ALASKA WORKERS' COMPENSATION BOARD

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

AARON M. BAILEY, Employee, Claimant, v. DISCOVERY CONSTRUCTION, INC., Employer, and SEABRIGHT INSURANCE CO., Insurer, Defendants.	)	FINAL DECISION AND ORDER AWCB Case No. 200608794 AWCB Decision No. 17-0043 Filed with AWCB Anchorage, Alaska on April 18, 2017

Aaron M. Bailey's (Employee) July 21, 2014 and May 3, 2016 claims were heard on February 15, 2017 in Anchorage, Alaska, a date selected on November 1, 2016. Attorney Charles Coe appeared and represented Employee, who appeared and testified. Attorney Martha Tansik appeared and represented Discovery Construction, Inc. (Employer) and its insurer. The record remained open to receive supplemental briefing from Employer and an affidavit for additional attorney fees from Employee and initially closed February 25, 2017. However, before the two-member panel could meet to deliberate, panel member Mark Talbert became unavailable for deliberation or decision. On March 8, 2017, the designated chair advised the parties that replacement member Amy Steele would listen to the record, review the pleadings and deliberate with the chair. Neither party objected to member Steele's participation. The record closed on March 17, 2017, after the two-person panel reviewed the record and the pleadings together, and deliberated.

ISSUES

As a preliminary issue, Employee contended his Employee's May 3, 2016 claim should wait until a Second Independent Medical Evaluation (SIME) is completed. He contended a continuance was in order. Employee contended sufficient medical disputes warrant an SIME to clarify the medical evidence, even if his recently filed SIME petition is not ripe.

Employer initially objected to the SIME issue but eventually agreed to add it as an issue and contended no SIME should occur because there is no medical dispute between Employer's and Employee's physicians. Employer contended any medical dispute involves a physician in an unrelated case, and is not a basis for an SIME order. It further contended Employee failed to timely request an SIME and failed to provide medical evidence proving causation.

1) Should this decision order an SIME?

Employer contends Employee's disability claim is late under AS 23.30.105(a). Therefore, Employer seeks an order dismissing Employee's disability claim.

Employee did not directly address Employer's affirmative defense under AS 23.30.105(a). This decision presumes he opposes it.

2) Does untimely filing bar Employee's past disability claims?

Employee contends his attending physician has not yet given him a permanent partial impairment (PPI) rating, and his PPI claim is not ripe. Employee wants to reserve the PPI claim.

Employer argues Employee raised the PPI issue but did not produce a PPI rating. Consequently, Employer seeks an order denying Employee's PPI claim.

3) Is Employee's PPI claim ripe?

Employee contends he is entitled to reimbursement for past out-of-pocket medical expenditures as well as ongoing medical expenses incurred for the work injury. He contends this medical benefit

award should reduce Employer's remaining credit under AS 23.30.015(g) resulting from Employee's third-party injury settlement.

Employer contends Employee has not proven he paid past, work-related medical costs or has outstanding medical bills or entitlement to future medical expenses for his work injury. Further, Employer contends the statute bars Employee's right to recover for past work-related medical bills because he failed to timely file and serve his medical billings. Accordingly, Employer contends Employee is not entitled to medical benefits and Employer's credit is not subject to reduction for any associated award. It seeks an order dismissing these claims.

4) Is Employee entitled to medical expenses?

Employee contends he has significantly reduced Employer's credit under AS 23.30.015. He seeks an order stating how much credit remains.

Employer contends Employee is entitled to no additional benefits. Therefore, it contends he is entitled to no credit reduction.

5) What is Employer's current §015 credit?

Employee contends his attorney provided valuable services. He seeks an attorney fee and cost award.

Employer contends Employee's attorney has obtained no benefits for Employee through his efforts. It seeks an order denying the attorney fee and cost claims.

6) Is Employee entitled to attorney fees or costs?

