171 (September 24, 2008), are incorporated herein. The following facts are reiterated from *Ellen I*, or are undisputed or established by a preponderance of the evidence:

1. On June 1, 2005, Employee injured his lower back after losing control of the dump truck he was driving while working for Employer. (*Ellen I*).

2. On March 15, 2006, a notice of appearance was filed for Employee's first attorney. (Notice of Appearance, March 15, 2006).

3. *Ellen I* was issued on September 24, 2008. It determined Employer was responsible for Employee's past and future, reasonably necessary medical expenses related to his right shoulder and low back conditions and awarded Employee TTD. (*Ellen I*).

4. On July 2, 2009, at a prehearing conference the parties stipulated Employee is eligible for reemployment benefits. (Prehearing Conference Summary, July 2, 2009).

5. On July 9, 2009, Employee saw Paul Schwaegler, M.D., about five months postop from his major spinal reconstructive procedure including a fusion of L3-4. (Schwaegler Report, July 9, 2009).

6. On August 13, 2009, the RBA mailed a letter informing Employee he was eligible for reemployment benefits based upon a stipulation to eligibility and an election form was included asking Employee to select reemployment benefits and pick a rehabilitation specialist or give up his right to reemployment benefits and choose to receive a job dislocation benefit. (Letter, August 13, 2009).

7. On October 8, 2009, Employee elected to receive reemployment benefits and waived his right to receive a job dislocation benefit and elected his rehabilitation specialist, Denise Van Der Pol. (Election to Either Receive Reemployment Benefits or Waive Reemployment Benefits and Receive a Job Dislocation Benefit Instead Form, October 8, 2009).

8. On October 27, 2009, the reemployment benefits section sent a letter to Employer's adjuster stating Employee elected to receive reemployment benefits and enclosed the election form. (Letter, October 27, 2009).

9. On November 12, 2009, the reemployment benefits section sent a letter to Ms. Van Der Pol informing her Employee had been found eligible for reemployment benefits and he had selected her to provide a reemployment benefits plan. (Letter, November 12, 2009).

10. On February 5, 2010, Ms. Van Der Pol sent a letter to Dr. Schwaegler asking whether Employee can participate in vocational training. (Letter, February 5, 2010).

11. On February 17, 2010, Dr. Schwaegler responded to Ms. Van Der Pol's February 5, 2010 letter and stated Employee could not participate in vocational training at this time. (Schwaegler Response, February 17, 2010).

12. On February 19, 2010, Ms. Van Der Pol requested suspension of the development of the reemployment plan based on Dr. Schwaegler's February 17, 2010 opinion. (Rehabilitation Report, February 19, 2010; Letter, February 17, 2010).

13. On March 11, 2010, the RBA stated he was unable to make a determination on the request for suspension without further information as to when the plan development might resume. (Letter, March 11, 2010).

14. On April 20, 2010, Ms. Van Der Pol filed a status report on Employee's reemployment plan stating she was waiting on a response from Dr. Schwaegler to her letter written March 22, 2010 to predict if "there would be a point of improvement, in time, that would allow him to work." (Status Report, April 20, 2010).

15. On May 27, 2010, Dr. Schwaegler opined Employee will remain temporarily totally disabled for at least the next six to twelve months and the rehabilitation specialist requested suspension of the development of the reemployment plan in a letter to Ms. Van Der Pol. (Schwaegler Letter, May 27, 2010; Rehabilitation Report, May 27, 2010).

16. On May 27, 2010, Ms. Van Der Pol requested a suspension of the reemployment plan based on the May 27, 2010 letter from Dr. Schwaegler. (Suspension Request, May 27, 2010).

17. On June 8, 2010, the RBA granted the rehabilitation specialist's request to suspend the development of the reemployment plan. (Letter, June 8, 2010).

18. On January 5, 2011, Jeffrey Fernandez, PA-C, opined Employee is expected to remain temporarily totally disabled for a period of at least six to twelve months in a letter to Ms. Van Der Pol. (Letter, January 5, 2011).

19. On January 31, 2011, Ms. Van Der Pol requested suspension of the development of the reemployment plan based on PA-C Fernandez's January 6, 2011 opinion. (Rehabilitation Report, January 31, 2011).

20. On May 8, 2012, Employer filed a petition for removal of Employee's first attorney as counsel of record because Employee's first attorney had his license to practice law suspended. (Petition, May 8, 2012).

21. On May 18, 2011, Employer underwent lumbar surgery to remove the posterolateral instrumentation at the L3-4 level; explore the fusion from L3 down to the sacrum; perform an un-instrumented posterolateral fusion utilizing bone graft and bone morphogenetic protein; and disc herniation excisions at the L3-4 and L4-5 levels and foraminotomies. (Schwaegler Operative Report, May 18, 2011).

22. On May 20, 2011, Dr. Schwaegler opined in a letter to Employer's adjuster Employee "will not be able to return to gainful employment," "it is a permanent condition" and Employee is "permanently disabled due to his lumbar spine condition." (Schwaegler Letter, May 20, 2011).

23. On May 26, 2011, Ms. Van Der Pol requested Employee's "file be closed for rehabilitation efforts" based on the May 20, 2011 letter by Dr. Schwaegler. (Rehabilitation Report, May 26, 2011).

24. On June 7, 2012, Employee and Employer appeared at a prehearing conference. Employee stated he was no longer represented by his first attorney and is currently unrepresented in this case. (Prehearing Conference Summary, June 7, 2012).

25. On July 26, 2012, an entry of appearance was filed for Employee's second attorney. (Entry of Appearance, July 26, 2012).

26. On October 9, 2012, Employee visited Matthew Provencher, M.D., for an Employer Medical Evaluation (EME). Dr. Provencher opined Employee's lumbar spine is medically stable and recommended no additional surgeries. (Provencher EME Report, October 9, 2012).

