ALASKA WORKERS' COMPENSATION BOARD

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

MARIBEL BARRAGAN,	)	
	)	
Employee,	)	FINAL DECISION AND ORDER
Claimant,	)	
	)	AWCB Case No. 201518114
v.	)	
	)	AWCB Decision No. 17-0047
SITKA CABS, INC.,	)	
	)	Filed with AWCB Juneau, Alaska
Employer,	)	on April 28, 2017
and	)	
	)	
BENEFIT GUARANTY FUND,	)	
	)	
Insurer,	)	
Defendants.	)	

Maribel Barragan's (Employee) November 10, 2015 and November 17, 2016 claims and Jeffrey Reinhardt's, D.C., January 26, 2016 claim were heard in Juneau, Alaska on April 7, 2017, a date selected on February 14, 2017. Attorney Charles Coe appeared and represented Employee, who appeared and testified. McKenna Wentworth appeared telephonically, Velma Thomas appeared and both represented the Alaska Workers' Compensation Benefits Guaranty Fund (Fund). Dr. Reinhardt appeared and testified. Loretta Lee, M.D., (Dr. Lee) appeared telephonically and testified on behalf of the Fund. No one appeared for Sitka Cab Inc., (Employer). The record closed on April 14, 2017 to allow the parties to file additional evidence and supplemental attorney's fees and costs affidavit. The panel consisted of two members, which is a quorum under AS 23.20.005(f).

As a preliminary matter, when Employer failed to appear at hearing, the panel issued an oral order to proceed in Employer's absence. This decision examines the oral order and decides the claims on their merits.

ISSUES

Employer failed to appear for the hearing and an attempt to contact Employer at the telephone number of record was unsuccessful. Employee contended the hearing should proceed in Employer's absence. The Fund also contended the hearing should proceed in Employer's absence. After deliberations, the panel issued an oral order to conduct the hearing in Employer's absence.

1) **Was the oral order to conduct the hearing in Employer's absence correct?**

Employee contends her injury arose out of and in the course of her employment with Employer when the taxicab she was driving struck a utility pole. Employee contends she intended to pull over because a migraine made her dizzy and caused blurry vision and because she intended to purchase ibuprofen and caffeine for the migraine. Employee contends she did not deviate from her employment and, if she did, it was a minor deviation for Employee's personal comfort, and caused by an emergency. Employee also contends the Workers' Compensation Act (the Act) is a no fault system so any potential negligence by Employee is irrelevant.

The Fund contends Employee's injury did not arise out of or in the course of employment. The Fund contends Employee deviated from employment when she took a break to purchase ibuprofen for her migraine and the deviation does not fall within the personal comfort doctrine. The Fund also contends Employee created a danger by exceeding the limits of her ability to drive with her migraine and created an emergency causing Employee to pull off the road.

As Employer did not participate in the hearing and did not file a hearing brief, its position is unknown. This decision assumes Employer opposes Employee's contention her injury arose out of and in the course of her employment.

2) **Did Employee's injury arise out of and in the course of her employment with Employer?**

Employee contends she is entitled to medical benefits, including chiropractic care. Employee contends Dr. Reinhardt's chiropractic care has been reasonable and necessary and each medical record contains a treatment plan, explanations regarding why the treatment plan needs to exceed any frequency standards, goals of treatment, and Employee's progress. She contends Dr. Reinhardt discussed the treatment plan with her and Employer. Alternatively, Employee contends the notice and treatment plan requirements for courses of treatment exceeding the frequency standards in the Act should be excused because the benefits were controverted on a different basis and Employer failed to provide a release signed by Employee to Dr. Reinhardt permitting Dr. Reinhart to release the medical records to Employer. Employee seeks an order requiring Employer to pay past medical benefits.

The Fund contends Employee is not entitled to past medical benefits because Employee's injury did not arise out of or in the course of her employment. The Fund also contends Employee is not entitled to past chiropractic care that exceeded the frequency limitations set by the Act because Dr. Reinhardt failed to provide a conforming written treatment plan to Employer and Employee as required in the Act. The Fund requests an order directing Employer to pay benefits if compensable.

Employer's position is unknown. This decision assumes Employer opposes Employee's request for an order awarding past medical care.

3) Is Employee entitled to past medical benefits?

Employee contends she is entitled to transportation expenses related to the chiropractic treatment. She contends it is five miles from her home to Dr. Reinhardt's office and seeks an order awarding 10 miles round trip for each chiropractic visit at the rate of $0.535 per mile.

The Fund requests an order directing Employer to pay transportation expenses if compensable.

Employer's position is unknown. This decision assumes Employer opposes Employee's contention she is entitled to past transportation expenses related to the chiropractic treatment.

4) **Is Employee entitled to past transportation benefits?**

Employee contends she is entitled to temporary total disability (TTD) benefits for one week after the work injury. Employee contends she is also entitled to temporary partial disability (TPD) benefits for five weeks as she was restricted from driving and was unable to work. She seeks an order awarding TTD and TPD benefits.

The Fund requests an order directing Employer to pay TTD and TPD benefits if compensable.

Employer's position is unknown. This decision assumes Employer opposes Employee's TTD and TPD claims.

5) **Is Employee entitled to TTD and TPD benefits?**

Employee contends she is entitled to interest on all past benefits awarded.

The Fund requests an order directing Employer to pay interest if compensable.

Employer's position is unknown. This decision assumes Employer opposes Employee's interest claim.

6) **Is Employee entitled to interest?**

Employee contends she is entitled to penalties from Employer on all past benefits awarded. Employee acknowledges the Fund cannot be required to pay penalties.

The Fund contended it cannot be required to pay penalties.

Employer's position is unknown. This decision assumes Employer opposes Employee's penalty claim.

7) **Is Employee entitled to penalties?**

Employee contends she is entitled to attorney's fees and costs as she is entitled to benefits resulting from her claim and her attorney obtained those benefits.

The Fund requests an order directing Employer to pay attorney's fees and costs if compensable.

Employer's position is unknown. This decision assumes Employer opposes Employee's attorney's fees and costs claim.

8) Is Employee entitled to attorney's fees and costs?

FINDINGS OF FACT

The following facts are undisputed or are established by a preponderance of the evidence:

1) On October 4, 2015, Employee sustained multiple physical injuries when the taxicab she was driving struck a utility pole. (First Report of Occupational Injury, November 19, 2015).

2) On October 4, 2015, Roger Golub, M.D., at the Sitka Community Hospital emergency room evaluated Employee. Employee reported sudden onset of headache and somnolence and she was attempting to drive the taxicab to the side of the road when she "nodded off." Employee described mild neck pain, left-sided posterior headache, pain in the left medial lower leg, and pain over shins, left greater than right. Employee said she has had several episodes of distinct left-sided headache associated with photophobia, nausea, and somnolence and she had fallen asleep once, drank coffee and walked around to keep herself from falling asleep. Employee's CT scan presented no evidence of acute intracranial hemorrhage. Employee's urine was negative for drugs. Dr. Golub restriced Employee from work for 3-4 days and referred her to the clinic regarding her headaches. (Dr. Golub, Chart Note, October 4, 2015; Alexander Schabel, CT Report, October 4, 2015).

3) On October 6, 2015, Sally Schwarze, F.N.P., at Sitka Medical Center, evaluated Employee's headaches. She stated under "History of Present Illness:"

> [Employee] is a 25 year old female. Has been getting headaches 1-4 times day for last 3 weeks. She calls them migraines. Only on left side of head. Sometimes starts base scalp and sometimes left temple but always ends up involving from temple to base skull on left only. Sometimes gets aura of 'funny feeling left temple' before headaches occurs. Intermittent trouble seeing out of left eye. She

> 'crashed taxi cab' she was driving due to headache, photophobia, nausea, and somolence [sic]. Didn't have her ibuprofen so was heading to Marketcenter to get some and 'headache crept up fast, I couldn't see good [sic] out of my left eye.' She feel [sic] somnolent and crashed into light pole, deployed airbag. Went to Sitka ER 10/4/15. I reviewed note. Had CT scan which was negative. Says used to get rare headaches until about 3 weeks ago.

F.N.P Schwarze diagnosed migraine headache likely variant type, and cervicalgia. She discussed physical therapy with Employee and Employee had already made an appointment with a chiropractor. Employee was not going to drive the taxicab for now and would return to clinic in one week for reevaluation. (Schwarze, Chart Note, October 6, 2016).

4) On October 6, 2015, Employee visited Dr. Reinhardt for an initial consultation for left cervical and bilateral cervicothoracic pain. Employee reported being in a motor vehicle accident on October 4, 2015, when she experienced a headache that caused her to lose vision in her left eye. She attempted to pull over "to park on the side of the road to allow the headache to clear" when she hit a utility pole head on with the taxicab. She stated she hit her forehead and lower abdomen on the steering wheel and her left and right legs on the dash. Employee also presented with contusions on her right and left legs and a right tempoparietal headache. Dr. Reinhardt did not provide chiropractic treatment. (Dr. Reinhardt, Chart Note, October 6, 2015).

5) On October 7, 2015, Dr. Reinhardt rendered his first chiropractic treatment for Employee's work injuries. He diagnosed cervical disc degeneration, cervical disc disorder with radiculopathy, lumbar intervertebral disc disorder, back muscle spasm, myalgia, cervicalgia, thoracic spine pain, low back pain, sacrococcygeal disorders, headache, and pain in right and left shoulder. The chiropractic treatment included radiographic examinations of the cervical, thoracic and lumbosacral spine; chiropractic manipulative treatment; manual therapy techniques; and electro-muscle stimulation (EMS). (Dr. Reinhardt, Chart Note, October 7, 2015).

6) On October 8, 2015, Employee reported bilateral cervicothoracic, bilateral shoulder, thoracolumbar and lumbsacral pain and radicular pain in digits one and two of the upper extremities bilaterally. Employee was treated with chiropractic manipulative treatment, manual therapy techniques, EMS, therapeutic exercises and mechanical traction. Based on the initial consultation and physical and radiographic examinations, Dr. Reinhardt recommended:

> The initial treatment protocol will consist of three office visits per week for a period of 12 weeks. The treatment procedures on each office visit will include

> CMT and physiotherapy in the form of interferential EMS. The rehabilitation portion of the treatment protocol will include therapeutic exercises that will utilize rotational spinal re-hydration and extension exercise. These exercise procedures will be followed by 15 minutes of extension, elliptical decompressive traction. In addition to the procedures performed in the office, the patient has been instructed to perform the therapeutic exercise and traction at home on those days that they are not in the office for their regularly scheduled treatment. I have also discussed with the patient the importance of following through with the treatment recommendation as set forth in the treatment protocol. To maximize the potential of a successful outcome and to meet the goals of treatment it is essential that the patient maintain the regularity of their scheduled appointments as well as perform the home care recommendations as set forth in the protocol. Treatment will also include two 60 minute sessions of therapeutic massage per week for the initial four weeks of the treatment protocol. The patient will be evaluated at the end of that period of time to determine if continued massage therapy will be beneficial to their plan of care. I have discussed with the patient the term and frequency of this treatment protocol as well as the various forms of treatment employed in this office. I also discussed with the patient the pro's and con's of both chiropractic and the medical procedures likely to be employed as they relate to treating conditions of this nature. In addition, I discussed with the patient what could be expected in the future based on their decision to undergo or forego treatment at this time.

Dr. Reinhardt included the following under "Goals of Treatment":

> The initial short term goal is to gain control of the symptoms that prompted the patient to seek treatment. The long term goals of the treatment plan are as follows: Eliminate or significantly reduce the pain from which the patient suffers. Return the patient to full and pain free ranges of motion. Restore the patient to their full range of recreational activities that are performed without restriction and/or pain. Restore the patient to full, pain free and complete activities of daily living. Improve the scores on the outcomes assessment forms by a minimum of 75%. Return the patient to maximum medical improvement (MMI) and if possible, pre-injury status.

Dr. Reinhardt recommended Employee apply cold compresses and perform the rotational intervertebral disc re-hydration and extension exercise she was taught in the office followed by 15 minutes of extension traction at home when she does not visit the office for treatment. (Dr. Reinhardt, Chart Note, October 8, 2015).

