

ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

BRUCE J. BROWN,)	
Employee,)	INTERLOCUTORY
Respondent,)	DECISION AND ORDER
)	ON RECONSIDERATION
v.)	
)	AWCB Case No. 200820295
ASRC ENERGY SERVICES,)	
Employer,)	AWCB Decision No. 14-0142
)	
and)	Filed with AWCB Anchorage, Alaska
)	on October 24, 2014
ARCTIC SLOPE REGIONAL CORP.,)	
Insurer,)	
Petitioners.)	
)	

Bruce J. Brown's (Respondent) December 20, 2010 claim, as amended June 1, 2011, was heard on August 19, 2014. *Brown v. ASRC Energy Services, Inc.*, AWCB Decision No. 14-0129 (September 24, 2014) (*Brown IV*) concluded the claim was not ripe and a second independent medical evaluation (SIME) was ordered. On October 7, 2014, ASRC Energy Services and Arctic Slope Regional Corp.'s (collectively, Petitioner) requested reconsideration of *Brown IV*. On October 9, 2014, petitioner's request for reconsideration was heard on the written record in Anchorage, Alaska. Attorney Robert J. Bredesen represented Petitioner. Non-attorney representative Claire L. Keene represented Respondent. The record closed when the panel met to deliberate on October 9, 2014.

ISSUE

Employer contends relevant evidence was not included in the factual findings of *Brown IV*, and important factual and credibility findings could have and "perhaps should have" been made.

Employer contends reconsideration is also necessary because *Brown IV*'s Principles of Law contains both pre-2005 and post-2005 legal standards regarding compensability, which could lead to confusing and erroneous conclusions. Finally, Employer contends the *Brown IV* order should be refined for a more inclusive and participatory AS 23.30.110(g) evaluation.

Respondent's time to respond to the petition has not yet passed and his position on Petitioner's reconsideration request is unknown. However, in the interest of ensuring the quick, efficient, fair and predictable delivery of benefits to Respondent, if he is entitled to them, at a reasonable cost to Petitioner, Petitioner's request for reconsideration shall be considered. Because power to reconsider *Brown IV* expires 30 days after it was mailed to the parties, a ruling on Petitioner's reconsideration request will be issued.

Should Petitioner's October 7, 2014 petition for reconsideration of *Brown IV* be granted?

FINDINGS OF FACT

A review of the entire record establishes the following relevant facts and factual conclusions by a preponderance of the evidence:

- 1) On August 19, 2014, Employee's December 20, 2010 claim, as amended June 1, 2011, was heard. (*Brown IV*.)
- 2) On September 24, 2014, *Brown IV* was issued and served on the parties. (*Id.*)
- 3) *Brown IV* made the following conclusions of law: "The issue of whether Employee's disability or need for medical treatment arose out of and in the course of his employment with Employer is not ripe" and "An SIME will be ordered." (*Id.* at 31.)
- 4) *Brown IV* made the following orders:
 - 1) Workers' Compensation Officer Susan Reishus-O'Brien is directed to schedule an SIME records review with internist and pulmonary disease specialist Dr. Daniel M. Raybin, subject to his availability and the lack of any potential conflict of interest.
 - 2) A prehearing conference to address deadlines and instructions for compilation of the SIME binders is scheduled for October 10, 2014, at 10:30 a.m. with Workers' Compensation Officer Harvey Pullen.
 - 3) Employer is ordered to provide a transcript of the August 19, 2014 hearing for inclusion in the SIME binders, along with a copy of this Decision and Order. The

Quotations from the Centers for Disease Control and Prevention Website document, and all depositions, medical records and medical opinions expressed in any format, including letters, are also to be included.

4) In addition to the standard questions posed by the board designee, the following questions will be posed to the SIME physician:

1. Was exposure to an infectious agent, including but not limited to influenza A, on Northstar Island the substantial cause of Employee's disability and need for medical treatment on December 25, 2008?

2. Did Employee have pre-existing conditions that constituted the substantial cause of his disability and need for medical treatment on December 25, 2008, regardless of whether Employee worked on Northstar Island?

3. Did Employee have pre-existing conditions that, when aggravated, accelerated or combined with exposure to an infectious agent on Northstar Island, produced his disability and need for medical treatment on December 25, 2008?

