ALASKA WORKERS' COMPENSATION BOARD

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

STEVEN EDGAR (DECEASED), TERRY FORDE-EDGAR, Widow, and RACHEL EDGAR, Minor child, Claimants, v. SBE ENGINEERING, LLC, and TRAVELERS INSURANCE CO., Employer and insurer, and NANA COLT/NANA WORLEY PARSONS, and ACE INDEMNITY INSURANCE CO., Contractor and insurer, Defendants.	)	FINAL DECISION AND ORDER AWCB Case No. 201121445M AWCB Decision No. 14-0144 Filed with AWCB Fairbanks, Alaska On October 27, 2014

Terry Forde-Edgar and Rachel Edgar's (Claimants) January 4, 2013 claim for death benefits was heard on August 28, 2014 in Fairbanks, Alaska. The hearing date was selected on April 16, 2014. Attorney John Franich appeared and represented Claimants. Attorney Robert Griffin appeared and represented SBE Engineering and Travelers Insurance Company (SBE). Attorney Robert

Bredesen appeared and represented NANA Colt/NANA Worley Parsons and Ace Indemnity Insurance Co. (NANA). Terry Forde-Edgar, Boyd Follett, and Bruce Packard MD testified telephonically. Craig Morrison appeared in person and testified. The record was held open to receive Claimants' supplemental affidavit of attorney's fees and costs and any objection thereto. Claimants filed their reply to SBE's partial opposition to Claimants' supplemental affidavit of attorney's fees and costs on September 17, 2014. The record closed when the board next met and deliberated, on September 25, 2014.

ISSUES

Claimants contend Steven Edgar was NANA's employee at the time of his death and assert they are entitled to death benefits, penalty, interest, and attorney's fees and costs. NANA contends Steven Edgar was not NANA's employee at the time of his death, and contends Edgar was instead an independent contractor. NANA seeks an order denying Claimants' claims for death benefits based upon a lack of an employee-employer relationship between Edgar and NANA.

Was Steven Edgar an "employee" of by NANA, an "employer," on the date of his death?

Claimants further contend Edgar died in the course and scope of his employment with SBE and/or NANA. Specifically, Claimants contend work was the substantial cause of Employee's death while working at a remote site, because if he had not been living at the remote work camp in Kaparuk, Alaska at the time of his heart attack, he would have had access to faster and better medical care which may have saved his life. Travelers contends Employee's heart attack was in no way related to his work. Travelers seeks an order finding Employee did not die in the course and scope of his employment with SBE.

Did Steven Edgar die in the course and scope of his employment with SBE?

FINDINGS OF FACT

All findings of fact from *Edgar v. SBE Engineering, et al*, AWCB Decision No. 14-0091 (June 30, 2014) *(Edgar I)* are incorporated herein. The following facts and factual conclusions are reiterated from *Edgar I* or established by a preponderance of the evidence:

1) Steven Edgar was the sole owner and employee of SBE Engineering, LLC, a chemical engineering consulting company. (Articles of Organization, SBE Engineering, June 1, 2005).

2) On July 25, 2005, SBE and NANA executed a "Master Service Agreement for Engineering/Consulting Services" (MSA) by which SBE, identified as "Consultant," agreed to perform engineering services for NANA. The MSA reads in relevant part:

> **1. Term**
>
> 1.1 Unless terminated earlier in accordance with this Agreement, the initial term of this Agreement shall be for two years, beginning as of the Effective Date.
>
> 1.2 After the initial two-year period, this Agreement will automatically renew each year on January 1 for additional one-year periods. This Agreement may not be terminated by non-renewal but only by written notice of termination in accordance with the notice requirements of this Agreement.
>
> **2. General Scope of Agreement**
>
> 2.1 NANA/Colt may, from time to time during the term of this Agreement deliver a written Work Order in the form of Attachment A executed by an Administrative Representative of NANA/Colt identified on the face page of this Agreement, requesting various engineering or consulting services be performed by Consultant, along with the expected completion dates, reports, data and results from such services.
>
> 2.2 Consultant shall not engage itself in any services under this Agreement unless NANA/Colt has issued to Consultant an approved Work Order executed by a NANA/Colt Administrative Representative.
>
> 2.3 The terms and conditions of this agreement shall apply to the performance of the services under the Work orders ("Services"). NANA/Colt reserves the right at any time to issue new, or revise existing, Work Orders to Consultant.
>
> 2.4 Consultant agrees to executed the Work directed by each Work Order ("Work") efficiently and diligently in strict conformity with this Agreement, the schedules and terms set forth in the Work Order, or any revisions to a Work Order, and NANA/Colt's general specifications, safety and environmental standards and requirements, regulatory requirements, and in accordance with good industry safety and environmental practices.
>
> 2.5 Consultant will be entitled to rely upon all documents, maps, criteria, design and construction standards and all information in NANA/Colt's possession related to NANA/Colt's requirements for the Work.
>
> 2.6 All Work will be performed at NANA/Colt offices, NANA/Colt's clients' offices, and/or Consultant's offices.
>
> 2.7 In the event of a dispute regarding any Work under this Agreement, Consultant agrees to complete the Work in good faith, unless terminated by NANA/Colt.

2.8 Consultant understands agrees that this Agreement is not a guarantee of Work, and that NANA/Colt is under no obligation to issue any Work Order under this agreement.

…

4. Authorization and Supervision

4.1 All services to be performed by Consultant under this Agreement shall be under the general direction of the NANA/Colt Representative, or his or her authorized designee, as identified in the associated Work Order. Consultant shall perform only those services authorized by this Agreement and each work order. All contractual matters relating to this Agreement shall be referred to one of NANA/Colt's Administrative Representatives, set forth on the face page of this agreement.

5. Compensation

5.1 NANA/Colt shall compensate Consultant in accordance with the terms and rates set forth in each Work Order. Such compensation shall constitute payment in full for performance of services under this Agreement, for all loss or damage arising out of performance of Services, except as may be otherwise expressly provided for in a Work Order or this Agreement. Consultant shall not be compensated for any charges or costs associated with performing Services under a specific Work Order in excess of the "Not-to-Exceed Amount" set forth in such Work Order, without NANA/Colt's prior written approval.

5.2 NO PAYMENT SHALL BE MADE FOR ANY SERVICES RENDERED UNLESS SUCH SERVICES ARE SPECIFICALLY SET FORTH IN A WORK ORDER.

6. Terms of Payment

6.1 Progress Payments

A. For Work under Work Orders specifying a "lump sum price," Consultant shall submit progress invoices and support documentation no more frequently than monthly and each such invoice shall cover the pro-rata costs for the progress as of the end of the billing cycle. These invoices must be based on the percentage completion approved by NANA/Colt for each line item on Consultant's Schedule of Values. NANA/Colt shall pay approved invoices net 30 days from receipt.

