

ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

LAURIE E. VANDENBERG,)	
Employee,)	
Claimant,)	FINAL DECISION AND ORDER ON
)	RECONSIDERATION
v.)	
)	AWCB Case No. 201112729
STATE OF ALASKA,)	
Self-Insured)	AWCB Decision No. 14-0100
Employer,)	
Defendant.)	Filed with AWCB Anchorage, Alaska
)	on July 23, 2014
)	

Laurie E. Vandenberg's July 14, 2014 petition for reconsideration and modification was heard on the written record on July 16, 2014 in Anchorage, Alaska. This hearing date was selected on the board's own motion on July 15, 2014. Attorney Joseph Kalamarides represented Ms. Vandenberg (Employee). Assistant Attorney General Daniel Cadra represented State Of Alaska (Employer). The record closed at the hearing's conclusion on July 16, 2014

ISSUES

Employee contends *Vandenberg v. State of Alaska*, AWCB Decision No. 14-0093 (July 2, 2013) (*Vandenberg I*), should be reconsidered or modified. *Vandenberg I* addressed Employee's claim for review of the RBA designee's determination that Employee was ineligible for reemployment benefits. The decision concluded the RBA designee had abused her discretion, but the error was harmless.

Employee contends *Vandenberg I* erred in determining which DOT job title described Employee's job. Employer's position is unknown, but it is presumed Employer opposes reconsideration.

1. Did Vandenberg I err by determining the DOT job title to describe Employee's job?

Employee contends *Vandenberg I* erred in failing to remand the case to the Reemployment Benefits Administrator (RBA) designee after finding the RBA designee had abused her discretion. Employer's position is unknown, but it is presumed Employer opposes reconsideration.

2. Did Vandenberg I err in failing to remand the case to the RBA designee?

FINDINGS OF FACT

All findings of fact in *Vandenberg I* are incorporated herein. The following findings of fact and factual conclusions are reiterated from *Vandenberg I*, undisputed, or established by a preponderance of the evidence:

1. Employee worked for Employer as a Nurse II. On August 30, 2011, Employee had driven to a client's home. She reached across the seat of her vehicle to retrieve a laptop computer and some files. She experienced sharp pain in her right shoulder when lifting the items. (Employee; Report of Injury, September 1, 2011).
2. On May 2, 2013, Employer's adjuster notified the RBA that Employee had lost 90 consecutive days of work. (Notice of Time Loss, May 2, 2013).
3. On May 29, 2013, rehabilitation specialist Lulie Williams was assigned to perform a reemployment benefits eligibility evaluation. (RBA, Rehabilitation Specialist selection letter, May 29, 2013).
4. On July 24, 2013, the rehabilitation specialist submitted an eligibility report. The specialist selected the job titles from the United States Department of Labor's "Selected Characteristics of Occupations Defined in the Revised Dictionary of Occupational Titles" (SCODRDOT) to represent Employee's job at the time of injury as well as the jobs she had held in the ten years before the injury. The specialist determined Employee's job as a Nurse II at the time of injury was best represented by a combination of SCODRDOT job titles; Nurse, General Duty, DOT #075.364-010, and Examiner, DOT #169.267-014. Three of the positions Employee had held in the ten years before the injury were also Nurse II positions. In each

case, the specialist found the Nurse, General title, either alone or in combination with another title represented the actual job. In the ten years before the work injury, Employee had also worked for Employer as a Health Facilities Surveyor for approximately three and one-half years. The specialist determined a combination of two DOT job titles described that position: Inspector, Health Facility, DOT #168.167-042, and Nurse, General Duty, DOT #075.364-010. The specialist had sent Larry Levine, M.D., descriptions for each of the DOT job titles and asked him to predict whether Employee could perform those duties. Relevant to this dispute, Dr. Levine predicted that Employee would have the physical capabilities to perform the duties of an Inspector, Health Care Facilities, DOT #168.167-042, but would not have the physical capacities to work as a Nurse, General Duty, DOT #075.364-010. Because the specialist had determined that the Nurse, General Duty title was, alone or in combination with another title, necessary to describe all of Employee's jobs, and because Employee met all of the other eligibility requirements, the specialist recommended that Employee be found eligible for reemployment benefits. (Williams; Eligibility Report, July 24, 2013).

