

# ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

MARY MARPLE,	)
	) INTERLOCUTORY
Employee,	) DECISION AND ORDER
Claimant,	)
	) AWCB Case No. 199628357
v.	)
	) AWCB Decision No. 17-0127
STATE OF ALASKA,	)
	) Filed with AWCB Anchorage, Alaska
Self-insured Employer,	) on November 9, 2017
Defendant.	)
_____	)

Mary Marple's (Employee) June 19, 2017 petitions and related issues were heard on November 7, 2017, in Anchorage, Alaska, a date selected on August 30, 2017. Non-attorney representative Barbara Williams appeared, testified and represented Employee who appeared by telephone and testified. Assistant Attorney General Anna Cometa appeared and represented the State of Alaska (Employer). Included, as a preliminary matter, was Employee's oral appeal of a decision from the prehearing conference designee entered on November 7, 2017. The designee issued a protective order on Employer's request, quashing a hearing subpoena issued for the adjuster in this case. The designee found Employee failed to provide the proposed witness with adequate notice for the hearing. An oral order at hearing affirmed the designee's ruling. This decision examines the oral order affirming the designee's ruling and addresses Employee's petitions on their merits. The record closed at the hearing's conclusion on November 8, 2017.

ISSUES

Employee contends the prehearing conference designee abused his discretion by issuing a protective order and quashing a subpoena she issued to require an adjuster's testimony at hearing. Employee seeks an order reversing the designee's decision and requiring the adjuster to testify.

Employer contends the designee properly issued a protective order because Employee failed to demonstrate the relevance of the adjuster's testimony and because she failed to give the adjuster adequate notice to appear by subpoena at the hearing. Employer seeks an order affirming the designee's decision.

**1) Was the designee's protective order quashing a subpoena for a hearing witness correct?**

Employee contends the division should send non-medical Social Security Administration (SSA) documents to her second independent medical evaluators (SIME).

Employer contends the SSA uses a different method to determine disability and does not address "causation." It contends Employee wants to "unduly influence" the SIME physicians' opinions. Employer opposes the division sending non-medical SSA documents to the SIME physicians.

**2) Should the division send Employee's non-medical SSA records to the SIME physicians?**

Employee seeks an order rescheduling her second SIME in a two-doctor SIME panel for an actual examination. She objects to the second physician performing only an SIME "records review."

Employer contends the second SIME may no longer be necessary. It contends this decision may order a record review and impose other restrictions on the second SIME, including restricting Employee's non-attorney representative from attending or recording a second examination.

**3) Will the remaining SIME appointment include a physical examination?**

Employee seeks an order striking the report from the first SIME physician, James Schwartz, M.D. She contends there was no medical record release to establish this SIME appointment, Employer did not make reasonable accommodations for Employee to see Dr. Schwartz and Employee contends he is not qualified professionally to address her situation.

Employer contends the division selected Dr. Schwartz to perform the SIME. It contends there is no support for Employee's request to strike his report. Employer further contends Employee's objections go to the weight of Dr. Schwartz's report, not its admissibility.

**4) Will Dr. Schwartz's SIME report be stricken from the record?**

FINDINGS OF FACT

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

- 1) On December 14, 1996, Employee slipped and fell on ice in her work parking lot, landing on her "back side." Employee complained of back and head pain. She worked for the Alaska State Troopers as a Radio Dispatcher II at the time she fell. An ambulance took Employee to the hospital. (Report of Occupational Injury or Illness, December 14, 1996).
- 2) A witness described Employee's fall as follows:

We both stepped off the curb at the same time onto the main roadway. It was at that moment when she slipped on the ice and fell onto her back. To give you an idea of how dramatic her fall was, her feet shot out in front of her into the air almost as high as the lower part of my chest. Mary fell hard onto the roadway and had the wind knocked out of her. . . . (John W. Wheeler statement, undated).