FINDINGS OF FACT

A preponderance of the evidence establishes the following facts and factual conclusions:

1) On April 25, 2006, Employee stopped his vehicle at a red light and a car struck him from behind. This injury arose out of and in the course of his employment with Employer. (Report of Occupational Injury or Illness, June 16, 2006; Stipulation).

2) Following the April 25, 2006 injury, Employee continued to work for Employer. (Employee).

3) In June 2006, Employer terminated Employee. For approximately 10 months following his termination, Employee collected unemployment benefits. Employee contends Employer "got pissed" because Employee got hurt on the job, which resulted in Employee's termination. Employee contends he lost income when Employer fired him. Employee says he did not know he still had workers' compensation coverage after termination. In his view, there had "never been a time since April 25, 2006" that he did not need medical treatment for his work injury. By April 2008, Employee learned he still had workers' compensation coverage, but understood his time was running out and he had better "do something" quickly. Employee knew in 2008 he had herniated discs and Dr. Eule recommended surgery, but Employee wanted to avoid surgery if possible. Employee refrained from recreational activities following his work injury and relied on Dr. Eule's light duty restriction to perform limited self-employment. Employee said he paid $250 to Alaska Spine Institute for his work injury with Employer. (Employee).

4) The symptoms Employee attributes to his 2006 work injury with Employer were not "latent." (Experience, judgment and inferences drawn from the above).

5) On May 10, 2007, Employee founded Quest Investment, Inc. (Quest). Through Quest, Employee performed lighter duty contract work for banks maintaining foreclosed properties. (*Id.*).

6) On June 27, 2008, James Vancho, D.C., and John Ballard, M.D., performed an Employer's Medical Examination (EME) on Employee for his 2006 work injury. They concluded Employee had persistent neck and back pain from the work injury, as well as unrelated, preexisting degenerative cervical and lumbar spine curvatures. (EME report, June 27, 2008).

7) On October 9, 2008, James Eule, M.D., examined Employee for his 2006 work injury and said, "[Employee's] injury to his neck and his back from my history from his [sic] is likely to both have occurred from this automobile accident. . . ." Dr. Eule opined Employee had a cervical disc herniation and herniations at L3-4 and L4-5, and his options were a microdisectomy or continuing to live with the condition. Dr. Eule also noted "physical therapy and/or an epidural injection" might be more helpful than chiropractic treatment. (Eule report, October 9, 2008).

8) On November 25, 2008, Dr. Eule offered the same conclusions and recommendations as in his October 9, 2008 report. (Eule report, November 25, 2008).

9) On January 23, 2009, John Ballard, M.D., performed an EME on Employee for his 2006 work injury. Dr. Ballard opined Employee needed no further diagnostic studies but might benefit from

four to six weeks' intensive physical therapy and possibly an injection at L3-4 and L4-5. In Dr. Ballard's view, Employee should stop chiropractic care and he was not a surgical candidate. Dr. Ballard stated Employee was not yet medically stable. (Ballard report, January 23, 2009).

10) On July 9, 2009, Employee settled a third-party claim from the 2006 work injury for $50,000, with Employer's consent. Employee reimbursed Employer $11,496.31 in full payment for workers' compensation benefits Employer paid, pursuant to AS 23.30.015. After subtracting litigation attorney fees and costs, Employee netted $30,263.79, which the parties at hearing stipulated was Employer's initial §015 credit. (Stipulation, February 15, 2017).

11) On September 18, 2009, Employee paid $278 to Alaska Spine Institute for physical therapy services according to Employer's evidence. (Employer's Notice of Filing Evidence, January 26, 2017, *see* Alaska Spine Institute itemization, September 18, 2009, attached).

12) On September 22, 2009, Dr. Eule concluded:

> . . . As far as his work is concerned, he definitely needs retraining. He cannot go back to a labor type job that he used to do from his neck or his back standpoint. He needs to have a light to maybe light medium type job with minimal to no bending, lifting, or stooping. I think he should start to get this in line with his Workers' Compensation. . . . (Eule report, September 22, 2009).