5. On October 8, 2013, the RBA designee wrote to the reemployment specialist noting that the specialist had not included a description of the duties of Employee's jobs, and as a result it was difficult to understand the need for multiple DOT titles for some positions, particularly the Health Facilities Surveyor position. The designee requested that the job duties be provided. (Letter, P. Helgeson to L. Williams, October 8, 2013).
6. On October 21, 2013, the rehabilitation specialist filed a corrected eligibility report and a letter to the RBA designee explaining the specialist's rationale for combining DOT job titles for the Health Facilities Surveyor position. In the letter, the specialist explained she believed the DOT title for Nurse, General Duty was required as part of the description of the Health Facilities Surveyor position for two reasons. First, the Health Facilities Surveyor position required occasional lifting of 50 pounds, which exceeded the strength requirements of the Inspector, Health Care Facilities job title, but not that of the Nurse, General Duty. Second, the Health Facilities Surveyor position required certification as a registered nurse. In her report, the specialist again recommended that Employee be found eligible. (Corrected Eligibility Report and letter, October 21, 2013).
7. The RBA designee and the rehabilitation specialist exchanged further correspondence regarding other aspects of the eligibility report, until March 3, 2014. (Record).

8. On March 3, 2014, the RBA Designee determined Employee was ineligible for reemployment benefits. The designee stated “Dr. Larry Levine predicted that you would have the permanent physical capacities to perform the physical demands for Health Care Facilities Inspector, a DOT/SCODRDOT job description selected by the specialist to best represent the duties you performed as a Health Facilities Surveyor.” The designee noted that “the specialist had selected a combination of DOT/SCODRDOT job titles to represent your job as a Health Facilities Surveyor; however, I made a determination that the title for Health Care Facilities Inspector was sufficient to describe the duties you performed in this position.” (Eligibility Letter, March 3, 2014).
9. Neither party contends there is a DOT job title other than Health Care Facilities Inspector, either alone or in combination with the Nurse, General Duty job title, that would better describe the duties of a Health Facilities Surveyor, (Record; Observation).
10. The job duties of a Health Facilities Surveyor I are:

Health Facilities Surveyors I perform professional on-site inspections and reviews of health care facilities. As members of a survey team, incumbents apply professional knowledge and expertise in a specialty area, such as nursing, medical technology, dietetics, sanitation, social work, or health administration, to analyze and assess the activities in the facility. Inspections cover all areas in a facility such as medical staff by-laws; surgical, obstetrical, emergency, pharmaceutical and rehabilitation services; nursing services; infection control practices and surveillance methodology; administrative services including personnel, financial and clinical records; physical plant structures; dietary, housekeeping, and laundry services; and risk management. Incumbents survey a variety of facilities including hospitals, nursing homes, home health agencies, rural health clinics, birthing centers, ambulatory surgery centers, independent laboratories, outpatient physical therapy services, and so on. Incumbents may lead a survey team when certified for the specific type of facility.

The minimum qualifications depend on the particular specialty needed; for a nurse, licensure as a Registered Nurse and three years of professional experience are required. (Workplace Alaska, Health Facilities Surveyor I job description, PCN 06-4021)

11. The job description for DOT # 168.167-042 Inspector, Health Care Facilities Inspector states:

Inspects health care facilities, such as hospitals, nursing homes, sheltered care homes, maternity homes, and day care centers, to enforce public health laws and to investigate complaints: Inspects physical facilities, equipment, accommodations, and operating procedures to ensure compliance with laws governing standards of sanitation, acceptability of facilities, record keeping, staff competence qualifications, and ethical practices. Reviews reports concerning

staffing, personal references, floor plans, fire inspections, and sanitation. Recommends changes in facilities, standard, and administrative methods in order to improve services and efficiency, utilizing knowledge of good practices and legal requirements. Advises applicants for approval of health care facilities on license application and rules governing operation of such facilities. May testify at hearings or in court. May compile data on conditions of health care facilities, for use in determining construction needs in community or region.

The DOT description states the strength requirement is sedentary, and the position requires GED (general educational development) levels of four for reasoning, three for math, and four for language. The SVP (specific vocational preparation) is six. (SCODRDOT #168.167-042).