- 3) On November 5, 2009, magnetic resonance imaging (MRI) disclosed a large, right-sided synovial cyst at Employee's L4-5 spinal level. (MRI report, November 5, 2009).
- 4) On November 25, 2009, Employee underwent surgery for the synovial cyst. (Operative Report, November 25, 2009).
- 5) On January 15, 2015, Employer asked for an SIME. Employer based its petition on medical disputes between Steven Yocum, D.O. and Ronna Wright, M.D. on Employee's side versus William Andrews, M.D. and Andrea Stutesman, M.D. on Employer's side. (Petition; SIME form, January 15, 2015).

6) On February 4, 2015, the parties stipulated to an SIME. The designee directed Employer to provide chronological medical records pursuant to the applicable regulations. The designee also provided board questions for the SIME physicians to address and directed the parties to submit up to three questions per medical issue by a date certain. At the time of this agreement, Employee had relocated to Appomattox, Virginia. The summary mentioned no travel restrictions or required accommodations. (Prehearing Conference Summary, February 4, 2015).

7) On June 2, 2015, the parties stipulated to using an orthopedic surgeon and a neurologist for the SIME panel. The parties initially stipulated to Vincent Boswell, M.D., as the orthopedic surgeon. The designee noted:

Because Ms. Marple's ability to travel is limited and the board's list does not include a neurologist in the eastern U.S., the parties agreed to either ask Dr. Boswell if he could recommend a nearby neurologist, or ask if Dr. Boswell could forward the result of his physical examination to a neurologist with Ms. Marple's other medical records, and have the neurologist perform a records-review evaluation. . . .

. . . .

The parties discussed the need for a travel companion to accompany Ms. Marple to the SIME. Mr. Rhodes suggested a nurse, and Ms. Marple agreed. Ms. Marple will contact her doctor to ask if there are any other travel restrictions. (Prehearing Conference Summary, June 2, 2015).

8) On June 9, 2015, Williams stipulated to the SIME process on the applicable form. The form states as follows:

**Please indicate if the parties have stipulated to a specialty? SIME physician? If yes, list the specialty(s) and/or physician(s).** Dr. Vincent Boswell (orthopedist) and a neurosurgeon of his choice or, alternatively, a neurosurgeon from the SIME list for a records review; see below and PHC summary.

. . . .

N/A-the parties agreed to use Dr. Vincent Boswell as a panel SIME physician. In order to reduce the necessary travel for the employee, the parties also agree that the panel shall include a neurosurgeon recommended by Dr. Boswell in his locale. If Dr. Boswell is not able to recommend a local neurosurgeon to perform an examination of the employee on the same trip to Atlanta to see Dr. Boswell, then the parties agree that a neurosurgeon shall be selected by the board from the SIME panel list. The board will ask that neurosurgeon to perform a records review and to consult with Dr. Boswell to obtain any pertinent information regarding his physical

examination of the employee before issuing his own report. (Second Independent Medical Evaluation (SIME) Form, June 9, 2015; June 17, 2015).

9) On July 2, 2015, the parties agreed the SIME process was “moving along” and it was not necessary for a follow-up prehearing conference. The summary mentioned no travel restrictions or required accommodations. (Prehearing Conference Summary, July 2, 2015).

10) On July 31, 2015, Employer denied Employee’s right to all benefits for this injury based on EME reports from Drs. Andrews and Stutesman, who opined her work injury no longer is a substantial factor for her ongoing medical treatment or for any disability. They further stated Employee was medically stable without a work-related restriction or permanent partial impairment rating. (Controversion Notice, July 30, 2015).

11) On August 5, 2015, the board’s designee noted, “progress had been made on the SIME” since the prior prehearing conference. The designee further said that the “SIME designee had suspended any SIME activity until Employer’s petition” objecting to Employee’s SIME questions, had been resolved. The designee said he would “notify the SIME designee to proceed with the SIME.” (Prehearing Conference Summary, August 5, 2015).