13) On January 7, 2012, an independent medical evaluation (IME) panel with Richard Rivera, D.C., and Keith Holley, M.D., examined Employee for a personal injury claim in an unrelated March 8, 2011 motor vehicle accident. The panel diagnosed cervical and lumbar sprains, strains related to the March 8, 2011 accident and cervical and lumbar disk herniations predating the March 8, 2011 motor vehicle accident and chronic back pain since 2006. The panel recommended physical therapy twice per week for up to six weeks after which Employee would reach maximum medical improvement for the March 8, 2011 motor vehicle injury. (IME report, January 7, 2012).

14) On September 25, 2012, Stephen P. Johnson, M.D., prescribed pain medication but did not opine on the 2006 work injury's relation to this treatment. (Johnson record, September 25, 2012).

15) On March 28, 2016, Derek A. Hagen, D.O., assessed lumbar pain with radiculopathy in the right lower extremity and refilled prescriptions. Dr. Hagen's report did not opine on the 2006 work injury's relation to this treatment. (Hagen report, March 28, 2016).

16) On May 14, 2016, David Bauer, M.D., performed an EME on Employee in the instant case and diagnosed resolved cervical and lumbar strains related to the 2006 work injury, and preexisting

vertical and lumbar degenerative changes neither aggravated nor accelerated by the work injury. He stated treatments after Dr. Eule's September 22, 2009 examination were unrelated to the work injury, and said ongoing narcotic use was related to the 2012 injury. (Bauer report, May 14, 2016).

17) On May 20, 2016, David Atkin, M.D., performed an IME for Employee's unrelated 2012 motor vehicle accident. Dr. Atkin opined a chronic condition resulting from "the two prior motor vehicle accidents" caused Employee's continued cervical pain. (IME report, May 20, 2016).

18) On February 13, 2017, Employer filed and served its hearing brief. In its brief, Employer objected to Employee's disability claim and argued its affirmative defense under AS 23.30.015(a). (Employer/Insurer's Hearing Brief, February 13, 2017, at 21).

19) Employee had notice of and an opportunity to be heard on the §105(a) defense at the February 15, 2017 hearing. (Observations, judgment and inferences drawn from the above).

20) Employer controverted Employee's claims on several occasions. (Controversion Notices, November 14, 2008; August 14, 2014; May 26, 2016; and June 1, 2016).

21) At hearing, Employee clarified and explained his TTD claim was from August 16, 2006 through January 1, 2010, and his TPD claim was from January 2, 2010 through December 31, 2010. (Employee's hearing arguments, February 15, 2017).

22) Employee's hearing brief, exhibits and arguments were not particularly helpful. (Experience, judgment and observations).

23) Employee's post-injury motor vehicle accidents make this a medically complex case. (Experience, judgment and inferences drawn from the above).

24) Employer paid Employee no benefits under AS 23.30.041, AS 23.30.180, AS 23.30.185, AS 23.30.190, AS 23.30.200 or AS 23.30.215. (Administrative record).

PRINCIPLES OF LAW

> **AS 23.30.010. Coverage**. (a) . . . [C]ompensation or benefits are payable under this chapter for disability . . . or the need for medical treatment . . . if the disability . . . or the . . . 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 death 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. . . .

The board may base its decision not only on direct testimony and other tangible evidence, but also on its "experience, judgment, observations, unique or peculiar facts of the case, and inferences drawn from all of the above." *Fairbanks North Star Borough v. Rogers & Babler*, 747 P.2d 528, 533-34 (Alaska 1987).

