ALASKA WORKERS' COMPENSATION BOARD

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

DANA L. OLSON, Employee, Claimant, v. FEDERAL EXPRESS CORP., Self-Insured Employer, and CARRS/SAFEWAY, INC., Self-Insured Employer, Defendants.	)	FINAL DECISION AND ORDER AWCB Case Nos. 200802181 & 200815961 AWCB Decision No. 15-0012 Filed with AWCB Anchorage, Alaska on January 29, 2015

Dana Olson's (Employee) May 15, 2008, February 12, 2010, April 20, 2010 , February 17, 2012 (sternum), February 17, 2012 (heart), and December 17, 2012 claims were heard on January 6, 2015, in Anchorage, Alaska, a date selected on September 22, 2014. Employee appeared, represented herself and was the only witness. Attorney Vicki Paddock appeared and represented self-insured Federal Express Corporation (FedEx) in case 200802181. Attorney Constance Livsey appeared and represented self-insured Carrs/Safeway's (Carrs) in case 200815961. As preliminary matters, Employee objected to FedEx's request for an over-length brief and contended she had not received adequate hearing notice. The hearing panel overruled Employee's objections. This decision examines the oral rulings and decides Employee's claims on their merits. The hearing record remained open for two weeks for Employee to file an optional post-hearing brief, and closed on January 20, 2015.

ISSUES

Prior to hearing, FedEx petitioned for an over-length hearing brief. It based its petition on the several years' litigation in this case and FedEx's need to fully address several contentious claims.

At hearing, Employee offered a vague objection to FedEx's over-length hearing brief. As Employee's specific objection could not be ascertained, she was given an opportunity to decide later in the hearing if she wanted to file a post-hearing brief to respond to anything with which she disagreed in FedEx's over-length brief. It is assumed Carrs had no objection to the over-length brief as none was expressed at hearing. An oral order overruled Employee's objection to the over-length brief, and accepted FedEx's brief as filed.

1) Was the oral order accepting FedEx's over-length brief correct?

In the course of discussing the over-length brief, Employee contended she received inadequate notice of the January 6, 2015 hearing. Employee contended she did not attend the prehearing conference at which the hearing was calendared and conceded she deliberately did not read the prehearing conference summary. It is unclear if Employee contended she never received the separate, formal hearing notice. Similarly, it was unclear what, if any, remedy Employee sought.

Both FedEx and Carrs objected to a hearing continuance, if that is what Employee wanted. Both employers contended Employee had ample written notice and the hearing should proceed. An oral order overruled Employee's objection and the hearing proceeded.

2) Was the oral order overruling Employee's objection to lack of hearing notice correct?

Carrs contends Employee failed to give written notice of any injury and her claims against it are barred. It seeks an order dismissing her claims under AS 23.30.100.

FedEx and Employee did not express an opinion on Carrs' notice defense.

3) Are Employee's claims against Carrs barred for failure to give adequate notice?

Employee's merits contentions are difficult to determine and are gleaned mainly from Employee's pleadings. Employee contends she was injured while trying out for employment with FedEx where she injured her right upper arm, shoulder, and neck, and this injury eventually affected her sternum, heart and various other body parts and functions, all as the result of lifting a weighted crate as part of a physical exertion test. She seeks a decision determining her various injuries are compensable.

FedEx contends Employee injured her right upper arm, shoulder and neck when she slipped exiting her personal vehicle while on the way to Anchorage to participate in the FedEx evaluation. It contends Employee did not injure herself while lifting at FedEx, and any additional body parts or functions she now claims are injured are not the result of Employee's FedEx employment. Accordingly, FedEx contends Employee has no compensable injury.

Employee also contends she had a subsequent right shoulder injury while employed as a deli worker for Carrs when she reached under a cabinet and either reinjured her FedEx injuries, or incurred new injuries while reaching for beverage containers. Employee lists the same body parts and functions for this injury as she did for her FedEx claim. She seeks an order finding her injuries suffered with Carrs are compensable.

In addition to its notice defense, Carrs contends Employee suffered no injuries while working in its employ. Accordingly, Carrs contends Employee has no compensable injury.

4) Does Employee have a compensable injury against either FedEx or Carrs?

Employee contends she is entitled to the following benefits from either or both employers for her right upper extremity, shoulder, neck, sternum, heart, eyes, back and feet, and perhaps other damaged body parts and functions: temporary total disability (TTD), temporary partial disability (TPD), permanent total disability (PTD), permanent partial impairment (PPI), past and ongoing medical benefits including transportation expenses, vocational reemployment benefits, a finding of an unfair or frivolous controversion, interest, attorney's fees and costs. Employee also contends her right to equal protection has been denied.

Both FedEx and Carrs contend as Employee does not have compensable injuries, she is entitled to no additional compensation under the Alaska Workers' Compensation Act (Act). Furthermore, they contend the medical evidence, including opinions from Employee's attending physician, shows she is not entitled to benefits. Both employers seek orders denying Employee's claims for all benefits.