4. Did Employee suffer any brain injury or cognitive impairment as a result of his December, 2008 pneumonia and complications? If so, what was the nature of this injury or impairment and has it resolved? If so, when?

5) Jurisdiction over the employee's claim is retained, pending receipt of the SIME report.

6) Upon receipt of the SIME report, if either party chooses to proceed to hearing, it is ordered to request a prehearing conference with Hearing Officer Margaret Scott.

Id. at 32.

5) Under AS 44.62.540, parties had until October 9, 2014 to petition for reconsideration of *Brown IV*.

6) Petitioner filed a Petition for Reconsideration of *Brown IV* on October 7, 2014. (Petition for Reconsideration, October 7, 2014.)

7) Petitioner's reconsideration petition was timely filed. (Record.)

8) Petitioner's reconsideration petition does not object to the SIME ordered in *Brown IV*, but requests the inclusion of supplemental findings of fact, including credibility determinations, at this time. Petitioner also requests a review of the principles of law, specifically the inclusion of both pre-2005 and post-2005 legal standards governing compensability, and refinement of the order for an AS 23.30.110(g) SIME to permit the evaluation to be more inclusive and participatory. (Petition for Reconsideration, October 7, 2014.)

9) Under 8 AAC 45.050(c)(2), Respondent's time to answer the reconsideration petition expires October 27, 2014. To date no response has been received from Respondent. (Record.)

10) Under AS 44.62.540(a), authority to order reconsideration of *Brown IV* expires on October 24, 2014, which is before the deadline for Respondent's answer to the petition. (Record.)

11) The *Brown IV* findings of fact are adopted by reference here. (Record.)

12) *Brown IV* factual finding 10 stated:

On October 23, 2008, Employee was interviewed by ACT AES Safety Specialist Robert J. Olsen, who opined on ASRC Energy Services letterhead, "I have concluded from the conversation with Bruce that there aren't any issues with drugs or alcohol that would be areas of concern. Bruce seems like a dedicated and caring individual that truly likes his job and working for ASRC. He is well liked by our client BP and should be allowed to continue working in his present capacity." (Olson memo, October 23, 2008.)

13) *Brown IV* factual finding 10 is supplemented to include the following, contextual findings of fact:

- According to an undated, unauthenticated memo purportedly written by ASRC supervisor Tracy Smith, Mr. Olsen's October 23, 2008 phone interview with Mr. Brown was arranged to:
go over some of the accusations that were brought up from [sic] the last work schedule . . . some of the accusations were that he was stumbling around. . . some people notice [sic] that his work performance was poor, and word got around that their [sic] may have been urine stored in bottles in his room; ("Bruce Brown Interview" memo.)
- On October 23, 2008 Respondent participated in a "random" [parenthesis sic] urinalysis test; (Email from Carolyn Swangler, ASRC Manager of Drug and Alcohol Programs, October 24, 2008.)
- The lab results from the October 23, 2008 five-panel urine drug test were negative for amphetamines, cocaine, marijuana, opiates and phencyclidine. (Lab Results Report, November 30, 2012.)

14) In hearing testimony Brent Burton, M.D., opined a combination of *Staphylococcus aureus* (staph) and *E. coli* infections were present in Respondent's life-threatening, necrotizing pneumonia, and neither bacterium is airborne. Rather, the two most likely ways for these bacteria to enter the lungs are via the bloodstream or aspiration. (August 19, 2014 Hearing Transcript, 127-129, 132, 157.)

15) Dr. Burton opined it is common for persons who use intravenous drugs to inject substances contaminated with staph and E. coli, resulting in blood infections involving the lungs and causing pneumonia. (*Id.* at 129.)

16) Dr. Burton opined individuals who commonly suffer aspiration pneumonia are chronic alcoholics or abusers of opioids or narcotic drugs. He testified chronic alcoholics become mentally dulled and unable to clear their airways; they vomit or regurgitate, and breathe the vomit or regurgitation into their lungs. Likewise, persons who abuse opioids become semiconscious or unconscious, lose control of their airways, and aspirate vomit or regurgitation into their lungs, leading to an aspiration pneumonia. (*Id.* at 133.)

17) At hearing Respondent testified he did not know how he got pneumonia. However his non-attorney representative stated she “was wanting to talk about a different reason for his illness.” She then presented a hitherto unexpressed contention regarding the cause of his December, 2008 pneumonia. Ms. Keene stated:

Even though [Respondent] worked in an unventilated area with only an open door used for ventilation, he continued to do his job without complaining, not knowing he was experiencing the effects of chemical exposure on a daily basis. Six years of this exposure weakened his immune system . . . (*Id.* at 18-19, 30.)

