ALASKA WORKERS' COMPENSATION BOARD

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

TONI SHAFER, Employee, Claimant, v. UNIVERSAL HEALTH SERVICES, INC., Employer, and INDEMNITY INSURANCE CO. OF NORTH AMERICA, Insurer, Defendants.	)	INTERLOCUTORY DECISION AND ORDER AWCB Case No. 201212792 AWCB Decision No. 14-0010 Filed with AWCB Anchorage, Alaska on January 31, 2014

Universal Health Services, Inc.'s (Employer) September 19, 2013 petition for a second independent medical evaluation (SIME) was heard on January 8, 2014, in Anchorage, Alaska, a date selected on November 5, 2013. Attorney Jeffrey Holloway appeared telephonically and represented Employer and its insurer. Attorney Robert Rehbock appeared and represented Toni Shafer (Employee). There were no witnesses. The record closed at the hearing's conclusion on January 8, 2014.

ISSUES

Employee contends Employer's September 18, 2013 petition for an SIME is untimely. Employee contends the petition was filed after the period permitted for requesting an SIME.

Employer contends the medical disputes became significant sufficient to warrant an SIME late in the summer of 2013. Employer contends it filed its petition for an SIME after it received an

updated medical summary and became aware of new medical reports warranting an SIME. Therefore, Employer contends its petition for an SIME is timely.

1) Is Employer's September 18, 2013 petition for an SIME timely?

Employer contends there is a medical dispute between Employee's attending physician and Employer's medical evaluators (EMEs) sufficient to warrant an SIME. Employer seeks an order granting an SIME.

Employee opposes an SIME. Employee contends she is entitled to rely on her attending physician's recommended reasonable and necessary course of treatment, and therefore no medical dispute warranting an SIME exists.

2) Shall an SIME be ordered?

FINDINGS OF FACT

The following relevant facts and factual conclusions are either undisputed or are established by a preponderance of the evidence:

1) On August 10, 2012, Employee reported injuring her hand while working as a housekeeper for Employer when a shelf fell and struck her. (Report of Injury, September 7, 2012; PA-C Suoja report, August 31, 2012).

2) On August 31, 2012, Employee was examined by Eric Suoja, PA-C in connection with the August 10, 2012 injury. Employee complained of pain and swelling in her right hand. X-ray images revealed no fractures. PA-C Suoja diagnosed contusion of the right hand and recommended a splint. (Suoja report, August 31, 2012).

3) On September 7, 2012, Employer filed a Report of Occupational Injury or Illness, describing the injury as "Unclassified, insufficient data, hand." (Report of Injury, September 7, 2012).

4) On September 27, 2012, Employee was examined for a follow-up by PA-C Suoja. Employee complained of pain at the second and third digits and difficulty making a fist with the right hand. PA-C Suoja's report states:

> Inspection of the hand, there is no obvious deformity or swelling, right hand, there is no swelling or contusion noted. She has full range of motion of extension, but with flexion of the second and third digits there is pain noted over the metacarpophalangeal joints. She does have good distal sensation, circulation, and

> good strength with active range of motion. Range of motion of the wrist are full. Distal sensation and circulation intact. . .
>
> Patient is healing, but much more slowly than anticipated. As was mentioned at the previous visit, she may benefit from a course of physical therapy. She was given a referral to Alaska Hand Rehab, otherwise she will continue with lifting no more than 10 pounds. She is no longer wearing a splint and has thrown this away. I instructed that the Alaska Hand Rehab will likely make a custom splint for her. For now, she will ice nightly. She declined any anti-inflammatory medicines and she agreed to follow up in two weeks for reevaluation sooner with any acute concerns. (Suoja report, September 27, 2012).

5) On October 2, 2012, Employee began physical therapy with Laura Fields, DPT/ATC at Alaska Hand Rehabilitation. (Fields report, October 2, 2012).

