ALASKA WORKERS' COMPENSATION BOARD

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

MARTIN PADILLA, Employee, Claimant, v. UNIVERSITY OF ALASKA, Self-Insured Employer, Defendant.	)	INTERLOCUTORY DECISION AND ORDER AWCB Case No. 201607261 AWCB Decision No. 17-0138 Filed with AWCB Anchorage, Alaska on December 13, 2017

On November 30, 2017, a date selected on November 22, 2017, a hearing occurred in Anchorage, Alaska to determine whether to approve the parties' proposed compromise and release (C&R) agreement. Martin Padilla (Employee) appeared, represented himself and testified. Attorney Jeffrey Holloway appeared by telephone and represented University Of Alaska (Employer). There were no other witnesses. The record closed at the hearing's conclusion on November 30, 2017.

ISSUE

An oral order at the hearing denied the C&R after the panel found it not to be in Employee's best interest. Employee requested a written decision and order explaining the denial.

Was the oral order denying the proposed C&R correct?

FINDINGS OF FACT

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

1) Employee was a student at Employer's Anchorage campus and worked part-time as a parking enforcement officer. (Deposition of Martin Padilla, June 20, 2017, at 25-26). In early December 2015, Employee slipped in a parking lot while working and felt "something" in his right knee although there was no pain at the time. (*Id*. at 44; Employee).

2) Employee's knee gradually became more painful, and on December 4, 2015, he went to the Veteran's Administration (VA) Clinic, where he reported twisting his right knee when he slipped on ice. (Settlement Agreement, November 14, 2017, at 1; Employee).

3) Employee reported the injury to one of his two supervisors within a week and filled out a written report, although he cannot recall specifically to which of his supervisors, Ahmad or Brian, he spoke or gave the report. (Employee).

4) Employee gave Employer timely notice of his injury. Employer through its supervisors had actual knowledge of the injury. (Judgment and inferences drawn from the above).

5) On March 10, 2016, x-rays of Employee's right knee showed degenerative changes to his tibiofemoral and patellofemoral joints. (VA Consultation Report, March 10, 2016).

6) On May 10, 2016, Timothy Vanderbilt, M.D., saw Employee at the VA Clinic, reviewed the x-rays and saw no significant degenerative joint disease. Dr. Vanderbilt ordered a right knee magnetic resonance imaging (MRI) study. (VA Consultation Report, May 10, 2016).

7) On May 11, 2016, the right knee MRI revealed a subacute complex osteochondral fracture and a complex medial meniscus tear. (VA Radiologic Examination Report, May 11, 2016).

8) A subacute fracture is one that likely occurred from weeks to months earlier. (Observations, experience).

9) On May 16, 2016, Dr. Vanderbilt assessed, "Right knee pain that started acutely in December 2015." Dr. Vanderbilt recommended a total knee replacement. (VA Chart Note, May 16, 2016).

10) On June 3, 2016, Michael Fraser, M.D., saw Employee for an employer's medical evaluation (EME). Dr. Fraser diagnosed osteonecrosis of the femoral condyle and subsequent collapse. He stated an acute injury in December 2015 would have shown up on the March 2016 x-rays. In response to a question asking him to identify all substantial factors in bringing about Employee's "diagnosed condition," Dr. Fraser included age, medical comorbidities, outside activities, and the fact that in a large percentage of cases, there is no identified cause for osteonecrosis in the knee. Dr. Fraser did not include the work injury as a substantial factor. He concluded the workplace injury had not aggravated any preexisting condition. Dr. Fraser agreed the fragmentation of the

subchondral bone shown on the May 2016 MRI warranted a total knee replacement, but he disagreed the December 2015 work injury was the cause. (Fraser report, June 3, 2016).

11) On June 13, 2016, Dr. Vanderbilt performed the total knee replacement. (VA Operative Note, June 13, 2016).