B. For Work under Work Orders specifying a "not to exceed amount," Consultant shall submit invoices and support documentation no more frequently than every two weeks and each such invoice shall cover costs and expenses incurred for the performance of Work up to the last day of the previous time period. Support documentation shall include time sheets and original receipts or certified original copies for expenses for each employee for the period of the invoice. All overtime must be approved in advance in writing by NANA/Colt.

…

6.6 Prior to submitting an invoice for final payment Consultant shall ensure that all bills for labor, material, equipment rental, taxes, insurance and all other charges arising in the performance of Work have been fully paid by or for Consultant.

6.7 Acceptance by Consultant of final payment from NANA/Colt shall constitute an unconditional and complete release in full satisfaction of all claims by Consultant against NANA/Colt, notwithstanding any other provisions to the contrary continued in this Agreement.

6.8 Each invoice submitted by Consultant to NANA/Colt will reference the number of the applicable NANA/Colt Project and the contract number of this Master Services Agreement.

6.9 All invoices must be received by NANA/Colt within 30 days of the performance of the Work by Consultant.

…

8. Suspension or Termination of Work

8.1 NANA/Colt may suspend or terminate this Agreement or any Work Order, in whole or in part, at any time for any reason whatsoever by giving written notice to Consultant. Upon receipt of such notice, Consultant shall cease all Work as of the date of suspension or termination. Consultant shall not be paid for any Work performed after such suspension or termination date.

…

11. Personnel

Consultant shall provide professional, skilled, and competent personnel to perform the Work to the satisfaction of NANA/Colt. NANA/Colt reserves the right to accept or reject Consultant candidates proposed for the Work, Consultant shall not, without prior written consent, remove specified key personnel from the Work or interfere with their availability to perform the Work on a first priority basis.

12. Independent Contractor

Consultant is an independent contractor with respect to all Work performed under this Agreement and shall control the performance of the Work and have the entire responsibility for it. All employees furnished by Consultant to perform Work shall be deemed to be Consultant's employees exclusively and shall be paid by Consultant for all Services. Consultant is not authorized to represent NANA/Colt or otherwise bind NANA/Colt in any dealings between Consultant and third parties.

13. Taxes, Duties, Permits and Fees

In connection with Consultant's performance under this Agreement, Consultant shall be responsible for any and all taxes, permits, licenses, fees and certifications and any other similar authorizations required or which may be required by any governmental body, except where laws, rules or regulations expressly require NANA/Colt to obtain such authorization.

…

20. Indemnification

20.1 Consultant shall defend, indemnify, and hold harmless NANA/Colt, its officers, directors, employees, and representatives from any and all claims, suits, losses, costs, damages, expenses, including attorney's fees, and liability for property damage or personal injury, including death, to any person, including Consultant's employees of whatsoever nature or kind, arising out of, or in connection with Consultant's performance of Consultant's Scope of Work. This duty to indemnify shall include indemnification for the active or passive negligence of NANA/Colt or the project owner, but Consultant shall not be required to indemnify any party for its sole negligence or willful misconduct.

20.2 Neither party shall be responsible or held liable to the other for any indirect, special, or consequential loss, damage, or liability, including, without limitation, loss of profit, loss of investment, loss of product, or business interruption, for services performed under this Agreement.

21. Inventions and Improvements

21.1 The parties agree that all original works of authorship (collectively referred to as "creative materials") developed specifically for NANA/Colt under this Agreement including, but not limited to, written reports, software, videos, manuals, charts, photographs and designs, are part of a collective work and, to the extent legally permissible, shall constitute a "work made for hire" under the U.S. Copyright Act of 1976 and NANA/Colt shall be considered to be the author and owner of all copyrights in any such works. If any creative material is not part of a collective work or otherwise does not constitute "work made for hire," Consultant irrevocably assigns to NANA/Colt, without separate compensation, all right, title and interest in and to such creative material together with all associated United States and foreign patent, copyright, trade secret and other proprietary rights including the rights of registrations and renewal.

21.2 Consultant shall not receive any intellectual property rights or licenses in any Work or work for hire or creative materials as a result of services performed under this Agreement.

21.3 All inventions, improvements and discoveries made, developed, suggested or conceived by employees or agents of Consultant in connection with the Work shall be promptly and fully disclosed to NANA/Colt in writing.

…

(MSA, July 25, 2005, emphasis in original).

3) On July 25, 2005, NANA and SBE executed a Work Order referencing the MSA by which SBE would provide professional engineering services to NANA in Anchorage, Alaska and at a "Contractor Remote Location." Services would not exceed $85.00 per hour. SBE was identified as "subcontractor." Steven Edgar signed as Owner/President of SBE. The work order noted "schedule start" was July 25, 2005 and "end" was December 31, 2005. (Work Order, July 25, 2005).

4) SBE was required under the MSA to provide and maintain its own workers' compensation insurance, general liability insurance, comprehensive automobile liability insurance and professional liability insurance. (NANA/Colt Insurance Requirements, Attachment C to MSA).

5) From 2005 until his death in 2011, Steven Edgar, on behalf of SBE, submitted regular invoices to NANA for payment for engineering services under the MSA, which NANA paid. (SBE Invoices, pay stubs, Bates Nos. 000687-000859).

6) On May 9, 2007, Steven Edgar wrote a letter to NANA Vice President of Business Services Dianna McDowell, including a new work order proposing an increased hourly rate and notifying NANA Edgar had completed his MBA program. He noted "I have discussed, with Wendy Osen, the possibility of hiring experienced Mexican engineers through my company and connections in Mexico to fill some of the engineering shortage in Alaska and possibly Canada" and requested a follow-up discussion on that issue. (S. Edgar letter to D. McDowell, May 9, 2007).

7) SBE and NANA executed a second work order, which increased Edgar's hourly rate to $110 per hour, per Edgar's request. (Proposed Work Order #2, May 9, 2007; Morrison).

8) On November 12, 2007, Steven Edgar wrote a letter to NANA requesting another hourly rate increase. The request was denied, but NANA and SBE executed a third work order which was substantially the same as the May 9, 2007 work order. (S. Edgar letter to L. O'Malia, Proposed Work Order #3, November 12, 2007; Morrison).

9) In 2009, NANA issued a form 1099-MISC listing $266,200.00 in nonemployee compensation paid to SBE for tax year 2009. NANA issued a form W-2 wage and tax statement for Steven Edgar listing $260,000.00 in wages and $69,000.00 in federal income tax withholding. (2009 1099-MISC and W-2 forms, Bates No. 000868-869).

10) In 2010, NANA issued a form W-2 for Steven Edgar listing $155,000.00 in wages and $27,880.00 in federal income tax withholding. (2010 W-2 form, Bates No. 00144).

11) Review of SBE's submitted invoices between 2005 and 2011 shows Edgar's hours varied. On some occasions he worked as many as 106 hours in a two-week period for NANA, while on others he worked as few as 3 hours. (SBE Invoices, 2005-2011, Bates Nos. 00687-00850).

12) On February 3, 2011, Steven Edgar suffered a heart attack and died in his room at the KCC Camp in Kaparuk, Alaska. (Record; Claim, September 4, 2012).