12. The DOT #075.364-010 Nurse, General Duty job description states:

Provides general nursing care to patients in hospital, nursing home, infirmary, or other similar health care facility: Administers prescribed medications and treatments in accordance with approved nursing techniques. Prepares equipment and aids physician during treatments and examination of patients. Observes patient, records significant conditions and reactions, and notifies supervisor or physician on patient's condition and reaction to drugs, treatments, and significant incidents. Takes temperature, pulse, blood pressure and other vital signs to detect deviations from normal and assess condition of patient. May rotate among various clinical services of institution, such as obstetrics, surgery, orthopedics, outpatient and admitting, pediatrics, and psychiatry. May prepare rooms, sterile instruments, equipment and supplies and hand items to surgeon . . . obstetrician . . . or other medical practitioner. May make beds, bathe, and feed patients. May serve as leader for a group of personnel rendering nursing care to a number of patients.

The DOT description states the strength requirement is medium and the position requires GED levels of five for reasoning, four for math, and five for language. The SVP is seven. (SCODRDOT #075.364-010).

13. Ms. Williams stated that at the time she was performing the eligibility evaluation, Employer was advertising for a Health Facilities Surveyor I. She reviewed the job requirements and contacted the individual listed in the job posting. That person explained it was necessary to lift up to 50 pounds to perform in the position. Ms. Williams explained the SCODRDOT often does not have an exact match to the actual job description; while the SCORDOT itself is old, the Inspector, Health Care Facilities description was last updated in 1977. Because the DOT description did not require either certification as an RN or the ability to lift 50 pounds, she determined a combination of DOT descriptions was necessary, and selected the Nurse,

General Duty description. Additionally, the Inspector, Health Care Facilities description requires an SVP of six, which means one to two years' experience, while the Health Facilities Surveyor was described as a "journey-level" position equating to an SVP of seven. Similarly, the GED requirement for an Inspector, Health Care Facilities is lower than the requirements for a Health Facilities Surveyor I. Both the SVP and GED requirements for a Nurse, General Duty are consistent with the requirements for a Health Facilities Surveyor I. Employee met the SVP and GED requirements for the DOT description for Inspector, Health Care Facilities. (Williams).

14. Employee explained that Health Facilities Surveyors work as a team, at least one of whom must be a registered nurse as there are parts of a survey that only a nurse can do. She believed the Health Care Surveyor position required her to meet the physical requirements for a nurse. If the survey team found conditions that placed patients in immediate jeopardy, they would be required to shut down the facility and assume care of the patients. Employee knew of only one case where that had occurred, and she was not part of that survey team. (Employee).
15. The only disputed fact in the case is the appropriateness of the RBA designee's decision to use the Inspector, Health Care Facilities job title alone, rather than in combination with the Nurse, General Duty title. There are no other factual disputes regarding eligibility. (Parties' representations).

PRINCIPLES OF LAW

AS 23.30.001. Intent of the legislature and construction of chapter. It is the intent of the legislature that

(1) This chapter be interpreted so as to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of this chapter;

(2) Worker's compensation cases shall be decided on their merits except where otherwise provided by statute. . . .

AS 23.30.005. Alaska Workers' Compensation Board.

. . .

(h) The department shall adopt rules . . . and shall adopt regulations to carry out the provisions of this chapter. . . . Process and procedure under this chapter shall be as summary and simple as possible. . . .

The board may base its decision not only on direct testimony, medical findings, and other tangible evidence, but also on the board's "experience, judgment, observations, unique or peculiar facts of the case, and inferences drawn from all of the above." *Fairbanks North Star Borough v. Rogers & Babler*, 747 P.2d 528, 533-534 (Alaska 1987).

"Harmless errors are those that do not affect the outcome of the case." *J. C. Marketing v. You Don't Know Jack*, AWCAC Decision No. 132 at 3, n. 31 (March 30, 2010) (holding Board's failure to strike SIME report, if it was error at all, was harmless error, because parties could still depose doctor). *Christopher v. Louisiana Pacific Corp.*, AWCB Decision No. 87-0185 (August 13, 1987) (holding on reconsideration while Board's reliance on an inadmissible medical opinion was error, it was harmless error because "substantial evidence exists for each of our findings without reliance" on the inadmissible medical opinion). *Sampert v. Dokoozian & Associates, Inc.*, AWCB Decision No. 05-0095 (April 6, 2005) (holding the RBA abused his discretion and erred by assigning the next rehabilitation specialist on the list to the employee's case, rather than the next specialist in the employee's senate district, but this was harmless procedural error because it did not outweigh "the public interest in prompt rehabilitation and reemployment").