6) On November 9, 2012, PA-C Suoja examined Employee and reported, "Contusion of right hand, not improving [after] 3 months." (Suoja report, November 9, 2012).

7) On November 15, 2012, Employee was examined by Robert Thomas PA-C, who diagnosed "Right hand and wrist contusion work related injury times 3 months with some clinical symptoms of CRPS [complex regional pain syndrome]." PA-C Thomas referred Employee to Larry Levine, M.D., for clinical examination and consideration of a sympathetic ganglion block. PA-C Thomas also referred Employee for an MRI of her right wrist. Thomas noted, "[Employee] does have pain out of proportion for the type of injury that she had." (Thomas report, November 15, 2012).

8) On November 20, 2012, Employee received an MR-arthogram of her right wrist. The results were interpreted by Howard Cable, M.D., at University Imaging Center. Dr. Cable reported:

> The contrast remains confined to the proximal carpal row. The scapholunate and lunate-triquetral ligaments are intact. Triangular fibrocartilage appears intact. No contrast passed into the distal radial-ulnar joint. There is a small cyst in the triquetral bone along its ulnar and proximal aspect. Contrast flows into this. This is not a contusion. There is minor area of marrow edema at the proximal-ulnar aspect of the lunate. This is a small area but it clearly is visible on the fat suppressed T2 weighted images and not on T1 or proton density, so it probably is not a cyst but is a contusion. . . This is the only potential contusion seen. (Cable report, November 20, 2012).

9) On November 29, 2012, Dr. Levine examined Employee and found developing CRPS, right hand, and status post blunt trauma to right hand. Dr. Levine opined:

> If [Employee] gets a good [sympathetic] block, sometimes we will repeat these to allow her to tolerate therapy and hopefully be able to discontinue them as they

> have a synergistic effect. If the block does not work and she continues to have difficulty, she could also be a candidate possible for spinal cord stimulator, but obviously she will have to fail with other care. (Levine report, November 29, 2012).

10) On December 7, 2012, Dr. Levine performed a right stellate ganglion block on Employee with no complications. Dr. Levine noted as both pre- and post-op diagnosis, “complex regional pain syndrome.” (Dr. Levine report, December 7, 2012).

11) On December 13, 2012, Dr. Levine examined Employee in follow-up to the December 7, 2012 procedure. Dr. Levine reported:

> “[Employee] noted the [ganglion block] may have helped out a little bit. She, however, notes that she feels like it increased her migraine-type headaches, although the headache she is experiencing is different. She notes this seems to be the back of the head. She feels like it is a little bit difficult to swallow and the throat feels somewhat swollen. This is particularly problematic trying to sleep.
> . . .
>
> On the 0 to 10 pain scale, currently the hand is somewhere between a 4 and a 5.
> . . .
>
> Due to the fact that the hand would continue to swell up when she went through therapy, they discontinued it.
> . . .
>
> **Again, I would not consider a stimulator, etc. until we failed all other conservative care**. (Dr. Levine report, December 13, 2012) (emphasis added).

12) On January 14, 2013, Matthew Provencher, M.D., examined Employee for an EME. Dr. Provencher diagnosed right wrist contusion injury, with the August 10, 2012 injury as the substantial cause. Dr. Provencher found no evidence of CRPS and opined Employee was not yet at medical stability, stated he does not recommend a spinal cord stimulator or any additional treatment that would be related to a presumed diagnosis of CRPS, and reported Employee does not have CRPS and this would not be reasonable and treatment for CRPS is not necessary. Instead, Dr. Provencher recommended a continued occupational therapy. Dr. Provencher opined medical stability would be reached six to eight weeks after starting physical therapy. (Dr. Provencher EME report, January 14, 2013).

13) On February 21, 2013, Michael McNamara, M.D., reviewed Dr. Provencher's EME report and checked a box on a Sedgwick Claims Management form indicating he concurred with Dr. Provencher's findings of January 14, 2013. (Dr. McNamara report, February 21, 2013).