13) No autopsy was performed, but the state medical examiner declared the death due to "probable arteriosclerotic cardiovascular disease." (Certificate of Death, February 25, 2011).

14) Steven Edgar was sharing his room with NANA employee David Morris on the night of his death. A synopsis of a recorded police interview with Morris reads in part:

> David stated his roommate had not been feeling well the night before. He had been up and down, and then went to bed at about 8:30 pm. David went to bed around 9:30 pm. David sleeps with ear plugs in and is a deep sleeper. He did not hear any noise all night. This is his first time staying with this roommate. He could not remember his roommate's name.
>
> David woke up at about 4:20 am. He got up out of bed, without turning on any lights, and went to the bathroom. He came back and turned on his bedroom light. That is when he saw his roommate bent over on the floor. He asked him if he was ok. He touched his roommate and he was hard to the touch. After that David went and notified security immediately. It was about 4:30 am by then.

(North Slope Police Department Death Investigation Report, February 3, 2011).

15) North Slope Police Department Officer Lucas Amidon completed an initial investigation. Officer Amidon took photographs and described the scene as follows:

> Steve was in a crouched position, as though in an Islamic prayer position. There was a lot of fluid that had seeped into the carpet around him. There was tried (sic, dried) blood and other bodily fluids on the bed and on a pillow that had been taken to the laundry room. I looked around the room for any medications and could not find any. I did find o One Touch finger poker, most commonly used by diabetics to test their blood sugar levels. I did not find any slips or a meter. We rolled Steve onto his back and his shirt was pulled up on his head like he was trying to take it off. There was blood and dried bodily fluids on the front of his shirt. The blood had settled in his head and on his arms. His face was bluish purple. Security had gotten statements from the rooms around his. They said they heard Steve vomiting in the bathroom during the night, and heard him going in and out of his room a lot.

(Id.)

16) On September 10, 2012, Claimants filed a workers' compensation claim seeking death benefits. (Claim, September 4, 2012).

17) On October 8, 2012, NANA filed an answer and controversion notice, denying all benefits and asserting Edgar's death was caused by a preexisting condition unrelated to his work. (Controversion Notice, October 5, 2012).

18) On October 11, 2012, Travelers filed an answer and controversion notice, denying all benefits and asserting Claimants' claim was untimely and SBE's workers' compensation policy was not in effect on the date Edgar died. (Controversion Notice, October 9, 2012).

19) On January 4, 2013, Claimants filed an amended claim, seeking death benefits, penalty, interest and attorneys' fees. (Amended WCC, January 4, 2013).

20) On January 25, 2013, Travelers filed a petition to be dismissed as a party, contending SBE did not have workers' compensation coverage in place on the date of his death. (Travelers' Petition, January 23, 2013).

21) On June 30, 2014, *Edgar I* issued. *Edgar I* found Travelers' notice of cancellation of policy for non-payment of premium was legally insufficient to constitute adequate notice, and therefore held the workers' compensation policy was in place at the time of Steven Edgar's death. *Edgar I* denied Travelers' petition to be dismissed as a party. *(Edgar I).*

22) On August 8, 2014, Travelers filed a petition for review of *Edgar I* with the Alaska Workers' Compensation Appeals Commission (AWCAC). (Petition for Review, August 8, 2014).

23) On August 28, 2014 the AWCAC issued an order declining to hear Travelers' Petition for Review of *Edgar I.* (Order on Petition for Review, August 28, 2014).

24) On September 8, 2014, Travelers filed a petition for review of the AWCAC's order to the Alaska Supreme Court. To date, the Court has not ruled on Travelers' petition for review. (Petition for Review, September 8, 2014, record).

25) Claimant Terry Forde-Edgar credibly testified about her relationship with Steven Edgar and her understanding of his business. She and Steven Edgar were married for 18 years and had one child, Rachel Edgar, born January 18, 1998. At the time of Edgar's death, the couple was living in Oxnard, California. Edgar traveled to Alaska to work for several weeks at a time, and then would return home on his off days. The couple shared a bedroom when he was home. Forde-Edgar testified her husband had been generally healthy, and rarely saw a doctor. He did not regularly take medication. If she had woken in the night and her husband was taking medication or complained of nausea, she would ask him what he was taking and how she might

help. She does not wear headphones or earplugs to sleep and would hear him if he was up and moving around. She testified if she had seen her bedroom in the state Edgar's room at Kaparuk was in, i.e., sheets on the floor, fluids on the bed, medication strewn around, coffee spilled, she would have talked to her husband to determine if he was conscious, run to the telephone to call emergency services, and instruct her daughter to run to the neighbor for help. Forde-Edgar testified she called the local ambulance services in Oxnard, California, and was told it would have taken three-to-five minutes for an ambulance to arrive at the Edgars' home, depending on traffic and weather. (Forde-Edgar).

26) Forde-Edgar did not request an autopsy be performed on her husband's body, as she believed autopsies were reserved for "only the most serious cases" and the funeral home informed her it would cost $5000.00. The coroner had already ruled the death due to cardiovascular disease, and it simply "came down to money." NANA chose the funeral home in Anchorage and transported the body there. She decided to have Edgar's body cremated and the ashes mailed to her in California. (Forde-Edgar).

27) Forde-Edgar was not involved in the day-to-day business decisions of SBE Engineering. She "only came into the picture when Steven asked me to help him." Edgar paid his own bills, handled the business mail, and had his own filing system. Edgar was SBE's sole employee. Sometimes Forde-Edgar would do "small things for SBE," including "researching different places for him to increase his education, like symposiums, and make the travel arrangements." Edgar had an engineering degree and had previously worked as a regular employee for NANA, as an engineer and had a longstanding positive relationship with NANA. In 2005, he left his job at NANA to attend business school in Arizona. He had always wanted to have his own business. Forde-Edgar had no part in negotiating or signing any contracts between SBE and NANA, and never saw the contracts until after Edgar died. (Forde-Edgar).

28) Boyd Follett, chief of the fire and emergency services department on the North Slope, credibly testified about the emergency services available at Kaparuk. There are 18 emergency services personnel assigned to Kaparuk, ranging from paramedics to EMT IIIs. Each complex has an internal security guard on duty 24 hours each day. The KCC facility, where Edgar resided while working for NANA, is directly adjacent to the medical facility. Follett estimated medical personnel could be on scene at the KCC facility within two minutes from the time the emergency dispatch was called. There are two ambulances available for patient transport if necessary, and it

would take only about one minute to reach the clinic by ambulance from the KCC facility. The clinic is staffed by physician assistants (PAs). Follett testified the emergency services capabilities were similar in February 2011 to what they are today. (Follett).