7) On October 9, 2015, Dr. Reinhardt examined Employee and rendered similar chiropractic treatment. (Dr. Reinhardt, Chart Notes, October 9, 2015).

8) On October 12, 2015, Dr. Reinhardt examined Employee and provided chiropractic treatment; he exceeded the frequency standards in the Act because he treated Employee four times in the same week. (Dr. Reinhardt, Chart Note, October 12, 2015; Experience, judgment, and observations).

9) On October 16, 2015, Dr. Reinhardt examined Employee and rendered similar chiropractic treatment. A representative for Employer stopped by his office this afternoon and asked if he could leave $500.00 on an account to begin paying for the fees for Employee's treatment. Dr. Reinhardt informed the representative he would not accept any money because it is a workers' compensation case and Dr. Reinhardt understood he could not collect any money from or on behalf of Employee. He was not able to discuss her care, including injuries she sustained in the October 4, 2015 accident. Dr. Reinhardt asked Employee to get the proper workers' compensation forms from her employer and bring them to the office on her next appointment. (Dr. Reinhardt, Chart Note, October 16, 2015).

10) On November 10, 2015, Employee filed a claim for her work injury, seeking TTD, TPD, medical costs and penalty. Employee listed injuries to both legs, the side of her knee and her head Her injuries included headache, stiff aching back, painful shoulders and arms. Under the section "Describe how the injury or illness happened" Employee stated:

> I've had a sudden migraine that made my vision blurry and I crushed into a utility pool [sic]. I was slowing down to park on the side of the road but I was not able to do [sic] to blurry vision and crushed [sic]. (Claim, November 10, 2015).

11) On November 16, 2015, Dr. Reinhardt evaluated Employee and rendered similar chiropractic care. Employee informed him she returned to driving for Employer over the weekend. (Dr. Reinhardt, November 16, 2015).

12) On November 30, 2015, the Fund filed an answer denying Employee's November 10, 2015 claim stating:

> It appears that [Employer] failed to comply with AS 23.30.075, and appears to have been uninsured on the date of Ms. Barragan's injury. However, it is unclear whether the relationship between [Employer] and [Employee] was that of an employer/employee. Accordingly, it is unclear whether [Employee] has a 'duly authorized' claim and is entitled to benefits under the Alaska Workers' Compensation Act.

> Alternatively, if [Employee] is entitled to Alaska Workers' Compensation benefits under the Act, there has been no order of compensability by the Alaska Workers' Compensation Board, nor has there been a finding that the employer is in default of a Board decision ordering benefit payments to [Employee]. Therefore, Employee is not entitled to receive benefits from the Fund at this time. (Answer, November 30, 2015).

13) On December 16, 2015, the Fund denied all benefits stating:

> Employer has not received any medical documentation of treatment received for alleged accident. Additionally, it appears that the proximate cause of the accident was due to migraine and blurry vision. (Controversion, December 16, 2015).

14) On December 21, 2015, the Fund filed a medical summary with Dr. Reinhart's chart notes for October 6, 2015 through October 8, 2015. (Medical Summary, December 21, 2015).

15) On January 26, 2016, Dr. Reinhardt filed a claim seeking medical costs and filed chart notes for treatment provided on October 6, 7, and 8, 2016. (Claim, January 26, 2016).

16) On February 4, 2016, the Fund filed an answer denying Dr. Reinhardt's claim. (Answer, February 4, 2016).

17) On March 21, 2016, Employee reported bilateral cervicothhoracic/scapular, bilateral midthoracic and centralized thoracolumbar pain and stiffness and a right suboccipital headache. Employee's truck broke down and she was riding her bicycle which requires her "to be in an upper torso forward position with her cervicothoracic region in extension." Dr. Reinhardt stated being in that position for prolonged periods will place undue stress on the cervicothoracic and lumbosacral region and provides a good explanation for the increase in Employee's symptoms. (Dr. Reinhardt, Chart Note, March 21, 2016).

18) On May 24, 2016, Employee reported bilateral cervicothoracic/left scapular pain and stiffness and left knee and ankle pain. Employee had last required chiropractic manipulative therapy on April 19, 2016, and Employee "demonstrated very significant improvement both functionally as well as symptomatically over the past three months." Dr. Reinhardt opined Employee's current pain is likely secondary to her new job working as a waitress. (Dr. Reinhardt, Chart Note, May 24, 2016).

19) On June 21, 2016, Dr. Reinhardt rendered chiropractic treatment to Employee for the last time. (Dr. Reinhardt, Chart Note, June 21, 2016).

20) On August 10, 2016, Employee, the Fund and a representative from Dr. Reinhardt's office attended a prehearing conference; Dr. Reinhardt's representative reported Employer provided a check from Sitka Cab for $500.00 on October 21, 2015, but Dr. Reinhardt's office never cashed the check. (Prehearing Conference Summary, August 10, 2016).

21) On October 13, 2016, a hearing officer approved a Stipulation of Undisputed Facts and Proposed Board Order assessing a civil penalty for Employer's failure to insure under AS 23.30.075. The stipulated facts acknowledged Employer's taxicab drivers did not meet the exemptions under AS 23.30.230(a)(7) and Employer was not insured for workers' compensation losses at the time Employee's work-related injury occurred. (Stipulation of Undisputed Facts and Proposed Board Order AWCB Case No. 700005007, October 13, 2016).

22) On October 20, 2016, Employer emailed a statement from John Welsh and a police report for the October 4, 2015 accident to the division without a notice of intent to rely form or an affidavit of service. (ICERS Event Entry, October 20, 2016).

23) On October 28, 2016, Employee's attorney filed an entry of appearance. (Entry of Appearance, October 28, 2016).

24) On November 17, 2016, Employer, Employee and the Fund attended a prehearing conference. The board designee informed Employer that notice of intent to rely forms must accompany non-medical documents filed with the board. (Prehearing Conference Summary, November 17, 2016).

25) On November 17, 2016, Employee filed a claim seeking TTD, TPD, attorney's fees and costs, transportation costs, medical costs and interest. Under the "Reason for filing claim" Employee stated, "Employer is uninsured and refuses to pay benefits. Guaranty fund is disputing the claim." (Claim, November 17, 2016).

26) On February 14, 2017, Employee and the Fund attended a prehearing conference; Employer and Dr. Reinhardt failed to attend. The board designee scheduled a hearing on April 4, 2017 on Employee's claims and Dr. Reinhardt's claim, and the issues for hearing included: whether the injury occurred during the scope and course of employment; medical costs; one week of TTD; three weeks of TPD; transportation costs; interest; and attorney's fees and costs. (Prehearing Conference Summary, February 14, 2017).

27) On February 15, 2017, the division served the April 4, 2017 hearing notice and the February 14, 2017 prehearing conference summary to Employer's address of record by certified return receipt mail. (Hearing Notice, February 15, 2017).

28) On March 8, 2017, the United States Postal Service (USPS) returned the April 4, 2017 hearing notice and the February 14, 2017 prehearing conference summary mailed to Employer by certified return receipt mail. The USPS marked "Return to Sender Unclaimed, Unable to Forward" on the envelope. (ICERS Event Entry, March 8, 2017; Envelope, March 8, 2017).

29) On March 8, 2017, the division served the April 4, 2017 hearing notice and the February 14, 2017 prehearing conference summary by first class mail to Employer's mailing address on record and by email to Employer's email address on record. (ICERS Event Entry, March 8, 2017).

30) On March 15, 2017, the Fund filed four exhibits. Exhibit 3 contained the statement from John Welsh. Exhibit 2 contained a controversion from the Fund dated July 19, 2016, stating:

> Per medical documentation from Sitka Medical Center, the employee has a preexisting condition of headaches. On the date of injury, she as going to Marketcenter to buy some ibuprofen and deviated from her normal job duties. The employee was not in the course and scope of employment when the injury occurred.

Exhibit 4 contains the Sitka Police report for the October 4, 2015 accident, which stated:

> On 10/04/2015 at approximately 0750 hrs. I arrived at Sitka Community Hospital to interview [Employee] about an accident she had just been in.
> . . . .
>
> I made contact with [Employee] in the emergency room. She was being seen by a nurse. She stated that she was driving inbound on Sawmill Creek Road, going to pull over on Sawmill Creek Road, just passed Degroff Street, because she was feeling tired and had a migraine. She stated she felt herself "nodding off," before striking the pole.
>
> I asked [Employee] what time her shift started and she described that she starts at 0530 hrs. and works until 1730 hrs, Saturday and Sunday, driving cab. She also works at Sitka Counseling and Prevention, Monday through Friday, 0800 hrs. to 1700 hrs.
>
> I asked her how much sleep she got the night before and she stated that she went to bed at 1930 hrs. and slept to 2230 hrs. She then got up and went to the Pioneer

> Bar and had one drink, Tequila. She said that later in the morning, around 0120 hrs, she ate some ribs, chicken tenders, and chips. She then went back to bed at 0200 hrs. and slept until 0500 hrs.
>
> I asked her if she would consent to a Portable Breath Test and she agreed. The test revealed a Breath Alcohol Concentration of 0.00.
>
> She stated that she had been having a lot of migraines lately and said that she had to go into work late on Friday because of a migraine. I asked her how much sleep she got on Friday night before she started her Saturday shift and she said she broke up her sleep the same way as on Saturday night.

The police report included an Alaska Motor Vehicle Collision Report which stated Employee hit the utility pole head on in the median at the intersection of Sawmill Creek Road and De Groff Street, the airbag deployed, and the vehicle was totaled. (The Fund, Notice of Intent to Rely, March 15, 2017).

31) On March 24, 2017, Dr. Lee, an internist, evaluated Employee after reviewing Employee's medical records. She diagnosed Employee with migraine headaches unrelated to the October 4, 2015 work injury and cervical strain caused by the October 4, 2015 work injury. She opined the October 4, 2015 accident was the substantial cause of Employee's cervical strain and need for medical treatment. She stated extreme somnolence and falling asleep while driving are not generally associated with migraines, but are associated with sleep deprivation; and sleep deprivation is a known trigger for migraines. Dr. Lee opined the medical treatment rendered by Dr. Reinhardt has not been within the realm of medically reasonable options and Employee reached medical stability when she went on the trip to Mexico in late December 2015. Dr. Lee stated it was likely Employee sustained a cervical and lumbar strain after the low speed accident but the strain should generally resolve within one to three months. She opined Employee is a young and previously healthy female and there was no reason Employee required chiropractic care beyond the standard frequency limitations set by the Act. Dr. Lee stated the substantial cause of symptomatic increases Employee experienced after December 2015 was personal activities, including a vacation to Mexico, riding a bicycle and work activities as a waitress. (Dr. Lee, Medical Report, March 24, 2017).