As far back as 1993, the Supreme Court held "the Board possesses the authority to invoke equitable principles to prevent an employer from asserting statutory rights." *Wausau Ins. Companies v. Van Biene*, 847 P.2d 584, 588 (Alaska 1993). One maxim of equity is that the law does not require useless or idle acts.

AS 23.30.041. Rehabilitation and reemployment of injured workers.

. . . .

(d) Within 30 days after the referral by the administrator, the rehabilitation specialist shall perform the eligibility evaluation and issue a report of findings. . . . Within 14 days after receipt of the report from the rehabilitation specialist, the administrator shall notify the parties of the employee's eligibility for reemployment preparation benefits. Within 10 days after the decision, either party may seek review of the decision by requesting a hearing under AS 23.30.110. The hearing shall be held

within 30 days after it is requested. The board shall uphold the decision of the administrator except for abuse of discretion on the administrator's part.

(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.'

....

(r) In this section

....

(4)"physical capacities" means objective and measurable physical traits such as ability to lift and carry, walk, stand or sit, push, pull, climb, balance, stoop, kneel, crouch, crawl, reach, handle, finger, feel, talk, hear, or see;

(5) "physical demands" means the physical requirements of the job such as strength, including positions such as standing, walking, sitting, and movement of objects such as lifting, carrying, pushing, pulling, climbing, balancing, stooping, kneeling, crouching, crawling, reaching, handling, fingering, feeling, talking, hearing, or seeing;

(6) "rehabilitation specialist" means a person who is a certified insurance rehabilitation specialist, a certified rehabilitation counselor, or a person who has equivalent or better qualifications as determined under regulations adopted by the department;

AS 23.30.130. Modification of awards.

(a) Upon its own initiative, or upon the application of any party in interest on the ground of a change in conditions, including, for the purposes of AS 23.30.175, a change in residence, or because of a mistake in its determination of a fact, the board may, before one year after the date of the last payment of compensation benefits under AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, whether or not a compensation order has been issued, or before one year after the

rejection of a claim, review a compensation case under the procedure prescribed in respect of claims in AS 23.30.110. Under AS 23.30.110 the board may issue a new compensation order which terminates, continues, reinstates, increases, or decreases the compensation, or award compensation.

(b) A new order does not affect compensation previously paid, except that an award increasing the compensation rate may be made effective from the date of the injury, and if part of the compensation due or to become due is unpaid, an award decreasing the compensation rate may be made effective from the date of the injury, and payment made earlier in excess of the decreased rate shall be deducted from the unpaid compensation, in the manner the board determines.

AS 44.62.540. Reconsideration.

(a) The agency may order a reconsideration of all or part of the case on its own motion or on petition of a party. To be considered by the agency, a petition for reconsideration must be filed with the agency within 15 days after delivery or mailing of the decision. The power to order a reconsideration expires 30 days after the delivery or mailing of a decision to the respondent. If no action is taken on a petition within the time allowed for ordering reconsideration, the petition is considered denied.

(b) The case may be reconsidered by the agency on all the pertinent parts of the record and the additional evidence and argument that are permitted, or may be assigned to a hearing officer. A reconsideration assigned to a hearing officer is subject to the procedure provided in AS 44.62.500. If oral evidence is introduced before the agency, an agency member may not vote unless that member has heard the evidence.

8 AAC 45.525. Reemployment benefit eligibility evaluations

(a) If an employee is found eligible for an eligibility evaluation for reemployment benefits under AS 23.30.041(c), the rehabilitation specialist whose name appears on the referral letter shall

(1) interview the employee and the employer and review all written job descriptions existing at the time of injury that describe the employee's job at the time of injury;

(2) review the appropriate volume listed in (A) or (B) of this paragraph and, based on the description obtained under (1) of this subsection, select the most appropriate job title or titles that describe the employee's job; if the employee's injury occurred

(A) on or after July 2, 1998 but before August 30, 1998, the rehabilitation specialist shall use the United States Department of Labor's Selected Characteristics of Occupations Defined in the Dictionary of Occupational Titles (1981) (SCODDOT);

(B) on or after August 30, 1998, the rehabilitation specialist shall use the 1993 edition of the United States Department of Labor's Selected Characteristics of Occupations Defined in the Revised Dictionary of Occupational Titles (SCODRDOT) unless, under AS 23.30.041(p), the board has designated a later revision or version of that volume; and

(3) submit all job titles selected under (2) of this subsection to the employee's physician, the employee, the employer, and the administrator.