12) On October 8, 2017, Dr. Fraser reviewed additional medical records and issued a supplemental report. He diagnosed osteonecrosis in the medial femoral condyle with collapse of the subchondral bone, and end-stage arthritis. When asked to identify all substantial factors in bringing about Employee's "disability and need for medical treatment," Dr. Fraser stated "the process" was most consistent with spontaneous osteonecrosis of the knee, which was "idiopathic." He identified several factors associated with osteonecrosis of the knee: obesity, sickle cell anemia, liposomal fat storage diseases, and other medical conditions, but he noted none of these causes were present in Employee. Dr. Fraser did not list the work injury as a causative factor. He also stated the osteonecrosis could be secondary to trauma with significant bone bruising or subchondral fracture. When asked which of the identified factors was the most significant, Dr. Fraser answered, "osteonecrosis," but he also stated

> [T]here is no indication that a minor twisting injury to the knee in a relatively healthy male is causative of the underlying osteonecrosis. It is more likely than not that the minor twisting injury was associated with the initial onset of symptoms for an underlying process that was unrecognized at that time.

Dr. Fraser found Employee to be medically stable and provided a 10 percent, whole-person permanent partial impairment (PPI) rating for Employee's right knee pursuant to the American Medical Association Guides to the Evaluation of Permanent Impairment, Sixth Edition. He said no PPI was attributable to the work injury. (Fraser Supplemental EME Report, October 8, 2017).

13) "Idiopathic" means "without a known cause." (Mosby's Medical Dictionary 864 (6th Ed. 2002).

14) The benefit for a 10 percent PPI rating is $17,700.00. (Experience, judgment, observations).

15) On November 14, 2017, the parties filed a proposed C&R. Under the proposed agreement, Employee would waive all past and future benefits, including medical, medical related transportation, disability, PPI, reemployment benefits, penalties and interest in exchange for $12,500.00. (Settlement Agreement, November 14, 2017).

16) Because Employee had no attorney and he was waiving future medical benefits, a board panel had to review the C&R to determine if it was in Employee's best interest. (Experience, judgment and inferences drawn from the above).

17) On November 21, 2017, the division notified the parties that the board panel was unable to determine if the proposed C&R was in Employee's best interest. The notification explained Employee's waiver of future medical benefits did not appear to be in Employee's best interest given Dr. Fraser's October 8, 2017 EME report. The division told the parties they could request an oral hearing. (C&R Denial Letter, November 21, 2017).

18) At the November 30, 2017 hearing, Employee said he had injured his right knee in 2010, but recovered quickly. He had never even thought about his knee between 2010 and the 2015 injury. He explained that while working in parking enforcement he had slipped on a patch of ice. While he did not fall, he felt "something" in his right knee, but no immediate pain. Over the next few days, the pain got worse, and by the end of the semester, he could barely walk. On December 4, 2015, he went to the VA clinic for his knee, but they were unable to schedule an appointment for a few months. Employee said while he still did not have full range of motion after the right knee replacement, he was able to walk without limping. Employee believed the C&R was in his best interest because he had only been able to work sporadically in the two years since the injury, his landlord was evicting him, and he needed glasses and dental work. Employee explained he had been through hard times before, and will get through them again. (Employee).

19) Employer disagreed Dr. Fraser's October 2017 report said the 2015 work incident aggravated Employee's preexisting condition. Employer contended Dr. Fraser clearly stated the cause was "idiopathic" and not related to the work injury. Employer also contended Employee lost the AS 23.30.120 presumption because he failed to timely report his injury. (Employer's arguments).

20) Employee's complaints of pain in his right knee began in December 2015, well before the March 2016 x-rays, and steadily worsened. At hearing, and throughout the medical reports, Employee complained he was unable to get a referral to the VA for his right knee in a timely manner. (Employee; medical records).

21) Employee is credible. (Experience, judgment and observations).