12) On December 16, 2015, the designee said the SIME process had been “restarted” but it had again “come to a halt.” An examination was scheduled but the physician required imaging films before proceeding. Employee said she was unable to obtain the films so Employer sent her a release so it could obtain them. Employee then filed a petition for protective order against the requested medical release. Employer said if Employee was willing to obtain the films, Employer did not care if she signed the release. Employer pointed out that in most cases employees hand-carry films to an SIME physician or the SIME relies on radiologists’ interpretations, but in this instance, the doctor wanted the actual films. After some discussion, the designee ordered Employee to sign the requested release. (Prehearing Conference Summary, December 16, 2015).

13) On June 28, 2016, a designee told the parties that Dr. Boswell and another physician had not responded to attempts to schedule SIME appointments. The designee gave the parties information for another physician and the parties agreed to notify the designee how they wanted to proceed with the SIME by no later than July 29, 2016. (Prehearing Conference Summary, June 28, 2016).

14) On December 22, 2016, the parties were still attempting to stipulate to an SIME panel “that can meet Employee’s travel restrictions.” Employee said she would provide travel restrictions

from her physician and stated none of the SIME physicians on the board's list was close enough "to accommodate her restrictions." (Prehearing Conference Summary, December 22, 2016).

15) On February 1, 2017, Employer provided a resume for James Schwartz, M.D., orthopedic surgeon in Harrisonburg, Virginia, that "meets Employee's travel restrictions." Employer also noted George Chovanes, M.D., in Allentown, Pennsylvania, was a neurologist on the board's SIME list who also appeared to meet Employee's restrictions. Williams requested additional time to discuss these physicians with Employee and to submit her own resumes for the designee's review. The designee told the parties if they were unable to stipulate to specific physicians by the next prehearing conference, a designee would select an SIME panel at random from the resumes the parties submitted. (Prehearing Conference Summary, February 1, 2017).

16) By March 3, 2017, Employee still had not provided resumes for recommended SIME physicians. The parties agreed Employee's representative would have until 5:00 PM on March 2, 2017, to submit resumes to Employer's counsel by email. The designee would then randomly select the SIME panel, on March 3, 2017. (Prehearing Conference Summary, March 3, 2017).

17) On April 4, 2017, the designee provided the parties with notice of Employee's examination with Dr. Chovanes on May 8, 2017, at 9:00 AM. (Pullen letter, April 4, 2017).

18) On April 4, 2017, the designee also provided the parties with notice of Employee's examination with Dr. Schwartz on May 17, 2017, at noon. (Pullen letter, April 4, 2017).

19) Both April 4, 2017 letters to Employee advised her to contact the adjuster immediately to coordinate travel arrangements. The letters further noted the arrangements "are required to be arranged at least ten days before the SIME appointment. . . ." (Observations).

20) On May 4, 2017, Williams emailed designee Pullen to inform him "that the unavailability of the travel companion has Ms. Marple very upset." Williams said she told Employer's attorney "in light of her current distress, I felt it would be better to do a records review and make her available at a later date for examination." Williams contended Employee was so upset that she might not be able to participate in the May 8, 2017 SIME with Dr. Chovanes. Williams also contended she gave the adjuster names and phone numbers for three companies who provide travel companions for medical evaluations. Williams asked Pullen to make "this a part of today's pre-hearing record." She also reminded Pullen that he "must make accommodation for Ms. Marple and her medical conditions under the ADA." (Williams email to Pullen, May 4, 2017).