29) Bruce Packard MD testified about his position as chief medical advisor to emergency services on the North Slope for Conoco Phillips. Dr. Packard has served in that position since 2002. While there are no physicians in Kaparuk, the PAs have immediate access by phone to emergency room physicians at Providence Hospital in Anchorage. He testified "the PAs always have someone to contact." In the case of a heart attack, once 911 is called, the dispatcher calls the ambulance and the PA. When paramedics arrive on the scene, they may provide oxygen, aspirin, and an IV if necessary. Once the patient is brought to the clinic, the PA assesses the patient, conducts an electrocardiogram and calls the Providence emergency room physician on call to consult on the proper treatment. In some cases involving cardiac arrest, a "clot-busting" drug is recommended. The assessment process to decide whether to administer the clot-busting drug takes between 30 and 60 minutes. Once the decision is made to give the drug, it takes another 10 to 15 minutes to administer. Dr. Packard believes the response time for ambulance arrival and transport to the clinic is actually better than in large cities because traffic is not an issue there. He testified the response time is "exceptionally short." In major urban centers, the goal is to make the decision whether to administer the clot-busting drug within one hour of the 911 call, though sometimes it takes up to three hours, depending on traffic and how busy the emergency room department is. At Kaparuk, if the team determines a patient needs treatment different than or in addition to the clot-busting drug, the recommended treatment is usually catheterization, which is not available on the North Slope. A medevac flight from Kaparuk to Providence Hospital takes between four and five hours. (Dr. Packard).

30) In cases involving ventricular fibrillation, or irregular heartbeat, the standard emergency response is cardiovascular shock. Paramedics have access to automatic electronic defibrillators (AEDs). The sooner the AED is administered, the better chance the patient has of survival. Survival rates are generally high when the AED is given within four minutes of the cardiac event. AEDs have been installed at the KCC facility and available to the security personnel there since 1998. Dr. Packard testified he believes if the KCC security guard had been aware Steven Edgar was having a heart attack or if someone had called 911, Edgar could have received the AED

treatment "within a couple minutes." Edgar was never seen in the clinic, as he died several hours before his roommate discovered his body. (Dr. Packard).

31) Between 2011 and 2013 there were eleven cardiac events requiring medevac. Three of those patients received the clot-busting drug prior to the medevac flight, and all eleven patients survived. Dr. Packard testified he has been "extremely pleased with [Conoco Phillips'] relationship with Providence" and stated he "would feel comfortable having a heart attack in Kaparuk if I had to." (Dr. Packard).

32) Craig Morrison, vice president and director of NANA Worley Parsons, testified about his work with Steven Edgar and his understanding of the relationship between SBE and NANA. NANA operates as an engineering company with a team of forty workers on the North Slope at Kaparuk. They have shifts of twenty workers at a time. Edgar was the only professional engineer. Becoming a professional engineer requires two tests, the first immediately after earning a bachelor's of science degree in engineering, and the second roughly five years later. In 2003, Edgar went to work for NANA as a regular employee, working as a processing engineer. He received regular wages and a W-2 for tax purposes. In 2004 he obtained his professional engineering certificate and was given a significant raise. Morrison described Edgar's certifications as "rare" and a "high commodity." Later in 2004 Edgar was relocated to work exclusively in Anchorage and given less work hours. Morrison stated Edgar was not happy with the change. He ended his employment with NANA in November 2004. In July 2005, NANA and SBE entered into the MSA. Morrison described the MSA as a "very common document between us and our subcontractors." Edgar began providing professional engineering services under the first work order. On May 5, 2007, the parties executed a second work order which increased Edgar's hourly rate to $110.00 per hour. The scope of the work remained the same. Edgar requested another rate increase, which was denied. Morrison stated Edgar "set his own hours" and was "totally independent. He controlled his own work." However, if work was not specifically authorized, Edgar was not to do it. NANA could inspect and audit SBE records and NANA had exclusive ownership of all of SBE's creative designs during the contract period. Edgar completed regular timesheets, as did all subcontractors. These were used to calculate the real-time cost for projects to provide to NANA's customer and to ensure the submitted invoices were accurate. Edgar's hourly rate was the same regardless of "straight time" or overtime. Morrison described Edgar's work as "looking at potential hazards and working to solve them. If that list had gone away, he wouldn't

have worked. But it didn't go away." The MSA was not an exclusive agreement, and SBE could have done work elsewhere and would have owned Edgar's creative though process as long as he did not develop it while working for NANA. After Edgar died, there was a two-month period when operations "shut down." NANA then hired a professional engineer who is a direct employee. (Morrison).

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, 533-534 (Alaska 1987).

> **AS 23.30.010. Coverage**. Except as provided in (b) of this section, compensation or benefits are payable under this chapter for disability . . . or the need for medical treatment of an Employee if the disability . . . or the Employee's need for medical treatment arose out of and in the course of the employment. To establish a presumption under AS 23.30.120(a)(1) that the disability . . . or the need for medical treatment arose out of and in the course of the employment, the Employee must establish a causal link between the employment and the disability . . . or the need for medical treatment. A presumption may be rebutted by a demonstration of substantial evidence that the . . . disability or the need for medical treatment did not arise out of and in the course of the employment. When determining whether or not the . . . disability or need for medical treatment arose out of and in the course of the employment, the board must evaluate the relative contribution of different causes of the disability . . . or the need for medical treatment. Compensation or benefits under this chapter are payable for the disability . . . or the need for medical treatment if, in relation to other causes, the employment is the substantial cause of the disability . . . or need for medical treatment. . . .

Under the Act, compensability is established "if the accidental injury . . . is connected with any of incidents of one's employment, then the injury both would arise out of and be in the course of

employment." *Northern Corp. v. Saari*, 409 P.2d 845 (Alaska 1966). The "arising out of" and the "in the course of" tests should not be kept in separate compartments but should be merged into a single concept of "work connection." *Id.*

Another exception to the premises rule is the "remote site" exception. The Alaska Supreme Court articulated the rationale for the exception in *Anderson v. Employer's Liability Assurance Corp.,* 498 P.2d 288, 290 (Alaska 1972):

> Although it is often possible for a resident employee in a civilized community to leave his work and residential premises to pursue an entirely personal whim and thereby remove himself from work-connected coverage, the worker at a remote area may not so easily leave his job site behind. The isolation and the remote nature of his working environment is an all encompassing condition of his employment. The remote site worker is required as a condition of his employment to do all of his eating, sleeping and socializing on the work premises. Activities normally totally divorced from his work routine then become a part of the working conditions to which he is subjected.

In *Norcon, Inc. v. Alaska Workers' Comp. Bd.*, 880 P.2d 1051 (Alaska 1994), the Alaska Supreme Court held a widow's claim for death benefits arising out of her husband's heart attack which occurred while he was preparing for work on a remote work site was not compensable because "[g]etting ready for work is not an activity choice made as a result of limited activities offered at a remote site. It is an activity that most employees engage in before they go to work, regardless of their location. Therefore, it does not fall within the parameters of the 'remote site' theory." *Norcon,* 880 P.2d at 1053.