> **AS 23.30.015. Compensation where third persons are liable**. . . .
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> (g) If the employee . . . recovers damages from the third person, the employee . . . shall promptly pay to the employer the total amounts paid by the employer . . . insofar as the recovery is sufficient after deducting all litigation costs and expenses. Any excess recovery by the employee . . . shall be credited against any amount payable by the employer thereafter. . . .
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> **AS 23.30.095. Medical treatments, services, and examinations**. . . .
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> (k) In the event of a medical dispute . . . between the employee's attending physician and the employer's independent medical evaluation, the board may require that a second independent medical evaluation be conducted by a physician or physicians selected by the board from a list established and maintained by the board. . . .
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> **AS 23.30.105. Time for filing of claims.** (a) The right to compensation for disability under this chapter is barred unless a claim for it is filed within two years after the employee has knowledge of the nature of the employee's disability and its relation to the employment and after disablement. . . . [I]f payment of compensation has been made without an award on account of the injury . . . a claim may be filed within two years after the date of the last payment of benefits under AS 23.30.041, 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215. It is additionally provided that, in the case of latent defects pertinent to and causing compensable disability, the injured employee has full right to claim as shall be determined by the board, time limitations notwithstanding.
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> (b) Failure to file a claim within the period prescribed in (a) of this section is not a bar to compensation unless objection to the failure is made at the first hearing of the claim in which all parties in interest are given reasonable notice and opportunity to be heard. . . .

> **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
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> (1) the claim comes within the provisions of this chapter. . . .

Under AS 23.30.120(a)(1), benefits sought by an injured worker are presumed to be compensable. *Meek v. Unocal Corp*., 914 P.2d 1276 (Alaska 1996). The presumption of compensability is applicable to any claim for compensation under the Act. (*Id*.). The presumption application involves a three-step analysis. To attach the presumption an employee must first establish a "preliminary link" between his injury and the employment. *Tolbert v. Alascom, Inc*., 973 P.2d 603, 610 (Alaska 1999). The first step does not consider credibility. *Veco, Inc. v. Wolfer*, 693 P.2d 865 (Alaska 1985).

If the employee's evidence raises the presumption, it attaches to the claim and in the presumption analysis' second step the production burden shifts to the employer. The second step does not consider credibility. *Id*. If the employer's evidence rebuts the presumption, it drops out and in the analysis' third step, the employee must prove his case by a preponderance of evidence. This means the employee must "induce a belief" in the fact finders' minds that the facts being asserted are probably true. *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964). The injured worker may need to produce medical evidence to raise the presumption in complex medical cases. *Wolfer*.

> **AS 23.30.145. Attorney Fees**. (a) Fees for legal services rendered in respect to a claim . . . may not be less than 25 percent on the first $1,000 of compensation. . . . When the board advises that a claim has been controverted . . . the board may direct that the fees for legal services be paid by the employer or carrier in addition to compensation awarded; the fees may be allowed only on the amount of compensation controverted and awarded. . . . In determining the amount of fees the board shall take into consideration the nature, length, and complexity of the services performed, transportation charges, and the benefits resulting from the services to the compensation beneficiaries. . . .

> **AS 23.30.185. Compensation for temporary total disability**. In case of disability total in character but temporary in quality, 80 percent of the injured employee's spendable weekly wages shall be paid to the employee during the continuance of the disability. . . .

> **AS 23.30.190. Compensation for permanent partial impairment; rating guides.** (a) In case of impairment partial in character but permanent in quality . . . the compensation is $177,000 multiplied by the employee's percentage of permanent impairment of the whole person. . . .

In *Stonebridge Hospitality Association v. Settje*, AWCAC Decision No. 153 (June 14, 2011), the commission vacated the board's decision finding a PPI issue was unripe, noting Settje's PPI rating was a central issue in her claim. The commission found Settje indicated her intent to pursue this claim and there was evidence in the record on the issue from the employer's physician and the SIME physician, though not from Settje's physician. The commission found the employer's higher litigation costs and the employee's still open claim outweighed the risks of deciding the issue without a rating from Settje's physician. *Id.*