- 21) On May 4, 2017, Employer's attorney at the time, David Rhodes, emailed Pullen stating Williams told him Employee would not be attending the May 8, 2017 SIME even with a companion, and had asked if Employer would agree to have Dr. Chovanes conduct a records review on May 8, 2017, and allow him to examine her later. Rhodes stated he would not object to the proposal nor would he advocate for it but would leave it to the board to decide whether it needs to schedule a later travel date for an examination with Dr. Chovanes. Rhodes also said Williams said she was available to travel for the May 17, 2017 appointment with the second SIME physician, Dr. Schwartz. Rhodes advised that the adjuster would attempt to arrange for Williams to accompany Employee on May 17, 2017. (Rhodes email to Pullen, May 4, 2017).
- 22) On May 8, 2017, Employee attended the SIME with Dr. Schwartz. Williams accompanied her into the examination room and assisted her in completing paperwork. (Schwartz SIME report, May 17, 2017; Employee; Williams).
- 23) On May 17, 2017, Dr. Schwartz issued his SIME report. (*Id.*).
- 24) Dr. Schwartz's SIME report is not favorable to Employee. His opinions rely primarily on Employee's past medical records and her medical history therein. (Observations).
- 25) On July 13, 2017, designee Sue Reishus-O'Brien advised Rhodes that the SIME "had been on hold due to EE not attending. . . ." (ICERS database, Communication on July 13, 2017, accessed November 7, 2017).
- 26) On November 3, 2017, Employee obtained a subpoena requiring Memorie Pollys, the insurance adjuster in this case, to appear and testify at hearing on "the 7<sup>th</sup> day of November, 2017 at 11 AM." Employee served the subpoena on the adjuster and Employer's attorney on the same day by email. (Subpoena to Appear, November 3, 2017).
- 27) On November 7, 2017, the parties appeared at a prehearing conference where the designee addressed Employer's November 6, 2017 petition to quash and for a protective order concerning Employee's November 3, 2017 subpoena to require adjuster Pollys to testify at hearing. Employee contended the adjuster's testimony goes to issues surrounding the original SIME and is therefore relevant. Employer contended the subpoena did not give adequate notice to the adjuster and stated an inaccurate hearing date. Employee countered and contended she did not know the time the hearing would commence until recently, thus preventing her from issuing an earlier subpoena. After considering the parties' arguments, the designee granted the protective order and quashed the subpoena. Given time constraints, the designee also added Employee's oral appeal of

the designee's discovery order as a preliminary, hearing issue. (Prehearing Conference Summary, November 7, 2017).

28) Employee's subpoena did not give Polly's adequate notice. (Experience, judgment and observations).

29) At hearing, in respect to Dr. Schwartz's SIME Employee said the adjuster failed to account for Employee's travel restrictions set forth by her doctor. Williams drove her to Dr. Schwartz's office. Employee said the drive from her home to Dr. Schwartz's office took approximately two hours and Employee implied the trip planning was inadequate for her to have a 15-minute break "every two hours" as recommended by her physician. Consequently, Employee said she was "crying," "hysterical" and "went to pieces" when she arrived at Dr. Schwartz's office. And though she never mentioned to Dr. Schwartz that the lack of a 15-minute break sometime during the two-hour drive caused her extreme distress, in her view the doctor should have known she was upset, and given her time to compose herself or provided some other accommodation. She said he did not. Employee does not think she understood the questions Dr. Schwartz asked her and feared he did not understand her medical needs or issues. Had the adjuster made better travel arrangements, Employee thinks she would have made a much better presentation to Dr. Schwartz. She implies the resulting report may have been more favorable to her. Employee also contended the lack of a valid medical release invalidates Dr. Schwartz's examination. Given these problems, Employee said an order should issue striking Dr. Schwartz's SIME report from the record. (Employee).

30) Employee could not remember how soon before the appointment with Dr. Schwartz Williams showed up at her home to drive her to the appointment. There was traffic and road construction along the way and flaggers required Williams' car to stop at least once and possibly twice. Employee could not remember how long the car stopped but said she could not get out of the vehicle because "it was not safe." (*Id.*).

31) Williams said the adjuster initially sent her to an airport too far from Employee's home. Williams changed the travel arrangements to a different airport. Otherwise, Williams said she would have driven two or three hours in the dark to arrive at Employee's home. Even so, it took Williams two hours to drive Employee to Dr. Schwartz's office. Williams offered as evidence a mostly illegible record stating the 15-minute break restriction. The record is not in Employee's file. (Williams; observations).



32) According to the division's digitized paper file and its electronic file, Employee has not filed a claim for any benefits in this case. (Observations).

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 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 23.30.005. Alaska Workers' Compensation Board. . . .**

....

(h) . . . Process and procedure under this chapter shall be as summary and simple as possible. The department, the board or a member of it may for the purposes of this chapter subpoena witnesses. . . .