27. On January 27, 2014, notice of withdrawal was filed for Employee's second attorney. (Notice of Withdrawal, January 27, 2014).

28. On April 2, 2014, Employer filed a controversion denying surgical treatment for lumbar spine based on the October 9, 2012 2012 EME report of Dr. Provencher. (Controversion, April 2, 2014).

29. On May 16, 2014, Employee saw Gary Olbrich, M.D., for an EME. Dr. Olbrich recommended weaning Employee totally off all narcotic analgesics for continued treatment of his lumbar spine pain symptoms and proposed a plan to do so. (Olbrich EME Report, May 16, 2014).

30. On May 16, 2014, Employee also saw Dr. Eric B. Harris M.D., for an EME. Dr. Harris opined Employee has "multilevel lumbar degenerative disc disease, a condition that in all likelihood preexisted any work injury"; status post back surgeries; and ongoing subjective back and lower extremity symptoms without consistent objective finding. Dr. Harris stated further medical treatment of the lumbar spine at this point in time is not indicated and recommended weaning Employee off of narcotic pain medication. (Harris EME, May 16, 2014).

31. On June 18, 2014, Employer mailed a letter to Dr. Schwaegler inquiring whether he agreed with Dr. Olbrich's recommendation regarding Employee's discontinuation of narcotic analgesics and included Dr. Olbrich's EME report with the plan for discontinuation of narcotic medications. (Employer Letter, June 18, 2014).

32. On July 2, 2014, Employer filed a controversion denying all medical treatment for the lumbar spine other than reasonable and necessary medical car for weaning off narcotic pain medications and management of non-nonnarcotic medications following weaning from the narcotic pain medications based on the EME reports by Dr. Olbrich and Dr. Harris. (Controversion, July 2, 2014).

33. On September 10, 2014, Dr. Schwaegler opined he agreed with Dr. Olbrich's plan to wean Employee off of narcotic medications. (Schwaegler Statement, September 10, 2014).

34. On February 24, 2015, Employee visited with Robert Friedman, M.D., for an evaluation for an in-patient pain management program called LifeFit Chronic Pain Program (LifeFit). (Friedman Report, February 24, 2015).

35. On March 18, 2015, Employee visited with Dr. Friedman for the program end follow up evaluation for LifeFit. Employee was off of narcotics and was to be discharged. Dr. Friedman noted Employee completed a functional capacity evaluation the same day and it was invalid because "the numbers we got were less than he's doing in therapy." He stated Employee was

released to return to work at "light-medium duty (35 pounds occasional, 20 pounds repetitive lifting)." (Friedman, March 18, 2015).

36. On April 8, 2015, Dr. Friedman stated Employee completed the LifeFit Program and has been released to work in a letter to Employer's claims adjuster. Dr. Friedman opined:

> It is my understanding that [Employee] has not followed up and as directed begun a daily independent exercise program at a gymnasium. In addition, he did not follow up with his counselor. This would be consistent with noncompliance with his physician directed treatment regime.
>
> His noncompliance with ongoing treatment would, on a more probable than not basis and to a reasonable degree of medical certainty, interfere with his ability to have a successful rate of improvement at 10% per week, which he was able to achieve during the LifeFit Chronic Pain Program with daily supervision.
>
> [Employee] was not honest and truthful during the LifeFit Program. Urine drug screens had confirmed he had resumed using THC, which is not legal in the State of Idaho. He was informed of such and directed not to do so. Nonetheless, urine drug screens confirmed THC presence. He did taper and discontinue the use of opiates. He was successful in becoming opiate free and should remain opiate free. There is no medical indication that he requires continued or ongoing opiate use.
>
> It is my opinion that [Employee] is employable. He was performing at the light to medium level at the time of his completion of the LifeFit Program. His permanent work restrictions based on his surgical treatment of his lumbar spine is medium work level, i.e. 50 pounds occasional and 25 pounds repetitive. This is based on his surgical treatment and his release to return to work at light to medium work as based on his performance at the end of the LifeFit Program. His failure to follow through with the recommended treatment program is decreasing his physical performance but does not change his permanent restrictions. Based on this, he is able to return to work full-time having been present and performing at the LifeFit program six and a half hours a day.

(Friedman Letter, April 8, 2015).

37. On April 21, 2015, Dr. Friedman opined in a letter to Employer's claims adjuster the following:

> [T]here is no need for any other medical treatment in regards to his industrial injury of 06/01/05 other than participation and continuing in a daily independent program, which he demonstrated expertise and performance by the end of the program. He had in fact been weaned off of his opiates and no longer requires medications for pain management.

(Friedman Letter, April 21, 2015).

38. On April 27, 2015, Employer filed a controversion denying surgical treatment for the lumbar spine, diagnostic tests for the lumbar spine, pain management for the lumbar spine, narcotic pain medications, counseling, including anger management, medications other than Cymbalta, Trazodone, and Tizanidine and visits with Dr. Friedman to manage the medications, medications and psychiatric care for Employee's complaints of auditory hallucinations, and any other medical care for the work injury other than participating in a daily independent exercise program based on Dr. Friedman's April 8, 2015 and April 21, 2015 letters. The proof of service indicates it was served to Employee's address of record. (Controversion, April 27, 2015).

39. On December 23, 2015, Employee saw Dr. Liljegren to establish care for chronic back pain. Dr. Liljegren noted Employee would like to see his back surgeon again, but workers' compensation will not approve of a visit. Employee stated he has pain all of the time but doesn't want to go back on narcotics, he exercises in the pool, and he has chronic insomnia due to pain and trazodone helps. Employee stated he would like a referral to another pain clinic for reevaluation regarding his pain. Dr. Liljegren referred Employee to a pain clinic in Washington. (Liljegren Report, December 23, 2015).