In *Doyon Universal Services v. Allen*, 999 P.2d 764 (Alaska 2000), the Court affirmed its holding in *Norcon* and explained:

> For the "remote site" doctrine to attach, the employee's activity choices must be limited by the remote site and that limitation must play a causal role in the employee's injury. For example, if we were confronted with a case similar to *Norcon* in which an employee's heart attack was caused by him or her being hit with a sudden burst of cold water while in the shower, we would conclude that the employee's limited choice of showers at the remote site contributed to his or her injury, and that the remote-site doctrine therefore applies.

Doyon, 999 P.2d at 769, n.22.

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.
> (2) notice of the claim has been given;

Under AS 23.30.120, an injured worker is afforded a presumption the benefits he or she seeks are compensable. The Alaska Supreme Court held the presumption of compensability is applicable to any claim for compensation under the workers' compensation statute, and applies to claims for medical benefits and continuing care. *Meek v. Unocal Corp*., 914 P.2d 1276, 1279 (Alaska 1996); *Municipality of Anchorage v. Carter*, 818 P.2d 661, 664-665 (Alaska 1991). An employee is entitled to the presumption of compensability as to each evidentiary question. *Sokolowski v. Best Western Golden Lion*, 813 P.2d 286, 292 (Alaska 1991).

Application of the presumption to determine the compensability of a claim for benefits involves a three-step analysis. *Louisiana Pacific Corp. v. Koons*, 816 P.2d 1379, 1381 (Alaska 1991). First, the claimant must adduce "some" "minimal," relevant evidence establishing a "preliminary link" between the disability and employment, or between a work-related injury and the existence of disability, to support the claim. *Cheeks v. Wismer & Becker/G.S. Atkinson, J.V.,* 742 P.2d 239, 244 (Alaska 1987). The evidence necessary to raise the presumption of compensability varies depending on the claim. In claims based on highly technical medical considerations, medical evidence is often necessary to make that connection. *Burgess Construction Co. v. Smallwood*, 623 P.2d 312, 316 (Alaska 1981). In less complex cases, lay evidence may be sufficiently probative to establish causation. *VECO, Inc. v. Wolfer*, 693 P.2d 865, 871 (Alaska 1985). The presumption of compensability continues during the course of the claimant's recovery from the injury and disability. *Olson v. AIC/Martin J.V.*, 818 P.2d 669, 675 (Alaska 1991). Witness credibility is not weighed at this stage in the analysis. *Resler v. Universal Services Inc.*, 778 P.2d 1146, 1148-49 (Alaska 1989). If there is such relevant evidence at this threshold step, the presumption attaches to the claim. If the presumption is raised and not rebutted, the claimant need produce no further evidence and the claimant prevails solely on the raised but un-rebutted presumption. *Williams v. State*, 938 P.2d 1065 (Alaska 1997).

In *Runstrom v. Alaska Native Medical Center,* AWCAC Decision No. 150 (March 25, 2011), the Alaska Workers' Compensation Appeals Commission held the 2005 legislative amendment to

AS 23.30.010 altered the longstanding presumption analysis: "…[W]e conclude that the legislature intended to modify the second and third steps of the presumption analysis by amending AS 23.30.010 as it did." *Runstrom,* AWCAC Decision No. 150, at 3. The Commission held the second stage of the presumption analysis now requires the employer

> "rebut the presumption with substantial evidence that excludes any work-related factors as the substantial cause of the employee's disability, etc. In other words, if the employer can present substantial evidence that demonstrates that a cause other than employment played a greater role in causing the disability, etc., the presumption is rebutted. However, the alternative showing to rebut the presumption under former law, that the employer directly eliminate any reasonable possibility that employment was *a factor* in causing the disability, etc., is incompatible with the statutory standard for causation under AS 23.30.010(a). In effect, the employer would need to rule out employment as *a factor* in causing the disability, etc. Under the statute, employment must be more than *a factor* in terms of causation. *Id.* at 7 (emphasis in original).

"Substantial evidence" is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Tolbert v. Alascom, Inc.*, 973 P.2d 603, 611-612 (Alaska 1999); *Miller* at 1046.

Since the presumption shifts only the burden of production and not the burden of persuasion, the employer's evidence is viewed in isolation, without regard to any evidence presented by the claimant. *Id.* at 1055. Credibility questions and weight to give the employer's evidence are deferred until after it is decided if the employer has produced a sufficient quantum of evidence to rebut the presumption the claimant is entitled to the relief sought. *Norcon, Inc. v. Alaska Workers' Comp. Bd.*, 880 P.2d 1051 (Alaska 1994); *Wolfer* at 869.

Runstrom held once the employer has successfully rebutted the presumption of compensability,

> [the presumption] drops out, and the employee must prove, by a preponderance of the evidence, that in relation to other causes, employment was the substantial cause of the disability, need for medical treatment, etc. Should the employee meet this burden, compensation or benefits are payable. *Id.* at 8.

> **AS 23.30.122. Credibility of witnesses.** The board has the sole power to determine the credibility of a witness. A finding by the board concerning the weight to be accorded a witness's testimony, including medical testimony and reports, is conclusive even if the evidence is conflicting or susceptible to contrary conclusions. The findings of the board are subject to the same standard of review as a jury's finding in a civil action.

> **AS 23.30.395. Definitions**. In this chapter,
> …
> (2) "arising out of and in the course of employment" includes employer-required or supplied travel to and from a remote job site; activities performed at the direction or under the control of the employer; and employer-sanctioned activities at employer-provided facilities; but excludes . . . activities of a personal nature away from employer-provided facilities;
> …
>
> (19) 'employee' means an employee employed by an employer as defined in (20) of this section;
>
> (20) 'employer' means the state or its political subdivision or a person employing one or more persons in connection with a business or industry coming within the scope of this chapter and carried on in this state. . . .
> …
>
> (24) "injury" means accidental injury or death arising out of and in the course of employment, and an occupational disease or infection that arises naturally out of the employment or that naturally or unavoidably results from an accidental injury;
> …

Before an employee-employer relationship exists under the Act, an express or implied contract of employment must exist. *Alaska Pulp Co. v. United Paperworkers Intern. Union*, 791 P.2d 1008, 1010 (Alaska 1990). Formation of such a contract generally requires mutual assent and consideration. *Alaska Pulp Co.*, 791 P.2d at 1010. An important purpose underlying the contract of employment requirement is to avoid "thrust[ing] upon a worker an employee status to which he has never consented . . . [since doing so] might well deprive him of valuable rights. . . ." *Id*. at 1011.

Employment generally begins after a meeting of the minds has been reached between the employee and the employer, for at that point a contract is formed. *Childs v. Kalgin Island Lodge*, 779 P.2d 310, 313 (Alaska 1989). Express contract formation requires an offer encompassing its essential terms, an unequivocal acceptance of the terms by the offeree, consideration and intent to be bound. *Childs*, 779 P.2d at 314. An implied employment contract is formed by a relationship resulting from "the manifestation of consent by one party to another that the other shall act on his behalf and subject to his control, and consent by the other so to

act." *Id.* An implied contract's existence must be determined by considering all factors in light of the surrounding circumstances. *Cluff v. Nana-Marriott, 892 P.2d 164, 171 (Alaska 1995).* A claimant's belief the claimant intended to work only for one party does not preclude the possibility an implied employment contract may have been formed between the claimant and another party. *Childs v. Tulin*, 799 P.2d 1338, 1340 (Alaska 1990).

