

ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

CASSANDRA SETTLES,)	
)	
Employee,)	FINAL DECISION AND ORDER
Claimant,)	
)	AWCB Case No. 201706312
v.)	
)	AWCB Decision No. 17-0101
ROSCOE'S SOUL FOOD, LLC,)	
)	Filed with AWCB Anchorage, Alaska
Uninsured Employer,)	on August 24, 2017
)	
and)	
)	
ALASKA WORKERS' COMPENSATION)	
BENEFITS GUARANTY FUND,)	
)	
Defendants.)	

Cassandra Settles' (Employee) April 21, 2017 workers' compensation claim (claim) was heard in Anchorage, Alaska on July 19, 2017, a date selected on June 2, 2017. Cassandra Settles appeared, represented herself, and testified. Roscoe Wyche appeared to represent Roscoe's Soul Food, LLC (Employer) and testified. Velma Thomas, Fund Administrator, and Carl Trexler, Claims Adjuster with Wilton Adjustment, appeared and represented the Alaska Workers' Compensation Benefits Guaranty Fund (Fund). The record remained open at the hearing's conclusion to permit the Fund to submit a complete set of Employee's medical records and a copy of the Anchorage Police Department's (APD) records regarding an alleged incident between Mr. Wyche and Employee. On August 8, 2017, the Fund was asked to provide a status report regarding its efforts to obtain and the reason for delay in obtaining APD's records and for information regarding how much longer it would take the Fund to file the medical records

collected in Employee's case. The Fund filed the medical records and a status report on August 9, 2017. The record closed with the panel deliberated on August 14, 2017.

ISSUES

Employee contends Roscoe Wyche, Employer's owner, shoved her backwards against a doorjamb while she worked for Employer, which caused a cervical strain and chest contusions.

Employer contends Employee filed a "bogus" claim and she was not injured at work. He contends Employee has fabricated her story and does not have an injury that arose out of and in the course of her employment with Employer.

The Fund did not express an opinion on compensability.

1) Did Employee suffer an injury arising out of an in the course of her employment with Employer on March 31, 2017, which may entitle Employee to benefits under the Act?

Employee contends her claim is compensable and she is entitled to medical benefits, transportation expenses, and a permanent partial impairment rating when she is medically stable.

Since Employer contends Employee filed a "bogus" claim, it contends she is entitled to no benefits.

The Fund contends, if Employee's claim is compensable, Employer should not be responsible for any medical bills Employee incurred prior to March 31, 2017.

2) If Employee's March 31, 2017 injury is compensable, to which benefits is Employee entitled?

3) If Employee's March 31, 2017 injury is compensable, does Employer owe interest?

The Fund contends should Employee be found entitled to benefits, it will not be liable unless Employer defaults.

Employee and Employer did not express an opinion on when the Fund would be liable to pay any awarded benefits.

4) When is the fund liable to pay any benefits awarded in this decision?

FINDINGS OF FACT

The following facts and factual conclusions are either undisputed or established by a preponderance of the evidence:

1) On April 1, 2017, Employee reported to Michael Levy, M.D., her employer “shot her up” against a doorjamb by pushing her chest several times. Employee had associated “mild intermittent right hand tingling, mild throbbing headache, and left lower chest wall pain.” Dr. Levy treated Employee for thorax, left front wall contusion and provided her with information regarding a chest contusion, which states, “A contusion is usually caused by a blow, trauma, or direct force to an area of the body.” He also treated Employee for and gave her information about cervical sprains, which states, “A cervical sprain is an injury in the neck in which the strong, fibrous tissues (ligaments) that connect your neck bones stretch or tear. . . . The amount of time it takes for a cervical sprain to get better depends on the cause and extent of the injury. Most cervical strains heal in 1 to 3 weeks.” Dr. Levy reviewed Employee’s cervical spine and chest x-rays, which showed cervical degenerative joint disease with cervical alignment preservation. The chest x-ray was unremarkable. Dr. Levy stated, “Considerations include the possibility of cervical strain, cervical contusion, traumatic disc rupture, facet pain, fractures cervical vertebrae, ligamentous injuries, and possibility of chest wall injury pneumothorax rib fracture pulmonary contusion.” He emphasized the need for follow up with a physician. (Alaska Regional Hospital Provider Notes, Dr. Levy, April 1, 2017.)