40. On January 19, 2016, Employee visited Dr. Liljegren for to follow up establishing care for chronic low back pain. Employee stated worker's compensation declined to send him to another pain clinic in Washington State. Employee reported his right shoulder is really sore, the pain interferes with his sleep and he would like to see if something could be done about it. Dr. Liljegren noted Employee has chronic low back pain and he has some pretty significant pain in his low thoracic back right now. It was noted Employee has tingling going all the way down his left arm. Dr. Liljegren stated she thought a pain clinic could be very helpful and Employee will return for a trial of trigger point injection. (Liljegren Report, January 19, 2016).

41. On January 27, 2016, Employee saw Dr. Liljegren to follow up his neck pain. Employee reported he was hit on the top of his head in 1979 and had a brief loss of consciousness. Employee experienced headaches since 1979 which he believes are migraines and some chronic neck pain. The pain is an intermittent deep throbbing on the left side of his neck and does not radiate into his arms. Employee noted since his head injury he gets nausea and dizziness when he moves his head certain ways. Employee has not been able to fill the prescriptions for Lidoderm or Voltaren "because workers comp hasn't approved it." Employee also reported the

trigger point injection relieved pain on the left trunk going up to his left shoulder. (Liljegren Report, January 27, 2016).

42. On March 10, 2016, Dr. Robert Friedman opined in a letter addressed to the Employer's claims administrator:

> Thank you for the opportunity to review the medical records you provided on [Employee]. These included medical records from December 2015 – 2/10/16 with his primary care physician, Dr. Diane Liljegren.
>
> Based on my review of the medical records, [Employee] remains at maximum medical improvement, and he should be considered medically stable. We documented in the LifeFit Program his performance at the end of the program at light to medium duty as performance. His permanent work restrictions are medium work level, i.e., 50 pounds occasional and 25 pounds repetitive.
>
> [Employee] remains opiate-free, and should remain so. Though he reported to his physician that the only benefit he achieved in the LifeFit Program was opiate detoxification, we did demonstrate a 40% improvement in his physical performance through the LifeFit Program, as well as his achievement at the light to medium work performance as he left the program.
>
> It is my opinion that [Employee] can return to work full-time. Should he have been compliant with his home exercise program, which he was provided at the time of discharge, he would be at medium work restrictions. Medium work restrictions are his permanent restrictions and limitations. I do not believe he can operate heavy duty truck driving within those restrictions, though I would defer to a vocational specialist in regards to identifying and retraining as necessary for return employment. He demonstrated the ability to perform in the LifeFit Program for six and a half hours, and is therefore released to return to work full-time at medium work level.

(Friedman Letter, March 10, 2016).

43. On March 15, 2016, Employer mailed a letter to the RBA requesting the rehabilitation specialist re-open the file and develop and submit a reemployment benefits plan for Employee. Employer stated,

> [Employee has continued to receive medical treatment and, in 2015, completed the LifeFit Chronic Pain Program under the supervision of Dr. Robert Friedman, Idaho Physical Medicine & Rehabilitation. Dr. Friedman felt that by the end of the program, [Employee]'s performance was at light to medium duty and [Employee] could return to work full-time.

(Employer Letter, March 15, 2016).

44. On March 26, 2016, Employee saw Dr. Harris for a follow up EME. Dr. Harris opined no further permanent partial impairment would be assignable for the alleged June 1, 2005 work injury because there was no truly identifiable diagnosis as a result of the work incident. Dr. Harris provided a 5% whole person impairment as a result of a previous injury and no rating as a result of the 2005 work event. (Harris EME Report, March 26, 2016).

45. On March 30, 2016, Employee saw Dr. Liljegren to follow up for abdominal pain starting when Employee was taking non-steroidal anti-inflammatory drugs. Employee also noted pain in his left mid back and it radiates down to just below his rib cage. Employee still has chronic back pain and is using THC which helps the chronic back pain somewhat. (Liljegren Report, March 30, 2016).

46. On April 5, 2016, the RBA mailed a letter informing Ms. Van Der Pol it would be appropriate to resume the development of the reemployment plan. (Letter, April 5, 2016).

47. On April 26, 2016, Dr. Harris sent a letter to Employer's attorney regarding a permanent partial impairment rating. Dr. Harris opined:

> [Employee] really has no assignable diagnosis as a result of the 06/01/05 work event. There is not even evidence in the medical record that would suggest [Employee] sustained a lumbar strain; however, if one assumes that he did, then he would have reached medically stationary status from that injury eight weeks or so afterward, and there is no assignable permanent partial impairment as a result of a lumbar strain, based on the sixth edition of the Guides.

(Harris Letter, April 26, 2016).

48. On July 26, 2016, the division mailed a letter informing the rehabilitation specialist over 90 days had passed since the case was referred and the specialist must submit a report within 10 days of the date of the letter. (Letter, July 16, 2016).

49. On August 1, 2016, the RBA's resignation became effective. (Observation).

50. On August 16, 2016, Ms. Van Der Pol signed the reemployment plan and submitted the reemployment plan to the RBA for review. The Occupational Goal of the plan is a crew member or fast food worker at McDonalds and Ms. Van Der Pol noted Employee had no intention of participating in a vocational rehabilitation re-training program. The plan stated Employee reported volunteering at a restaurant and a senior center busing tables, delivering food, doing dishes, cleaning, making sandwiches and clam chowder and delivering take-out food. Employee's remunerative wage is $10.00 per hour and the crew member job meets the

remunerative wage. The job is light duty, entry level, located where Employee lives, and does not require Employee to learn any computer, internet or clerical skills. Employee uses marijuana and this job does not perform drug tests. The plan stated Employee was cleared to work at the light to medium physical demand level in a full time capacity by Dr. Friedman. The total cost of the plan was $7,770.00 for one month of intensive work readiness counseling and application and 12 hours of work readiness job placement adjustment follow up by Ms. Van Der Pol. (Reemployment Benefits Plan, August 16, 2016).