(b) When interviewing the employee the rehabilitation specialist whose name appears on the referral letter shall obtain descriptions of the tasks and duties for other jobs the employee held or for which the employee received training within 10 years before the injury, and any jobs held after the injury. The rehabilitation specialist shall

(1) exercise due diligence to verify the employee's jobs in the 10 years before the injury and any jobs held after the injury;

(2) review the appropriate volume listed in (A) or (B) of this paragraph and select the most appropriate job title or titles that describe the jobs held and training received; if the employee's injury occurred

(A) on or after July 2, 1988 but before August 30, 1998, the rehabilitation specialist shall use the United States Department of Labor's Selected Characteristics of Occupations Defined in the Dictionary of Occupational Titles (1981) (SCODDOT);

(B) on or after August 30, 1998, the rehabilitation specialist shall use the 1993 edition of the United States Department of Labor's Selected Characteristics of Occupations Defined in the Revised Dictionary of Occupational Titles (SCODRDOT) unless, under AS 23.30.041(p), the board has designated a later revision or version of that volume;

(3) identify all job titles identified under (2) of this subsection for which the employee meets the specific vocational preparation codes as described in the volume; and

(4) submit all job titles identified under (3) of this subsection to the employee's physician, the employee, the employer and the administrator; if the physician predicts the employee will have permanent physical capacities equal to or greater than the physical demands of a job or jobs submitted under this paragraph, the rehabilitation specialist shall conduct labor market research to determine whether the job or jobs exist in the labor market as defined in AS 23.30.041(r)(3).

8 AAC 45.530. Determination on eligibility for reemployment benefits

(a) Within 14 days after receiving a rehabilitation specialist's eligibility evaluation report for an employee injured on or after July 1, 1988, the administrator will

determine whether the employee is eligible or ineligible for reemployment benefits, or that insufficient information exists to make a determination on the employee's eligibility for reemployment benefits. The administrator will give the parties written notice by certified mail of the determination, the reason for the determination, and how to request review by the board of the determination.

(b) If the administrator determines the eligibility evaluation is not in accordance with 8 AAC 45.525, or the information in the board's case file is insufficient or does not support the eligibility recommendation, the administrator

(1) may not decide the employee's eligibility for reemployment benefits; and

(2) shall notify the employee, the employer, or the rehabilitation specialist

(A) what additional information is needed, who must submit the information, and the date by which the information must be submitted so eligibility can be determined; or

(B) that the administrator shall reassign the employee to a new rehabilitation specialist in accordance with 8 AAC 45.430.

The RBA's decision must be upheld absent "an abuse of discretion on the administrator's [designee's] part." *Miller v. ITT Arctic Services*, 367 P.2d 884, 889 (Alaska 1962). Several definitions of "abuse of discretion" appear in Alaska law although none appear in the Alaska Workers' Compensation Act (Act). The Alaska Supreme Court stated abuse of discretion consists of "issuing a decision which is arbitrary, capricious, manifestly unreasonable, or which stems from an improper motive." *Sheehan v. University of Alaska*, 700 P.2d 1295, 1297 (Alaska 1985). *See also Tobeluk v. Lind*, 589 P.2d 873, 878 (Alaska 1979). An agency's failure to apply controlling law or to exercise sound, reasonable and legal discretion may also be considered an abuse of 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 (Alaska 1999); *Manthey v. Collier*, 367 P.2d 884, 889 (Alaska 1962).

In *Konecky v. Camco Wireline, Inc.*, 920 P.2d 277 (Alaska 1996), the Supreme Court held that in determining eligibility for reemployment benefits, an employee's physical capacities are to be compared to the physical demands of the selected DOT job title and not the employee's actual job. The court followed that holding in *Morgan v. Lucky Strike Bingo*, 938 P.2d 1050 (1997) and *Irvine*.

In *Attwood v. Anchor Appliance*, AWCB Decision No. 00-0062 (April 4, 2000) and *Peifer, v. Sunshine School*, AWCB Decision No. 10-0114 (June 23, 2010), the board addressed the correctness of DOT job titles selected by a rehabilitation specialist.