32) Dr. Reinhart provided chiropractic treatments to Employee, including chiropractic manipulative treatment, manual therapy treatment, EMS, manual therapy techniques, therapeutic exercise, and mechanical traction, therapeutic massage or both on 68 dates in 37 weeks

beginning October 7, 2015 and exceeded the frequency standards in the Act on 34 dates as follows:

Treatment Date	Treatment Week	Treatment Standards - Exceeded (Yes/No)
Month One		**Three Treatments Per Week**
October 7, 2015	Week One	Treatment One - No
October 8, 2015	Week One	Treatment Two - No
October 9, 2015	Week One	Treatment Three - No
October 12, 2015	Week One	Treatment Four - Yes
October 14, 2015	Week Two	Treatment One - No
October 16, 2015	Week Two	Treatment Two - No
October 19, 2015	Week Two	Treatment Three - No
October 21, 2015	Week Three	Treatment One - No
October 23, 2015	Week Three	Treatment Two - No
October 26, 2015	Week Three	Treatment Three - No
October 28, 2015	Week Four	Treatment One - No
October 30, 2015	Week Four	Treatment Two - No
November 2, 2015	Week Four	Treatment Three - No
Month Two		**Two Treatments Per Week**
November 4, 2015	Week Five	Treatment One - No
November 6, 2015	Week Five	Treatment Two- No
November 9, 2015	Week Five	Treatment Three - Yes
November 11, 2015	Week Six	Treatment One - No
November 12, 2015	Week Six	Treatment Two - No
November 16, 2015	Week Six	Treatment Three - Yes
November 18, 2015	Week Seven	Treatment One - No
November 20, 2015	Week Seven	Treatment Two - No
November 21, 2015	Week Seven	Treatment Three - Yes
November 23, 2015	Week Seven	Treatment Four - Yes
November 24, 2015	Week Seven	Treatment Five - Yes
November 25, 2015	Week Eight	Treatment One - No
November 28, 2015	Week Eight	Treatment Two - No
November 30, 2015	Week Eight	Treatment Three - Yes
Month Three		**Two Treatments Per Week**
December 2, 2015	Week Nine	Treatment One - No
December 4, 2015	Week Nine	Treatment Two - No
December 7, 2015	Week Nine	Treatment Three - Yes
December 9, 2015	Week Ten	Treatment One - No
December 11, 2015	Week Ten	Treatment Two - No
December 14, 2015	Week Ten	Treatment Three - Yes
December 16, 2015	Week Eleven	Treatment One - No
December 18, 2015	Week Eleven	Treatment Two - No
December 21, 2015	Week Eleven	Treatment Three - Yes
Month Five		**One Treatment Per Week**

February 5, 2016	Week Eighteen	Treatment One - No
February 10, 2016	Week Nineteen	Treatment One - No
February 15, 2016	Week Nineteen	Treatment Two – Yes
February 17, 2016	Week Twenty	Treatment One - No
Month Six		**One Treatment Per Month**
February 24, 2016	Week Twenty One	Treatment One - No
February 26, 2016	Week Twenty One	Treatment Two - Yes
March 7, 2016	Week Twenty Two	Treatment Three - Yes
March 9, 2016	Week Twenty Three	Treatment Four - Yes
March 11, 2016	Week Twenty Three	Treatment Five - Yes
March 12, 2016	Week Twenty Three	Treatment Six - Yes
March 14, 2016	Week Twenty Three	Treatment Seven - Yes
March 15, 2016	Week Twenty Three	Treatment Eight - Yes
March 16, 2016	Week Twenty Four	Treatment Nine - Yes
March 18, 2016	Week Twenty Four	Treatment Ten - Yes
March 21, 2016	Week Twenty Four	Treatment Eleven - Yes
Month Seven		**One Treatment Per Month**
March 23, 2016	Week Twenty Five	Treatment One - No
March 24, 2016	Week Twenty Five	Treatment Two - Yes
March 25, 2016	Week Twenty Five	Treatment Three - Yes
March 28, 2016	Week Twenty Five	Treatment Four - Yes
March 30, 2016	Week Twenty Six	Treatment Five - Yes
April 2, 2016	Week Twenty Six	Treatment Six - Yes
April 4, 2016	Week Twenty Six	Treatment Seven - Yes
April 6, 2016	Week Twenty Seven	Treatment Eight - Yes
April 11, 2016	Week Twenty Seven	Treatment Nine - Yes
April 19, 2016	Week Twenty Eight	Treatment Ten - Yes
Month Eight		**One Treatment Per Month**
April 29, 2016	Week Thirty	Treatment One - No
May 17, 2016	Week Thirty Two	Treatment Two - Yes
Month Nine		**One Treatment Per Month**
May 24, 2016	Week Thirty Three	Treatment One - No
May 27, 2016	Week Thirty Four	Treatment Two - Yes
May 31, 2016	Week Thirty Four	Treatment Three - Yes
Month Ten		**One Treatment Per Month**
June 20, 2016	Week Thirty Seven	Treatment One - No
June 21, 2016	Week Thirty Seven	Treatment Two - Yes

(Dr. Reinhardt, Chart Notes, October 7, 2015 through June 21, 2016; Observation).

33) Employer never controverted or answered Employee's or Dr. Reinhardt's claims. (Record).

34) On March 28, 2017, the Fund filed a hearing brief contending the chiropractic treatment rendered by Dr. Reinhardt totaled $27,925.00 and exceeded the frequency limitations set by the Act on October 12, 2015; November 9, 2015; November 16, 2015; November 21, 2015;

November 23, 2015; November 24, 2015; November 30, 2015; December 7, 2015; December 14, 2015; December 21, 2015; February 15, 2016; February 26, 2016; March 9, 2016; March 11, 2016; March 12, 2016; March 14, 2016; March 15, 2016; March 16, 2016; March 18, 2016; March 21, 2016; March 23, 2016; March 24, 2015; March 25, 2016; March 28, 2016; March 30, 2016; April 4, 3016; April 6, 2016; April 11, 2016; April 19, 2016; May 24, 2016; May 27, 2016; May 31, 2016, and June 21, 2016. (Fund, Brief, March 28, 2017).

35) On March 28, 2017, Employee filed a hearing brief requesting $243.95 in TTD and $609.87 in TPD. (Employee, Hearing Brief, March 28, 2017).

36) On March 28, 2017, Employee filed a medical billing table totaling $32,004 in medical costs, including $3,195 for Sitka Community Hospital, $314 for Sitka Medical Center, and $28,495 for Arctic Chiropractic. Employee also totaled 680 total miles of travel for chiropractic treatment rendered on 68 dates between October 7, 2015 and June 21, 2016. The current reimbursement rate for private automobile travel is $0.535 per mile. Employee requested $363.80 in transportation costs. (Employee's Medical Billing Table; Bulletin 17-01, January 5, 2017).

37) At hearing on April 4, 2017, the board designee contacted the telephone number on record for Employer and left a message requesting Employer to contact the division to participate in the hearing. Employer did not contact the division. (Record).

38) At hearing, the Fund did not dispute whether an employer and employee relationship existed. It contended Employee is not entitled to past medical benefits because Employee's injury did not arise out of or in the course of employment. The Fund further contended Dr. Reinhardt's treatments exceeded the frequency limitations set by the Act and he failed to provide a treatment plan within 14 days of treatment as required by the Act and the treatment frequency was unreasonable. (Record).

39) At hearing, Dr. Reinhardt credibly testified regarding the treatment he provided Employee for the October 4, 2015 work injury. He diagnosed Employee with a cervical sprain because Employee suffered ligament damage in her neck; a mild closed head injury; headaches; and a lumbar strain because Employee suffered muscle damage caused by the October 4, 2015 accident. He stated sprains takes longer to heal and longer to treat than strains because ligaments have less blood and oxygen supply than muscles; and ligament injuries tend to be a lifetime injury. Muscle strains typically take four to six weeks to heal and ligament sprains take about twelve weeks to heal. Dr. Reinhardt testified he is familiar with the frequency limitations in the

Act and he disagrees with the limitations. He stated he has seen nothing in medical research or literature stating the frequency limitation set out in the Act is reasonable, there is no medical rational behind it, he believes it is one of the most ridiculous things he has seen in his life and he never follows the treatment frequency limitations in the Act. Dr. Reinhardt stated he provides chiropractic manipulative treatment based on a pretreatment examination he performs at the beginning of each appointment; the pretreatment examination involves an objective isolation testing protocol to determine whether there was leg length inequality and subluxation requiring an adjustment. He opined Employee reached medical stability in June of 2016 and the frequency with which he treated Employee was reasonable and necessary because the frequency of treatment depended on Employee's response to the isolation testing protocol; every person responds differently to treatment and Employee's response was well within the norm. Dr. Reinhardt testified he discussed the treatment plan in the October 8, 2015 medical report in detail with Employee, but did not discuss whether the treatment plan exceeded the frequency limitations; and he is available to discuss treatment frequency with adjusters if the adjuster contacts him. Dr. Reinhardt prescribed Employee orthotics in October 2015 to help provide stability and help Employee go longer periods of time without chiropractic treatment. He provided the Fund the medical records as soon as he had a proper medical release and neither Employer nor the Fund objected to the frequency of treatment he provided. When he examined Employee in February 2016, he did not update his treatment plan; he was basing Employee's need for chiropractic manipulative treatment at that time on the pretreatment examination. Dr. Reinhardt disagrees with Dr. Lee's report because he opines the crash was not a low speed crash as it exceeded the threshold for low speed crashes and crashing into a non-yielding stationary barrier increased the velocity of crash and because Employee did not sustain a cervical strain. Employee experienced a temporary exacerbation of symptoms in June 2016 secondary to Employee's work as a waitress. Dr. Reinhardt could not remember if he released Employee from work. He requested to be reimbursed for all chiropractic treatment rendered and requested $450.00 per hour for his testimony. (Dr. Reinhardt).

40) At hearing, Employee credibly testified about the October 4, 2015 accident, her injuries, and her employment with Employer. At the time of the October 4, 2015 accident she worked full time at Sitka Counseling and Prevention and she worked for Employer driving a taxicab on the weekends. Employee underwent and passed a physical exam and a background check to obtain a

chauffeur license to work for Employer. Employee first worked nights, from 6 p.m. to 6 a.m., Friday through Sunday for Employer. In September 2015, Employer changed her schedule to days, from 6 a.m. to 6 p.m. Saturday and Sunday and changed her schedule as needed. Employee kept track of her trips, fares and gas receipts. Employer reimbursed Employee for gas and split the fares, paying 40 percent to Employee. Employer also provided a cellphone to receive calls from clients. Employee's shift began when the previous taxi driver picked her up and she dropped off the previous taxi driver and her shift ended when she picked up the next taxi driver and the next taxi driver dropped her off. Employer encouraged the taxi drivers to take breaks, turn off the taxicab and receive calls from clients as long as the drivers responded to fares. Employer did not have a written policy regarding routes to use when picking up and dropping off clients, nor did it have a written policy about taking breaks; and Employer did not have any policy requiring Employee to be well rested. Employee returned home from work on October 3, 2015, and had eaten and slept for several hours; then she got up sometime that evening and went to the Pioneer Bar with a friend before going back to sleep for a few hours. On October 4, 2015, coworker John Welsh picked Employee up at her friend's house at 6 a.m. After dropping off Mr. Welsh five to seven minutes later, Employee stopped at her apartment and took the cellphone used to receive calls for fares with her into her apartment. She received a call to pick up her first client, and she did so. While driving her first client she began experiencing a migraine. Employee received a call to pick up a second client with whom she was familiar. Employee knew she had enough time to stop and pick up some ibuprofen and caffeine on the way to pick up the second client. Employee intended to pull over to the side of the road where parking is permitted and walk one block to the store to pick up ibuprofen and caffeine. Employee did not feel it was safe for her to drive any further because she was tired, her vision was blurry and she had a lot of pressure and pain in her head caused by the migraine. Employee estimated it would take her approximately 10 minutes to walk to the store, purchase the ibuprofen and caffeine, and walk back to the car and expected to feel better and able to drive safely afterwards. It was the first place, after Employee felt unsafe to drive, where she could lawfully park. Employee thought the walk, fresh air, caffeine and ibuprofen would help her migraine. Employee never parked and walked to the market because she hit the utility pole in the median at the intersection of Sawmill Creek Road and De Groff Street. Employee injured her neck, back, shoulders and legs when she crashed. A stranger transported Employee to the

emergency room; Employee reported the accident to the police while being transported to the hospital and to Employer after she arrived at the emergency room. Employer came to the emergency room and dealt with Employee's second client. Employee was awake during the accident and estimated she was driving 20-25 miles per hour when she hit the utility pole. Sawmill Creek Road is a main road in Sitka, Alaska, and is the route one would take to drive to pick up the second client. Employee had called in sick with Employer before because she had a headache, but on October 4, 2015 Employee's headache began while she was driving. Employee had been experiencing headaches since she began work for Employer and her sleeping patterns changed. No one diagnosed Employee with, or treated her for migraines before the October 4, 2015 accident. Employee returned to her employment with Employer in the middle of November 2015 and visited her mother in Mexico from the end of December 2015 through the end of January 2016. Dr. Reinhardt verbally went over the treatment plan in the October 8, 2015 medical report with her, but they did not discuss whether the plan exceeded frequency limitations. Dr. Reinhardt also provided home exercises to perform and physical restrictions for her visit with her mother and she followed them. Employee paid around $200 for orthotics recommended by Dr. Reinhardt. It is five miles one way from her home to Dr. Reinhardt's office. Employee got a release from work for one week and missed one week of work, including 40 hours of work at Sitka Counseling and 24 hours of work for Employer after the accident on October 4, 2015. Employee was restricted from driving the taxicab until mid-November 2015 and missed 24 hours of work for Employer per week. Employee has scars on her legs from the crash and still experiences pain in her neck and back in certain positions. She has no plan for future treatment at this time. Employee's migraines stopped on October 30, 2015. Employee paid $617.40 for the emergency room bill and paid Sitka Medical Center $258. Employee paid $270 for an airline ticket and $25 for a cab from the airport to the hearing. (Employee).