14) Also on February 21, 2013, Dr. Levine examined Employee and reported:

> I would agree in some aspects with Dr. Matthew Provencher that the diagnosis is difficult. In seeing on today's date, **one would not meet the criteria for complex regional pain syndrome**.
>
> [Employee] is quite frustrated by her overall situation; I can completely understand this. There is no great answer in relation to the overall pain situation.
>
> I am not of the notion that we should be repeating injections, etc. since we are not seeing the stigmata consistent with vascular instability. **Nor would one pursue placing a spinal cord stimulator, etc. given her overall presentation on today's date**. . . (Dr. Levine, February 21, 2013) (emphasis added).

15) On February 22, 2013 Dr. Levine memorialized an apparent misunderstanding or miscommunication with Employee during the February 21, 2013 examination. Thereafter, Employee ceased treating with Dr. Levine as her attending physician. (Dr. Levine letter to Employee, February 22, 2013).

16) On March 14, 2013, Steven P. Johnson, M.D., at A.A. Spine & Pain Clinic in Anchorage examined Employee. Dr. Johnson's report stated, in relevant part:

> **At this time this would appear to be a case of complex regional pain syndrome involving the right hand and wrist and forearm**. This has progressed in severity since the IME evaluation 2 months ago. She currently presents with aching burning pain at the right hand wrist and forearm. This has spread up to the forearm over the past month. She also reports ongoing coldness of the right hand and forearm.
> . . .
>
> **She feels the stellate ganglion block did overall help** her over a two-month period although the reports from the providers would indicate a minimal improvement at that time.
> . . .
>
> I think a stellate ganglion block done soon can both be diagnostic and hopefully some regression of the recent spread up her symptoms at the right forearm. . . (Johnson, July 25, 2013) (emphasis added).

17) On March 22, 2013, Dr. Johnson administered a right stellate ganglion block to Employee with no complications. (Postoperative Report, March 22, 2013).

18) On March 28, 2013, Dr. McNamara examined Employee. Dr. McNamara reported:

> Right hand essentially normal exam at this point. Patient states that she can't go back to work because she can't lift 50 pounds. She states that Dr. Provencher states she cannot lift 50 pounds yet and that he would make recommendations for her returning to work, progressive. She states she can't go back to work until she can lift 50 pounds. (Dr. McNamara report, March 28, 2013).

19) On April 3, 2013, Dr. Johnson examined Employee for follow-up of the March 22, 2013 stellate ganglion block procedure. Dr. Johnson reported Employee indicated her pain was a 3/10, and assessed CRPS I. Dr. Johnson ordered another possible stellate ganglion block on April 30, 2013, depending on Employee's progress. (Dr. Johnson report, April 3, 2013).

20) On April 8, 2013, Dr. McNamara reported Employee was medically stable as of March 28, 2013. (Dr. McNamara report, April 8, 2013).

21) On April 8, 2013, Employee filed a workers' compensation claim, stating the reason for filing:

> Controversion. I believe that my hand problems are directly related to my work. My doctor disagrees with the IME physician. My doctor also believes that we are still in an diagnostic period. I need to have my medical care reinstated so that we can determine why my hand/arm is "freezing up," and why the numbness/pain continues to spread. **It may be necessary for me to see an SIME physician, since there seems to be serious disagreements between my doctor and theirs**. (Claim, April 8, 2013) (emphasis added).

22) On April 15, 2013, Alfred A. Lonser, M.D., at A.A. Spine and Pain Clinic in Anchorage examined Employee. Employee complained of throbbing pain in her right hand and wrist, which fluctuated through the month, and increased when she returned to work on April 4, 2013. Employee requested a work excuse, which Dr. Lonser provided. (Lonser report, April 15, 2013; Work excuse letter, April 15, 2013).

23) On April 30, 2013, Employee reported her pain as a 7/10, which was stabbing, burning, and itching and radiated to the right elbow. Dr. Johnson performed another right stellate ganglion block on Employee with no complications. (Dr. Johnson report, April 30, 2013).