18) At hearing Lynn Palazzotto, senior manager of the workers’ compensation administration for ASRC, testified at the time of Respondent’s illness the company’s loss control unit was headed by an industrial hygienist who monitored for air quality control, proper ventilation, and exposure to chemicals. She stated Respondent’s employer was “very, very strong and clear on reporting issues like [problems working around chemicals]. You can be terminated for not reporting things like that.” She further testified employees were provided ventilation masks. (*Id.* at 110-114.)

19) Respondent’s contention he suffered from chemical exposure is found not credible due to two factors: (1) Respondent never reported any such exposure or poor ventilation to his employer, and concededly raised the issue for the first time at hearing; and (2) Ms. Palazzotto’s credible testimony regarding rigorous remote site monitoring for safety and loss prevention. (Experience, judgment, observations, unique or peculiar facts of the case, and inferences drawn from all of the above.)

20) On October 10, 2014, parties attended a prehearing conference to discuss deadlines and instructions for compilation of the SIME binders. Petitioner was ordered to prepare and serve on

Respondent SIME binders by November 10, 2014. Respondent was ordered to review the binders, add any missing documents, and serve on Petitioner and the board by November 24, 2014. The board's SIME questions were specified, but no provisions were made for parties to submit additional questions for possible submission to the SIME physician. (Prehearing conference summary, October 10, 2014.)

PRINCIPLES OF LAW

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

...

(4) hearings in workers' compensation cases shall be impartial and fair to all parties and that all parties shall be afforded due process and an opportunity to be heard and for their arguments and evidence to be fairly considered.

The board may base its decision not only on direct testimony 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). An adjudicative body must base its decision on the law, whether cited by a party or not. *Barlow v. Thompson*, 221 P.3d 998 (Alaska 2009).

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. .

..

...

Subsection AS 23.30.110(g) has long been considered procedural in nature, not substantive, for the reasons outlined in *Deal v. Municipality of Anchorage*, AWCB Decision No. 97-0165 (July 23, 1997) at 3; *see also Harvey v. Cook Inlet Pipe Line Co.*, AWCB Decision No. 98-0076 (March 26, 1998) at 4. Wide discretion exists under AS 23.30.110(g) to consider any evidence available when deciding whether to order an SIME to assist in investigating and deciding medical issues in contested claims, to best protect the rights of all parties. *See, e.g., Hanson v. Municipality of Anchorage*, AWCB Decision No. 10-0175 (October 29, 2010) at 18; *Young v. Brown Jug, Inc.*, AWCB Decision No. 02-0223 (October 28, 2002) at 3; AS 23.30.135(a); AS 23.30.155(h).

The Alaska Workers' Compensation Appeals Commission (Commission) in *Bah v. Trident Seafoods Corp.*, AWCAC Decision No. 073 (February 27, 2008) at 5 addressed the board's authority to order an SIME. Referring to § 110(g), the Commission stated "the board has discretion to order an SIME when there is a significant gap in the medical or scientific evidence and an opinion by an independent medical examiner or other scientific examination will help the board in resolving the issue before it. . . ." In denying Mr. Bah's request for a board-ordered SIME, the Commission noted: "Ordering an SIME is not proper if it serves no purpose to the board by advancing its understanding of the medical evidence or by filling in gaps in the medical evidence, where that gap in the evidence, or lack of understanding of the medical evidence, prevents the board from ascertaining the rights of the parties in the dispute before the board." *Id.* at 5.

Bah further noted "the purpose of ordering an SIME . . . is to assist the board..." *Id.* Citing *Olafson v. State, Dep't of Trans. & Pub. Facilities*, AWCAC Decision No. 061 (October 25, 2007) at 23, *Bah* reiterated the SIME physician is the *board's expert*, not the employee's or employer's expert. *Id.*, emphasis in original.

AS 23.30.120. Presumptions.