> **8 AAC 45.890. Determining employee status**. For purposes of AS 23.30.395(19) and this chapter, the board will determine whether a person is an 'employee' based on the relative-nature-of-the-work test. The test will include a determination under (1)-(6) of this section. Paragraphs (1) and (2) of this section are the most important factors, and at least one of these two factors must be resolved in favor of an 'employee' status for the board to find that a person is an employee. The board will consider whether the work
>
> (1) is a separate calling or business; if the person performing the services has the right to hire or terminate others to assist in the performance of the service for which the person was hired, there is an inference that the person is not an employee; if the employer
>
> (A) has the right to exercise control of the manner and means to accomplish the desired results, there is a strong inference of employee status;
>
> (B) and the person performing the services have the right to terminate the relationship at will, without cause, there is a strong inference of employee status;
>
> (C) has the right to extensive supervision of the work then there is a strong inference of employee status;
>
> (D) provides the tools, instruments, and facilities to accomplish the work and they are of substantial value, there is an inference of employee status; if the tools, instruments, and facilities to accomplish the work are not significant, no inference is created regarding the employment status;
>
> (E) pays for the work on an hourly or piece rate wage rather than by the job, there is an inference of employee status; and
>
> (F) and person performing the services entered into either a written or oral contract, the employment status the parties believed they were creating in the contract will be given deference; however, the contract will be construed in view of the circumstances under which it was made and the conduct of the parties while the job is being performed;

> (2) is a regular part of the employer's business or service; if it is a regular part of the employer's business, there is an inference of employee status;
>
> (3) can be expected to carry its own accident burden; this element is more important than (4)-(6) of this section; if the person performing the services is unlikely to be able to meet the costs of industrial accidents out of the payment for the services, there is a strong inference of employee status;
>
> (4) involves little or no skill or experience; if so, there is an inference of employee status;
>
> (5) is sufficient to amount to the hiring of continuous services, as distinguished from contracting for the completion of a particular job; if the work amounts to hiring of continuous services, there is an inference of employee status;
>
> (6) is intermittent, as opposed to continuous; if the work is intermittent, there is a weak inference of no employee status.

The "relative-nature-of-the-work" test was adopted to distinguish between employees and independent contractors for determining whether an individual is an "employee," and thus eligible for workers' compensation benefits under the Act. In determining whether a particular individual is an employee, the board must assess the totality of all the relevant circumstances surrounding the parties' relationship. *Kroll v. Reeser,* 655 P.2d 753 (Alaska 1982). However, both relationships presuppose a contractual undertaking. Therefore, absent a contract for hire, the board is not required to make this distinction. *Alaska Pulp Corp*, 791 P.2d at 1008.

ANALYSIS

Was Steven Edgar an "employee" of NANA, an "employer," on the date of his death?

Applying the AS 23.30.120 presumption analysis and without considering witness credibility, Claimants attached the presumption Steven Edgar was NANA's "employee" and NANA was his "employer," when Edgar died. This finding is based upon Terry Forde-Edgar's testimony Edgar had worked as a direct employee for NANA in the past and had a long-standing positive relationship with NANA. Claimants further attached the presumption with documentary evidence Steven Edgar worked consistently for NANA as its sole professional engineer, submitted timesheets documenting his hours, received regular pay, and did not own the intellectual property rights to his

work product. Claimants successfully established a "preliminary link" showing an employee-employer relationship between Edgar and NANA, attaching the §120 presumption.

Once the presumption is raised, NANA must rebut the presumption with substantial evidence, which is viewed in isolation and without considering credibility. Craig Morrison testified Edgar "set his own hours" and was "totally independent." He further testified the MSA was not an exclusive agreement, and SBE could have done work elsewhere. The MSA clearly identifies SBE as an independent contractor. All this is substantial evidence supporting NANA's contention no employee-employer relationship existed at the time of Edgar's death in February 2011. This is substantial evidence to rebut the §120 presumption and shift the burden to Claimants, who must prove their claim against NANA by a preponderance of the evidence. *Runstrom.*

The "relative-nature-of-the-work" test was adopted to distinguish between "employees" and "independent contractors" for determining whether an individual is an "employee," and thus eligible for workers' compensation benefits under the Act. *Alaska Pulp Co.*, 791 P.2d at 1012. However, both relationships presuppose a contractual undertaking. Therefore, absent a contract for hire this distinction need not be made. *Id.* Thus, the first inquiry is whether or not there was an oral or written contract for hire, express or implied, for employment purposes or otherwise, between Steven Edgar and NANA. If there was no such agreement, the inquiry ends there and the relative-nature-of-the-work test need not be applied.

The parties do not dispute Edgar and NANA entered into an express, written contract by which SBE would provide professional engineering services for NANA. Edgar was the sole employee of SBE and the parties clearly anticipated Edgar would personally perform the work. Edgar had worked consistently for NANA as a direct employee in the past and the work under the MSA was substantially similar to the work he did as a direct employee. Because there was an express contract for hire between SBE and NANA, the next inquiry is to determine the status of their contractual relationship.

The "relative nature of the work" test is applied to distinguish between employee and independent contractor status. *Alaska Pulp Co.*, 791 P.2d at 1012. The "most important factors" in the test are

8 AAC 45.890(1) and (2). At least one of these factors must be resolved in Claimants' favor to find Edgar was NANA's "employee" at the time of his death. These first two factors are then considered in light of the remaining four.

(1) Was Edgar's work a separate calling or business? Did Edgar have the right to hire or terminate others at the time of his February 2011 death?

If a person's work is a separate calling or business and the employee has the right to hire or terminate others, there is an inference the person is not an employee. Steven Edgar was a highly qualified and experienced professional engineer. Terry Forde-Edgar testified "he had always wanted to have his own business." He organized SBE as a limited liability company in 2005 and named himself as sole owner. The MSA executed by SBE and NANA clearly identifies SBE as an independent contractor. While he did work only for NANA, neither the MSA's express language nor the nature of the parties' relationship excluded Edgar from pursuing other contracts on behalf of SBE. He submitted invoices to NANA for work completed. The MSA provided SBE would "control the performance of the Work and have the entire responsibility for it" and allowed SBE to hire employees to aid in completing the work. Any employees of SBE would be paid by SBE. In fact, while there is no evidence Edgar ever hired any employees, in his May 9, 2007 letter to NANA Vice President of Business Services Dianna McDowell, Edgar referenced the possibility of SBE hiring Mexican engineers to relieve the engineer shortage. All this is evidence Edgar's work was a "separate calling or business" and Edgar had the right to hire or terminate others. Under this prong of the test, there is an inference Edgar was not NANA's employee.