24) On April 30, 2013, attorney Robert Rehbock filed his appearance on behalf of Employee. (Entry of Appearance, April 30, 2013).

25) On May 2, 2013 Employer controverted specific benefits relating to Employee's August 10, 2012 work injury based, in part, on a report by Dr. McNamara, which released Employee to full-duty work and indicated she was medical stability on March 28, 2013. The May 2, 2013

controversion stated there were insufficient disputes to warrant an SIME. Specifically controverted were:

> All benefits related to complex regional pain syndrome, right arm/upper extremity and neck.
>
> Temporary Total Disability Benefits, from April 3, 2012, ongoing.
>
> Temporary Partial Disability Benefits – unspecified.
>
> Medical costs which are not reasonable, necessary, related to the injury of August 10, 2012, or which are not for services performed in accord with a treatment plan under AS 23.30.095(c) or otherwise exceed the treatment frequency standards of 8 AAC 45.082(f), or which do not comply with the usual or customary fee schedules of AS 23.30.097. (Controversion Notice, May 2, 2013).

26) On May 29, 2013, Dr. Johnson performed another right stellate ganglion block on Employee with no complications. (Dr. Johnson report, May 29, 2013).

27) On June 5, 2013, neurologist Lynne Bell, M.D., examined Employee for a second EME. Dr. Bell diagnosed: 1) right hand contusion; 2) injury to branch of superficial radial nerve associated with hand contusion; 3) functional overlay related to preexisting personality features and possible ongoing psychological problems. The report stated, "[Employee] does not meet criteria for diagnosis of CRPS or reflex sympathetic dystrophy as defined in the AMA Guides, 6th Edition." Dr. Bell recommended a psychiatric EME to explore possible psychological factors which may be contributing to Employee's ongoing disability. Dr. Bell further reported, "The cause of the right hand contusion and injury to the branch of the superficial radial nerve was the industrial injury. . . No further active treatment is required to address either the right hand contusion or the right superficial radial nerve injury." Dr. Bell found Employee was medical stable on June 5, 2013. (EME Report, Dr. Bell, June 5, 2013).

28) On June 12, 2013, Dr. Johnson performed another right stellate ganglion block on Employee with no complications. Employee reported her pain was worse on this visit with Dr. Johnson than the last. (Dr. Johnson report, June 12, 2013).

29) On June 25, 2013, Employee returned to Dr. Johnson and another stellate ganglion block was performed with no complications. Dr. Johnson's report states, in relevant part:

> . . . The patient describes the pain as stabbing and burning. The pain does radiate to the right shoulder and right hip. The patient rates her pain as 7/10. The patient states her pain is worse than it was at the previous visit.

> She also reports the following: new low back pain that started spontaneously about 10 days ago. The patient has no prior history of neck or back surgery. (Dr. Johnson report, June 25, 2013).

30) On July 1, 2013, Dr. Johnson reported, "The patient rates her pain as 8/10." A trial spinal cord stimulator was recommended. (Dr. Johnson report, July 1, 2013).

31) Also on July 1, 2013, Dr. Johnson referred Employee to Rebekah S. Bond, PhD, for a psychological evaluation. (Dr. Johnson referral letter, July 1, 2013)

32) On July 3, 2013, Employer controverted specific benefits relating to Employee's August 10, 2012 work injury based, in part, on Dr. Provencher's EME report. The July 3, 2013 controversion stated there were insufficient disputes to warrant an SIME. Specifically controverted were:

> All benefits related to reflex sympathetic dystrophy, complex regional pain syndrome, right arm/upper extremity, and neck.
>
> Temporary Total Disability Benefits, from June 5, 2013 ongoing.
>
> Temporary Partial Disability Benefits – unspecified.
>
> Medical costs through June 5, 2013, which are not reasonable, necessary, related to the injury of August 10, 2012, or which are not for services performed in accord with a treatment plan under AS 23.30.095(c) or otherwise exceed the treatment frequency standards of 8 AAC 45.082(f), or which do not comply with the usual and customary fee schedules of AS 23.30.097.
>
> All medical and related transportation costs following June, 5, 2013.
>
> Other: SIME.
>
> Attorney fees and costs.
>
> Reemployment benefits. (Controversion Notice, July 3, 2013).