PRINCIPLES OF LAW

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 . . . 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 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. . . .
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> **AS 23.30.012. Agreements in regard to claims.** (a) At any time after death, or after 30 days subsequent to the date of the injury, the employer and the employee or the beneficiary or beneficiaries, as the case may be, have the right to reach an agreement in regard to a claim for injury or death under this chapter, but a memorandum of the agreement in a form prescribed by the director shall be filed with the division. Otherwise, the agreement is void for any purpose. . . .
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> (b) The agreement shall be reviewed by a panel of the board if the claimant or beneficiary is not represented by an attorney licensed to practice in this state . . . or the claimant is waiving future medical benefits. If approved by the board, the agreement is enforceable the same as an order or award of the board and discharges the liability of the employer for the compensation notwithstanding the provisions of AS 23.30.130, 23.30.160, and 23.30.245. The agreement shall be approved by the board only when the terms conform to the provisions of this chapter, and, if it involves or is likely to involve permanent disability, the board may require an impartial medical examination and a hearing in order to determine whether or not to approve the agreement. A lump-sum settlement may be approved when it appears to be to the best interest of the employee or beneficiary or beneficiaries.

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. However, if the condition requiring the treatment, apparatus, or medicine is a latent one, the two-year period runs from the time the employee has knowledge of the nature of the employee's disability and its relationship to the employment and after disablement. 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.

AS 23.30.100. Notice of injury or death. (a) Notice of injury or death in respect to which compensation is payable under this chapter shall be given within 30 days after the date of such injury or death to the board and to the employer.

(b) The notice must be in writing, contain the name and address of the employee, a statement of the time, place, nature, and cause of the injury or death, and authority to release records of medical treatment for the injury or death, and be signed by the employee or by a person on behalf of the employee, or, in case of death, by a person claiming to be entitled to compensation for the death or by a person on behalf of that person.

(c) Notice shall be given to the board by delivering it or sending it by mail addressed to the board's office, and to the employer by delivering it to the employer or by sending it by mail addressed to the employer at the employer's last known place of business. If the employer is a partnership, the notice may be given to a partner, or if a corporation, the notice may be given to an agent or officer upon whom legal process may be served or who is in charge of the business in the place where the injury occurred.

(d) Failure to give notice does not bar a claim under this chapter

(1) If the employer, an agent of the employer in charge of the business and the place where the injury occurred, or the carrier had knowledge of the injury or death and the board determines that the employer or carrier has not been prejudiced by failure to give notice;

(2) the board excuses the failure on the ground that for some satisfactory reason notice could not be given;

(3) unless objection to the failure is raised before the board of the first hearing of a claim for compensation in respect to the injury or death.

> **AS 23.30.110. Procedure on claims**. . . .
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> (c) Before a hearing is scheduled, a party seeking a hearing shall file a request for hearing together with an affidavit stating that the party has completed necessary discovery, obtained necessary evidence, and is prepared for the hearing. An opposing party shall have 10 days after the hearing request is filed to file a response. . . . If the employer controverts a claim on a board-prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied.
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> **AS 23.30.120. Presumptions.** (a) In a proceeding for the enforcement of a claim for compensation under this chapter it is presumed, in the absence of substantial evidence to the contrary, that
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> (1) the claim comes within the provisions of this chapter . . . .
> . . . .
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> (b) If delay in giving notice is excused by the board under AS 23.30.100(d)(2), the burden of proof of the validity of the claim shifts to the employee notwithstanding the provisions of (a) of this section. . . .

Benefits sought by an injured worker are presumptively compensable and the presumption is applicable to any claim for compensation under the Act. *Meek v. Unocal Corp*., 914 P.2d 1276 (Alaska 1996). 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 attaches, the employer must rebut the raised presumption with "substantial evidence." *Huit v. Ashwater Burns, Inc*., 372 P.3d 904 (Alaska 2016). The fact-finders do not weigh credibility at this stage. *Veco, Inc. v. Wolfer*, 693 P.2d 865 (Alaska 1985).

If the employer's evidence rebuts the presumption, it drops out and the employee must prove his 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 v. Ashwater Burns, Inc*., 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 drawn and credibility

considered. *Wolfer*. An injured worker is entitled to a presumption of continued work-related disability. *Kodiak Oilfield Haulers v. Adams*, 777 P.2d 1145 (Alaska 1989).