51. On August 31, 2016, a workers' compensation technician with the reemployment benefits section mailed a letter to Employee, Employer's attorney and Ms. Van Der Pol informing them the plan had only been signed by Ms. Van Der Pol and stating,

> The status of the plan is in question because it has not been approved and signed by employee and/or employer/insurer. Please contact the individuals who have not signed the plan and find out if they are in agreement with the plan or if they oppose it. If they agree with the plan, please forward their signatures to my attention. Once all parties agree to and sign the plan, it goes forward as written.
>
> Please let us know within 10 days of the parties' decision regarding plan approval.

(Reemployment Benefit Section Letter, August 31, 2016).

52. On September 7, 2016, Employer's adjuster signed the reemployment plan and submitted it to the RBA. (Employer's Adjuster Letter, September 7, 2016).

53. On September 16, 2016, Employer filed a controversion suspending all benefits based on Employee's failure to sign and return releases to obtain medical and rehabilitation information relative to Employee's injury. (Controversion, September 16, 2016).

54. On September 28, 2016, Employer contacted the reemployment benefit section. The event entry states:

> [Employer Attorney] states both [rehabilitation specialist]/[Employer] have signed plan but [Employee] has not & she asks how plan review requests are currently dealt with in the [reemployment benefit section] with no [RBA] or acting [RBA]--after consulting rb officer II's advs [Employer Attorney] that plan review [requests] are accepted but will not be addressed in [reemployment benefit section] until a new [RBA] is hired.krs

(ICERS Event Entry, Phone Call, September 28, 2016).

55. On September 28, 2016, Employer requested the RBA review and approve the plan as Employee has not approved the plan. (Employer Letter, September 28, 2016).

56. On October 10, 2016, Employer filed a withdrawal of controversion for Employer's controversion dated September 16, 2016. (Withdrawal of Controversion, October 10, 2016).

57. On October 11, 2016, Employer filed a petition requesting the board, in the absence of a RBA, review and approve the reemployment plan under Alaska Statute (AS) 23.30.041(j). (Petition, October 11, 2016).

58. On November 1, 2016, Employer filed an affidavit of readiness for hearing (ARH) on the October 11, 2016 petition. (ARH, November 1, 2016).

59. On December 13, 2016, at a prehearing conference, a hearing was scheduled on January 24, 2017 on Employer's petition for board approval of the reemployment benefits plan. The prehearing conference summary includes the workers' compensation reemployment benefits section in the proof of service section. (Prehearing Conference Summary, December 13, 2016).

60. On December 14, 2016, the division served Employee, Employer, and Employer's adjuster with the prehearing conference summary by certified mail. Due to a clerical error, the workers' compensation reemployment benefits section was not served with the prehearing conference summary. (ICERS Entry, Prehearing Conference Summary Served, December 14, 2016).

61. On January 4, 2017, Employee filed with the board by email hearing evidence including a letter dated December 1, 2016 from Dr. Liljegren and two pages of a medical report for an appointment with Dr. Liljegren on December 1, 2016. The email cover sheet indicated only the division was included in the email. The medical report included an order for a lumbar spine MRI without contrast and a referral to the Swedish Medical Center pain clinic. The letter dated December 1, 2016 from Dr. Liljegren and addressed to Ms. Van Der Pol. The letter stated:

> This is a response to your letter dated August 15, 2016 Re: Jerry Ellen. This is the first time I have seen him since receiving a letter side [sic] not able to respond. Currently [Employee] is unable to do work of any kind. He has had an increase in his pain level in large part because Worker's [sic] Compensation is no longer paying for his Lyrica and he cannot afford to purchase it. Lyrica was fairly effective in controlling his pain. He also has some new neurologic signs that are worrisome and need further evaluation. Once he has his new neurologic evaluation and is back on his Lyrica, he may be able to be gainfully employed.

(Employee Email, January 4, 2017; Liljegren Letter, December 1, 2016; Liljegren Report, December 1, 2016; Observation).

62. On January 6, 2017, a workers' compensation officer called Employee and left a voicemail and sent Employee an email informing Employee the email did not indicate Employee served

Employer with the emailed documents and medical documents should be filed on a medical summary form. (Phone Call, January 6, 2017; Email, January 6, 2017).

63. On January 9, 2017, Employee emailed to the division a medical summary form listing a letter to the rehabilitation specialist from Dr. Liljegren and a referral from Dr. Liljegren. The proof of service section on the medical summary form provides Employer was served. (Medical Summary Form, January 9, 2017).

64. On January 13, 2017, Employer objected to Employee's evidence because Employer received the medical report and letter by Dr. Liljegren on January 7, 2017. Employer argued the medical report is incomplete and unreliable because was not submitted in its entirety. Employer stated it did not waive the right to cross-examine Dr. Liljegren and argued the letter by Dr. Liljegren is hearsay and should not be considered by the board at hearing if Dr. Liljegren is not presented for deposition or as a witness at hearing. Employer did not waive its right to cross-examine Dr. Liljegren. (Objection, January 13, 2016).

65. On January 17, 2017, a workers' compensation technician served the RBA with the December 13, 2016 prehearing conference summary by email. (Email, January 17, 2017).

66. On January 18, 2017, Employer filed a witness list including Ms. Van Der Pol and stated she would testify as to "her activities as the rehabilitation counselor on [Employee]'s claim." (Employer Witness List, January 18, 2017).

67. On January 23, 2017, Employer's attorney's office contacted a workers' compensation officer to reschedule the January 24, 2017 hearing date due to Employer's attorney's unexpected illness. The workers' compensation officer contacted Employee about the request and both Employer and Employee agreed to reschedule the hearing on February 7, 2017. (ICERS Database, Phone Call Record, January 23, 2017; Record).

68. At hearing on February 7, 2017, Employer contended the RBA has a statutory obligation to review and approve or deny a reemployment plan with 14 days. Employer argued by failing to act and ignoring its statutory duty for five months, the RBA abused its discretion. Employer argued Employee's evidence submitted for hearing should be excluded because the medical report is untrustworthy because it is incomplete and the letter dated December 1, 2016 from Dr. Liljegren and addressed to Ms. Van Der Pol should be excluded because Employer essentially requested cross-examination of Dr. Liljegren. (Employer).