33) On July 9, 2013, Dr. Bond evaluated Employee, and summarized her findings as follows: possible somatoform disorder of the histrionic type coexisting with depressive and anxiety disorders and suicidal ideation. (Dr. Bond report, July 9, 2013).

34) On August 16, 2013, Dr. Johnson implanted a trial spinal cord stimulator with no complications. (Dr. Johnson report, August 16, 2013).

35) On August 22, 2013, Employee had a 50% reduction in pain and stated she would like to proceed with the permanent stimulator. (Dr. Johnson report, August 22, 2013).

36) On September 6, 2013, Employee filed a medical summary, which included reports from Drs. Johnson and Bond. The summary was dated August 8, 2013, but since it contained medical reports dated August 22, 2013, the parties stipulated at hearing the summary was misdated. (Record; Parties' stipulation, January 8, 2014).

37) On September 18, 2013, Dr. Johnson implanted a permanent version of the spinal cord stimulator with no complications. (Dr. Johnson postoperative report, September 18, 2013).

38) Complex regional pain syndrome is a controversial subject in the medical community and a difficult diagnosis to make and to rate. (Experience, judgment, observations, and inferences from all of the above; AMA Guides, 6th Ed. § 15.5).

39) On September 19, 2013, Employer filed a petition for an SIME. Employer's petition stated, in relevant part:

> Significant medical disputes exist between the employee's physician, Steven Johnson, M.D., and the employer's physicians, Matthew Provencher, M.D., and Lynne Bell, M.D., warranting a [SIME]. (SIME Petition, September 19, 2013).

40) Employer's September 19, 2013 petition specified the medical specialty required for the SIME as orthopedic surgeon, neurologist, and/or neurosurgeon. (*id.*).

41) This case is set for hearing on the merits on February 26, 2014. (Record).

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;

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 23.30.095. Medical treatments, services, and examinations.
. . .

(k) In the event of a medical dispute regarding determinations of causation, medical stability, ability to enter a reemployment plan, degree of impairment, functional capacity, the amount and efficacy of the continuance of or necessity of treatment, or compensability between the employee's attending physician and the employer's independent medical evaluation, the board may require that a second independent medical evaluation be conducted by a physician or physicians selected by the board from a list established and maintained by the board. . . .

AS 23.30.110. Procedure on claims.
. . .

(g) An injured employee claiming or entitled to compensation shall submit to the physical examination by a duly qualified physician which the board may require. The place or places shall be reasonably convenient for the employee. The physician or physicians as the employee, employer, or carrier may select and pay for may participate in an examination if the employee, employer, or carrier so requests. Proceedings shall be suspended and no compensation may be payable for a period during which the employee refuses to submit to examination. . . .

AS 23.30.155. Payment of compensation.
. . .

(h) The board may upon its own initiative at any time in a case . . . where right to compensation is controverted . . . make the investigations, cause the medical examinations to be made, or hold the hearings, and take the further action which it considers will properly protect the rights of all parties.

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 45.092. Selection of an independent medical examiner. . . .
. . .

(g) If there exists a medical dispute under AS 23.30.095(k),
. . .

(2) a party may petition the board to order an evaluation; the petition must be filed within 60 days after the party received the medical reports reflecting a

> dispute, or the party's right to request an evaluation under AS 23.30.095(k) is waived; . . .
>
> (3) the board will, in its discretion, order an evaluation under AS 23.30.095(k) even if no party timely requested an evaluation under (2) of this subsection if
>
> > (A) the parties stipulate, in accordance with (1) of this subsection to the contrary and the board determines the evaluation is necessary; or
> >
> > (B) the board on its own motion determines an evaluation is necessary.