A fundamental principle in workers' compensation law is the "eggshell skull doctrine," which states an employer must take an employee "as he finds him." *Fox v. Alascom, Inc.*, 718 P.2d 977, 982 (Alaska 1986). A pre-existing condition does not disqualify a claim if the employment aggravated, accelerated or combined with the pre-existing condition to produce the disability or need for medical treatment for which compensation is sought. Under the Act, there is no distinction between the aggravation of symptoms and the aggravation of the underlying condition. *DeYonge v. NANA/Marriott*, 1 P.3d 90, 96 (Alaska 2000).

> **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 finding of credibility "is binding for any review of the Board's factual findings." *Smith v. CSK Auto, Inc.*, 204 P.3d 1001, 1008 (Alaska 2009).

> **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 23.30.190. Compensation for permanent partial impairment; rating guides.** (a) In case of impairment partial in character but permanent in quality, and not resulting in permanent total disability, the compensation is $177,000 multiplied by the employee's percentage of permanent impairment of the whole person. The percentage of permanent impairment of the whole person is the percentage of impairment to the particular body part, system, or function converted to the percentage of impairment to the whole person as provided under (b) of this section. The compensation is payable in a single lump sum, except as otherwise provided in AS 23.30.041, but the compensation may not be discounted for any present value considerations.

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 in the same or any other employment;

8 AAC 45.160. Agreed settlements. (a) The board will review a settlement agreement that provides for the payment of compensation due or to become due and that undertakes to release the employer from any or all future liability. A settlement agreement will be approved by the board only if a preponderance of evidence demonstrates that approval would be for the best interest of the employee or the employee's beneficiaries. The board will, in its discretion, require the employee to attend, and the employer to pay for, an examination of the employee by the board's independent medical examiner. If the board requires an independent medical examination, the board will not act on the agreed settlement until the independent medical examiner's report is received by the board.

(b) All settlement agreements must be submitted in writing to the board, must be signed by all parties to the action and their attorneys or representatives, if any, and must be accompanied by form 07-6117.

. . . .

(d) The board will, within 30 days after receipt of a written agreed settlement, review the written agreed settlement, the documents submitted by the parties, and the board's case file to determine

(1) if it appears by a preponderance of the evidence that the agreed settlement is in accordance with AS 23.30.012; and

(2) if the board finds the agreed settlement

(A) is in the employee's best interest, the board will approve, file, and issue a copy of the approved agreement in accordance with AS 23.30.110(e); or

(B) lacks adequate supporting information to determine whether the agreed settlement appears to be in the employee's best interest or if the board finds that the agreed settlement is not in the employee's best interest, the board will deny approval of the agreed settlement, will notify the parties in writing of the denial, and will, in the board's discretion, inform the parties

(i) of the additional information that must be provided for the board to reconsider the agreed settlement; or

(ii) that either party may ask for a hearing to present additional evidence or argument for the board to reconsider the agreed settlement; to ask for a hearing under this paragraph, a party may write to the board or telephone the division; an affidavit of readiness for hearing is not required; the procedures in 8 AAC 45.070 and 8 AAC 45.074 do not apply to a hearing under this subparagraph unless a party requests a hearing by filing an affidavit of readiness for hearing. If a hearing is held under this section, the board will, in its discretion, notify the parties orally at the hearing of its decision or in writing within 30 days after the hearing; if after a hearing the board finds the preponderance of evidence supports the conclusion that the agreed settlement appears to be in the employee's best interest, the board will approve and file the agreed settlement in accordance with AS 23.30.110(e); the evidence is insufficient to determine whether the agreed settlement appears to be in the employee's best interest, the board will deny approval of the agreed settlement and request additional information from the parties; or the agreed settlement does not appear to be in the employee's best interest, the board will deny approval of the agreed settlement; the board will not prepare a written decision and order containing findings of fact and conclusions of law unless, within 30 days after the board's notification, a party files with the board a written request for findings of fact and conclusions of law together with the opposing party's written agreement to the request.