- (a) In a proceeding for the enforcement of a claim for compensation under this chapter it is presumed, in the absence of substantial evidence to the contrary, that
 - (1) the claim comes within the provisions of this chapter

A three-step analysis is used to determine the compensability of a worker's claim. If an employer rebuts the presumption of compensability at step two, at the third step of the analysis the burden shifts to the employee to prove his claim by a preponderance of the evidence. *McGahuey v. Whitestone Logging, Inc.*, 262 P.3d 613, 621 (Alaska 2011); *Smith v. Univ. of Alaska, Fairbanks*, 172 P.3d 782, 788 (Alaska 2007). Witness credibility determinations are made at the third stage. *McGahuey* at 621; *Steffey v. Municipality of Anchorage*, 1 P.3d 685, 691 (Alaska 2000).

AS 23.30.135. Procedure before the board.

- (a) In making an investigation or inquiry or conducting a hearing the board is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this chapter. The board may make its

investigation or inquiry or conduct its hearing in the manner by which it may best ascertain the rights of the parties. . . .

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. . . .

(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. . . .

8 AAC 45.092. Selection of an independent medical examiner.

. . .

(h) If the board requires an evaluation under AS 23.30.095(k), the board will, in its discretion, direct

. . .

(5) that, within 10 days after a party's filing of verification that the binders are complete, each party may submit to the board designee up to three questions per medical issue in dispute under AS 23.30.095(k), as identified by the parties, the board designee, or the board, as follows:

. . .

(B) if any party is not represented by counsel, only questions developed by the board designee shall be submitted to the physician; however, the board designee may consider and include questions submitted by the parties;

(C) if any party objects to any questions submitted to the physician, that party shall file a petition with the board and serve all other parties within 10 days after receipt of the questions; the objection must be preserved in the record for consideration by the board at a hearing on the merits of the claim, or, upon the petition of any party objecting to the questions, at the next available procedural hearing day; failure by a party to file and serve an objection does not result in waiver of that party's right to later argue the questions were improper, inadequate, or otherwise ineffective;

(D) any questions submitted for purposes of this paragraph must be prepared in accordance with 8 AAC 45.114(3) and (4).

8 AAC 45.114. Legal memoranda.

Except when the board or its designee determines that unusual and extenuating circumstances exist, legal memoranda must

. . .

(3) be on 8 1/2 by 11-inch paper of at least 16-pound weight, have margins of at least one inch on all sides, exclusive of headers and page numbers, and have spacing of not less than one and one-half lines, except that quotations may be single-spaced and indented;

(4) display the text in clear and legible hand printing or writing in black or blue ink or in black typeface equivalent in size to at least 12 point Courier or 13 point Times New Roman or New Century Schoolbook; . . .

ANALYSIS

Should Petitioner's October 7, 2014 petition for reconsideration of *Brown IV* be granted?

Employer timely filed a petition for reconsideration of *Brown IV*, requesting five alterations: (1) inclusion of supplemental medical findings of fact; (2) inclusion of supplemental non-medical findings of fact; (3) inclusion of credibility determinations; (4) redaction from the Principles of Law section all citations to pre-2005 case law; and (5) an order modifying the SIME procedure to be followed. On its own motion, this reconsideration decision and order also corrects typographical and clerical errors in *Brown IV* and the subsequent prehearing conference summary.

1) Supplemental medical findings of fact

EME physician Dr. Burton's conclusory opinions regarding the non-compensability of Respondent's life-threatening pneumonia are memorialized in *Brown IV*'s factual findings 42-44, 54, 63 and 71. The findings of fact in *Brown IV* focused on the interlocutory issue -- the need for a board-ordered SIME under AS 23.30.110(g) -- and were not intended to include every finding relevant to an ultimate hearing on the merits. Nonetheless, because a key element of Petitioner's defense is Dr. Burton's opinion Respondent's most significant risk factors for the development of pneumonia included intravenous drug abuse, this reconsideration makes the following additional factual findings regarding Dr. Burton's opinions on the methodology by which E. coli and staph bacteria enter the lungs:

- In hearing testimony Brent Burton, M.D., opined a combination of Staphylococcus aureus (staph) and E. coli infections were present in Respondent's life-threatening, necrotizing pneumonia, and neither bacterium is airborne. Rather, the two most likely ways for these bacteria to enter the lungs are via the

bloodstream or aspiration. (August 19, 2014 Hearing Transcript, 127-129, 132, 157.)