In *Egemo v. Egemo Construction Co.*, 998 P.2d 434 (Alaska 2000), Egemo filed a TTD claim, anticipating a 1998 surgery related to the work injury, and disability while recovering from the surgery. The board awarded medical benefits but denied TTD, citing AS 23.30.105, and the superior court affirmed. On appeal, the Alaska Supreme Court reversed, finding claim ripeness for disability required both a medical condition and an earning impairment. The court held filing a claim prematurely did not justify claim dismissal. The employer knew beforehand that Egemo expected disability. There was no prejudice or inconvenience to the employer. *Egemo* concluded a premature claim "should be held in abeyance until it is timely, or it should be dismissed with notice that it may be refiled when it becomes timely." *Id*. at 441 (footnote omitted).

> **AS 23.30.200. Temporary partial disability**. (a) In case of temporary partial disability resulting in decrease of earning capacity, the compensation shall be 80 percent of the difference between the injured employee's spendable weekly wages before the injury and the wage having earning capacity of the employee after the injury. . . .

> **8 AAC 45.092. Selection of an independent medical examiner**. . . .
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> (g) If there exists a medical dispute under AS 20.30.095(k),
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> (2) a party may petition the board to order an evaluation; the petition must be filed within 60 days after the party received the medical reports reflecting a dispute, or the party's right to request an evaluation under AS 23.30.095(k) is waived. . . .

ANALYSIS

1) Should this decision order an SIME?

Employee knew Dr. Eule diagnosed herniated cervical and lumbar discs in 2008 and causally connected these to his 2006 work injury with Employer. Dr. Eule recommended lumbar surgery but Employee deferred. Dr. Eule reiterated his diagnoses and treatment recommendations on November 25, 2008. Employee deferred again. Thus, in 2008 Employee knew his attending physician gave a positive causation opinion connecting his 2006 work injury with the need for significant lumbar surgery. On January 23, 2009, EME Dr. Ballard opined Employee was not a lumbar spine surgical candidate and he should discontinue chiropractic care.

Employer served Drs. Eule's and Ballard's records by mail on Employee's counsel on September 9, 2014. These reports created medical disputes between Employee's attending physician and Employer's EME regarding at least causation and treatment. AS 23.30.095(k). By regulation, Employee had 60 days from the day his lawyer received the reports to request an SIME on these medical disputes. Adding three days for mail service and taking into account a November 11, 2014 holiday, Employee waived his right to request an SIME under AS 23.30.095(k) if he did not request an SIME or obtain a stipulation for one by November 12, 2014. 8 AAC 45.092(g)(2). Employer did not stipulate to an SIME. Employee's July 18, 2014 and May 3, 2016 claims did not request an SIME. *Rogers & Babler*. Employee's January 11, 2017 SIME petition was tardy by over two years. Employee waived his right to an SIME on these records. 8 AAC 45.092(g)(2).

Apart from the waiver, Employee based his January 11, 2017 SIME petition on a medical dispute between EME Dr. Bauer versus IME Drs. Rivera and Holley. Even if a medical dispute exists among these physicians, none is Employee's "attending physician." Their opinions do not count toward a medical dispute for SIME purposes. AS 23.30.095(k). Employee cites records from Drs. Johnson and Hagen to create a medical dispute with EME Dr. Bauer. This argument also fails because Drs. Johnson and Hagen did not offer causation opinions but merely recounted Employee's self-reported history. Employee does not point to any medical record expressly or by reasonable inference giving an opinion supporting causation. Without a causation opinion, other physician recommendations and opinions are meaningless in an SIME setting. *Rogers & Babler*.

Lastly, Employee suggests this decision should order an SIME on its own motion, time limits and other issues notwithstanding. Employee had several motor vehicle accidents following Dr. Eule's 2008 opinions. Given these unusual circumstances, an eight-year-old medical opinion from an attending physician who is presumably unaware of Employee's intervening accidents will not form the basis for a current SIME. *Rogers & Babler*. This decision will not order an SIME. However, Employee retains his right to develop medical evidence showing a current medical dispute between a valid attending physician and a work injury EME opinion. Employer retains its defenses.