A) Did NANA have the right to exercise control over the manner and means to accomplish the desired result?

If an employer has the right to exercise control over the manner and means to accomplish the desired result, there is an inference of employee status. Edgar worked relatively independently. He was the only certified professional engineer working for NANA at Kaparuk. The MSA stated SBE would control the performance of the work and have the entire responsibility for it. As Craig Morrison testified, Edgar set his own hours and was "totally independent." The evidence shows NANA relied on Edgar's expertise and trusted him to "look at the potential hazards and work to solve them," with little input or control from NANA. He had no direct supervisor. This factor does not create an inference of employee status.

B) Did NANA and Edgar have the right to terminate the relationship at will, without cause?

If the parties have the right to terminate their relationship at will, without cause, there is an inference of employee status. The MSA dictated the circumstances under which the parties could terminate their relationship. The MSA had an initial two year term, with automatic annual renewal for one-year periods. NANA could terminate the MSA or any work order at any time for any reason by providing written notice to SBE. No such provision existed for SBE to terminate the MSA. SBE was contractually obligated to continue providing engineering services through the term of the MSA. This factor does not create an inference of employee status.

C) Did NANA have the right to extensive supervision of Edgar's work?

If an employer has the right to extensive supervision of a person's work, there is a strong inference of employee status. Based on the evidence and testimony at hearing, Edgar worked independently, set his own hours, and NANA was satisfied as long as the work was completed. Edgar was a highly respected and valued worker, a "high commodity" in his field, and the only professional engineer working for NANA. The MSA provided SBE would control the performance of the work and have the entire responsibility for it. While Edgar could not perform work unless specifically authorized by NANA, NANA did not supervise his actual work. This factor does not create an inference of employee status.

D) Did NANA provide the tools, instruments, and facilities to accomplish Edgar's work, are they are of substantial value, and are the tools, instruments and facilities to accomplish the work significant?

If an employer provides valuable and significant tools, instruments and facilities to accomplish the work, there is an inference of employee status. All work completed under the MSA was done onsite at NANA facilities. NANA provided the tools to accomplish Edgar's work; Edgar provided his professional expertise. There was little testimony or evidence on the value of the tools and facilities provided, but the work was necessarily done on site. This factor creates an inference of employee status.

E) Did NANA pay for Edgar's work on an hourly or piece rate wage rather than by the job?

If an employer pays a worker on an hourly or piece rate wage rather than by the job, there is an inference of employee status. Under the MSA and accompanying work orders, Edgar submitted regular invoices documenting hours worked at his agreed-upon hourly rate, and NANA paid the invoices to SBE. Edgar also submitted regular timesheets, which Morrison testified all NANA subcontractors completed. These were used to calculate the real-time cost for projects to provide to NANA's customer and to ensure the submitted invoices were accurate. Regardless of the number of hours Edgar worked in a week, he was paid at the same hourly rate, with no distinction between straight time and overtime. While Edgar had consistent work for NANA from 2005 until his death in 2011, Morrison testified if there had not been work, Edgar would not have worked. This does not create an inference of employee status between Edgar and NANA.

F) Did NANA and Edgar enter into a written or oral contract, and if so, what "employment status" did they believe they were creating?

The employment status the parties believed they were creating in the contract will be given deference; however, the contract will be construed in view of the circumstances under which it was made and the conduct of the parties while the job is being performed. The MSA Edgar and NANA executed clearly contemplates SBE as an independent contractor. Subsection 12 of the MSA states:

> **12. Independent Contractor**
> Consultant is an independent contractor with respect to all Work performed under this Agreement and shall control the performance of the Work and have the entire responsibility for it. All employees furnished by Consultant to perform Work shall be deemed to be Consultant's employees exclusively and shall be paid by Consultant for all Services. Consultant is not authorized to represent NANA/Colt or otherwise bind NANA/Colt in any dealings between Consultant and third parties.

Terry Forde-Edgar testified Edgar "always wanted to have his own business." Edgar organized SBE as a limited liability company in 2005, obtained his MBA in 2007, and clearly considered himself an independent business owner. At one point he considered the possibility of hiring on additional engineers as employees of SBE. As a condition to the MSA, NANA required SBE to carry his own workers' compensation insurance, general liability insurance, automobile liability

insurance and professional liability insurance. It is more likely than not Edgar and NANA believed Edgar was an independent contractor.

Of the six factors considered in the first prong of the relative-nature-of-the-work test, only one factor creates an inference of employee status. Consequently, on balance, this of the two most important factors of the test is resolved in finding no employee-employer relationship between Edgar and NANA.

(2) Were Edgar's services a regular part of NANA's business or service?

This is the second of the two "most important factors" in the test. If the work is a regular part of the employer's business or service, there is an inference of employee status. NANA/Colt's exclusive business was providing engineering services. Steven Edgar was NANA's sole professional engineer. There is no question Edgar's services were a regular an integral part of NANA's business. When Edgar died, NANA had to close operations for two months until it found another professional engineer, who it then hired as a regular employee. This factor creates a strong inference of employee status. As this is one of the two "most important factors," this inference is significant.

(3) Can Edgar be expected to carry his own accident burden?

This element is more important than (4) – (6) of this section. If the worker is unlikely to be able to meet the costs of industrial accidents out of the payment for the services, there is a strong inference of employee status. The MSA required SBE to carry its own workers' compensation insurance, general liability insurance, automobile insurance and professional liability insurance. NANA required all its subcontractors to carry their own insurance. Edgar made $260,000.00 in 2009 and $155,000.00 in 2010, significant income. By all measures SBE was a successful business, and it is reasonable to expect Edgar to carry his own accident burden. This factor does not create an inference of employee status between Edgar and NANA.

(4) Did Edgar's work involve little or no skill or experience?

If the work involves little or no skill or experience, there is an inference of employee status. Edgar's work for NANA required a professional engineer's certificate, which Craig Morrison testified was "rare" and a "high commodity." Edgar was a highly skilled, experienced engineer, greatly respected in his field. When Edgar died, NANA had no other engineer to complete its work and had to shut down operations for two months. Edgar's work involved significant skill and experience. This factor does not create an inference of employee status between Edgar and NANA.

(5) Was the employment agreement sufficient to amount to the hiring of continuous services, as distinguished from contracting for the completion of a particular job?

If the work amounts to hiring of continuous services, there is an inference of employee status. The MSA specified no work was to be completed absent an approved work order. The parties executed three work orders between 2005 and 2011. Edgar worked steadily for NANA during that period. Craig Morrison testified the work was constant and was not segmented into individual jobs. However, he also testified if there had been no work, Edgar would not have worked. There was a shortage of qualified engineers, which Edgar himself referenced in his May 2007 letter to VP Dianna McDowell. In effect, Edgar worked continuously for NANA from 2005 to 2011 as its sole professional engineer. This factor creates an inference of employee status.

(6) Was the employment intermittent, as opposed to continuous?