In *Miller v. Municipality of Anchorage*, AWCB decision No. 13-0099 (August 20, 2013), the board quashed a subpoena issued only seven days before hearing to the division director. *Miller* found seven days' notice for any witness, much less a public official, is inadequate notice to subpoena a witness to testify at a hearing.

**AS 23.30.095. Medical treatments, services, and examinations.**

....

(k) In the event of a medical dispute . . . between the employee's attending physician and the employer's independent medical evaluation, the board may require that a second independent medical evaluation be conducted by a physician

or physicians selected by the board from a list established and maintained by the board. . . .

In *Church v. Arctic Fire & Safety*, AWCAC Decision No. 126 (December 31, 2009), the commission addressed an injured worker’s claim that the board had erred by ordering an SIME that failed to include a physical examination. *Church* concluded the board was in the best position to assess what an SIME needs to include for the board to resolve any disputes in its understanding of the medical evidence. The board in *Church* had concluded that “an extensive record” already existed on how Church’s spine condition developed, his surgery was already completed, a physical examination was unlikely to help determine causation, and not requiring a physical examination made the SIME more cost-effective. Lastly, the *Church* board left open the possibility of a physical examination if the SIME doctor requested one.

**AS 23.30.135. Procedure before the board.** (a) In making an investigation or inquiry or conducting a hearing the board is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this chapter. The board may make its investigation or inquiry or conduct its hearing in the manner by which it may best ascertain the rights of the parties. . . .

**8 AAC 45.054. Discovery.** . . .

. . . .

(c) The board or division will issue subpoenas and subpoenas duces tecum accordance with the Act. . . .

**8 AAC 45.080. Pleadings.** . . .

. . . .

(f) **Stipulations.** . . .

. . . .

(2) Stipulations between the parties may be made at any time in writing before the close of the record, or may be made orally in the course of a hearing or prehearing.

(3) Stipulations of fact or procedure are binding upon the parties to the stipulation and have the effect of an order unless the board, for good cause, relieves a party from the terms of the stipulation. . . .

**8 AAC 45.092. Selection of an independent medical examiner.** . . .

(h) If the board requires an evaluation under AS 23.30.095(k), the board will, in its discretion, direct

(1) a party to make two copies of all medical records, including medical providers' depositions, regarding the employee in the party's possession, put the copies in chronological order by date of treatment with the initial report on top and the most recent report at the end, number the copies consecutively, and put the copies in two separate binders. . . .

. . . .

(j) After a party receives an examiner's report, communication with the examiner is limited as follows and must be in accord with this subsection. If a party wants the opportunity to

(1) submit interrogatories or depose the examiner, the party must

(A) file with the board and serve upon the examiner and all parties, within 30 days after receiving the examiner's report, a notice of scheduling a deposition or copies of the interrogatories; if notice or the interrogatories are not served in accordance with this paragraph, the party waives the right to question the examiner unless the opposing party gives timely notice of scheduling a deposition or serves interrogatories; and

(B) initially pay the examiner's charges to respond to the interrogatories or for being deposed; after a hearing and in accordance with AS 23.30.145 or AS 23.30.155(d), the charges may be awarded as costs to the prevailing party;

(2) communicate with the examiner regarding the evaluation or report, the party must communicate in writing, serve the other parties with a copy of the written communication at the same time the communication is sent or personally delivered to the examiner, and file a copy of the written communication with the board; or

(3) question the examiner at a hearing, the party must initially pay the examiner's fee for testifying; after a hearing and in accordance with AS 23.30.145 or AS 23.30.155(d), the board will, in its discretion, award the examiner's fee as costs to the prevailing party.

(k) If a party's communication with an examiner is not in accordance with (j) of this section, the board may not admit the evidence obtained by the communication at a hearing and may not consider it in connection with an agreed settlement.