41) At hearing, Dr. Lee testified credibly regarding review of Employee's medical records. She testified Employee's sleepiness at the time of the accident on October 4, 2015 is not typical for migraines and most people who experience migraines have warning signs, like auras, before the migraine affects the ability to function at work. She testified Employee's sleep deprivation likely caused the accident on October 4, 2015. She opined the referral to a chiropractor was reasonable; however, the frequency of chiropractic treatment by Dr. Reinhardt was not reasonable and necessary to treat Employee's cervical strain. (Dr. Lee).

42) Employee requested total attorney's fees of $22,212.50 for 53.9 attorney hours and costs of $485.40. (Employee Affidavit of Attorney's Fees and Costs, March 28, 2017; Employee Supplemental Affidavit of Attorney's Fees and Costs, April 6, 2017).

43) Employee requested an order directing Employer to pay the medical costs she paid out-of-pocket and the airfare and taxicab fare she paid to attend the hearing. (Record).

44) The Fund did not file an objection to Employee's affidavits and did not object to any particular entries in Employee's attorney fee affidavit or to Employee's counsel's claimed hourly rate. (Record; Observation).

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

The board may base its decision not only on direct testimony, 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, 533-34 (Alaska 1987). An adjudicative body must base its decision on the law, whether cited by a party or not. *Barlow v. Thompson*, 221 P.3d 998 (Alaska 2009).

> **AS 23.30.122. 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.

The board's credibility findings and weight accorded evidence are "binding for any review of the Board's factual findings." *Smith v. CSK Auto, Inc.*, 204 P.3d 1001, 1008 (Alaska 2009).

8 AAC 45.070. Hearings

. . . .

(f) If the board finds that a party was served with notice of hearing and is not present at the hearing, the board will, in its discretion, and in the following order of priority,

> (1) proceed with the hearing in the party's absence and, after taking evidence, decide the issues in the application or petition;
> (2) dismiss the case without prejudice; or
> (3) adjourn, postpone, or continue the hearing.

AS 23.30.110. Procedure on claims.

. . . .

(c) . . . The board shall give each party at least 10 days' notice of the hearing, either personally or by certified mail. . . .

8 AAC 45.060. Service

. . . .

(b) A party may file a document with the board, other than the annual report under AS 23.30.155(m), personally or by mail; the board will not accept any other form of filing. Except for a claim, a party shall serve a copy of a document filed with the board upon all parties or, if a party is represented, upon the party's representative. Service must be done personally, by facsimile, by electronic mail, or by mail, in accordance with due process. 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. . . .

AS 23.30.010. Coverage.

(a) Except as provided in (b) of this section, compensation or benefits are payable under this chapter for disability or death or the need for medical treatment of an employee if the disability or death of the employee 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 death 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 death or the need for medical treatment. A presumption may be rebutted by a demonstration of substantial evidence that the death or 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 death or 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 death or the need for medical treatment if, in relation to other causes, the employment is the substantial cause of the disability or death or need for medical treatment. . . .
>
> **AS 23.30.045. Employer's liability for compensation.**
> . . . .
>
> (b) Compensation is payable irrespective of fault as a cause for the injury. . . .

Under the Alaska Workers' Compensation Act, coverage is established by a work connection, meaning the injury must have "arisen out of" and "in the course of" employment. If an accidental injury is connected with any of the incidents of one's employment, then the injury both would "arise out of" and be "in the course of" employment. 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." *Northern Corp. v. Saari*, 409 P.2d 845, 846 (Alaska 1966).

In *Anchorage Roofing Co. Inc. v. Gonzales*, 507 P.2d 501 (Alaska 1973), the Alaska Supreme Court addressed an airplane crash, which occurred after the worker-pilot had departed from a direct flight path to his business-related activity to search for a small dirt airstrip, anticipating a future hunting trip. The injured worker-pilot, who also owned the company, was traveling to Homer, Alaska to give a job estimate and to make temporary repairs to a leaky roof. He was also carrying passengers, two of whom planned to stay in the Homer area to go fishing. The injured pilot filed a flight plan and allotted an additional 30 minutes to look for the airstrip for the future hunting trip. Upon reaching the lake, the worker pilot departed from the direct flight path to Homer and veered to the east approximately three miles to search for the airstrip. He reduced airspeed to approximately 50-60 miles per hour and lowered his altitude from 3,500 feet to 400-500 feet. During the low-level, slow-velocity scanning, the plane crashed. (*Id*. at 503).

The board found the business purpose of the Homer trip was sufficiently central to the trip to allow compensation, and held the crash was a compensable injury. The superior court affirmed. On appeal, the insurer contended: (1) there was inadequate evidence to support the board's conclusion that the business purpose of the Homer trip was sufficiently central to the accident's occurrence to allow compensation; *i.e*., creating "a dual-purpose issue"; and (2) as a legal matter, the trip's business character stopped during the scanning operation which led to the accident; *i.e*.,

creating "a deviation issue." (*Id.*). The insurer contended the board also erred in finding the flight deviation was "insubstantial" and in ruling the company practice allowing such deviations was "supportive of compensation." The insurer also took issue with the lower court's conclusion the deviation created no increased risk. (*Id.*).

Gonzales held the worker-pilot's trip was "dual purpose," as it involved the Homer work trip and a plan to leave two passengers in the Homer area for a fishing trip. The court quoted the dual purpose test from *Marks' Dependents v. Gray*, 167 N.E. 181 (N.Y. 1929):

> We do not say that service to the employer must be the sole cause of the journey, but at least it must be a concurrent cause. To establish liability, the inference must be permissible that the trip would have been made though the private errand had been canceled. . . .
>
> The test in brief is this: If the work of the employee creates the necessity for travel, he is in the course of his employment, though he is serving at the same time some purpose of his own. . . . If, however, the work has had no part in creating the necessity for travel, if the journey would have gone forward though the business errand had been dropped, and would have been canceled upon failure of the private purpose, though the business errand was undone, the travel is then personal, and personal the risk. (*Gonzales*, 507 P.2d at 504, citing *Gray*, 167 N.E. at 183)).

Gonzales found substantial evidence supported the board's finding the flight would have been taken even had it not been used for the purpose of searching for a landing strip or to take passengers fishing to Homer. *Gonzales* further found the worker-pilot had decided to take passengers fishing only after the Homer work flight had been arranged. Therefore, substantial evidence supported the board's finding the flight would have occurred regardless of other activities planned during and after the flight. (*Id*. at 505). *Gonzales* held the statutory presumption of compensability would apply until such time as evidence showed the worker was outside the scope of his employment. At such time, the worker-pilot would then have the burden of going forward with evidence his injury was job-related. (*Id*.).

Gonzales next addressed the "deviation" issue. Assuming the dual-purpose doctrine permitted characterizing the overall trip as one for a business purpose, the insurer contended the identifiable deviation while flying around the lake for purely personal reasons removed the

worker-pilot from the course of his employment during the deviation. *Gonzales* noted deviation cases "are legion" and are of only limited help because they have infinite factual patterns and widely divergent deviations, and their results "often appear to have been dictated by judicial attitudes toward workmen's compensation acts." (*Id*.). *Gonzales* cited Professor Larson's workers' compensation treatise addressing the deviation issue, and enunciated the general rule:

> An identifiable deviation from a business trip for personal reasons takes the employee out of the course of his employment until he returns to the route of the business trip, unless the deviation is so small as to be disregarded as insubstantial. (*Gonzales* 507 P.2d at 505 citing 1 A. Larson, *The Law of Workmen's Compensation*, §19.00 at 294.57 (1972)).

Gonzales noted some older decisions denied compensation in such situations but further stated, specifically referring to "the personal comfort doctrine," that under current case law "an employee is entitled to compensation so long as the activity is reasonably foreseeable and incidental to his employment." (*Id*. n. 14). The court noted many cases hold an otherwise personal deviation is compensable where authorized, expressly or by implication, and some incidental benefit accrues to the employer, "at least where the deviation does not introduce substantial additional hazards." (*Id*. at 506). However, given the fact the employer and the injured worker in *Gonzales* were the same, the court decided to not base its decision upon the authorization issue and wanted "to await a proper factual presentation to the Board before deciding such a question," and instead focused on Larson's "minor deviation rule." (*Id*.). The insurer argued the board's characterization of the landing strip scanning operation as an "insubstantial" deviation was contrary to law and unsupported by substantial evidence. It contended fully one-third of the flight time allotted to the trip was taken up by the purely personal scanning activity. Noting the absence of an "encompassing substantiality test," the court found the need to "balance a variety of factors such as (1) the geographic and durational magnitude of the deviation in relation to the overall trip, (2) past authorization or toleration of similar deviations, (3) the general latitude afforded the employee in carrying out his job, and (4) any risks created by the deviation which are causally related to the accident." (*Id*. at 507). Applying this test to the facts before it, *Gonzales* found the first three factors weighed in favor of compensability. As for the fourth factor, *Gonzales* found no evidence supported the insurer's argument that reducing airspeed and lowering altitude increased a risk of engine failure or

downdrafts causing a crash. Since the insurer had the burden of proving its affirmative defense under the deviation rule, the lack of substantial evidence in the record supporting its argument was a proper basis for the superior court to affirm the board's decision. (*Id*. at 508). In a footnote, *Gonzales* set forth the "personal comfort" doctrine as follows:

> The 'personal comfort' definition encompasses those momentary diversions from an employment which for social and biological reasons, are inextricably bound up with the normal work flow of an individual, such as eating, drinking, resting, washing, smoking, conversing, seeking fresh air, coolness or warmth, going to the toilet, etc. (*Id*. at 506 n. 19 citing 1 A. Larson, *The Law of Workmen's Compensation* §19.63 (1972)).

In *Marsh v. Alaska Workmen's Compensation Board*, 584 P.2d 1134, 1136 (Alaska 1978), the Alaska Supreme Court affirmed a decision finding an assault on a bartender by a customer not work-connected. The court noted the injured worker was correct in saying that "labeling the employee's activity as 'personal' may not render the ensuing injury *per se* not compensable. However, the activity must still be 'reasonably foreseeable and incidental' to the employment, and not just 'but for' the employment . . . to entitle the employee to claim compensation."

In *Estate of Stark v. Alaska Fiber Star, LLC*, AWCB Decision No. 05-0171 (June 23, 2005), the decedent employee was involved in a single, company-owned vehicle accident resulting in his death. The decedent had been dispatched to Whittier, Alaska to work in the early afternoon. He completed his work in Whittier by about 4:33 PM, and left the worksite. The decedent called his wife at approximately 4:27 PM on the accident date and asked her to pick up their children at day care by 5:30 PM because he was working and would not be able to pick them up. At 6:23 PM, local emergency responders received a call from an accident site involving the decedent, which occurred on a frontage road next to the New Seward Highway, in Anchorage. Investigations found the decedent had been ejected during a vehicle rollover and first responder reports suggested a strong alcohol odor emanating from the decedent's mouth. However, the emergency room physician attempting to revive the decedent detected no alcohol on his breath or his person, and no toxicology, laboratory work or autopsy was performed. Consequently, the physician opined there was no way to determine if the decedent had been intoxicated at the time of his death. Investigators found a bottle of Jack Daniels inside the wrecked company van; the decision does not say whether it was empty. One witness said the decedent had come to him months

earlier and confessed he had an alcohol problem but was receiving treatment. The decedent's supervisors never suspected or detected the decedent had any issues with drugs or alcohol. Witnesses tried to determine whether the decedent was still on the clock when he was killed. A supervisor suspected the decedent may have stopped for dinner on the road back to Anchorage and testified, had he done so, the decedent would have been on the clock during his dinner hour and during the delay it caused on his return trip. The supervisor also testified there was no business purpose for the decedent to have been on the frontage road when the accident occurred. The employer argued *Gonzalez* required the board to deny compensability because the decedent made an identifiable deviation past his place of employment and was killed while traveling on a route to a friend's home for purely personal reasons.