2) On April 5, 2017, Employee filed an injury report for March 31, 2017 sprain injuries to her neck and chest. She described how the injury occurred as follows, “Roscoe shoved me backwards several times pushing me back against a door jamb.” (Employee Report of Occupational Injury or Illness to Employer, April 3, 2017.)

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3) On April 24, 2017, Employee filed a claim for transportation and medical costs and a \$724.36 Alaska Regional Hospital bill for emergency services on April 1, 2017. (Workers' Compensation Claim, April 21, 2017.)

4) On May 8, 2017, the Fund stated it provides benefits under AS 23.30.082 when:

(1) An employer fails to comply with the requirements of AS 23.30.075, (2) the employer fails to pay benefits due under the Alaska Workers' Compensation Act, (3) the employee files a workers' compensation claim against the WCBGF, (4) the claim is "duly authorized" and (5) the WCBGF has sufficient funds appropriated to pay the claim. It appears that Roscoe's Soul Food LLC failed to comply with AS 23.30.075, and appears to have been uninsured on the date of Cassandra Settles' injury. However, it is unclear whether the relationship between Roscoe's Soul Food and Cassandra Settles' was that of an employer/employee. Accordingly, it is unclear whether Cassandra Settles has a "duly authorized" claim and is entitled to benefits under the Alaska Workers' Compensation Act.

Alternatively, if Cassandra Settles 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 benefits payments to Cassandra Settles. Therefore, Cassandra Settles is not entitled to receive benefits from the Fund at this time.

(Fund's Answer, May 5, 2017.)

4) Employer did not file an answer to Employee's claim. (Record.)

5) On June 1, 2017, Mr. Wyche admitted Employee was Employer's "employee" and her last day of employment was March 31, 2017. He stated he was "not claiming she was not injured as an employee"; however, he contended she filed a "bogus" claim and disputed she was injured at work. Mr. Wyche confirmed he did not file an answer to Employee's claim. He was notified of an employer's obligation to file an answer if they dispute an employee's claim and that unless an answer is timely filed, statements made in the claim will be deemed admitted under 8 AAC 45.050(c). (Prehearing Conference Summary, June 1, 2017.)

6) On June 1, 2017, the Fund stipulated Employee was Employer's "employee" on March 31, 2017, the reported injury date. (*Id.*)

7) On June 20, 2017, Employee amended her claim to include a permanent partial impairment (PPI) rating when medically stable and PPI benefits if she has a ratable impairment. Employee stated she was not "currently" seeking indemnity benefits. Employee sought treatment at the

emergency room after her encounter with Mr. Wyche and the doctor told her to follow-up with her physician; however, she could not afford to see her physician. She wants seeks medical benefits so she can obtain treatment. In response to the Fund's questions, Employee stated she has never had medical issues with her neck prior to the March 31, 2017 work incident. Ms. Thomas indicated there was "something in the record" that led her to believe Employee had a prior neck injury. Ms. Thomas was referring to a February 6, 2017 motor vehicle accident (MVA) involving Employee and was under the impression Employee filed a report of injury for the February 6, 2017 MVA. Employee explained she had taken Mr. Wyche to the airport so he could attend his mother's burial. Mr. Wyche told her his car registration was expired, but that he had new tags. Mr. Wyche missed his plane so he had an opportunity to obtain and attach his new registration tags. Employee explained that after Mr. Wyche finally left for his mother's burial, she drove his car strictly for work purposes. While Mr. Wyche was gone, Employee obtained supplies needed for his two restaurants and delivered them to the restaurants and while doing this, she was involved in an MVA. Employee learned after the accident Mr. Wyche's had no car insurance; therefore, she provided the officer her car insurance information. She stated the accident did not injure her and she received no medical treatment for any body part after the accident. Employee was driving about 10 to 15 miles per hour when she hit another vehicle's back passenger side panel. (Settles; Prehearing Conference Summary, June 20, 2017.)