If the work is intermittent, there is a weak inference of no employee status. Edgar's work for NANA was regular and consistent, as there was no shortage of work and NANA had no other professional engineer. Edgar received payment for his submitted invoices on a regular basis from 2005 through his death in 2011. NANA was the only company Edgar provided engineering services for. The work was not intermittent, which supports an inference of employee status.

Weighing all the elements outlined in the relative-nature-of-the-work test under 8 AAC 45.890 and considering the totality of the circumstances surrounding the parties' relationship, a preponderance of the evidence demonstrates no employee-employer relationship existed between Steven Edgar and NANA. Claimants have failed to prove by a preponderance of the evidence Steven Edgar was an "employee" and NANA an "employer," as defined at AS 23.30.395(19) and (20) on February 3, 2011.

Did Steven Edgar die in the course and scope of his employment with Employer?

Whether Steven Edgar's death arose out of and in the course of his employment is a factual question to which the presumption of compensability applies. Claimants raised the presumption of compensability with Terry Forde-Edgar's testimony and the undisputed fact Edgar died of a heart attack while living and working in Kaparuk while performing engineering services for SBE. Specifically, Forde-Edgar testified if her husband had had a heart attack while living with her in California, she would have contacted emergency services and her husband would have received immediate medical treatment which may have saved his life.

Without regard to credibility, NANA and Travelers rebutted the presumption of compensability with the testimony of Dr. Packard and Boyd Follett. Specifically, Dr. Packard and Boyd Follett testified the response time for emergency services to the KCC facility is extremely short and had anyone contacted security or emergency services, Edgar could have been treated with potentially life-saving medication and procedures within minutes.

The burden now shifts to Claimants to prove by a preponderance of the evidence Edgar died in the course and scope of his employment. The facts surrounding Edgar's death are not disputed. Whether Claimants' claim is compensable turns on application of the remote site doctrine.

Generally, injuries occurring off the employer's premises are not compensable. However, as addressed in *Norcon*, because "the worker at a remote area may not so easily leave his job site behind," "activities normally totally divorced from his work routine then become a part of the working conditions to which he is subjected." *Norcon.* Nonetheless, not all injuries occurring on remote sites are compensable. In *Norcon*, the Court denied a widow's claim for death benefits related to her husband's death of a heart attack while he was getting ready for work, holding "[g]etting ready for work is not an activity choice made as a result of limited activities offered at a remote site. It is an activity that most employees engage in before they go to work, regardless of their location. Therefore, it does not fall within the parameters of the 'remote site' theory." *Norcon*, at 1053.

The Court again addressed the limitations of the remote site doctrine in *Doyon,* explaining Employee's activity choices must be limited by the remote site and the limitation must play a causal role in the injury. *Doyon*, at 769, n.22.

In *Doyon,* the employee became ill after eating the food provided for him at the employee cafeteria. There, the causal link was created not by the mere act of Employee eating, but by the fact that the specific food he was eating, which was limited by virtue of his employment at a remote site, made him sick. The question then turns to whether there was anything about the facilities or conditions at Kaparuk that either caused Employee's heart attack or led to his death. Claimants contend Edgar did not have immediate access to emergency medical services at Kaparuk, as he would have had if he were living and working in California.

Forde-Edgar testified if she had woken in the night and her husband was taking medication or complained of nausea, she would ask him what he was taking and how she might help. If she had seen her bedroom in the state Edgar's room at Kaparuk was in, she would have talked to her husband to determine if he was conscious, run to the telephone to call emergency services, and instructed her daughter to go to the neighbor for help. Forde-Edgar testified she called the local ambulance services in Oxnard, California, and was told it would have taken three-to-five minutes for an ambulance to arrive at the Edgars' home, depending on traffic and weather.

Boyd Follett, chief of the fire and emergency services department on the North Slope, testified about the emergency services available at Kaparuk. There are 18 emergency services personnel assigned to Kaparuk, ranging from paramedics to EMT IIIs. Each complex has an internal security guard on duty 24 hours each day. The KCC facility, where Edgar resided while working for NANA, is directly adjacent to the medical facility, and Follett estimated medical personnel could be on scene at the KCC facility within two minutes from the time the emergency dispatch was called. There are two ambulances available for patient transport if necessary, and it would take only about one minute to reach the clinic by ambulance from the KCC facility.

Dr. Packard testified the PAs at Kaparuk have immediate access by phone to emergency room physicians at Providence Hospital in Anchorage. In the case of a heart attack, once 911 is called,

the dispatcher calls the ambulance and the PA. When paramedics arrive on the scene, they may provide oxygen, aspirin, and an IV if necessary. Dr. Packard believes the response time for ambulance arrival and transport to the Kaparuk clinic is actually better than in large cities because traffic is not an issue there. He testified the response time is "exceptionally short." Dr. Packard testified he believes if the KCC security guard had been aware Edgar was having a heart attack or if someone had called 911, Edgar could have received AED treatment "within a couple minutes." He went so far as to state he "would feel comfortable having a heart attack in Kaparuk if I had to."

While it is true Edgar would likely have been sharing a bed with his wife if he were not working on the North Slope and she would likely have heard his distress and called emergency personnel, this "what if" and "but for" analysis is not the requisite test under *Doyon.* Under *Doyon, E*mployee's activity choices must be limited by the remote site and the limitation must play a causal role in the injury. Here, Edgar was sleeping when he became ill and had a heart attack. Nothing about the remote site limited his ability to sleep or to seek medical attention. To the contrary, medical personnel were mere minutes away. It is unfortunate Edgar's roommate did not hear him, that the co-workers in the building who heard Edgar vomiting did not contact anyone, and that Edgar himself assumedly did not appreciate the severity of his illness and did not seek help. There is however, simply no causal link between the conditions of the remote site and Edgar not receiving medical attention.

Edgar's case falls into the exception to the remote site doctrine the Alaska Supreme Court carved out in *Norcon* and reiterated in *Doyon.* Claimants' case is not compensable under the remote site doctrine. Their claim will be denied.

CONCLUSIONS OF LAW

1) Steven Edgar was not an employee of NANA on the date of his death.

2) Employee did not die in the course and scope of his employment with SBE.

ORDER

Claimants' January 4, 2013 claim is denied.

Dated at Fairbanks, Alaska on October 27, 2014.

ALASKA WORKERS' COMPENSATION BOARD

/s/____
Amanda Eklund, Designated Chair

/s/____
Julie Duquette, Member

/s/____
Lake Williams, 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 that the foregoing is a full, true and correct copy of the Decision and Order in the matter of TERRY FORDE-EDGAR and RACHEL EDGAR, Claimants v. SBE ENGINEERING and TRAVELERS INSURANCE CO.; NANA COLT/NANA WORLEY PARSONS, and ACE INDEMNITY INSURANCE CO., Defendants; Case No. 201121445M, dated and filed in the office of the Alaska Workers' Compensation Board in Fairbanks, Alaska, and served upon the parties this 27th day of October, 2014.

/s/______________________________

Darren Lawson, Office Assistant II