- Dr. Burton opined it is common for persons who use intravenous drugs to inject substances contaminated with staph and E. coli, resulting in blood infections involving the lungs and causing pneumonia. (*Id.* at 129.)
- Dr. Burton opined individuals who commonly suffer aspiration pneumonia are chronic alcoholics or abusers of opioids or narcotic drugs. He testified chronic alcoholics become mentally dulled and unable to clear their airways; they vomit or regurgitate, and breathe the vomit or regurgitation into their lungs. Likewise, persons who abuse opioids become semiconscious or unconscious, lose control of their airways, and aspirate vomit or regurgitation into their lungs, leading to an aspiration pneumonia. (*Id.* at 133.)

2) Supplemental non-medical findings of fact

Brown IV factual finding 10 stated:

On October 23, 2008, Employee was interviewed by ACT AES Safety Specialist Robert J. Olsen, who opined on ASRC Energy Services letterhead, “I have concluded from the conversation with Bruce that there aren’t any issues with drugs or alcohol that would be areas of concern. Bruce seems like a dedicated and caring individual that truly likes his job and working for ASRC. He is well liked by our client BP and should be allowed to continue working in his present capacity.” (Olson memo, October 23, 2008.)

Petitioner requested additional findings to place the above in context. The following supplemental factual findings, derived from Employer’s Hearing Brief Exhibit G, are hereby made:

- According to an undated, unauthenticated memo purportedly written by ASRC supervisor Tracy Smith, Mr. Olsen’s October 23, 2008 phone interview with Mr. Brown was arranged to:
 - go over some of the accusations that were brought up from [sic] the last work schedule . . . some of the accusations were that he was stumbling around. . . some people notice [sic] that his work performance was poor, and word got around that their [sic] may have been urine stored in bottles in his room; (“Bruce Brown Interview” memo.)
- On October 23, 2008 Respondent participated in a “random” [parentheses sic] urinalysis test; (Email from Carolyn Swangler, ASRC Manager of Drug and Alcohol Programs, October 24, 2008.)

- The lab results from the October 23, 2008 five-panel urine drug test were negative for amphetamines, cocaine, marijuana, opiates and phencyclidine. (Lab Results Report, November 30, 2012.)

3) Credibility determinations

Credibility findings are made at the third step of the presumption analysis. *McGahuey; Steffey*. In *Brown IV* the hearing panel's deliberations were thwarted at the third step by both gaps in the medical evidence and the panel's lack of understanding of the evidence produced, and an SIME was therefore ordered. *Bah*. Prior to the inclusion of the SIME report in the record, credibility determinations regarding medical evidence are premature.

However Respondent's contention, first raised at the August 19, 2014 hearing, that he suffered chemical exposure at the worksite is not supported by any evidence, medical or otherwise, in the record. The following factual findings and credibility determination are therefore appropriate at this juncture:

- At hearing Respondent testified he did not know how he got pneumonia. However his non-attorney representative stated she "was wanting to talk about a different reason for his illness." She then presented a hitherto unexpressed contention regarding the cause of his December, 2008 pneumonia. Ms. Keene stated:

Even though [Respondent] worked in an unventilated area with only an open door used for ventilation, he continued to do his job without complaining, not knowing he was experiencing the effects of chemical exposure on a daily basis. Six years of this exposure weakened his immune system . . . (*Id.* at 18-19, 30.)

- At hearing Lynn Palazzotto, senior manager of the workers' compensation administration for ASRC, testified at the time of Respondent's illness the company's loss control unit was headed by an industrial hygienist who monitored for air quality control, proper ventilation, and exposure to chemicals. She stated Respondent's employer was "very, very strong and clear on reporting issues like [problems working around chemicals]. You can be terminated for not reporting things like that." She further testified employees were provided with ventilation masks. (*Id.* at 110-114.)
- Respondent's contention he suffered from chemical exposure is found not credible due to two factors: (1) Respondent never reported any such exposure or poor ventilation to his employer, and concededly raised the issue for the first time at hearing; and (2) Ms. Palazzotto's credible testimony regarding rigorous remote site monitoring for safety and loss prevention. (Experience, judgment,

observations, unique or peculiar facts of the case, and inferences drawn from all of the above.)

Because Petitioner's defense relies heavily on its contention Respondent is not credible, the board's SIME question regarding brain injury or cognitive impairment will be reworded to include the credibility issue. *Brown IV* ordered the question to be phrased:

- Did Employee suffer any brain injury or cognitive impairment as a result of his December, 2008 pneumonia and complications? If so, what was the nature of this injury or impairment and has it resolved? If so, when?