8) Review of the Workers' Compensation Division's database does not reveal Employee reported a February 6, 2017 injury or any injury related to the February 6, 2017 MVA. (Record.)

9) Employee's testimony regarding the motor vehicle accident is credible. (Experience, judgment, and inferences drawn from the above.)

10) The records contains no medical reports related to the February 6, 2017 MVA. (Record.)

11) Friday, March 31, 2017, was Employee's day off; however, Mr. Wyche contacted her and asked her to come in because the other cook was unavailable. Employee had plans after work. While Employee was closing Employer's kitchen, Mr. Wyche said he wanted to reopen the restaurant to serve late arriving customers. He asked her to stay late. She said she had commitments that evening but told Mr. Wyche she would make the seafood jambalaya. Employee stated Mr. Wyche told her to leave and that she never had to come back. Employee gathered her purse and left; however, her cell phone was on the spice rack in the kitchen. She went back to get it and encountered Mr. Wyche. Employee said Mr. Wyche called her explicit

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names and she told him he would never be like Robert Allsander. Mr. Wyche ran at her and shoved her backwards by her chest to push her out the door; he pushed her against the doorjamb and hurt her chest. Employee contacted the police and made a statement. The next morning, April 1, 2017, she was very stiff. She went to Alaska Regional Hospital's emergency department, which diagnosed her with a cervical sprain and chest contusions. Employee's outstanding medical bills for the April 1, 2017 services are \$1,536.36. Employee's neck still hurts; however, she cannot seek follow up treatment because she cannot afford to incur any further medical bills. (Settles.)

12) Employee's testimony is credible. (Experience, judgment, and inferences drawn from the above.)

13) Mr. Wyche usually closes the restaurant at 10:00 p.m.; however, on March 31, 2017, a customer came in at 10:08 p.m. Employee said she would cook; however, the customer was waiting for others to join her. Mr. Wyche said at 10:20 p.m., Employee asked why he was asking her to cook for "all these people" and told him it was too late. Mr. Wyche told Employee she could leave and stated she got boisterous and he did too. He told her to get out of the restaurant. She went out the door and came back. Mr. Wyche grabbed her arm, turned her around and closed the door behind her. Mr. Wyche stated he did not assault Employee, but did shove her. Mr. Wyche is willing to do whatever the board decides. (Wyche.)

14) Mr. Wyche's admission he shoved Employee is credible. (Experience, judgment, and inferences drawn from the above.)

15) Outstanding medical bills for Employee's April 1, 2017 treatment at Alaska Regional Hospital's Emergency Department total \$1,536.36 and are comprised of the following:

Date of Service	Statement Date	Provider	Amount
April 1, 2017	April 11, 2017	Alaska Regional Hospital	\$724.36
April 1, 2017	May 8, 2017	Alaska Imaging Associates, Inc.	\$131.00
April 1, 2017	May 15, 2017	Denali Emergency Medical Assoc.	\$681.00
TOTAL			\$1,536.36

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 . . . to ensure . . . quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to . . . employers who are subject to the provisions of this chapter;

The board may base its decision on not only 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).

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

AS 23.30.045. Employer’s liability for compensation. (a) An employer is liable for and shall secure the payment to employees of the compensation payable under AS 23.30.041, 23.30.050, 23.30.095, 23.30.145, and 23.30.180 – 23.30.215. If the employer is a subcontractor and fails to secure the payment of compensation to its employees, the contractor is liable for and shall secure the payment of compensation to employees of the subcontractor. If the employer is a contractor and fails to secure the payment of compensation to its employees or the employees of a subcontractor, the project owner is liable for and shall secure the payment of compensation to employees of the contractor and employees of a subcontractor, as applicable.