69. Employee credibly testified he has chronic pain and he is back on prescription pain medication. Employee stated he is unable to complete the reemployment plan and work at this time due to chronic pain. Employee testified he is using marijuana because it helps his chronic pain. Employee stated he would love to work but he is concerned he would hurt someone or put someone else in jeopardy if he went back to work in his condition. Employee stated there is no way he can go back to work in a gainful way. Employee stated he could not have obtained and submitted his evidence for hearing earlier than he submitted it; he stated he submitted it when he received it. Employee testified he had not heard from the reemployment benefits section about the reemployment plan review. Employee stated he wanted the hearing evidence he submitted considered when deciding Employer's petition for board approval of the reemployment plan. (Employee).

70. At hearing, Ms. Van Der Pol credibly testified about the reemployment plan she developed. She stated all of the different employment ideas explored are outlined in the plan. She stated she completed a job analysis and observed the job location. Ms. Van Der Pol testified she used inventories to narrow down the occupational options and the plan hits all the criteria it needed to address including: Employee's marijuana use; Employee's inability to use and refusal to learn computers and the internet: Employee's high school level education; the light to medium duty physical demand limitation and it is a walking, standing, or sitting job; and located where Employee currently lives. She testified she elected on the job training because that is the way Employee has learned his jobs in the past. Ms. Van Der Pol stated Employee is sociable, amenable and he will do well in a team environment. Ms. Van Der Pol testified the plan will ensure remunerative employability. She stated she expects Employee to be able to satisfactorily complete the plan and she is ready to start anytime. (Ms. Van Der Pol).

71. At hearing, Employer submitted Ms. Van Der Pol's resume as an exhibit. Employee did not object to introduction of this document as evidence. (Resume of Ms. Van Der Pol, February 7, 2017; Record).

72. Five months have passed since the plan was first submitted to the RBA and the RBA has not reviewed and approved or denied the reemployment plan, nor has the RBA requested additional information. (Record; Observation).

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 . . . to ensure the quick, efficient, fair, and predictable delivery of . . . benefits to injured workers at a reasonable cost to . . . employers. . .

AS 23.30.005. Alaska Workers' Compensation Board.
. . . .

(h) . . . Process and procedure under this chapter shall be as summary and simple as possible. . . .

The board may base its decisions not only on direct testimony 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).

8 AAC 45.070. Hearings.
(a) Hearings will be held at the time and place fixed by notice served by the board under 8 AAC 45.060(e). A hearing may be adjourned, postponed, or continued from time to time and from place to place at the discretion of the board or its designee, and in accordance with this chapter. . . .

8 AAC 45.074. Continuances and cancellations.
(a) A party may request the continuance or cancellation of a hearing . . . .

(b) Continuances or cancellations are not favored by the board and will not be routinely granted. A hearing may be continued or cancelled only for good cause and in accordance with this section. For purposes of this subsection,

(1) good cause exists only when

(A) a material witness is unavailable on the scheduled date and deposing the witness is not feasible;

(B) a party or representative of a party is unavailable because of an unintended and unavoidable court appearance;

(C) a party, a representative of a party, or a material witness becomes ill or dies;

(D) a party, a representative of a party, or a material witness becomes unexpectedly absent from the hearing venue and cannot participate telephonically;

(E) the hearing was set under 8 AAC 45.160(d);

(F) a second independent medical evaluation is required under AS 23.30.095(k);

(G) the hearing was requested for a review of an administrator's decision under AS 23.30.041(d), the party requesting the hearing has not had adequate time to prepare for the hearing, and all parties waive the right to a hearing within 30 days;

(H) the board is not able to complete the hearing on the scheduled hearing date due to the length of time required to hear the case or other cases scheduled on that same day, the lack of a quorum of the board, or malfunctioning of equipment required for recording the hearing or taking evidence;

(I) the parties have agreed to and scheduled mediation;

(J) the parties agree that the issue set for hearing has been resolved without settlement and the parties file a stipulation agreeing to dismissal of the claim or petition under 8 AAC 45.050(f)(1);

(K) the board determines that despite a party's due diligence in completing discovery before requesting a hearing and despite a party's good faith belief that the party was fully prepared for the hearing, evidence was obtained by the opposing party after the request for hearing was filed which is or will be offered at the hearing, and due process required the party requesting the hearing be given an opportunity to obtain rebuttal evidence;

(L) the board determines at a scheduled hearing that, due to surprise, excusable neglect, or the board's inquiry at the hearing, additional evidence or arguments are necessary to complete the hearing;

(M) an agreed settlement has been reached by the parties less than 14 days before a scheduled hearing, the agreed settlement has not been put into writing, signed by the parties, and filed with the board in accordance with 8 AAC 45.070(d)(1), the proposed settlement resolves all disputed issues set to be heard, and the parties appear at the scheduled hearing to state the terms of the settlement on the record; or

(N) the board determines that despite a party's due diligence, irreparable harm may result from a failure to grant the requested continuance or cancel the hearing;

(2) the board or the board's designee may grant a continuance or cancellation under this section

(A) for good cause under (1)(A) - (J) of this subsection without the parties appearing at a hearing;

(B) for good cause under (1)(K) - (N) of this subsection only after the parties appear at the scheduled hearing, make the request and, if required by the board, provide evidence or information to support the request; or

> (C) without the parties appearing at the scheduled hearing, if the parties stipulate to the continuance or cancellation for good cause as set out in (1)(A) - (J) of this subsection.

AS 23.30.041. Rehabilitation and reemployment of injured workers.

. . . .

(c) An employee and an employer may stipulate to the employee's eligibility for reemployment benefits at any time. . . .

. . . .