Estate of Stark applied the "minor deviation rule." Using substantial evidence, the board pieced together what happened, and determined the decedent was still "on the clock" and anything that happened to him on his way back to his employer's premises to drop off the employer's vehicle arose out of and in the course of his employment. The board discounted testimony from the decedent's friend stating she believed the decedent was on his way to her home to drop off a ladder to be used in painting when he was killed, because the ladder was never found either in the van or at the accident scene. The lack of a ladder indicated the decedent had not yet retrieved his own vehicle or the ladder and would not have done so before he returned his employer's truck to the work premises. As to why the decedent was not on the normal route to return the truck, *Estate of Stark* relied upon Professor Larson's rule stating taking a somewhat roundabout route or not being on the shortest line between two points does not necessarily remove an injured worker from the course and scope of his employment. It must also be shown the deviation was aimed at reaching some personal objective. (*Id*. at 20). *Estate of Stark* evaluated the employer's other concerns and dismissed them. The death was ruled compensable. (*Id*. at 23).

Sears v. World Wide Movers, Inc., AWCB Decision No. 15-0140 (October 27, 2015), involved the "personal comfort" and "minor deviation" doctrines. The employee slipped and fell on the ice upon exiting Walgreens after purchasing a cup of coffee while traveling to a job in his company moving van. He contended his injury arose out of and in the course of his employment with the employer. The employer argued the employee's injury did not arise out of and in the

course of employment because he violated company policy when he left the company yard early, and deviated from his employment-related travel for personal purposes when he stopped the company vehicle for coffee. The employee argued his injury was compensable under the personal comfort doctrine, defined by the Alaska Supreme Court in *Gonzales*. *Sears* found the employee had correctly noted that while his activities may arguably violate a company policy, such violations do not automatically exclude an injury from coverage under the Act just because it occurred during company policy violations:

> [T]here is no Act provision prohibiting compensability if an employee violates a company policy not specifically enumerated in the Act, and an injury occurs during the violation. Employer provided no authority stating otherwise and its legal theory runs counter to the 'no-fault' system the legislature established to address work-related injuries. *Nickels*.
> . . . .
>
> Employer has failed to show through statute, regulation or decisional law why these selectively enforced 'violations,' if they truly exist at all, removed Employee's injury from coverage under the Act. AS 23.30.010(a); *Gonzales*.
>
> (*Id.* at 26-28).

Patricia S. Kolb v. Walmart Associates Inc., AWCB Decision No. 16-0099 (October 28, 2016), involved the "minor deviation" doctrine. The employee, a cashier for the employer, was injured close to the end of her shift while attempting to get a kitty litter bag from a shelf 70 inches high to purchase when she lost her grip and the kitty litter fell, breaking her leg and injuring her knee. She contended her injury arose out of and in the course of employment with the employer. The employer argued the employee's injuries did not arise out of and in the course of her employment because Employee was engaged in personal shopping when she was injured, personal shopping was not part of her job duties and her personal shopping while on the clock was expressly prohibited by the employer and was not a sanctioned activity. *Kolb* found the employee's injury arose out of and in the course of her employment with the employer because the employee's shopping was reasonably foreseeable and incidental to her employment and her deviation was relatively brief and minor. *Id*. at 34.

Professor Larson addressed idiopathic falls in determining whether an injury arose out of and in the course of employment. Idiopathic falls are those resulting from a non-occupational personal condition. Professor Larson expressed the general rule:

> When an employee, solely because of a nonoccupational heart attack, epileptic fit, or fainting spell, falls and sustains a skull fracture or other injury, the question arises whether the skull fracture (as distinguished from the internal effects of the heart attack or disease, which of course are not compensable) is an injury arising out of the employment.
>
> The basic rule, on which there is now general agreement, is that the effects of such a fall are compensable if the employment places the employee in a position increasing the dangerous effects of such a fall, such as on a height, near machinery or sharp corners, or in a moving vehicle. (1 Larson, Workers' Compensation Law, §9.01[1], p. 9-2 (2015).)

Professor Larson addressed idiopathic motor vehicle crashes when determining whether an injury arose out of and in the course of employment:

> Awards are uniformly made when the employee's idiopathic loss of his or her facilities took place while he or she was in a moving vehicle, as in the case of a delivery worker whose job required the employee to be at the wheel of a truck and who 'blacked out' during an asthmatic attack and went into the ditch, and of an employee who was on a motor scooter when he lost consciousness. It seems obvious that the obligations of their employment had put those employees in a position where the consequences of blacking out were markedly more dangerous than if they had not been so employed. (1 Larson, Workers' Compensation Law §9.01[2], p. 9-4 (2014).)

In *Marshall v. Bob Kimmel Trucking*, 817 P.2d 1346 (Or. Ct. App. 1991), the employee fainted while driving a log truck for the employer and sustained injuries resulting from the crash. The court of appeals concluded that the employee's injury, although caused from his unexplained loss of consciousness, was compensable because the employer placed the employee in a position of risk of serious injury after the employee became unconscious. *Marshall* held that even if a fainting episode is solely idiopathic, an injury may be compensable if the danger of serious injury was greatly increased by some employment related factor. *Id*. at 1347.

In *Hill v. Faircloth Mfg. Co.*, 630 N.W.2d 640 (Mich. Ct. App. 2001), the court of appeals reversed the workers' compensation appellate commission's decision denying the employee's

petition for benefits for injuries he sustained when he suffered a diabetic seizure and collided with the back of a truck. It held if the accident occurred in the course of employment, even if caused by an idiopathic condition, employment-related driving constitutes an increased risk that aggravated the injuries and injuries attributable to the collisions and "arose out of" employment, entitling the employee to workers' compensation benefits. *Hill* at 643.

In *Appeal of Brandon Kelly*, 114 A.3d 316 (N.H. 2015), the New Hampshire Supreme Court reversed a workers' compensation appeals board decision denying the employee's claim for benefits for injuries sustained when he fell asleep and struck a utility pole while driving between a job site and his place of employment. To recover under workers' compensation law in New Hampshire, an employee must show his injuries arose out of and in the course of employment. The Court found guidance in a previous case which discussed idiopathic falls and found a personal risk, the employee's tiredness, and an employment risk, driving a moving truck for employer's benefit. Employee's injury in this instance resulted from a motor vehicle accident and not from the medical condition. The Court determined the personal risk and employment risk combined to produce the injury. The results of falling asleep were increased by the environment in which the employee found himself at the time he fell asleep, behind the wheel of a moving truck. Employment was a substantial contributing factor to the injury.

> **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; . . . .

Under AS 23.30.120(a)(1), benefits sought by an injured worker are presumed to be compensable and the presumption is applicable to any claim for compensation under the Act. *Meek v. Unocal Corp*., 914 P.2d 1276, 1279 (Alaska 1996). The presumption of compensability is applicable to any claim for compensation under the workers' compensation statute, including medical benefits. *Moretz v. O'Neill Investigations*, 783 P.2d 764, 766 (Alaska 1989).

The presumption's application involves a three-step analysis. To attach the presumption, an injured employee must first establish a "preliminary link" between his injury and the

employment. *Tolbert v. Alascom, Inc.*, 973 P.2d 603, 610 (Alaska 1999). Once the presumption is attached, the employer must rebut the raised presumption with "substantial evidence." *Huit v. Ashwater Burns, Inc.*, 372 P.3d 904 (Alaska 2016). Where there is no competing cause, the standard is essentially unchanged from prior cases: the board is to evaluate the relative contribution of difference causes when assessing work-relatedness. *Id*. at 919. As the employer's evidence is not weighed against the employee's evidence, credibility is not examined at this stage. *Veco, Inc. v. Wolfer*, 693 P.2d 865, 869-70 (Alaska 1985).

If the presumption is raised but not rebutted, the claimant prevails and need not produce further evidence. *Williams v. State*, 938 P.2d 1065, 1075 (Alaska 1997).

If the employer's evidence is sufficient to rebut the presumption, the presumption drops out and the employee must prove her case by a preponderance of the evidence. *Runstrom v. Alaska Native Medical Center*, AWCAC Decision No. 150 at 8 (March 25, 2011) (reversed on other grounds, *Huit*, 372 P.3d 904 (Alaska 2016)). 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). In the third step, evidence is weighed, inferences are drawn and credibility is considered. *Wolfer*. In *Lindhag v. State, Dept. of Natural Resources*, 123 P.3d 948 (Alaska 2005), the Alaska Supreme Court stated a claim can fail for "failure of proof."

> **AS 23.30.095. Medical treatments, services and examinations.**
> (a) The employer shall furnish medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus for the period which the nature of the injury or the process of recovery requires, not exceeding two years from and after the date of injury to the employee.
> . . . .
>
> (c) A claim for medical or surgical treatment, or treatment requiring continuing and multiple treatments of a similar nature, is not valid and enforceable against the employer unless, within 14 days following treatment, the physician or health care provider giving the treatment or the employee receiving it furnishes to the employer and the board notice of the injury and treatment, preferably on a form prescribed by the board. The board shall, however, excuse the failure to furnish notice within 14 days when it finds it to be in the interest of justice to do so, and it may, upon application by a party in interest, make an award for the reasonable value of the medical or surgical treatment so obtained by the employee. When a

claim is made for a course of treatment requiring continuing and multiple treatments of a similar nature, in addition to the notice, the physician or health care provider shall furnish a written treatment plan if the course of treatment will require more frequent outpatient visits than the standard treatment frequency for the nature and degree of the injury and the type of treatments. The treatment plan shall be furnished to the employee and the employer within 14 days after treatment begins. The treatment plan must include objectives, modalities, frequency of treatments, and reasons for the frequency of treatments. If the treatment plan is not furnished as required under this subsection, neither the employer nor the employee may be required to pay for treatments that exceed the frequency standard. The board shall adopt regulations establishing standards for frequency of treatment.

AS 23.30.097. Fees for medical treatment and services.

. . . .

(d) An employer shall pay an employee's bills for medical treatment under this chapter, excluding prescription charges or transportation for medical treatment, within 30 days after the date that the employer receives the provider's bill or a completed report as required by AS 23.30.095(c), whichever is later.

8 AAC 45.082. Medical treatment.

. . . .

(d) Medical bills for an employee's treatment are due and payable no later than 30 days after the date the employer received the medical provider's bill, a written justification of the medical necessity for dispensing a name-brand drug product if required for the filling of a prescription that was part of the treatment, and a completed report in accordance with 8 AAC 45.086(a). Unless the employer controverts the prescription charges or transportation expenses, an employer shall reimburse an employee's prescription charges or transportation expenses for medical treatment no later than 30 days after the employer received the medical provider's completed report in accordance with 8 AAC 45.086(a), a written justification of the medical necessity for dispensing a name-brand drug product if required for the filling of a prescription that was part of the treatment, and an itemization of the prescription numbers or an itemization of the dates of travel, destination, and transportation expenses for each date of travel. . . .

. . . .

(f) If an injury occurs on or after July 1, 1988, and requires continuing and multiple treatments of a similar nature, the standards for payment for frequency of outpatient treatment for the injury will be as follows. Except as provided in (h) of this section, payment for a course of treatment for the injury may not exceed more than three treatments per week for the first month, two treatments per week for the second and third months, one treatment per week for the fourth and fifth

months, and one treatment per month for the sixth through twelfth months. Upon request, and in accordance with AS 23.30.095(c), the board will, in its discretion, approve payment for more frequent treatments.

(g) The board will, in its discretion, require the employer to pay for treatments that exceed the frequency standards in (f) of this section only if the board finds that

> (1) the written treatment plan was given to the employer and employee within 14 days after treatments began;
> (2) the treatments improved or are likely to improve the employee's conditions; and
> (3) a preponderance of the medical evidence supports a conclusion that the board's frequency standards are unreasonable considering the nature of the employee's injury.

. . . .

(l) In this section,
(1) “month” means a four-week period, the first of which commences on the first day of treatment . . . .