(b) Compensation is payable irrespective of fault as a cause for the injury. . . .

AS 23.30.075. Employer's liability to pay. (a) An employer under this chapter, unless exempted, shall either insure and keep insured for the employer's liability under this chapter in an insurance company or association duly authorized to transact the business of workers' compensation insurance in the state, or shall furnish the division satisfactory proof of the employer's financial ability to pay directly the compensation provided for. If an employer elects to pay directly, the board may, in its discretion, require the deposit of an acceptable security, indemnity, or bond to secure the payment of compensation liabilities as they are incurred.

(b) If an employer fails to insure and keep insured employee subject of this chapter or fails to obtain a certificate of self-insurance from the division, upon conviction, the court shall impose a fine of \$10,000 and may impose a sentence of imprisonment for not more than one year. If an employer is a corporation, all persons who, at the time of the injury or death, had authority to insure the corporation or apply for a certificate of self-insurance, and the person actively in charge of the business of the corporation shall be subject to the penalties prescribed in this subsection and shall be personally, jointly, and severally liable together with the corporation for the payment of all compensation or other benefits for which the corporation is liable under this chapter if the corporation at that time is not insured or qualified as a self-insure.

AS 23.30.080. Employer's failure to insure. (a) If an employer fails to comply with AS 23.30.075 the employer may not escape liability for personal injury or deaths sustained by an employee when the injury sustained arises out of and in the usual course of the employment because

- (1) the employee assumed the risks inherent to or incidental to or arising out of the employment, or the risks arising from the failure of the employer to provide and maintain a reasonably safe place to work, or the risks arising from the failure of an employer to furnish reasonably safe tools or appliances; or because the employer exercises reasonable care in selecting reasonably competent employees in the business;
- (2) the injury was caused by the negligence of a co-employee;
- (3) the employee was negligent, unless it appears that the negligence was wilful and with intent to cause the injury or was the result of wilful intoxication on the part of the injured party. . . .

AS 23.30.082. Workers' compensation benefits guaranty fund. . . .

. . .

(c) Subject to the provisions of this section, employee employed by an employer who fails to meet the requirements of AS 23.30.075 and who fails to pay

compensation and benefits due to the employee under this chapter may file a claim for payment by the fund. In order to be eligible for payment, the claim form must be filed within the same time, and in the same manner, as a workers compensation claim. The fund may assert the same defenses as an insured employer under this chapter. . . .

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. . . . It shall be additionally provided that, if continued treatment or care or both beyond the two-year period is indicated, the injured employee has the right of review by the board. The board may authorize continued treatment or care or both as the process of recovery may require. . . .

Medical benefits including continuing care are covered by the AS 23.30.120(a) presumption of compensability. *Municipality of Anchorage v. Carter*, 818 P.2d 661, 664-665 (Alaska 1991).

AS 23.30.120. Presumptions. (a) In a proceeding for the enforcement of a claim for compensation under this chapter it is presumed, in the absence of substantial evidence to the contrary, that

- (1) the claim comes within the provisions of this chapter;
- (2) sufficient notice of the claim has been given;
- (3) the injury was not proximately caused by the intoxication of the injured employee or proximately caused by the employee being under the influence of drugs unless the drugs were taken as prescribed by the employee's physician;
- (4) the injury was not occasioned by the willful intention of the injured employee to injure or kill himself or another. . . .

An injured employee is entitled to the presumption of compensability as to each evidentiary question. *Sokolowski v. Best Western Golden Lion*, 813 P.2d 286, 292 (Alaska 1991). The presumption's application involves a three-step analysis. *Louisiana Pacific Corp. v. Koons*, 816 P.2d 1379, 1381 (Alaska 1991). First, an employee must establish a "preliminary link" between the claim and his employment. An employee need only adduce "some," "minimal" relevant evidence establishing a "preliminary link" between the claim and the employment. *Cheeks v. Wismer & Becker/G.S. Atkinson, J.V.*, 742 P.2d 239, 244 (Alaska 1987). The witnesses'

credibility is of no concern in this first step. *Excursion Inlet Packing Co. v. Ugale*, 92 P.3d 413, 417 (Alaska 2004).