(e) An employee shall be eligible for benefits under this section upon the employee's written request and by having a physician predict that the employee will have permanent physical capacities that are less than the physical demands of the employee's job as described in the 1993 edition of the United States Department of Labor's 'Selected Characteristics of Occupations Defined in the Dictionary of Occupational Titles' for:

> (1) the employee's job at the time of injury; or
>
> (2) other jobs that exist in the labor market that the employee has held or received training for within 10 years before the injury or that the employee has held following the injury for a period long enough to obtain the skills to compete in the labor market, according to specific vocational preparation codes as described in the 1993 edition of the United States Department of Labor's 'Selected Characteristics of Occupations Defined in the Dictionary of Occupational Titles.'

. . . .

(g) Within 30 days after the employee receives the administrator's notification of eligibility for benefits, an employee shall file a statement under oath with the board, on a form prescribed or approved by the board, to notify the administrator and the employer of the employee's election to either use the reemployment benefits or to accept a job dislocation benefit under (2) of this subsection. The notice of the election is effective upon service to the administrator and the employer. The following apply to an election under this subsection:

> (1) an employee who elects to use the reemployment benefits also shall notify the employer of the employee's selection of a rehabilitation specialist who shall provide a complete reemployment benefits plan; failure to give notice of selection of a rehabilitation specialist required by this paragraph constitutes noncooperation under (n) of this section; if the employer disagrees with the employee's choice of rehabilitation specialist to develop the plan and the disagreement cannot be resolved, then the administrator shall assign a rehabilitation specialist; the employer and employee each have one right of refusal of a rehabilitation specialist; . . .

. . . .

(h) Within 90 days after the rehabilitation specialist's selection under (g) of this section, the reemployment plan must be formulated and approved. The reemployment plan must require continuous participation by the employee and must maximize the usage of the employee's transferrable skills. The reemployment plan must include at least the following:

(1) a determination of the occupational goal in the labor market;

(2) an inventory of the employee's technical skills, transferrable skills, physical and intellectual capacities, academic achievement, emotional condition, and family support;

(3) a plan to acquire the occupational skills to be employable;

(4) the cost estimate of the reemployment plan, including provider fees; and the cost of tuition, books, tools, and supplies, transportation, temporary lodging, or job modification devices;

(5) the estimated length of time that the plan will take;

(6) the date that the plan will commence;

(7) the estimated time of medical stability as predicted by a treating physician or by a physician who has examined the employee at the request of the employer or the board, or by referral of the treating physician;

(8) a detailed description and plan schedule;

(9) a finding by the rehabilitation specialist that the inventory under (2) of this subsection indicates that the employee can be reasonably expected to satisfactorily complete the plan and perform in a new occupation within the time and cost limitations of the plan; and

(10) a provision requiring that, after a person has been assigned to perform medical management services for an injured employee, the person shall send written notice to the employee, the employer, and the employee's physician explaining in what capacity the person is employed, whom the person represents, and the scope of the services to be provided.

(i) Reemployment benefits shall be selected from the following in a manner that ensures remunerative employability in the shortest possible time:

(1) on the job training;

(2) vocational training;

(3) academic training;

(4) self-employment; or

(5) a combination of (1) - (4) of this subsection.

(j) The employee, rehabilitation specialist, and the employer shall sign the reemployment benefits plan. If the employer and employee fail to agree on a reemployment plan, either party may submit a reemployment plan for approval to the administrator; the administrator shall approve or deny a plan within 14 days after the plan is submitted; within 10 days of the decision, either party may seek review of the decision by requesting a hearing under AS 23.30.110; the board shall uphold the decision of the administrator unless evidence is submitted

> supporting an allegation of abuse of discretion on the part of the administrator; the board shall render a decision within 30 days after completion of the hearing.
> . . . .
>
> (l) The cost of the reemployment plan incurred under this section shall be the responsibility of the employer, shall be paid on an expense incurred basis, and may not exceed $13,300.
> . . . .
>
> (r) In this section
> (1) "administrator" means the reemployment benefits administrator under (a) of this section;

The legislature granted the RBA authority to decide issues related to reemployment benefits, including approving a request for an eligibility evaluation and ultimately deciding whether an injured worker is eligible for rehabilitation and reemployment benefits. *Meza v. Alyeska Seafoods, Inc.*, AWCB Decision No. 89-0207 (August 14, 1989).

The RBA-Designee's decision must be upheld absent "an abuse of discretion on the administrator's [designee's] part." An "abuse of discretion" in the context of the Alaska Workers' Compensation Act, has been defined as "issuing a decision which is arbitrary, capricious, manifestly unreasonable, or which stems from an improper motive," failure to apply controlling law or regulation, or failure to exercise sound, reasonable and legal discretion. *Smith v. CSK Auto, Inc.*, 204 P.3d 1001, 1013 (Alaska 2009); *Irvine v. Glacier General Construction*, 984 P.2d 1103, 1107, n. 13 and accompanying test (Alaska 1999); *Sheehan v. University of Alaska*, 700 P.2d 1295, 1297 (Alaska 1985); *Tobeluk v. Lind*, 589 P.2d 873, 878 (Alaska 1979); *Manthey v. Collier*, 367 P.2d 884, 889 (Alaska 1962).

In *Clark v. Trecon, Reichert Shake & Fencing, and State of Alaska*, AWCB Decision No. 95-0056 (March 1, 1995), Trecon petitioned to dismiss contending the State of Alaska was responsible for injuries Clark received while completing on the job training with Trecon as specified in a reemployment plan, under the prior statute AS 23.30.041(c) which provided:

> For a person eligible for vocational rehabilitation service under this chapter or AS 23.15.080 who is placed with an employer for service at the request of the rehabilitation administrator or division of vocational rehabilitation to provide on the job training . . . the liability set out in (a) of this section applies to the state

> rather than to the employer. However, an employer may elect to assume the liabilities in (a) of this section. *Id.* at 3-4.