ANALYSIS

**1) Was the designee’s protective order quashing a subpoena for a hearing witness correct?**

The legislature intends that workers’ compensation hearings be “fair” overall and to be “impartial and fair to all parties.” AS 23.30.001(1), (4). Parties have a right to request and obtain subpoenas to enforce witness participation at hearings and depositions. AS 23.30.005(h); 8 AAC 45.054(c). However, the rules apply fairly to all parties, including parties’ representatives. The designee found Employee’s short notice to Employer’s adjuster was “unreasonable” to “give a witness [time] to prepare to appear at hearing” regardless of the witness’ status as a public official or private citizen. *Miller*. Employee knew of the November hearing on August 30, 2017. Nothing prevented her from obtaining a subpoena for Pollys at any time thereafter, with adequate notice to the witness. She did not. Further, Employee did not explain the relevance of the adjuster’s testimony. The designee’s order and the oral order at hearing were correct.

**2) Should the division send Employee’s non-medical SSA records to the SIME physicians?**

Contrary to Employee’s assertions, the administrative regulations specify what the division sends to an SIME physician. This expressly includes “all medical records, including medical providers’ depositions regarding the employee. . . .” 8 AAC 45.092(h). While the regulation arguably appears to give the division “discretion,” possibly to send documents other than medical records, nothing in the multi-section administrative regulation regarding SIME records suggests anything other than medical records should go to the SIME physicians. Therefore, Employee’s request runs counter to the regulations’ plain and express language.

Furthermore, provided the parties make a timely request, both parties have the right to “submit interrogatories or depose the examiner” after the parties receive the SIME physicians’ reports. 8 AAC 45.092(j)(1-4). Thus, following the examinations and their receipt of the reports, a party may timely send whatever they want to an SIME examiner and ask if the document in question changes any opinions expressed in the SIME reports. 8 AAC 45.092(k). Similarly, a party can depose the SIME physician post-report, provide non-medical documents as exhibits, and ask the same question. In short, the regulations do not support Employee’s requested relief but do provide

an alternative. The division will not provide non-medical SSA records to the SIME physicians though the parties may, timely, post-report, in accordance with the applicable regulations.

**3) Will the remaining SIME appointment include a physical examination?**

On January 15, 2015, Employer requested an SIME based on medical disputes between attending physicians and EMEs. AS 23.30.095(k). Employee never opposed the SIME and eventually stipulated to a two-physician panel. On January 15, 2018, just over two months from now, it will have been three years since Employer requested an SIME and two and one-half years since the parties filed their SIME stipulation form. Only one-half of the SIME is completed. This is an unusual and unreasonably long time to accomplish an SIME. *Rogers & Babler*. It is the opposite of “quick, fair and efficient,” and “summary and simple.” AS 23.30.001(1); AS 23.30.005(h).

Furthermore, Employee’s representative signed a written stipulation agreeing to a records review SIME in the event the original agreed-upon SIME physician, Dr. Boswell, could not recommend a local neurologist. 8 AAC 45.080(f)(2-3). As it turned out, Dr. Boswell was not even available to perform the SIME much less recommend a neurologist. Though the facts to which the parties stipulated changed somewhat, the fact Dr. Boswell did not perform the first SIME does not change the parties’ original agreement to conduct a record review second SIME.

Lastly, there is already an ample medical record in this case. Employee’s medical records well document her care since 1996. She has already undergone surgery, which she attributes to her work injury with Employer, and it is unlikely another physical examination at this point would provide useful information on “causation” issues. Given the unreasonable time this SIME has taken to complete, and the lack of a clear way forward to satisfy Employee’s travel restrictions, the second SIME will go forward with Dr. Chovanes as a record review only. The parties will supplement the SIME medical records to bring them current and the designee will send the updated records to Dr. Chovanes for his review. The designee will inquire of Dr. Chovanes to see if he thinks a physical exam is necessary. Should he insist on a physical exam to complete his assignment, the parties can revisit this issue at a prehearing conference. AS 23.30.135; *Church*.