Lay evidence in relatively uncomplicated cases is adequate to raise the presumption and rebut it. *VECO, Inc. v. Wolfer*, 693 P.2d 865, 871 (Alaska 1985). If an employer fails to rebut the raised presumption, the injured worker is entitled to benefits based solely on the raised but unrebutted presumption. *Williams v. State of Alaska, Department of Revenue*, 938 P.2d 1065 (Alaska 1997).

Once the preliminary link is established, the presumption is raised and attaches to the claim. The injured worker's employer, at the presumption's second stage, has the burden to overcome the raised presumption by coming forward with substantial evidence the claim is not compensable. *Miller v. ITT Arctic Services*, 577 P.2d 1044, 1046 (Alaska 1978). "Substantial evidence" is an amount of relevant evidence a reasonable mind might accept as adequate to support a conclusion. *Id.* at 1046. The employer's evidence is viewed in isolation, without regard to the employee's evidence. *Id.* at 1055. Therefore, credibility questions and weight accorded the employer's evidence is deferred until after it is decided if the employer produced a sufficient quantum of evidence to rebut the presumption. *Norcon, Inc. v. Alaska Workers' Compensation Board*, 880 P.2d 1051, 1054 (Alaska 1994); citing *Big K Grocery v. Gibson*, 836 P.2d 941 (Alaska 1992). The presumption may be overcome at the second stage when the employer or, in appropriate cases, the fund presents substantial evidence demonstrating a cause other than employment played a greater role in causing the disability or need for medical treatment. *Runstrom v. Alaska Native Medical Center*, AWCAC Decision No. 150, at 7 (March 25, 2011). The employer's and the fund's evidence is considered by itself and the employee's evidence is not weighed against the employer's or the fund's rebuttal evidence; credibility is not examined at the second stage. *Veco, Inc. v. Wolfer*, 693 P.2d 865, 869-70 (Alaska 1985).

If the employer or the fund produces substantial evidence an injury is not work-related and thus not compensable, or in claims not involving "work-relatedness" that the injury is not compensable, the presumption drops out, and the employee must prove all case elements by a preponderance of the evidence. *Louisiana Pacific Corp. v. Koons*, 816 P.2d 1381. The party with the burden of proving asserted facts by a preponderance of evidence must "induce a belief" in the fact finders' minds the

asserted facts are probably true. *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964). In the third step, evidence is weighed, inferences are drawn from the evidence, and credibility is considered.

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.

8 AAC 45.082. Medical treatment.

....

(d) Medical bills for an employee's treatment are due and payable within 30 days after the date the employer received the medical provider's bill and a completed report on form 07-6102. 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 . . . an itemization of the dates of travel, destination, and transportation expenses for each date of travel.

8 AAC 45.084. Medical travel expenses. (a) This section applies to expenses to be paid by the employer to an employee who is receiving or has received medical treatment.

(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.

(c) It is the responsibility of the employee to use the most reasonable and efficient means of transportation under the circumstances. If the employer demonstrates at a hearing that the employee failed to use the most reasonable and efficient means of transportation under the circumstances, the board may direct the employer to pay the more reasonable rate rather than the actual rate.

(d) Transportation expenses, in the form of reimbursement for mileage, which are incurred in the course of treatment or examination are payable when 100 miles or more have accumulated, or upon completion of medical care, whichever occurs first. . . .

8 AAC 45.142. Interest. (a) If compensation is not paid when due, interest must be paid at the rate established in AS 45.45.010 for an injury that occurred before July 1, 2000, and 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
. . . .

(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.

Interest awards recognize the time value of money, and they give "a necessary incentive to employers to release . . . money due." *Moretz v. O'Neill Investigations*, 783 P.2d 764, 765-66 (Alaska 1989).