The rehabilitation specialist prepared and submitted a plan to the RBA. However, the administrator did not approve or deny the plan and Clark was injured while completing his on the job training with Trecon. The issue was whether the rehabilitation administrator approved the reemployment plan under AS 23.30.041(j) so liability for Clark's injuries sustained while completing the on the job training applies to the State rather than to Trecon under AS 23.30.041(c). The board concluded Clark's placement was by a rehabilitation specialist, not the administrator, and found the State was not liable. The administrator's failure to approve or deny a reemployment plan under AS 23.30.041(j) was addressed by the board:

> There is nothing in the statute which addresses the effect of the RBA's failure to timely act. If the legislature wanted the plan to be automatically approved or denied if the RBA failed to timely act, it could have addressed that in AS 23.30.041(j). Since it did not, we find the RBA's failure to act left the plan in the same status. It was not approved and it was not denied; it was in limbo. *Id*. at 8.

In *Burke v. Houston NANA, LLC*, 222 P.3d 851 (Alaska 2010), the Court held the board did not have the adjudicative power to impose a discovery rule on deadlines, or add legal requirements that neither the legislature nor the executive branch in its rule-making power chose to include in the Alaska Workers' Compensation Act or regulations. "If the board wished to add to the deadlines it explicitly set in the regulations - via adoption of a discovery rule - it was required to do so by regulation." *Id.* at 867. The Administrative Procedures Act (APA) "requires an agency to follow certain procedures, including public notice and an opportunity for public comment, before it can supplement or amend a regulation." *Id.* This is distinguished from an agency's right to implement internal agency practices, which do "not themselves alter the rights or interests of the parties, although [they] may alter the manner in which the parties present themselves or their viewpoints to the agency." *Id.*

> **8 AAC 45.052. Medical summary.**
> (a) A medical summary on form 07-6103, listing each medical report in the claimant's or petitioner's possession which is or may be relevant to the claim of petition, must be filed with a claim or petition. The claimant or petitioner shall serve a copy of the summary form, along with copies of the medical reports, upon all parties to the case and shall file the original summary form with the board.

. . . .

(c) Except as provided in (f) of this section, a party filing an affidavit of readiness for hearing must attach an updated medical summary, on form 07-6103, if any new medical reports have been obtained since the last medical summary was filed.

(1) If an updated medical summary is filed and served less than 20 days before a hearing, the board will rely upon a medical report listed in the updated medical summary only if the parties expressly waive the right to cross-examination, or if the board determines that the medical report listed on the updated summary is admissible under a hearsay exception of the Alaska Rules of Evidence.

. . . .

(d) After a claim or petition is filed, all parties must file with the board an updated medical summary form within five days after getting an additional medical report. A copy of the medical summary form, together with copies of the medical reports listed on the form, must be served upon all parties at the time the medical summary is filed with the board.

. . . .

8 AAC 45.120. Evidence.

(f) Any document . . . that is served upon the parties, accompanied by proof of service, and that is in the board's possession 20 or more days before hearing, will, in the board's discretion, be relied upon by the board in reaching a decision unless a written request for an opportunity to cross-examine the document's author is filed with the board and served upon all parties at least 10 days before the hearing. The right to request cross-examination specified in this subsection does not apply to medical reports filed in accordance with 8 AAC 45.052; a cross-examination request for the author of a medical report must be made in accordance with 8 AAC 45.052.

. . .

(i) If a hearing is scheduled on less than 20 days' notice or if a document is received by the board less than 20 days before hearing, the board will rely upon that document only if the parties expressly waive the right to cross-examination or if the board determines the document is admissible under a hearsay exception of the Alaska Rules of Evidence.

"Letters written by a physician to a party or party representative to express an expert medical opinion on an issue before the Board are not admissible as business records unless the requisite foundation is established." *Bass v. Veterinary Specialists of Alaska*, AWCB Decision No. 08-

0093 (May 16, 2008). A party has a right to cross-examine the authors of a medical record, if the right is not waived. *Commercial Union Companies v. Smallwood*, 550 P.2d 1261 (Alaska 1976).

ANALYSIS

1. Was the oral order denying Employee's request for a continuance correct?

Employee requested a continuance to seek an attorney. Employee contended he needs an attorney to represent him because he does not understand why we are at hearing and he needs more time to retain an attorney. Employee also contended he requested the board and Employer mail him Employer's controversion denying medications and he did not receive it so he is not prepared for hearing. Employer objected to Employee's request for a continuance. Employer argued Employee failed to demonstrate good cause to grant a continuance. Employer contended Employee has already been represented by counsel in the past, has had sufficient time to find an attorney, and the hearing had already been continued once for Employer's attorney's unexpected illness. Employer contended there are no complex issues to be decided today and Employer would be significantly prejudiced by a continuance as the issue to be decided has been delayed for a long length of time and Employer's attorney attended the hearing in-person at great expense.

Continuances are not favored by the board and will not be routinely granted. 8 AAC 45.074(b). Continuances are only granted for good cause as defined under 8 AAC 45.074(b)(1)(A)-(N). Employee did not demonstrate his situation fit into any of the limited grounds for good cause. Employee's inability to retain an attorney is not necessarily good cause to grant a continuance. The grounds for good cause related to an absent legal representative do not apply because Employee's last legal representative filed a written notice of withdrawal on January 27, 2014. 8 AAC 45.074(b)(1)(B)-(D). Employee did not demonstrate how irreparable harm may come from proceeding with the February 7, 2017 hearing without legal representation because Employee did not demonstrate due diligence in attempting to secure representation. 8 AAC 45.074(b)(1)(N). Employee retained legal representation twice before for this work injury and his last attorney withdrew his representation on January 27, 2014. The controversion Employee expressed concern about at hearing was served on Employee on April 27, 2015 and there is nothing in the record indicating Employee had not received it prior to the hearing or had requested another

copy. Employer mailed a letter to the RBA a letter requesting the rehabilitation specialist re-open the file on March 15, 2016; Ms. Van Der Pol submitted the reemployment plan at issue on August 16, 2016; and Employer filed the petition at issue on October 11, 2016, over three months before the February 7, 2017 hearing. It was Employee's responsibility to secure legal representation; he should have exercised greater diligence to find an attorney in a timely manner.