2) Does untimely filing bar Employee's past disability claim?

Prior to the first hearing on this claim, Employer in its hearing brief objected to Employee's disability claim. AS 23.30.105(b). Employer's hearing brief gave Employee "reasonable notice" and the February 15, 2017 hearing gave him an "opportunity to be heard" on Employer's AS 23.30.105(a) objection. Employee did not address this defense in his brief or at hearing and did not request an opportunity to address it post-hearing.

Employer paid Employee no benefits under AS 23.30.041, AS 23.30.180, AS 23.30.185, AS 23.30.190, AS 23.30.200 or AS 23.30.215. *Rogers & Babler*. Employee testified there was never a time since 2006 that he did not need medical care for his work injury. Therefore, Employee's injury was not "latent" and nothing extends Employee's time to file a disability claim. The law bars Employee's right to disability benefits unless he filed a disability claim within two years after Employee had knowledge "of the nature of" his disability, "its relation to the employment" and "after disablement." AS 23.30.105(a).

Employee knew in October 2008, and on November 25, 2008, that Dr. Eule recommended lumbar surgery, which would have resulted in disability. Employee deferred, wanting to avoid surgery. He knew in 2008 that Dr. Eule linked his need for surgery to his work injury with Employer. Employee contends he lost income, because his work injury limited him to lighter duty, from the time Employer fired him in June 2008 and continuing. Employee contends he was "disabled" to some extent since his work injury. He seeks TTD or TPD benefits beginning in 2006 and continuing, though the end dates were unclear until Employee clarified them at hearing. Given this knowledge, Employee could have and should have filed a disability claim no later than November

25, 2010. He did not file any claim until 2014. Employee's July 18, 2014 claim does not request disability. Employee finally filed a disability claim on May 3, 2016. His May 3, 2016 claim seeks TTD or "permanent total disability" benefits from April 25, 2006, through "present."

AS 23.30.105(a) bars Employee's right to past disability benefits including TTD and TPD before May 3, 2014, which period is two years prior to his May 3, 2016 disability claim. Employee retains his right to claim future TTD benefits upon presenting medical evidence demonstrating work-related total disability, and filing a timely disability claim. He retains his right to claim future TPD benefits upon presenting medical and earning evidence demonstrating work-related partial disability, and filing a timely disability claim. Employer retains all defenses.

3) Is Employee's PPI claim ripe?

Employee withdrew his PPI claim at hearing, because he does not have a PPI rating from his physician. AS 23.30.190. This case differs from *Settje* because the claimant in that case did not expressly withdraw her PPI claim. Employee retains his right to claim PPI upon presenting appropriate medical evidence. Employer retains all defenses. *Egemo*.

4) Is Employee entitled to past or future medical expenses?

This issue raises factual disputes to which the compensability presumption applies. AS 23.30.120(a); *Meek*. Employee raises the presumption with his testimony combined with the itemized Alaska Spine Institute statement showing he paid $278 to this provider for physical therapy services on September 18, 2009. *Tolbert*. Employer does not contend it rebuts the presumption on this bill and contends this is the only bill Employee can document he paid from his own pocket for his work injury. EME Dr. Ballard recommended additional physical therapy and said Employee was not medically stable in January 2009. The Alaska Spine Institute bill is consistent with this recommendation. A preponderance of the evidence shows Employee paid $278 in medical expenses for his work injury. *Saxton*.

Employee is unable to raise the presumption as to any other past work-related medical bill he claims to have paid because this is a medically complex case given the post-injury motor vehicle accidents. *Wolfer*. Further, Employee did not produce documentary evidence showing additional out-of-

pocket payments to medical providers for his work injury. As for other minimal payments Employee may have made to other providers in later years, no medical evidence links these medical services to his 2006 work injury with Employer. *Id.* Therefore, Employee has not proven compensability of any additional past, out-of-pocket medical payments. *Saxton*. Employee had at least two, serious motor vehicle accidents since his work injury. Employee has not shown his April 25, 2006 work injury with Employer is "the substantial cause" of the need for any additional past or current medical care recommendations. *Id.*; AS 23.30.010(a). Employee retains his right to claim future medical expenses upon presenting evidence. Employer retains all defenses.