8 AAC 45.195. Waiver of procedures. A procedural requirement in this chapter may be waived or modified by order of the board if manifest injustice to a party would result from a strict application of the regulation. However, a waiver may not be employed merely to excuse a party from failing to comply with the requirements of law or to permit a party to disregard the requirements of law.

ANALYSIS

Was the oral order denying the proposed C&R correct?

Employee has no attorney. Along with all other benefits to which he may be entitled for this injury, Employee waives future medical benefits under the proposed C&R. AS 23.30.095(a). Thus, AS 23.30.012(b) requires review and approval. Under that section, approval comes only if the settlement agreement appears to be in Employee's best interest. Since an oral order denied approval in this instance, the parties are entitled to an explanation. Employee requested a written decision. Ordinarily, there will be no written decision on a C&R denial unless a party files a written request and the opposing party agrees to the request. 8 AAC 45.160(d)(ii). Since Employee is self-represented and is not sophisticated in respect to workers' compensation practice and procedure, this rule is relaxed to accept Employee's oral request. 8 AAC 45.195.

The presumption analysis under AS 23.30.120 does not directly apply to C&R review under AS 23.30.012. However, presumption factors apply in considering whether the agreement is in Employee's best interest. For example, appropriate considerations include whether Employee raised the presumption and whether Employer rebutted it. Additionally, reviewers consider whether a limiting statute may bar or otherwise diminish the claim and if Employee is likely to prove his entitlement to benefits by a preponderance of the evidence. These are all appropriate factors to consider in determining whether an agreement is in Employee's best interest.

Benefits are payable under the Act if disability or need for medical treatment "arose out of and in the course of employment." AS 23.30.010(a). To establish the statutory presumption under AS 23.30.120(a)(1) that disability or need for medical treatment arose out of and in the course of his employment, Employee must establish a causal link between his employment and his disability or need for treatment. *Meek.* Based on the evidence currently in the file, Employee raised the presumption through his testimony as to how the injury occurred and through Dr. Vanderbilt's May 16, 2015 statement that Employee's right knee pain started acutely in December 2015. Further, Dr. Fraser's October 8, 2017 EME report also raises the presumption when it states, "It is more likely that the minor twisting injury was associated with the initial onset of his symptoms from the underlying process that was unrecognized at that time." *Tolbert*.

The "coverage" statute says nothing about the cause of any underlying, preexisting "condition." AS 23.30.010(a).

Because Employee raised the presumption, Employer was required to rebut it with substantial evidence showing the disability or need for medical treatment did not arise out of and in the course of employment. Employer can meet its burden either with substantial evidence showing that something other than work was the cause of disability or need for treatment, or by evidence that work could not have caused the disability or need for medical treatment. *Huit*. Without regard to credibility, and based on the current record, Employer has not rebutted the presumption. *Wolfer*. In his October 8, 2017 EME report, Dr. Fraser agreed it is "more likely" Employee's twisting injury at work caused his symptom onset for an underlying, but unrecognized process in his right knee. In other words, Dr. Fraser said the work injury aggravated Employee's preexisting right knee condition. *DeYonge*. Though the claims adjuster asked Dr. Fraser the correct question addressing "the substantial cause" of Employee's disability and need for treatment, Dr. Fraser's answer addressed the substantial cause of the "underlying process" and stated the substantial cause was "an idiopathic-type process." In essence, Dr. Fraser is saying the cause of the preexisting condition, osteonecrosis, is "unknown." His answer is not responsive to the salient question, which is why it does not rebut the presumption. *Rogers & Babler*; AS 23.30.010(a); *Runstrom*.

Notwithstanding the fact Dr. Fraser's answer addressed the substantial cause of the underlying condition rather than the substantial cause of the disability and need for treatment, *Huit* stated an "idiopathic" cause is not substantial evidence that something other than work was the cause. Additionally, Dr. Fraser never actually listed potential causes of the need to treat the "underlying process that was unrecognized at that time" and any related disability. Indeed, Dr. Fraser noted acute trauma could be a cause, but it is unclear why he did not consider Employee's injury to be an acute trauma. Nothing in Dr. Fraser's report establishes that something other than work was the cause of the disability and need for treatment or that work could not have been the cause of Employee's disability or need for medical treatment. *Huit*.