The following, general criteria are typically considered when ordering an SIME, though the statute does not expressly so require:

1) Is there a medical dispute between Employee's physician and Employer's EME?
2) Is the dispute "significant"?
3) Will an SIME physician's opinion assist the board in resolving the disputes?

DiGangi v. Northwest Airlines, AWCB Decision No. 10-0028 at 13 (February 9, 2010). AS 23.30.095(k) is procedural and not substantive for the reasons outlined in *Deal v. Municipality of Anchorage*, AWCB Decision No. 97-0165 at 3 (July 23, 1997). AS 23.30.135 provides the board with wide discretion under AS 23.30.095(k) to consider any evidence available when the board decides whether to order an SIME to assist in investigating and deciding medical issues in contested claims. *Bah v. Trident Seafoods Corp.*, AWCAC Decision No. 073 (February 27, 2008) addressed the board's authority to order an SIME under AS 23.30.095(k) and AS 23.30.110(g). With regard to AS 23.30.095(k), the AWCAC stated:

> [t]he statute clearly conditions the employee's right to an SIME . . . upon the existence of a medical dispute between the physicians for the employee and the employer.

Id. at 4. *Bah* stated, before ordering an SIME, it is necessary to find the medical dispute is significant or relevant to a pending claim or petition and the SIME would assist the board in resolving the dispute. *Id.*

The law gives discretion to the board to order the specialty to conduct an SIME, and to empanel one or several doctors for an SIME if necessary to ensure "the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost" to Employer. *Mazurenko v. Chugach Alutiiq JV*, AWCB Case No. 11-0064 (May 17, 2011).

"Process and procedure under this chapter shall be as summary and simple as possible." AS 23.30.005(h). By law, the board may require an SIME "by a physician or physicians" selected from a list established and maintained for such purposes. The board may also order an "investigation or inquiry" in "the manner by which it may best ascertain the rights of the parties." AS 23.30.135. If an employee's claim has been controverted, the board may "cause the medical examinations to be made," and take discretionary action to "properly protect the rights of all parties." AS 23.30.155(h). In short, the board has broad discretion to order a medical evaluation and to select one or more specific physicians from the SIME list, and their specialties, for an SIME. *Lindeke v. Anchorage Grace Christian School*, AWCB Decision No. 11-0040 (April 8, 2011).

Under Alaska's Workers' Compensation Act, an employer shall furnish an employee injured at work any medical treatment "which the nature of the injury or process of recovery requires" within the first two years of the injury. The medical treatment must be reasonable and necessitated by the work-related injury. Thus, when the board reviews an injured employee's claim for medical treatment made within two years of an injury that is undisputably work-related, its review is limited to whether the treatment sought is reasonable and necessary. *Weidner v. Hibdon*, 989 P.2d 727, 731 (Alaska 1999).

ANALYSIS

1) Is Employer's September 18, 2013 petition for an SIME timely?

A party must file its petition for an SIME within 60 days after receiving a medical summary which contains medical reports evidencing a medical dispute. 8 AAC 45.092. Employee filed a medical summary on September 6, 2013. The September 6, 2013 summary included reports of the August 16, 2013 spinal cord stimulator trial implanted by Dr. Johnson and follow-up to that procedure. The September 6, 2013 summary also included Dr. Johnson's report of the permanent spinal cord stimulator implant and follow-up. Employee's prior attending physician, Dr. Levine, noted in his November 29, 2012 report a possible course of treatment at some point

in the future may be a spinal cord stimulator. However, Dr. Levine opined more conservative approaches would first have to be exhausted. Dr. Levine again recommended against a spinal cord stimulator until conservative treatment had been exhausted in his report of December 13, 2012 and again in a report dated February 21, 2013. Then, on July 1, 2013, Employee's new treating physician, Dr. Johnson, specifically recommended a trial spinal cord stimulator be implanted, which was done on August 16, 2013. The trial was completed and successful; therefore, a permanent version of the stimulator was implanted on September 18, 2013.