This reconsideration will order the above question replaced with the following:

- As a result of his December, 2008 pneumonia and complications, did Employee suffer any brain injury or cognitive impairment that would affect his ability to be credible? If so, what was the nature of this injury or impairment and has it resolved? If so, when?

4) Redaction of pre-2005 law

Petitioner contends *Brown IV* incorrectly "recites" two conflicting causation standards by citing case laws from both before and after the 2005 amendments to the Alaska Workers' Compensation Act (Act). Petitioner further contends neither the remote site nor "eggshell skull" doctrines apply in this case.

These legal issues are unripe in an interlocutory decision ordering an SIME. Parties will be afforded the opportunity to brief them in a future hearing on the merits, but Petitioner's request to redact from *Brown IV*'s Principles of Law section all citations to pre-2005 law will be denied. In deference to Petitioner's concern any aspect of *Brown IV* might mislead or confuse the SIME physician, this reconsideration reverses the prior order to include the *Brown IV* Decision and Order in the SIME binders.

5) SIME procedure

Petitioner contends the *Brown IV* order should be refined for a more inclusive and participatory AS 23.30.110(g) evaluation, and asks that the parties be allowed to submit SIME questions. Under the broad authority conferred by AS 23.30.134(a) to conduct investigations in the manner by which the parties' rights may best be ascertained, this reconsideration will adopt the procedures set out in 8 AAC 45.092(h)(5).

If either party believes the board's SIME questions do not adequately cover the medical issue of the causation/compensability of Respondent's illness commencing December 25, 2008, the party may submit to the board designee up to three, non-compound questions, limited to that issue, for possible inclusion in the board's letter to the SIME physician. To be considered, the questions must be served on the opposing party and filed with the board no later than November 24, 2014.

This reconsideration also corrects clerical errors in the October 10, 2014 prehearing conference summary. Because the SIME is a records review only, Respondent will not hand carry film studies to the physician and will not undergo a physical examination. Petitioner and Respondent will be ordered not to have any conversations or other contact with the SIME physician or anyone in his office before the final SIME report is submitted to the board.

6) Typographical error

Page 26, paragraph three of *Brown IV* includes a reference to "AS 223.30.010(a)." The citation is herein corrected to AS 23.30.010(a).

CONCLUSION OF LAW

Petitioner's October 7, 2014 petition for reconsideration of *Brown IV* should be granted.

ORDER

- 1) Petitioner's petition for reconsideration is granted.
- 2) The record's factual findings are supplemented by those in this reconsideration decision and order (*Brown V*).
- 3) Petitioner's request to redact from *Brown IV*'s Principles of Law section all citations to pre-2005 law is denied.
- 4) Neither *Brown IV* nor *Brown V* will be submitted to the SIME physician for review.
- 5) *Brown V* reconsiders *Brown IV*'s order to submit the following compound question to the SIME physician:
 - Did Employee suffer any brain injury or cognitive impairment as a result of his December, 2008 pneumonia and complications? If so, what was the nature of this injury or impairment and has it resolved? If so, when?

That question is ordered deleted and replaced with the following:

- As a result of his December, 2008 pneumonia and complications, did Employee suffer any brain injury or cognitive impairment that would affect his ability to be credible? If so, what was the nature of this injury or impairment and has it resolved? If so, when?
- 6) Each party is allowed to submit to the board designee up to three, non-compound questions, limited to the medical issue of the causation/compensability of Respondent's illness commencing December 25, 2008, for possible inclusion in the board's letter to the SIME physician. To be considered, the questions must be served on the opposing party and filed with the board no later than November 24, 2014.
- 7) Petitioner and Respondent are ordered not to have any conversations or other contact with the SIME physician or anyone in his office before the final SIME report is submitted to the board.

Dated in Anchorage, Alaska on October 24, 2014.

ALASKA WORKERS' COMPENSATION BOARD

Margaret Scott, Designated Chair

Michael O'Connor, Member

Stacy Allen, 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 BRUCE J BROWN, employee / claimant; v. ASRC ENERGY SERVICES, employer; ARCTIC SLOPE REGIONAL CORP., insurer / defendants; Case No. 200820295; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties on October 24, 2014.

Pamela Murray, Office Assistant