Because Employer failed to rebut the raised presumption, Employee would currently prevail without producing further evidence. *Huit*. However, even if Employer had rebutted the presumption, Dr. Fraser's report appears to establish the compensability of Employee's injury as an aggravation of a preexisting condition. Although Dr. Fraser concluded in his June report that the injury had not aggravated a preexisting condition, statements in his October 2017 report conflict with that conclusion. *Saxton*. In the October 2017 report, Dr. Fraser stated:

> [T]here is no indication that a minor twisting injury to the knee in a relatively healthy male is causative of the underlying osteonecrosis. It is more likely than not that the minor twisting injury was associated with the initial onset of symptoms for an underlying process that was unrecognized at that time.

Employer's reliance on Dr. Fraser's opinion is troublesome for two reasons. First, the question is not whether the work injury would have caused an injury in a relatively healthy male. The question is whether the work injury aggravated Employee's preexisting condition causing his disability and need for medical care. *Fox*. Second, an injury is compensable if it is the substantial cause of an aggravation in Employee's symptoms, even though it does not cause or aggravate the underlying process. *DeYonge*.

Employer contends Employee has no presumption in his favor because he failed to provide a written notice of his work injury within 30 days. AS 23.30.100. Employee's credible testimony shows he completed a written injury report within 30 days and that his supervisor had actual knowledge of the injury. AS 23.30.122; *Smith*. The only time an injured worker loses the presumption under AS 23.30.120 is when factfinders "excuse" failure to give notice on grounds the worker could not have given timely notice. AS 23.30.100(d)(2); AS 23.30.120(b). This rule is inapplicable here because Employee gave timely written and actual notice.

Because it appears from the current record that Employee is entitled to benefits, waiving all benefits, past and future, for $12,500.00 is not in his best interest. Based on Dr. Fraser's 10 percent PPI rating, Employee would be entitled to $17,700.00 in PPI benefits, while waiving nothing. AS 23.30.190. He would also be entitled to temporary total or temporary partial disability benefits for periods when he was unable to work because of the work injury, while waiving nothing. AS 23.30.185; AS 23.30.200; AS 23.30.395(16); *Adams*. He, or the Veterans

Administration, would be entitled to reimbursement for past medical expenses and Employee may be entitled to reemployment benefits, all without waving anything. AS 23.30.095. Although exact amounts of those benefits cannot be determined based on the current record, they would significantly exceed $12,500.00. When an injured worker has exigent circumstances, it may be in the employee's best interest to accept a settlement for less than the apparent value of the benefits even though the employee appears to have established his claim. In this case, however, based on this evidence the discrepancy is so great that settlement would not be in Employee's best interest. AS 23.30.012(b).

Employee may contact a workers' compensation technician at 269-4980 if he has questions about how to proceed with his claim. He may obtain from the division a list of workers' compensation lawyers and consult with, and obtain, an attorney without charge. Lastly, Employee filed a claim for benefits on May 30, 2017. Employer controverted his claim on June 19, 2017. To avoid possible claim dismissal, Employee must request a hearing on his claim, or request more time to request a hearing, by no later than June 19, 2019. AS 23.30.110(c).

CONCLUSION OF LAW

The oral denial of the proposed C&R was correct.

ORDER

The proposed C&R is not in Employee's best interest, and is not approved for the reasons stated in this decision and order.

Dated in Anchorage, Alaska on December 13, 2017.

ALASKA WORKERS' COMPENSATION BOARD

/s/
William Soule, Designated Chair

/s/
Stacy Allen, 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 Martin Padilla, employee / claimant v. University of Alaska, self-insured employer / defendant; Case No. 201607261; 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 December 13, 2017.

/s/
Elizabeth Pleitez, Office Assistant