Employer was not aware of Dr. Johnson's determination that conservative treatment had been exhausted and failed, or his recommendation for a spinal cord stimulator until it received the September 6, 2013 medical summary containing Dr. Johnson's recommendations and reports of the procedures to implant both the trial and permanent spinal cord stimulators. Employer filed its petition for an SIME on September 19, 2013, or thirteen days after Employee's medical summary was filed. Therefore, Employer's petition for an SIME was timely. 8 AAC 45.092(g)(2).

2) Should an SIME be ordered?

Employer's petition for an SIME having been timely filed, the SIME test must be applied to the facts of this case. Employee relies on *Weidner v. Hibdon*, 989 P.2d 727 (Alaska 1999) in support of her position that she has the right to follow her own doctor's advice and recommended course of treatment, so long as the choice of treatment is not unreasonable. It follows, Employee argues, that no medical dispute exists sufficient to warrant an SIME because there is sufficient substantial evidence to support a finding that Employee's course of treatment was reasonable, necessary and within the realm of acceptable medical treatment options.

However, *Hibdon* is distinguishable from the instant case. Under *Hibdon*, when the board "reviews an injured employee's claim for medical treatment made within two years of an injury that is *undisputably work-related*, its review is limited to whether the treatment sought is reasonable and necessary." *Id.* at 731. (emphasis added). The dispute in the present case is not whether the type of treatment Employee received was reasonable and necessary. Instead, Employer's EMEs dispute whether Employee needed any additional treatment at all. Therefore, Employee's reliance on *Hibdon* at this stage is premature.

i) Is there a medical dispute between Employee's physician and an ***EME?***

The law provides for an SIME when there is a medical dispute between the employee's attending physician and an EME. AS 23.30.095. The reports of Employee's attending physicians Drs. Johnson, Levine, and McNamara contradict those of EME physicians Drs. Provencher and Bell. Specifically, Dr. Provencher examined Employee on January 14, 2013, and found no evidence of CRPS, opined Employee was not yet medically stable, and stated he does not recommend a spinal cord stimulator or any additional treatment that would be related to a presumed diagnosis of CRPS. Dr. Provencher opined medical stability would be reached at approximately six to eight weeks after instituting physical therapy. Thereafter, on March 14, 2013, Dr. Johnson examined Employee and reported Employee likely had CRPS. In contrast, on April 8, 2013, Employee's attending physician, Dr. McNamara, released Employee to full-duty work and reported Employee was medically stable on March 28, 2013. On June 5, 2013, Dr. Bell examined Employee for a second EME and opined Employee does not meet the CRPS diagnosis criteria. Dr. Bell recommended a psychiatric EME. Dr. Bell found Employee medical stable as of June 5, 2013. On July 1, 2013, Dr. Johnson recommended a spinal cord stimulator, which was implanted on September 18, 2013. As the foregoing shows, there is a medical dispute between Employee's attending physicians and the EMEs as to the diagnosis of CRPS, and the pathology of Employee's hand and wrist pain. There is also a medical dispute as to whether spinal cord stimulator treatment is reasonable and necessary for Employee's work injury. AS 23.30.095(k). *Bah.*

ii) Is the dispute "significant"?

The medical disputes are significant because if the work injury is not the substantial cause of the need to treat Employee with a spinal cord stimulator, Employer will not be responsible to pay the costs associated with the two procedures already performed and future procedures, medical follow-up, and supplies that may be necessary for Employee's continued treatment with the spinal cord stimulator. Further, there are clear medical disputes as to causation, current and future need for treatment, medical stability, and Employee's ability to return to work at the same level she was at prior to the injury. Dr. Bond's July 9, 2013 psychological EME also made several findings strongly supporting somatization and other psychological factors potentially complicating Employee's recovery. An SIME will provide a causation opinion for the need for treatment with

a spinal cord stimulator, an opinion regarding Employee's physical capacity, her ability to return to work, and medical stability. These opinions could result in considerable differences in costs, disability, and impairment. AS 23.30.001(1).