8 AAC 45.177. Claims against the workers' compensation benefits guaranty fund.
. . . .

(f) In case of default by the employer in the payment of compensation due under an award and payment of the awarded compensation by the fund, the board shall issue a supplementary order of default. The fund shall be subrogated to all the rights of the employee and may pursue collection of the defaulted payments under AS 23.30.170. . . .

ANALYSIS

1) Did Employee suffer an injury arising out of an in the course of her employment with Employer on March 31, 201, which may entitle Employee to benefits under the Act?

Employee is entitled to a determination of whether her work related injury is compensable, so she can decide whether to obtain additional recommended medical care or seek impairment benefits. Employee claims injury when Mr. Wyche shoved her in the chest. Mr. Wyche admitted he shoved Employee. Employee's testimony is credible and uncontradicted, and is consistent with the limited medical records. AS 23.30.122. Employer failed to answer Employee's claim, therefore, by law the facts in Employee's claim are deemed admitted. 8 AAC 45.050(c)(1). Because these facts are undisputed, the presumption of compensability analysis is not applied. *Williams*.

Alternatively, Employee establishes a preliminary link and attaches the presumption to her claim through her testimony Mr. Wyche shoved her chest and Dr. Levy's medical opinion Employee sprained her cervical spine and had a chest contusion. AS 23.30.120; *Cheeks; Wolfer; Sokolowski*. Employer and the Fund, however, suggested Employee might have injured her chest and neck during a February 6, 2017 MVA. Credibility questions and weight accorded Employer's and the Fund's evidence are deferred until after it is decided if they have produced a sufficient evidence to rebut the presumption. *Norcon*. Lay evidence in uncomplicated cases can be sufficient to rebut the presumption. *Wolfer*. Mr. Wyche and Ms. Thomas's testimony is sufficient to rebut the presumption at the second stage. At the presumption analysis' third stage, Employee was able to prove her claim the March 31, 2017 injury is compensable with her credible testimony she had no injury from the MVA. AS 23.30.122. Further, no medical records evidence Employee sought medical care after the February 6, 2017 MVA. *Rogers & Babler; Saxton*.

Employee's March 31, 2017 injury arose out of and in the course of her employment with Employer and is compensable under the Act. AS 23.30.010; *Miller*.

2) If Employee's March 31, 2017 injury is compensable, to which benefits is Employee entitled?

Employee's compensable March 31, 2017 injury was the substantial cause of her known injuries as described in her report of injury, claim, medical records and testimony. Accordingly, as a matter of law, Employee is entitled to all benefits under the Act for which she may qualify, and Employer may be liable for additional medical care or other benefits in accordance with the Act. Absent a valid legal or factual reason to controvert Employee's future rights to benefits, Employer is required by law to pay benefits to which Employee becomes entitled, promptly and directly without an order. However, Employer retains its right to controvert Employee's rights to benefits in the future, and any claims for those benefits she may make, in accordance with the Act.

Employee's request for an order requiring Employer to pay for medical care for her neck sprain and chest contusion will be granted. AS 23.30.045; AS 23.30.095. Employer will be ordered to pay Employee's outstanding medical bills: \$724.36 to Alaska Regional Hospital; \$131.00 to Alaska Imaging Associates, Inc.; and \$681.00 to Denali Emergency Medical Associates. Further, Dr. Levy emphasized the need for Employee to follow up with a physician; however, Employee was unable to do so because her Employer did not have workers' compensation insurance coverage and Employee could not afford additional medical fees. Employee is entitled to continuing medical care recommended by Dr. Levy and any further medical care for which she may qualify under the Act. *Carter*.

Employee is entitled to payment from Employer for transportation expenses for medical treatment. 8 AAC 45.084(d). Transportation expenses, in the form of reimbursement for mileage, which are incurred in the course of treatment or examination are payable when 100 miles or more have accumulated, or upon completion of medical care, whichever occurs first. *Id.* Employee must submit an itemized log to Employer, which includes travel dates, destination, and transportation expenses for each travel date for medical treatment. 8 AAC 45.082(d). Employer must reimburse Employee \$0.535 per mile within 30 days of receiving Employee's log. 8 AAC 45.084.