5) What is Employer's current §015 credit?

The parties agreed Employer's initial AS 23.30.015(g) credit totaled $30,263.79. A major issue in Employee's claim was obtaining a declaration of the remaining credit, after any awarded TTD, TPD or medical expenses reduced the credit amount. This decision does not award Employee any TTD or TPD benefits. His PPI claim is not ripe. The only benefit this decision imparts on Employee is a $278 out-of-pocket medical expense to Alaska Spine Institute, which operates to reduce Employer's credit. Therefore, Employer's current credit is $29,985.79 ($30,263.79 - $278 = $29,985.79). Employee retains his right to reduce this credit further by showing future work-related disability or impairment benefits, and documenting he paid future medical services related to his April 25, 2006 work injury with Employer. Employer retains all defenses.

6) Is Employee entitled to attorney fees or costs?

Employer controverted Employee's claim. Therefore, this decision may award attorney fees under AS 23.30.145(a). Coe's services resulted in minimal advantage to Employee. Employee's hearing brief, exhibits and arguments were not particularly helpful. This decision denies Employee's SIME request and his TTD and TPD claims. Employee's PPI claim is not ripe. Although this decision gleaned the $278 billing information from Employer's filings, Coe's efforts netted a $278 out-of-pocket medical cost reduction in Employer's credit, which is a benefit to Employee, who now has a minimally lower credit to exhaust before Employer may be liable to pay additional benefits. Given the circumstances, and the minimal results to Employee, this decision will award Coe statutory minimum attorney's fees on the amount he obtained for Employee. This decision will award Coe $69.50 under AS 23.30.145(a) ($278 x 25 percent = $69.50).

CONCLUSIONS OF LAW

1) This decision will not order an SIME.
2) Untimely filing bars Employee's past disability claim.
3) Employee's PPI claim is not ripe.
4) Employee is entitled to $278 in past medical expenses.
5) Employer's current §015 credit is $29,985.79.
6) Employee is entitled to attorney fees.

ORDER

1) Employee's SIME petition is denied.
2) Employee's past disability claims are barred under AS 23.30.105(a).
3) Employee's past TTD claim is denied; he may make timely future TTD claims.
4) Employee's past TPD claim is denied; he may make timely future TPD claims.
5) Employees PPI claim is denied without prejudice, as not ripe.
6) Employee is entitled to a $278 out-of-pocket medical expense credit.
7) Employee's other claims for past medical expenses are denied.
8) Employer's current AS 23.30.015 credit is $29,985.79.
9) Employer is ordered to pay Coe $69.50 as a statutory minimum attorney fee.
10) The parties retain all rights and defenses not otherwise determined in this decision.

Dated in Anchorage, Alaska on April 18, 2017.

ALASKA WORKERS' COMPENSATION BOARD

/s/
William Soule, Designated Chair

/s/
Amy Steele, Member

If compensation is payable under terms of this decision, it is due on the date of issue. A penalty of 25 percent will accrue if not paid within 14 days of the due date, unless an interlocutory order staying payment is obtained in the Alaska Workers' Compensation Appeals Commission.

APPEAL PROCEDURES

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

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

RECONSIDERATION

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

MODIFICATION

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

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Final Decision and Order in the matter of Aaron M. Bailey, employee / claimant v. Discovery Construction, Inc., employer; Seabright Insurance Co., insurer / defendants; Case No. 200608794; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties by First-Class U.S. Mail, postage prepaid, on April 18, 2017.

/s/ _____
Nenita Farmer, Office Assistant