**4) Will Dr. Schwartz's SIME report be stricken from the record?**

Employee is not happy with Dr. Schwartz's SIME report. She raises a litany of reasons to strike it from the record. Her main concern is that the adjuster did not provide ample trip planning for Williams to take Employee from her home to the SIME appointment without causing Employee undo physical and emotional stress. However, both Williams and Employee testified the trip between Employee's house and Dr. Schwartz's office took two hours including time the vehicle stopped for road construction delays and when they stopped to buy water. Employee's physician advised that Employee was to have a 15-minute break from driving in a motor vehicle every two hours. Since the trip only took two hours, it is unclear how Employee should have become so uncomfortable during and after a two-hour trip. The trip, which did not exceed two hours, did not violate Employee's doctor-ordered restrictions. As an aside, the report setting forth the restrictions is mostly illegible and has not been filed or served on a medical summary as required by law. *Rogers & Babler*.

Furthermore, the SIME with Dr. Schwartz is completed. Employee fails to explain convincingly why any of her proffered infirmities with the SIME process affected the actual examination and Dr. Schwartz's report. Employee stipulated to the SIME. Employee's representative is aware that medical records go to an SIME physician. *Rogers & Babler*. Employee failed to explain why the alleged lack of a current medical release at the time of Dr. Schwartz's examination invalidates the agreed-to SIME. Dr. Schwartz bases his opinions primarily on Employee's medical records and her medical history therein. Striking Dr. Schwartz's report and requiring another SIME physician to perform a new exam would not be a reasonable cost to Employer under these circumstances. AS 23.30.001(1). In short, Employee provides no compelling reason to strike the report, for which Employer has presumably already paid. Employee is free to assail Dr. Schwartz and his report at a merits hearing and attempt to weaken their influence. However, these arguments go to the report's weight, not its admissibility. Consequently, Employee's petition to strike Dr. Schwartz's report from the record is without merit.

CONCLUSIONS OF LAW

1) The designee's protective order quashing a subpoena for a hearing witness was correct.

- 2) The division will not send Employee's SSA non-medical records to the SIME physicians.
- 3) The remaining SIME appointment with Dr. Chovanes will not include a physical examination.
- 4) Dr. Schwartz's SIME report will not be stricken from the record.

ORDER

- 1) The designee's November 7, 2017 order granting a protective order and quashing a subpoena is affirmed.
- 2) Employee's June 19, 2017 petition to include non-medical SSA documents in the records the division sends to the SIME physicians is denied.
- 3) Employee's June 19, 2017 petition to compel Employer to arrange for a physical examination by Dr. Chovanes is denied.
- 4) The appropriate designee is directed to reschedule the SIME with Dr. Chovanes at his earliest possible opportunity, as a record review SIME only. If Dr. Chovanes requires a physical examination to complete his assignment, he may so advise the division and the parties may revisit this issue at a prehearing conference.
- 5) The parties are directed to supplement the SIME records with any relevant medical records for treatment obtained since the last SIME record supplementation.
- 6) Employee is directed to obtain a legible copy of the medical report she filed at hearing setting forth Employee's travel restrictions, and file and serve it on a medical summary.

Dated in Anchorage, Alaska on November 9, 2017.

ALASKA WORKERS' COMPENSATION BOARD

\_\_\_\_\_/s/  
William Soule, Designated Chair

\_\_\_\_\_/s/  
Brett Stubbs, Member

\_\_\_\_\_/s/  
Donna Phillips, Member

PETITION FOR REVIEW

A party may seek review of an interlocutory other non-final Board decision and order by filing a petition for review with the Alaska Workers' Compensation Appeals Commission. Unless a petition for reconsideration of a Board decision or order is timely filed with the board under AS 44.62.540, a petition for review must be filed with the commission within 15 days after service of the board's decision and order. If a petition for reconsideration is timely filed with the board, a petition for review must be filed within 15 days after the board serves the reconsideration decision, or within 15 days from date the petition for reconsideration is considered denied absent Board action, whichever is earlier.

RECONSIDERATION

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

MODIFICATION

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

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Interlocutory Decision and Order in the matter of Mary Marple, employee / claimant v. State of Alaska, self-insured employer; defendants; Case No. 199628357; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties by First-Class U.S. Mail, postage prepaid, on November 9, 2017.

\_\_\_\_\_/s/  
Elizabeth Pleitez, Office Assistant