Employer controverted Employee's right and claim to specific benefits, including all benefits related to complex regional pain syndrome, reflex sympathetic dystrophy, and right arm/upper extremity and neck. Employer's controversions remain in place. Having an SIME on the current medical disputes will provide another expert medical opinion, which will assist in quickly ascertaining and protecting the rights of all parties in this controverted case. *Mazurenko*; *Lindeke*; AS 23.30.155(h).

iii) Will an SIME physician's opinion assist the board in resolving the disputes?

CRPS is a complex medical diagnosis. There is disagreement between physicians as to whether Employee has CRPS and, if she does, whether work is the substantial cause of her disability and need for medical treatment. The disagreements become more complex because Dr. Bond identified possible somatization disorder, which may be the cause of Employee's continuing pain. There are numerous opinions regarding medical stability. Given these disputes, a SIME opinion will assist in resolving Employee's claim for medical benefits by providing an independent and objective opinion on whether Employee's work for Employer is the substantial cause of her disability and need for treatment of her wrist, hand, back, and possible somatization disorder. *Bah; DiGangi.* Accordingly, a panel SIME will be ordered with a pain specialist and a neurologist. 8 AAC 45.092.

The issues for the SIME will include, but are not limited to: whether work is the substantial cause of Employee's complex regional pain syndrome and whether a spinal cord stimulator is reasonable and necessary medical treatment for complex regional pain syndrome or some other diagnosis for which work was the substantial cause. To save time and expense, the parties may agree to have the SIME physicians address other "non-SIME issues," including the need for medical treatment for other allegedly work related conditions like Employee's back and permanent partial impairment. A prehearing conference will be ordered at the next mutually available date so the

parties can begin the SIME process and determine if there are any additional issues the SIME should address. The designee will be directed to arrange for the panel SIME. AS 23.30.001(1).

A hearing on the merits of Employee's claim is scheduled for February 26, 2014. The SIME physicians' reports, which will assist in resolving this case in the most efficient, dignified, and most certain form, will not be filed by February 26, 2014. A hearing may be continued only for good cause. Since an SIME will be ordered, good cause exists under 8 AAC 45.074(b)(1)(F) to continue the February 26, 2014 hearing date.

CONCLUSIONS OF LAW

1) Employer's September 18, 2013 petition for an SIME was timely.
2) An SIME will be ordered.

ORDER

1) Employer's petition for an SIME is granted.
2) A panel SIME shall be conducted with a pain specialist and a neurologist, with adequate experience in CRPS and somatization disorder as determined by the designee.
3) A prehearing conference shall be conducted at the next mutually available date to begin the SIME process.
4) Unless the parties otherwise stipulate to SIME physicians, a pain specialist and a neurologist will be selected by the appropriate designee in conformance with the division's policy for selecting SIME doctors from the authorized list.
5) The designee shall use her discretion and the normal selection process, including the criteria set forth in 8 AAC 45.092(e).
6) The designee shall arrange for the panel SIME.
7) The hearing scheduled for February 26, 2014 is continued.
8) The designee shall assist the parties to reschedule the February 26, 2014 hearing.

Dated in Anchorage, Alaska on January 24, 2014.

ALASKA WORKERS' COMPENSATION BOARD

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Matthew Slodowy, Designated Chair

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Mark Talbert, Member

PETITION FOR REVIEW

A party may seek review of an interlocutory of 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 TONI SHAFER, employee / claimant; v. UNIVERSAL HEALTH SERVICES, INC., employer; INDEMNITY INSURANCE COMPANY OF NORTH AMERICA, insurer / defendants; Case No. 201212792; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties on January 31, 2014.

Sertram Harris, Office Assistant