

# 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. 14-0151
	)	
and	)	Filed with AWCB Anchorage, Alaska
	)	on November 19, 2014
ARCTIC SLOPE REGIONAL CORP.,	)	
Insurer,	)	
Petitioners.	)	
	)	

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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. In response to ASRC Energy Services and Arctic Slope Regional Corp.'s (collectively, Petitioner) request for reconsideration, *Brown v. ASRC Energy Services, Inc.*, AWCB Decision No. 14-0142 (October 24, 2014) (*Brown V*) made supplemental factual findings, reworded a Second Independent Medical Evaluation (SIME) question, allowed the parties to submit questions for possible inclusion in the board's letter to the SIME physician, and ordered *Brown IV* and *Brown V* would not be sent to the SIME physician. *Brown V* also denied Petitioner's request to redact from *Brown IV*'s Principles of Law section all citations to pre-2005 law, and ordered both parties 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. On November 10, 2014, Petitioner requested reconsideration of *Brown V*. On November 18, 2014, petitioner's

second 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 November 18, 2014.

### ISSUE

Petitioner contends reconsideration is necessary because *Brown V* retained factual findings based on allegedly false evidence, retained overruled case law, and “overlooked” a request to provide the SIME physician with a complete case record.

Respondent’s time to respond to the petition has not yet passed and his position on Petitioner’s reconsideration request is unknown.

**Should Petitioner’s November 10, 2014 Petition for Reconsideration of *Brown V* 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, Respondent’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) On October 7, 2014, Petitioner requested reconsideration of *Brown IV*, contending 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. Petitioner contended reconsideration was 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, Petitioner contended the *Brown IV* order should be refined for a more inclusive and participatory AS 23.30.110(g) evaluation. (Petition for Reconsideration, October 7, 2014; *Brown V* at 1-2.)
- 4) *Brown V* made the following orders:
  - 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.

(*Id.* at 13-14.)

5) Petitioner timely filed a Petition for Reconsideration of *Brown V* on November 10, 2014. (Petition for Reconsideration, November 10, 2014.)

6) Petitioner's reconsideration petition contended *Brown V* erred by: (1) not making a credibility determination regarding the authorship of a letter purportedly written by Dr. Patrick Brady; (2) relying on legal authorities Petitioner asserts have been overruled, and allowing the board's letter to the SIME physician to include unspecified "questions founded upon bad law"; and (3) "overlooking" Petitioner's request to provide the SIME physician with a complete case record. (*Id.*)

7) Under 8 AAC 45.050(c)(2) and 8 AAC 45.060(b), Respondent's time to answer the reconsideration petition expires December 3, 2014. To date no response has been received from Respondent. (Record.)

8) Under AS 44.62.540(a) and 8 AAC 45.063(a), authority to order reconsideration of *Brown V* expires on November 24, 2014, which is before the deadline for Respondent's answer to the petition. (*Id.*)

#### 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.

**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 45.050. Pleadings.**

...

(c) Answers.

...

(2) An answer to a petition must be filed within 20 days after the date of service of the petition and must be served upon all parties.

**8 AAC 45.060. Service.**

...

(b) . . . Service by mail is complete at the time of deposit in the mail if mailed with sufficient postage and properly addressed to the party at the party's last known address. If a right may be exercised or an act is to be done, three days must be added to the prescribed period when a document is served by mail.

**8 AAC 45.063. Computation of time.**

(a) In computing any time period prescribed by the Act or this chapter, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period is included, unless it is a Saturday, Sunday or a legal holiday, in which case the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday.

ANALYSIS

**Should the November 10, 2014 petition for reconsideration of *Brown V* be granted?**

Petitioner's timely petition requesting reconsiders contends *Brown V* made legal errors by: (1) not making a credibility determination regarding the authorship of a letter purportedly written by Dr. Brady; (2) relying on legal authorities Petitioner asserts have been overruled, and allowing the board's letter to the SIME physician to include unspecified "questions founded upon bad law"; and (3) "overlooking" Petitioner's request to provide the SIME physician with a complete case record.

The panel's authority to reconsider *Brown V* expires November 24, 2014. AS 44.62.540(a); 8 AAC 45.063(a). Respondent has not yet responded to Petitioner's petition, but the deadline to do so does not expire until December 3, 2014. 8 AAC 45.050(c)(2); 8 AAC 45.060(b). To afford Respondent due process and an opportunity to be heard, and to allow him full opportunity to present arguments and evidence in response to Petitioner's contentions, the record will be held open through December 3, 2014. AS 23.30.001(4). The petition for reconsideration will be heard on the written record on December 4, 2014.

CONCLUSIONS OF LAW

**The November 10, 2014 Petition for Reconsideration of *Brown V* will be granted.**

ORDER

- 1) Petitioner's November 10, 2014 Petition for Reconsideration of *Brown V* is granted.
- 2) The record will be held open through December 3, 2014, to allow Respondent to answer the Petition.
- 3) The matter will be heard on the written record on December 4, 2014.

Dated in Anchorage, Alaska on November 19, 2014.

ALASKA WORKERS' COMPENSATION BOARD

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Margaret Scott, Designated Chair

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Michael O'Connor, Member

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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 November 19, 2014.

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Pamela Murray, Office Assistant