Employee did not demonstrate how irreparable harm may come from representing himself. 8 AAC 45.074(b)(1)(N). Employee requested a continuance and provided arguments supporting his request. Employee also filed evidence and provided argument supporting his opposition to Employer's objection and petition. The oral order denying Employee's request for a continuance was correct.

2. Should the board approve the reemployment plan when the RBA failed to approve or deny the plan or request additional information within 14 days?

When parties fail to agree on a reemployment plan, the employer or employee may submit it to the RBA; and the RBA shall approve or deny a plan within 14 days. AS 23.30.041(j); 8 AAC 45.550(c)(1)-(2). The RBA may also notify the parties the plan is incomplete and request additional information and make a decision within 14 days after the additional information is received. 8 AAC 45.550(c)(3); 8 AAC 45.550(d). Employee refused to sign the reemployment plan; and on September 7, 2016, Employer's adjuster signed the reemployment plan and submitted it to the RBA. The RBA has not approved or denied the plan or requested additional information in five months. The RBA clearly failed to timely approve or deny the plan.

The employer or employee may seek review of the RBA decision by requesting a hearing; and the board shall uphold the decision of the RBA unless evidence is submitted supporting an allegation of abuse of discretion by the RBA. AS 23.30.041(j). Employer contended the RBA's failure to act and fulfill its statutory obligation to do so was a decision by the RBA. The clear language of AS 23.30.041(j) defines the actions constituting a decision by the RBA as approval or denial of the reemployment plan. Because the RBA neither approved nor denied the plan, and there is nothing in the Act addressing the effect of the RBA's failure to timely act, there was no RBA decision. *Clark*. Therefore, the RBA's failure to timely approve or deny the

reemployment plan does not constitute a decision by the RBA under the Act. Employer's contention the RBA's failure to issue a decision for five months amounted to a decision by the RBA is not accepted.

Employer contended the RBA abused its discretion by failing to timely approve or deny the reemployment plan. Before an allegation of abuse of discretion may be considered, the RBA must issue a decision approving or denying a reemployment plan. AS 23.30.041(j). Because the RBA did not approve or deny the plan, there is no RBA decision to review for abuse of discretion. Employer's contention the RBA abused its discretion by failing to timely approve the reemployment plan within fourteen days is not accepted. Employer's contention the RBA abused its discretion by failing to timely approve or deny the reemployment plan is not accepted.

Under the Act, only the RBA may initially approve or deny a reemployment plan. AS 23.30.041(j); AS 23.30.041(r)(1). When the RBA fails to timely approve or deny the reemployment plan, the plan is in effect suspended until the RBA issues a decision. *Clark.* This seems to thwart the legislature's intent for the Act to be interpreted to ensure the quick, efficient, fair and predictable delivery of benefits at a reasonable cost to employers and for process and procedures to be as summary and simple as possible. AS 23.30.001(1); AS 23.30.005(h). However, the Act allocates the authority between the board and the RBA; and the RBA is explicitly granted the power of deciding the initial reemployment plan approval or denial. Agency decisional law cannot extend statutorily granted decision making authority to another administrative party or body that neither the legislature nor the executive branch in its rule-making power chose to add to the Act or regulations. *Burke.* Approving the reemployment plan in this situation would be expansive as it would expand the statutory decision making authority to another administrative body. Accepting Employer's contention the RBA's failure to issue a decision was a decision by the RBA and granting Employer's petition for board approval of the reemployment plan would be an abuse of discretion as it would amount to an improper promulgation of a regulation through adjudication. Employer's petition for board review and approval of the reemployment plan will be denied.

3. Should Employee's evidence for hearing be excluded?

Employer objected to evidence Employee submitted for hearing to address the issue of whether the reemployment plan should be approved or denied after board review. However, the issue of whether the reemployment plan should be approved or denied after board review was not reached in this decision and order. Consequently, Employer's objection to Employee's evidence for hearing will not be considered and decided.

CONCLUSIONS OF LAW

1. The oral order denying Employee's request for a continuance was correct.
2. The board will not approve or deny the reemployment plan and the plan review will be remanded.
3. Employer's objection to Employee's evidence for hearing is not considered and decided.

ORDER

1. Employer's October 11, 2016 petition for board approval of the reemployment plan is denied.
2. The August 16, 2016 reemployment plan is remanded to the RBA for review.

Dated in Juneau, Alaska on March 2, 2017.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Kathryn Setzer, Designated Chair

/s/
Bradley Austin, Member

PETITION FOR REVIEW

A party may seek review of an interlocutory other non-final Board decision and order by filing a petition for review with the Alaska Workers' Compensation Appeals Commission. Unless a petition for reconsideration of a Board decision or order is timely filed with the board under AS 44.62.540, a petition for review must be filed with the commission within 15 days after service of the board's decision and order. If a petition for reconsideration is timely filed with the board, a petition for review must be filed within 15 days after the board serves the reconsideration decision, or within 15 days from date the petition for reconsideration is considered denied absent Board action, whichever is earlier.

RECONSIDERATION

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

MODIFICATION

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

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Interlocutory Decision and Order in the matter of JERRY ELLEN, employee / claimant; v. DURETTE CONSTRUCTION, employer; ALASKA TIMBER INSURANCE EXCHANGE, insurer / defendants; Case No. 200508739; dated and filed in the Alaska Workers' Compensation Board's office in Juneau, Alaska, and served on the parties by First-Class U.S. Mail, postage prepaid, on March 2, 2017.

/s/_____
Dani Byers, Workers' Compensation Technician