45 CFR 164.512. Uses and disclosures for which an authorization or opportunity to agree or object is not required.
A covered entity may use or disclose protected health information without the written authorization of the individual, as described in § 164.508, or the opportunity for the individual to agree or object as described in § 164.510, in the situations covered by this section, subject to the applicable requirements of this section. When the covered entity is required by this section to inform the individual of, or when the individual may agree to, a use or disclosure permitted by this section, the covered entity's information and the individual's agreement may be given orally.

(a) Standard: Uses and disclosures required by law.

> (1) A covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law.
>
> (2) A covered entity must meet the requirements described in paragraph (c), (e), or (f) of this section for uses or disclosures required by law.

. . . .

(l) **Standard: Disclosures for workers' compensation**. A covered entity may disclose protected health information as authorized by and to the extent necessary

> to comply with laws relating to workers' compensation or other similar programs, established by law, that provide benefits for work-related injuries or illness without regard to fault.

In *Hale v. Anchorage School District*, 922 P.2d 268 (Alaska 1996), the Alaska Supreme Court explained how the treatment plan regulation works:

> Once it began a course of treatment of daily physical therapy, the fourteen-day notification period of AS 23.30.095(c) commenced. Regardless of when Hale's treating physician determined that Hale would need long-term physical therapy, Physical Therapists was required to submit a conforming treatment plan within fourteen days after October 7, the date it began physical therapy in excess of the standard treatment frequency (footnote omitted). (*Hale* at 270).

The board cannot allow more frequent treatments without the submission of a treatment plan following the procedures set forth in 8 AAC 45.082(g). *Grove v. Alaska Constructors & Erectors*, 948 P.2d 454 (Alaska 1997). A "plan" is a method of "putting into effect an intention or proposal." *Black's Law Dictionary*, Abridged Fifth Edition, p. 599 (1983).

The Alaska Supreme Court has strictly interpreted AS 23.30.095(c). In *Grove*, the employee argued the employer had waived its ability to object to statutory treatment limits because it initially disputed the employee's entitlement to benefits. The Court noted the board had adopted regulations defining circumstances where treatment frequency may exceed the standards and concluded an employer's initial decision to controvert benefits was not within these circumstances. *Id*. at 457. The Court held an employer does not have the burden of objecting to the frequency of an employee's medical treatments because the legislature intended to place the burden on the health care provider to furnish a conforming treatment plan if the provider wanted to be paid for visits in excess of the treatment standards. It further stated:

> Grove's position, if adopted, would put the burden on the employer to object to the frequency of an employee's medical treatments, if they exceed the standard. The statute is clear that it is the employee's health care provider who must take steps if the statutory frequency of that treatment is exceeded. *Id*.

In a similar case involving AS 23.30.095(c), the board used the statute and 8 AAC 45.195 to excuse a provider's failure to provide a written treatment plan. *Crawford & Co. v. Baker-Withrow*, 73 P.3d 1227 (Alaska 2003). The employer appealed. While the Court found the

statute expressly provides for excusing a failure to furnish notice of treatment, it does not provide for excusing a failure to furnish a treatment plan. *Id*. at 1228-29. The Court also added 8 AAC 45.195 can only be used to excuse regulatory, but not statutory, requirements. *Id*. at 1229. In a third case, the Court rejected an employee's estoppel defense under AS 23.30.095(c) and held an employer does not have a duty to inform a provider of deficiencies in its treatment plan. *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851 (Alaska 2010) (citing *Grove*).

> **8 AAC 45.084. Medical travel expenses.**
> . . . .
>
> (b) Transportation expenses include
>
> > (1) a mileage rate, for the use of a private automobile, equal to the rate the state reimburses its supervisory employees for travel on the given date if the usage is reasonably related to the medical examination or treatment;
> > (2) the actual fare for public transportation if reasonably incident to the medical examination or treatment; and
> > (3) ambulance service or other special means of transportation if substantiated by competent medical evidence or by agreement of the parties.
>
> . . . .

> **AS 23.30.150. Commencement of compensation.** Compensation may not be allowed for the first three days of the disability, except the benefits provided for in AS 23.30.095; if, however, the injury results in disability of more than 28 days, compensation shall be allowed from the date of the disability.

> **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. Temporary total disability benefits may not be paid for any period of disability occurring after the date of medical stability.

> **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-earning capacity of the employee after the injury in the same or another employment, to be paid during the continuance of the disability, but not to be paid

> for more than five years. Temporary partial disability benefits may not be paid for a period of disability occurring after the date of medical stability.
> . . . .
>
> **AS 23.30.395 Definitions.** In this chapter,
> . . . .
>
> (16) "disability" means incapacity because of injury to earn the wages which the employee was receiving at the time of injury. . . .
> . . . .

Lowe's v. Anderson, AWCAC Decision No. 130 (March 17, 2010), explained to obtain TTD benefits, assuming the presumption has been rebutted, an injured worker must establish: (1) she is disabled as defined by the Act; (2) her disability is total; (3) her disability is temporary; and (4) she has not reached the date of medical stability as defined in the Act. (*Id*. at 13-14).

> **AS 23.30.155. Payment of compensation.**
> (a) Compensation under this chapter shall be paid periodically, promptly, and directly to the person entitled to it, without an award, except where liability to pay compensation is controverted by the employer. . . .
>
> (b) The first installment of compensation becomes due on the 14th day after the employer has knowledge of the injury or death. On this date all compensation then due shall be paid. Subsequent compensation shall be paid in installments, every 14 days, except where the board determines that payment in installments should be made monthly or at some other period.
> . . . .
>
> (d) If the employer controverts the right to compensation, the employer shall file with the division and send to the employee a notice of controversion on or before the 21st day after the employer has knowledge of the alleged injury or death. If the employer controverts the right to compensation after payments have begun, the employer shall file with the division and send to the employee a notice of controversion within seven days after an installment of compensation payable without an award is due. . . .
>
> (e) If any installment of compensation payable without an award is not paid within seven days after it becomes due, as provided in (b) of this section, there shall be added to the unpaid installment an amount equal to 25 percent of the installment. This additional amount shall be paid at the same time as, and in addition to, the installment, unless notice is filed under (d) of this section or unless the nonpayment is excused by the board after a showing by the employer that owing to conditions over which the employer had no control the installment

could not be paid within the period prescribed for the payment. The additional amount shall be paid directly to the recipient to whom the unpaid installment was to be paid.
. . . .

(p) An employer shall pay interest on compensation that is not paid when due. Interest required under this subsection accrues at the rate specified in AS 09.30.070(a) that is in effect on the date the compensation is due.

8 AAC 45.142. Interest.

(a) If compensation is not paid when due, interest must be paid at the rate . . . established in AS 09.30.070(a) for an injury that occurred on or after July 1, 2000. If more than one installment of compensation is past due, interest must be paid from the date each installment of compensation was due, until paid. If compensation for a past period is paid under an order issued by the board, interest on the compensation awarded must be paid from the due date of each unpaid installment of compensation.

(b) The employer shall pay the interest

(1) on late-paid time-loss compensation to the employee or, if deceased, to the employee's beneficiary or estate;
. . . .

(3) on late-paid medical benefits to

(A) the employee or, if deceased, to the employee's beneficiary or estate, if the employee has paid the provider or the medical benefits;
. . . .

(C) to the provider if the medical benefits have not been paid.

AS 23.30.145. Attorney fees.
(a) Fees for legal services rendered in respect to a claim are not valid unless approved by the board, and the fees may not be less than 25 percent on the first $1,000 of compensation or part of the first $1,000 of compensation, and 10 percent of all sums in excess of $1,000 of compensation. When the board advises that a claim has been controverted, in whole or in part, 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. When the board advises that a claim has not been controverted, but further advises that bona fide legal services have been rendered in respect to the claim, then the board shall direct the payment of the fees out of the compensation 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.

(b) If an employer fails to file timely notice of controversy or fails to pay compensation or medical and related benefits within 15 days after they become due or otherwise resists the payment of compensation or medical and related benefits, and if the claimant has employed an attorney in the successful prosecution of the claim, the board shall make an award to reimburse the claimant for the costs in the proceedings, including reasonable attorney fees. The award is in addition to the compensation or medical and related benefits ordered.

8 AAC 45.180. Costs and attorney fees.

. . . .

(b) A fee under AS 23.30.145(a) will only be awarded to an attorney licensed to practice law in this or another state. An attorney seeking a fee from an employer for services performed on behalf of an applicant must apply to the board for approval of the fee; the attorney may submit an application for adjustment of claim or a petition. An attorney requesting a fee in excess of the statutory minimum in AS 23.30.145(a) must (1) file an affidavit itemizing the hours expended, as well as the extent and character of the work performed, and (2) if a hearing is scheduled, file the affidavit at least three working days before the hearing on the claim for which the services were rendered; at the hearing, the attorney may supplement the affidavit by testifying about the hours expended and the extent and character of the work performed after the affidavit was filed. If the request and affidavit are not in accordance with this subsection, the board will deny the request for a fee in excess of the statutory minimum fee, and will award the minimum statutory fee.

(c) Except as otherwise provided in this subsection, an attorney fee may not be collected from an applicant without board approval. A request for approval of a fee to be paid by an applicant must be supported by an affidavit showing the extent and character of the legal services performed. . . .

(d) The board will award a fee under AS 23.30.145(b) only to an attorney licensed to practice law under the laws of this or another state.

. . . .

(2) In awarding a reasonable fee under AS 23.30.145(b) the board will award a fee reasonably commensurate with the actual work performed and will consider the attorney's affidavit filed under (1) of this subsection, the nature, length, and complexity of the services performed, the benefits resulting to the compensation beneficiaries from the services, and the amount of benefits involved.

> . . . .
>
> (f) The board will award an applicant the necessary and reasonable costs relating to the preparation and presentation of the issues upon which the applicant prevailed at the hearing on the claim. The applicant must file a statement listing each cost claimed, and must file an affidavit stating that the costs are correct and that the costs were incurred in connection with the claim. The following costs will, in the board's discretion, be awarded to an applicant:
>
> > . . . .
> >
> > (13) reasonable travel costs incurred by an applicant to attend a hearing, if the board finds that the applicant's attendance is necessary;
> > . . . .

Attorney's fees in workers' compensation cases should be fully compensatory and reasonable so injured workers have competent counsel available to them. *Cortay v. Silver Bay Logging*, 787 P.2d 103 (Alaska 1990). Fees for time spent on *de minimis* issues will not be reduced if the employee prevails on the primary issues at hearing. *Uresco Construction Materials, Inc. v. Porteleki*, AWCAC Decision No. 152 at 14-16 (May 11, 2011).

ANALYSIS

1) Was the oral order to conduct the hearing in Employer's absence correct?

When a party does not appear at a hearing, but was served with notice of the hearing, the first option in the order of priority is to proceed with the hearing in the party's absence. 8 AAC 45.070(f)(1). Employer did not attend the February 14, 2017 prehearing conference in which the April 4, 2017 hearing was scheduled. However, the division properly served Employer with more than 10 days' notice. AS 23.30.110(c); 8 AAC 45.060(b). The prehearing conference summary and notice of the hearing were served on Employer's address of record by certified return receipt mail on February 15, 2017; but the certified mail returned as "Unclaimed" on March 8, 2017. Subsequently, the prehearing conference summary and hearing notice were mailed to Employer's last address of record by first class mail and was emailed to Employer to the email address of record on March 8, 2017. The designated chair unsuccessfully attempted to contact Employer by telephone at hearing on April 4, 2017. Employer never attempted to cancel

or continue the hearing. The oral order to proceed with the hearing in Employee's absence was correct. 8 AAC 45.070(f).

2) Did Employee's injuries arise out of and in the course of her employment with Employer?

The parties do not dispute that Employee was Employer's employee, Employee was driving Employer's taxicab when she crashed into a utility pole on October 4, 2015, and Employee sustained injuries to her neck, back and shoulders when she crashed into the utility pole. However, the Fund contends Employee crashed the taxicab and was injured while engaging in a personal errand, rather than in the "course and scope of employment." The Fund also contends Employee's non-work related condition caused Employee to crash as Employee created a danger by exceeding the limits of her ability to drive with her migraine and created an emergency causing Employee to pull off the road. Employee contends she crashed due to blurry vision caused by a migraine and Dr. Lee's medical report contends Employee's somnolence caused Employee to crash.