3) If Employee's March 31, 2017 injury is compensable, does Employer owe interest?

The law requires an interest award to compensate for the time value of money. *Moretz*. Employee's medical providers are entitled to interest on the value of their bills. The interest rate for 2017 injuries is 4.25% per annum. 8 AAC 45.142. Therefore, Employer owes interest to Employee's medical providers as follows:

Interest on \$724.36 Alaska Regional Hospital bill	\$13.59
Interest on \$131.00 Alaska Imaging Associates, Inc. bill	\$ 2.46
Interest on \$681.00 Denali Emergency Medical Associates bill	\$12.78

4) When is the fund liable to pay any benefits awarded in this decision?

Employer is uninsured for workers' compensation liability and, therefore, is obligated to pay directly for benefits to which Employee is entitled for the March 31, 2017 work injury. AS 23.30.075. Employer's failure to obtain workers' compensation coverage will not permit Employer to escape liability for Employee's work related injury and benefits to which she is entitled. AS 23.30.080. In the event Employer does not comply with an order to pay benefits to which Employee is entitled, Employee filed a claim for payment from the Fund. AS 23.30.082.

The fund is not obligated to pay an injured worker's claim unless this decision awards compensation and Employer defaults on paying the compensation for a period of 30 days after it is due. 8 AAC 45.177(e). Therefore, if Employer does not pay the benefits awarded in this decision within 30 days of this decision's date, Employer will be in default as of the 30th day. Employee can then seek a supplementary order of default, which will determine the amount in default. At that point, the Fund is responsible to pay the awarded benefits, and then has a subrogation right to recover these benefits from Employer. *Id.*

CONCLUSIONS OF LAW

- 1) Employee suffered an injury arising out of an in the course of her employment with Employer on March 31, 201, which may entitle Employee to additional medical care and other benefits under the Act.
- 2) Employee's March 31, 2017 injury is compensable, and Employee is entitled to any and all benefits under the Act for which she may qualify.

- 3) Employee's medical providers are entitled to interest in amounts set forth in this decision.
- 4) The Fund is not liable to pay any benefits awarded in this decision unless Employer defaults on paying the compensation for 30 days after it is due and a supplementary order of default is issued.

ORDER

- 1) Employee suffered a compensable injury on March 31, 2017, and is entitled to benefits for which she qualifies under the Act and Employer may be liable for additional medical care or other benefits in accordance with the Act.
- 2) Absent a valid legal or factual reason to controvert Employee's future rights to benefits, Employer must pay benefits to which Employee may become entitled, promptly and directly to the person entitled to those benefits, without an order.
- 3) Employer retains the right to controvert Employee's rights to benefits in the future, as well as any claims for those benefits she may make, in accordance with the Act, for reasons other than those addressed in this decision and order.
- 4) Employer shall pay directly to Employee's medical providers any and all benefits to which she is currently entitled under the Act.
- 5) Employer is ordered to pay Alaska Regional Hospital \$737.95 (\$724.36 bill + \$13.59 interest = \$737.95).
- 6) Employer is ordered to pay Alaska Imaging Associates, Inc. \$133.46 (\$131.00 bill + \$2.46 interest = \$133.46).
- 7) Employer is ordered to pay Denali Emergency Medical Associates \$691.78 (\$681.00 bill + \$12.78 interest = \$691.78).
- 8) The Fund is not liable to pay any benefits awarded in this decision unless Employer defaults on paying the compensation for 30 days after it is due and a supplementary order of default is issued.

Dated in Anchorage, Alaska on August 24, 2017.

ALASKA WORKERS' COMPENSATION BOARD

_____/s/

Janel Wright, Designated Chair

_____/s/

Stacy Allen, Member

_____/s/

Amy Steele, Member

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

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.