ANALYSIS

1. Did Vandenberg I err by determining the DOT job title to describe Employee's job?

Employee contends *Vandenberg I*'s ruling that a combination of DOT job titles was not necessary to describe the job of Health Care Facilities Surveyor was a finding of fact that exceeded the board's jurisdiction. Employee asserts *Vandenberg I* was wrong factually and legally and asks for modification and reconsideration.

Determining whether a DOT job title or titles adequately describe the duties of a particular job is within the board's jurisdiction. Petitions seeking review of reemployment benefits eligibility determinations frequently involve the propriety of the chosen DOT job titles, and the board must determine the correct DOT job title. *Peifer, Attwood*. The board did not err as a matter of law in determining the propriety of the DOT job titles.

Employee also argues the evidence demonstrated the Nurse, General Duty job title was necessary to describe the Health Facilities Surveyor position. Specifically, Employee reargues that strength, education and experience requirements of the Health Facilities Surveyor position exceed the requirements of the Inspector, Health Care Facilities job title, so it must be combined with some other job title. As to the strength requirement, *Konecky* and *Morgan* are clear: the strength requirement of the DOT job title rather than the strength requirement of the actual job is determinative. As to education or professional licensing, the focus of AS 23.40.041(e) is on the "physical demands" of the job, and in selecting an appropriate DOT job title, a rehabilitation specialist should compare the physical activities of the actual job with the DOT job title; education and professional licensing are not factors. And, as *Vandenberg I* stated, SVP codes are only relevant to determine if an employee has held a job "long enough to obtain the skills to compete in the labor market." Employee worked as a Health Facilities Surveyor far longer than needed to meet the SVP for an Inspector, Health Care Facilities.

In most cases where there is a dispute over job titles, remand to the rehabilitation specialist is necessary because factual questions still exist. In this case, remand would serve no purpose as no factual dispute remains. The dispute before the board was whether the DOT title for Inspector, Health Care Facilities, alone or in combination with the DOT title for Nurse, General, described the duties of a Health Facilities Surveyor. As *Vandenberg I* noted, neither party contended there was any job description, other than Inspector, Health Care Facilities, alone or in combination with Nurse, General Duty that would describe the job of Health Facilities Surveyor. Although Employee's petition seeks modification of the finding that the Inspector, Health Care Facilities job title adequately describes the job of Health Facilities Surveyor, she does not identify any other possible job title. Employee has not shown a mistake in fact.

2. Did Vandenberg I err in failing to remand the case to the RBA designee?

Employee contends remand is necessary if an RBA designee's decision is not supported by substantial evidence. There are a number of ways a designee can abuse her discretion. One way is by making findings that are not supported by substantial evidence and another is by misapplying the law. *Vandenberg I* concluded the RBA designee had misapplied the law; it did not find insufficient evidence to support her findings. It also concluded the designee's error was harmless as only one outcome was possible. *Vandenberg I* could have remanded the matter to the RBA designee with instructions to direct the rehabilitation specialist to make an eligibility recommendation based only on the Inspector, Health Care Facilities job title. Remand would have been a useless act, and in the interest of a quick and efficient outcome, *Vandenberg I* held Employee was ineligible for reemployment benefits. The decision to not remand the case to the RBA designee will not be reconsidered.

CONCLUSIONS OF LAW

1. *Vandenberg I* did not err by determining the DOT job title to describe Employee's job.
2. *Vandenberg I* did not err in failing to remand the case to the RBA designee.

ORDER

Employee's July 14, 2014 petition for reconsideration and modification is denied.

LAURIE E. VANDENBERG v. STATE OF ALASKA

Dated in Anchorage, Alaska on July 23, 2014.

ALASKA WORKERS' COMPENSATION BOARD

Ronald P. Ringel, Designated Chair

Linda Hutchins, Member

Mark Talbert, Member

APPEAL PROCEDURES

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

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

RECONSIDERATION

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

MODIFICATION

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

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Final Decision and Order on Reconsideration in the matter of LAURIE E. VANDENBERG, employee / claimant; v. STATE OF ALASKA, self-insured employer; Case No. 201112729; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties on July 23, 2014.

Sertram Harris, Office Assistant