The presumption analysis under AS 23.30.120 applies to the question of whether an injury arose out of and in the course of the employment. *Meek.* Employee makes a preliminary link and attaches the presumption of compensability with her testimony she was driving Employer's taxicab during her shift and had intended to make a minor deviation to purchase ibuprofen and caffeine for her migraine on the same route she needed to take to pick up her second client but her vision became blurry due to the migraine and she crashed into a utility pole before she pulled over. *Tolbert.*

Because Employee established the link, Employer must overcome the presumption at the second stage by presenting substantial evidence demonstrating a cause other than employment played a greater role in causing the disability or need for medical treatment. *Runstrom*. The Fund rebuts the presumption with the police report and medical report on October 4, 2016 and October 6, 2016 demonstrating Employee was somnolent at the time of the accident and Employee's testimony she was experiencing a migraine making her vision blurry and she intended to make a deviation for a personal errand to purchase ibuprofen and caffeine. Employee's evidence is not

weighed against Employer's rebuttal evidence. Therefore, credibility is not examined at the second stage of the presumption analysis. *Wolfer*. However, at the third stage of the presumption analysis, credibility must be weighed and if the evidence is conflicting or susceptible to contrary conclusions, a finding regarding the weight to be given a witness's testimony is conclusive. *Runstrom*; *CSK Auto, Inc.*; AS 23.30.122.

Employee intended to pull over because she felt it was unsafe to drive because her vision became blurry due to her migraine and to purchase ibuprofen and caffeine for her migraine. *CSK Auto, Inc.*; AS 23.30.122. The Fund contends Employee's deviation does not fall under the personal comfort doctrine as she diverted her route for a personal errand. Pulling over due to a migraine or to purchase ibuprofen and caffeine is a personal deviation. There was a business and a personal purpose for Employee's travel; it was the same route to pick up her second client and go to the store. Employee would have been driving the same route even if Employee had not intended to pull over for a personal reason while in route to pick up the second client. Therefore, the overall purpose of driving was a business purpose. *Gonzales*.

Momentary deviations from employment to rest and seek fresh air and to obtain something to drink and ibuprofen falls under the personal comfort doctrine. *Gonzales*; *Marsh*; *Sears*. Pulling over was a relatively minor geographic and durational deviation as it was on the route Employee needed to take to pick up the second client. It would have taken Employee about 10 minutes to walk one block to the store, purchase the ibuprofen and caffeine and walk back to the car. Employee had sufficient time to complete the personal errand before picking up her second client. *Estate of Stark*; *Kolb*. Employee's work required her to drive Employer's taxicab to pick up and drop off clients during a 12-hour shift and foreseeably take personal breaks; it would be unreasonable to work such a long shift and not make stops for personal comfort. *Gonzales*; *Marsh*. Making a short stop for Employee's personal comfort was reasonably foreseeable and incidental to employment. *Id.*

An employer clearly benefits when an employee, behind the wheel of a moving vehicle for work related activities, pulls over and stops the moving vehicle when feeling sleepy or experiencing blurry vision. Employee credibly testified Employer tolerated and even encouraged Employee to

make personal stops or errands and afforded Employee great latitude in carrying out her duty to pick up and drop off clients during her shift. *CSK Auto, Inc.*; AS 23.30.122. Employer benefitted from Employee completing personal errands, like stopping and shutting off the taxicab, which reduces Employer's fuel costs and helps keep employees alert during a long shift.

There is no evidence that a minor deviation to pull over for Employee's personal comfort introduced substantial additional hazards as Employee was driving on the same route required to pick up the second client and she intended to stop and park lawfully on that route. Employee's injury arose out of and in the course of her employment with Employer because Employee's intended deviation was relatively brief and minor, reasonably foreseeable and incidental to employment, and fell under the personal comfort doctrine. *Gonzales*; *Marsh*; *Sears*; *Estate of Stark*; *Kolb*.

The Fund contended Employee increased the risk to Employer and herself by driving with a migraine or while somnolent. Workers' compensation is a no-fault system; it applies regardless of whether an employee or employer may have been negligent. AS 23.30.045(b). Employee's somnolence and migraines are personal risks or non-occupational personal conditions. *Hill*; *Marshall*; *Appeal of Brandon Kelly*. Injuries sustained by an employee driving caused by the employee's idiopathic personal condition may arise out of and during the course of employment. 1 Larson, Workers' Compensation Law §9.01[2]. p. 9-4 (2014). The environment in which Employee worked, behind the wheel of a moving taxicab, increased the effects of being sleepy or experiencing blurry vision due to a migraine because when Employee crashed into a utility pole due to her idiopathic conditions she sustained injuries to her neck, back and shoulders. *Hill*; *Marshall*; *Appeal of Brandon Kelly*. Therefore, the substantial cause of the injuries to Employee's neck, back and shoulders Employee's is the employment-related crash of the taxicab into a utility pole. *Hill*; *Marshall*; *Appeal of Brandon Kelly*; AS 23.30.120(a). Employee has proven by a preponderance of the evidence her injuries arose out of and in the course of her employment with Employer. AS 23.30.010(a); *Saxton*.

3) Is Employee entitled to past medical benefits?

Employee seeks an order requiring Employer to pay past medical bills for the injuries to her back, neck and shoulders when she crashed the taxicab into the utility pole. The past medical bills include Employee's visit to the emergency room at the Sitka Community Hospital on October 4, 2014; Employee's visit with F.N.P Schwarze at the Sitka Medical Center on October 6, 2015; Employee's initial visit with Dr. Reinhardt; 68 chiropractic appointments with Dr. Reinhardt; and orthotics Employee paid for out-of-pocket. Employee also testified she paid out-of-pocket portions of the Sitka Community Hospital and Sitka Medical Center bills. The Fund contends Employee is not entitled to past medical benefits because Employee was not injured in the course and scope of employment. This decision found Employee's injury arose out of and in the course and scope of her employment when she crashed the taxicab into the utility pole.

The Fund contends Employee is not entitled to past chiropractic care that exceeded the frequency limitations because Dr. Reinhardt failed to timely provide a conforming written treatment plan to Employer and Employee as required by the Act. Employee contends Dr. Reinhardt provided a conforming treatment plan. Both Employee and Dr. Reinhardt requests an order requiring Employer to pay Dr. Reinhardt for past chiropractic treatment for Employee's work injury. Employer did not brief or argue nonconforming treatment plans as a defense; however, Employer's liability for past medical care was a primary issue at hearing and all parties had an opportunity to brief this issue. *Thompson*. Dr. Reinhardt chose not to file a brief and testified he is aware of the frequency limitations in the Act and his October 8, 2015 medical report contained his treatment plan. Therefore, this decision may appropriately cite and rely on AS 23.30.095(c) and 8 AAC 45.082(g) as support for its conclusions. *Id*.

Once a medical provider exceeds the treatment frequency standards, and every time the provider exceeds those standards thereafter, the provider must, within 14 days of the date the treatment frequency standards are exceeded, provide a conforming written treatment plan to the employee and the employer. *Hale*. The written treatment plan must include objectives, modalities, frequency of treatments and reasons for the frequency of treatments. AS 23.30.095(c). If a conforming written treatment plan is not furnished, neither the employer nor the employee may be required to pay for excess treatments. AS 23.30.095(c); *Grove*.

Regulation 8 AAC 45.082(f) sets frequency standards: no more than three treatments per week for the first month; two treatments per week for the second and third months; one treatment per week for the fourth and fifth months; and one treatment per month for the sixth through twelfth months. "Month" has an unusual though specific definition and is defined as a "four-week period, the first of which commences on the first day of treatment." 8 AAC 45.082(*l*)(1).

Upon request, and in accordance with AS 23.30.095(c), treatments exceeding the frequency limitations may be approved. However, "continuing and multiple treatments of a similar nature" may only be approved if: (1) the written treatment plan was given to Employer and Employee within 14 days after treatments began; (2) the treatments improved or are likely to improve Employee's condition; and (3) a preponderance of medical evidence supports a conclusion that the frequency standards are unreasonable given Employee's injury. 8 AAC 45.082(g).

Employer or Dr. Reinhardt must show Dr. Reinhardt prepared a conforming treatment plan covering the dates he exceeded the frequency limitations and gave copies to Employee and Employer within 14 days after treatments began. 8 AAC 45.082(g)(1); *Hale*; *Grove*. The medical record contains only one treatment plan by Dr. Reinhardt in the October 8, 2015 medical report. Dr. Reinhardt first exceeded the frequency standards on October 12, 2015. There is no evidence Dr. Reinhardt gave Employee and Employer a confirming written treatment plan within 14 days of October 12, 2015. Dr. Reinhardt exceeded the frequency standards on nine additional dates by December 21, 2015. There is no evidence in the record Dr. Reinhardt provided Employer and Employee the October 8, 2015 treatment plan until January 26, 2016, when he filed a claim along with the October 8, 2015 medical report. 8 AAC 45.082(g)(1); *Lindhag*. After December 2015, Dr. Reinhardt provided chiropractic treatment on 32 additional dates from February 5, 2016 through June 21, 2016; Dr. Reinhardt exceeded the frequency standards on 24 dates from February 5, 2016 through June 21, 2016. *Rogers & Babler*. There is no evidence Dr. Reinhardt provided another treatment plan or revised the October 8, 2015 treatment plan. *Lindhag*. Dr. Reinhardt failed to provide Employer and Employee a written treatment plan within 14 days of the dates he exceeded the treatment frequency standards on the 34 dates listed in finding 33 above. AS 23.30.095(c); 8 AAC 45.082(g)(1).

Dr. Reinhardt testified he rendered chiropractic treatment based upon Employee's response to the isolation testing protocol completed at the beginning of each appointment. Employee contended each medical record by Dr. Reinhardt contains a treatment plan. However, a treatment plan provides an intended treatment for the future, not for a single appointment, and the treatment plan should clearly state the reasons for the frequency of treatments. The October 8, 2015 treatment plan does not contain a conforming treatment plan because it did not contain the reasons for the frequency of treatments. AS 23.30.095(c). None of Dr. Reinhardt's medical records contain a conforming treatment plan because none provide a plan for future treatment. AS 23.30.095(c).

Employee contends this decision should excuse the treatment plan requirements because the benefits were controverted on a different basis. This argument fails because the burden of timely providing a conforming treatment plan to Employer and Employee is on the physician rendering the treatment; neither Employer nor the Fund has a duty to inform a medical provider of deficiencies in its treatment plan. *Grove*; *Baker-Withrow*; *Burke*. Employee contends the failure to fulfill to provide a timely written conforming treatment plan to Employer and Employer should be excused because Employer failed to provide a release signed by Employee to Dr. Reinhardt, permitting him to release medical records, including the treatment plan, to Employer. This argument fails because the burden of providing a written treatment plan to both Employer and Employee within 14 days after treatments began is on Dr. Reinhardt. There is no evidence Dr. Reinhardt timely provided a written treatment plan to Employee. Even if the failure to timely present a written conforming treatment to Employer is excusable, Dr. Reinhardt failed to provide a written conforming treatment plan to Employee. This argument also fails because Dr. Reinhardt had the authority under federal and Alaska law to disclose protected health information (PHI) to Employer to accomplish a workers' compensation purpose, providing Employer notice of treatment and a treatment plan. 45 CFR 164.512(l); 45 CFR 164.512(a); AS 23.30.095(c).

Employee and the Fund do not dispute Employee's crash into the utility pole is the substantial cause of the injuries to Employee's neck and back; however the Fund disputes whether the chiropractic treatment rendered was reasonable. Dr. Reinhardt opined Employee sustained a

cervical sprain and lumbar strain; Dr. Lee opined Employee sustained a cervical and lumbar strain. The Fund contends, with Dr. Lee's testimony and medical report, Employee failed to show that a preponderance of the medical evidence supports a conclusion that the frequency standards are unreasonable considering the nature of Employee's injury. This issue raises factual issues to which the presumption of compensability must be applied. AS 23.30.120(a); *Carter*; *Meek.*

Without regard to credibility, Employee raises the presumption through Dr. Reinhardt's opinion stating the chiropractic care he rendered was reasonable and necessary to treat Employee's cervical sprain and lumbar strain. *Wolfer*; *Tolbert*. Without regard to credibility, the Fund rebuts the presumption with Dr. Lee's opinion the chiropractic care was not reasonable and necessary to treat Employee's cervical and lumbar sprains. *Wolfer*; *Huit*.

Employee or Dr. Reinhardt must show a preponderance of medical evidence supports a conclusion that the frequency standards were unreasonable considering Employee's injury. AS 23.30.095(c); 8 AAC 45.082(g); *Runstrom*; *Saxton*. Dr. Lee's opinion regarding Employee's chiropractic care is given less weight because Dr. Lee is an internist and she did not physically examine Employee. Employee sustained a neck sprain and lower back strain. *CSK Auto, Inc.*; AS 23.30.122. Employee's injuries are not medically complex as Employee did not sustain any fractures and the injuries she sustained are common injuries resulting from motor vehicle crashes. *Rogers & Babler*.

Dr. Reinhardt testified sprains normally heal in twelve weeks and he devised a treatment plan for Employee with three chiropractic treatments per week for twelve weeks, starting on October 7, 2015 and ending on December 30, 2015. Dr. Reinhardt provided chiropractic treatment that exceeded the October 8, 2015 treatment plan because he provided more than three treatments per week on October 12, 2015, November 23, 2015 and November 24, 2015. There is no evidence in the medical record that Dr. Reinhardt provided another treatment plan or revised the October 8, 2015 treatment plan to increase the frequency of treatment and this oversight diminishes the weight of his opinion. Dr. Reinhardt exceeded the treatment provided in the October 8, 2015 treatment plan again when he provided chiropractic treatment on 32 additional dates after

December 30, 2015, the date the October 8, 2015 treatment plan should have ended. Dr. Reinhardt's failure to provide another treatment plan or update his own treatment plan to provide for additional treatment after the October 8, 2015 treatment plan ended with the reason for exceeding the treatment standards also diminishes the weight of his opinion. The nature of Employee's injury does not justify exceeding the frequency standards. Employee and Dr. Reinhardt failed to prove by a preponderance of the medical evidence that the frequency standards are unreasonable considering the nature of the employee's injury. *Saxton*; *CSK Auto, Inc.*; AS 23.30.122.

Employee is entitled to past medical benefits because Employee was injured in the course and scope of employment when she crashed the taxicab into the utility pole. This decision will order Employer to pay for chiropractic care listed in factual finding 33 above with some exceptions. This decision will deny Employee's request for an order requiring Employer to pay for chiropractic treatment rendered on 34 dates listed in finding 33 above for the reasons stated in this analysis. AS 23.30.095(c); 8 AAC 45.082(g)(3); *Runstrom*; *Saxton*.

Employee seeks an order requiring Employer to pay her for orthotics she purchased from Dr. Reinhardt. Dr. Reinhardt prescribed orthotics to treat Employee's back, neck and shoulder injuries. Dr. Reinhardt confirmed he prescribed Employee orthotics. However, Employee failed to provide any medical evidence documenting the orthotics were prescribed to treat the injuries she sustained to her back, neck and shoulder in the crash and she failed to file a bill or itemized statement including the cost of orthotics. Without documentation, the parties cannot scrutinze the necessity of the prescription. Therefore, Employee's request for an order requiring Employer to pay Employee for orthotics will be denied for failure of proof. *Saxton*; *Lindhag*.

Employer will be ordered to pay for past medical benefits, except for the orthotics and the dates Dr. Reinhardt exceeded the frequency standards in the Act. To the extent Employee paid such medical costs out-of-pocket payments, Employer shall pay her. To the extent such medical costs remain unpaid, Employer shall pay the medical provider.

4) Is Employee entitled to past transportation benefits?

Under AS 23.30.097(d), an employer is obligated to pay an employee's medical-related transportation costs. Employee documented 680 miles of travel for the 68 chiropractic visits with Dr. Reinhardt. 8 AAC 45.082(d); 8 AAC 45.084. However, Employee is only entitled to transportation costs for compensable work-related medical treatment and this decision found only 34 chiropractic visits compensable. Therefore, Employee is entitled to transportation costs for 340 miles of travel (34 chiropractic visits x 10 miles round trip per visit). At the rate of $0.535, Employee is entitled to $181.90 in medical transportation costs and Employer will be ordered to pay that amount.

5) Is Employee entitled to TTD and TPD benefits?

Employee contends she is entitled to TTD for one week after the October 4, 2015 work injury because she was restricted from working for one week for Sitka Counseling and Prevention for 40 hours, or for five days, and for Employer for 24 hours, or for two days. Employee contends she is entitled to five weeks of TPD, following the first week of TTD, as she was disabled while restricted from driving the taxicab for five additional weeks for 24 hours, or for two days, each week. The Fund seeks an order directing Employer to pay TTD and TPD benefits if compensable.

Employee raised the presumption of compensability for her claim for TTD because Employee was taken off work for three or four days by Dr. Golub on October 4, 2016 and for one week by F.N.P Schwarze on October 6, 2015, as a result of the injuries sustained in the crash. AS 23.30.185; *Lowe's*; *Tolbert.* Employer and the Fund failed to rebut the presumption of compensability because neither produced any contrary evidence. Employee is entitled to TTD benefits. *Williams.* Because Employee was disabled less than 28 days, under AS 23.30.150, she is not entitled to TTD for the first three days of the disability on October 5, 6, and 7, 2015. This decision will order Employer to pay Employee TTD benefits from October 8 through October 11, 2015.

However, Employee produced no medical evidence establishing disability for TPD benefits. AS 23.30.200; AS 23.30.395(16). Dr. Reinhardt only noted Employee informed him she returned to

driving for Employer over the weekend on November 16, 2015; there is no medical evidence Dr. Reinhardt or any other physician restricted Employee from driving the taxicab until mid-November 2015 due to the injuries she sustained from the crash rather than from her idiopathic migraines. Consequently, Employee failed to establish the preliminary link and failed to raise the presumption for her claim for TPD. *Tolbert*. Having failed to raise the presumption, Employee is not entitled to TPD benefits and this decision will deny her TPD claim.

6) Is Employee entitled to interest?

As a matter of law, Employee is entitled to interest on all benefits not paid when due. Employee is entitled to interest on all benefits awarded in this decision in accordance with the Act and the administrative regulations. AS 23.30.155(p); 8 AAC 45.142(b)(1), (3).

7) Is Employee entitled to penalties?

Employee contends she is entitled to penalties from Employer on all past benefits awarded. Employers must either pay workers' compensation benefits directly to the person entitled to them or deny those benefits. AS 23.30.155(a). An employer denies benefits by filing and serving a controverison notice. AS 23.30.155(d). Unless an employer timely files and serves a controversion notice, the employer's obligation to pay arises without any hearings or award. AS 23.30.155(a). If an employer fails to either timely pay benefits owed without an award within seven days after the benefits become due, or fails to controvert benefits, the law provides for an additional 25 percent penalty. AS 23.30.155(e).

Employer never controverted Employee's right to benefits or her claims. This decision found Employee entitled to TTD in October of 2015. Under AS 23.30.155(b), TTD must be paid within 14 days of injury. Employer has not paid Employee any TTD benefits. Employee is entitled to a penalty of 25 percent from Employer on TTD benefits awarded in this decision. AS 23.30.155(e).

Under AS 23.30.097(d), an employer must pay medical benefits within 30 days of receiving the provider's bill or a treatment plan under AS 23.30.095(c). This decision awards Employee

medical costs for treatment of her neck, back and shoulders. Employer attempted to pay for medical costs on October 16, 2015, and wrote Dr. Reinhardt's office a check for $500 dated October 21, 2015, which was never cashed. However, it is not clear from the evidence if, or when Employer received the medical bills for Employee's compensable medical treatment or when Dr. Reinhardt received the check for $500. Employee is entitled to and Employer is liable for a 25 percent penalty on all medical bills related to the treatment of Employee's neck, back and shoulders not paid within 30 days of receipt. AS 23.30.155(e).

A penalty will not be awarded to Employee under AS 23.30.070(f) on transportation expenses, because prior to hearing Employee had not itemized them and provided a mileage log to Employer. Employee is entitled to and Employer will be ordered to pay penalties on all TTD and medical costs awarded by this decision.

8) Is Employee entitled to attorney's fees and costs?

A successful claimant is entitled to an attorney's fee and cost award. AS 23.30.145(a), (b). Employee requested a board order for attorney's fees totaling $22.212.50 but did not specify under which subsection she claims attorney's fees. Employee is entitled to attorney's fees and costs because Employer failed to file a controversion and failed to pay compensation or medical and related benefits timely within and Employee hired an attorney and succeeded on her claim for medical costs, transportation costs, interest, penalty, and TTD. AS 23.30.145(b). In making attorney's fee awards, the nature, length and complexity of the professional services performed and the benefits resulting from those services on the employee's behalf must be considered. AS 23.30.145(b); 8 AAC 45.180(d)(2). This case did not involve complex, difficult or time consuming issues. Employee did not succeed on her TPD claim. However, her TPD claim was a *de minimis* issue as the TPD benefit requested totaled only $609.87. *Porteleki.* Employer and the Fund did not object to any particular entries in Employee's attorney fee and costs affidavit or to Employee's counsel's claimed hourly rate. Based on this reasoning and analysis, Employee's requested attorney's fees will not be reduced.

Employee requested an order for costs totaling $485.40. Employee requested an order directing Employer pay airfare and taxi costs for Employee to attend the hearing. Because Employee

failed to include the costs for her travel in the affidavit of attorney's fees and costs or supplemental affidavit of attorney's fees and costs, Employer will not be ordered to pay for Employee's airfare and taxi costs. 8 AAC 45.180(f)(13).

Therefore, Employee will be awarded $22,212.50 in total actual fees and $485.40 in total actual costs.

CONCLUSIONS OF LAW

1) The oral order to conduct the hearing in Employer's absence was correct.
2) Employee's injury arose out of and in the course of her employment with Employer.
3) Employee is entitled to past medical benefits except for the orthotics and the treatment dates Dr. Reinhardt exceeded the frequency standards in the Act.
4) Employee is entitled to transportation costs of $181.90.
5) Employee is entitled to TTD benefits from October 8, 2015 to October 11, 2015
6) Employee is not entitled to TPD.
7) Employee is entitled to interest.
8) Employee is entitled to penalties.
9) Employee is entitled to attorney's fees and costs.

ORDER

1) Employee's November 10, 2015 and November 17, 2016 claims and Dr. Reinhardt's January 26, 2016 claim are granted in part and denied in part.
2) Employer is ordered to pay Employee's past medical costs arising from the October 4, 2015 work injury in accordance with the Act except for the orthotics and the dates Dr. Reinhardt exceeded the frequency standards in the Act. To the extent Employee paid such medical costs out-of-pocket, Employer shall pay her. To the extent such medical costs remain unpaid, Employer shall pay the medical provider.
3) Employer is ordered to pay Employee's medical related transportations costs of $181.90.
4) Employer is ordered to pay Employee TTD.
5) Employee's claim for TPD is denied.

6) Employer shall pay interest on all TTD and medical benefits from the date due until the date paid. Employer shall pay interest to the person or entity entitled to the benefit.

7) Employer shall pay a 25 percent penalty on all TTD and medical costs awarded by this decision. Employer shall pay the penalty to the person or entity entitled to the benefit.

8) Employer shall pay Employee's attorney's fees and costs in the amount of $22,212.50 and $485.40, respectively.

9) If Employer fails to pay the above-ordered benefits within 30 days of this decision and order, Employee may apply for a supplementary order of default.

Dated in Juneau, Alaska on April 28, 2017

ALASKA WORKERS' COMPENSATION BOARD

/s/
Kathryn Setzer, Designated Chair

/s/
Charles Collins, 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.
If compensation awarded is not paid within 30 days of this decision, the person to whom the awarded compensation is payable may, within one year after the default of payment, request from the board a supplementary order declaring the amount of the default.

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 Maribel Barragan, employee / claimant v. Sitka Cabs Inc., employer; Benefit Guaranty Fund, insurer / defendants; Case No. 201518114; dated and filed in the Alaska Workers' Compensation Board's office in Juneau, Alaska, and served on the parties on April 28, 2017.

/s/_____
Dani Byers, Workers' Compensation Technician