5) Is Employee entitled to any benefits from either employer?

FINDINGS OF FACT

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

1) On February 20, 2008, Employee hand-wrote a statement for her supervisor at FedEx explaining what happened to her that day. She stated, while on her way to work early in the morning her truck lost traction on the ice and would not move. Employee decided to call for assistance and got out of her vehicle when she slipped and "fell on [her] right hip and right shoulder/upper arm in a poofy down coat." She got up and walked to a friend's home, who pulled her vehicle down the street so she was able to continue her commute to FedEx. Employee continued: "I participated in orientation, and tried to massage my fall. I talked to others about it -- was I hurt? Or sore." A little after 2:00 PM, the instructor directed Employee to perform a lifting exercise with a demonstration crate. Not wanting to look like a "whiner," Employee decided she would make the attempt. Employee attempted to lift and, because she did not do it correctly, was told to try again. She declined stating: "My arm hurts now." Shortly thereafter, Employee met with her supervisor to discuss work schedules and mentioned her arm hurt and she needed to complete an incident report for workers' compensation (Employee's written statement, February 20, 2008).

2) On February 20, 2008, at 7:12 PM, Employee reported to Alaska Regional Hospital Emergency Room. On intake paperwork, she listed FedEx as her employer. The sign in sheet for emergency services states: "I have hurt upper arm/shoulder." Another form states the reason for her visit was: "I have hurt upper arm shoulder." The initial physician's notes recorded at 8:15 PM state: "Fell getting out of car @ 5:30. Lifting crates at work (FedEx)" and had increasing pain in her right arm. The note further states: "Landed on right side." The typed emergency room record states:

> HISTORY OF PRESENT ILLNESS: This is a 54-year-old female who states that she was getting out of the car around 5:30 this morning greater than 12 hours ago now when she slipped injuring her right arm. She states that she works at FedEx. She has been lifting crates at work and that has caused increasing pain. Because of

> this she presents for evaluation as her employer encouraged her to do so as this appears to be impairing her ability to do her job. She denies any numbness or tingling. She is right-hand dominant (Emergency Room Note, February 20, 2008).

On physical examination, Employee had positive tenderness to palpation over the right proximal medial humerus without obvious contusion. There was no pain noted in the right shoulder, elbow or wrist and Employee had good range of motion and was neurovascularly intact. A right humerus x-ray showed no obvious fracture. The examining physician concluded Employee had a "right upper arm contusion," and presented with "right arm pain after a fall." As Employee felt this was interfering with her work, she was given a note for "off work the rest of this week." The physician further suggested Employee see an orthopedic surgeon if she did not improve (Sign in Sheet for Emergency Services; Alaska Regional Admissions form; Emergency Room Note, February 20, 2008).

3) On February 22, 2008, Employee completed and filed a timely injury report stating on February 20, 2008, at 2:15 PM, she injured her right upper arm, shoulder and neck lifting a crate to "demonstrate safe lifting" (Report of Occupational Injury or Illness, February 22, 2008).

4) On February 26, 2008, FedEx paid Employee for two days' TTD, February 24, 2008 through February 25, 2008 (Compensation Report, March 16, 2008).

5) On March 3, 2008, FedEx filed a notice denying time loss benefits after February 25, 2008, on grounds there was no medical documentation supporting time loss related to the reported work injury after that date (Controversion Notice, February 28, 2008).

6) On March 10, 2008, Employee saw Margaret Fitzgerald, ANP, as a new patient for "work comp" with an arm and shoulder injury "on 2/20/08." Employee explained she was having ongoing problems with arm pain following an incident at work on February 20, 2008, while at FedEx. She stated she was "lifting a large crate" when she hurt her arm. Employee was due to return to work the next day, but could not because her arm continued to hurt and Employee felt if she kept working she would cause permanent damage to her arm. She had taken Ibuprofen intermittently and had noted a sore lump under her armpit. Employee described no joint swelling but had right arm and shoulder pain with certain movements, but no back pain. Her left and right shoulders appeared symmetric and the examiner found no atrophy or deformity in the right shoulder. Employee was unable to fully extend her right arm overhead due to pain and her internal and external rotation was somewhat limited by pain. Employee had no tenderness to palpation along her acromioclavicular

joint and no tenderness to palpation to the bicipital groove. Employee's muscle strength was equal in both arms. ANP Fitzgerald diagnosed "arm pain" and recommended additional Ibuprofen with alternating heat and cold to the affected area (Fitzgerald Progress Note, March 10, 2008).

7) On March 10, 2008, ANP Fitzgerald provided a hand-written "to whom it may concern" letter stating Employee had been seen for evaluation of arm pain and its effect on her ability to lift objects. ANP Fitzgerald noted the exam was essentially negative but there were some abnormalities with Employee's range-of-motion in the right upper extremity. She recommended Employee see a physical therapist for further functional assessment. ANP Fitzgerald opined Employee was unable to lift heavy objects and could not return to work to perform her normal duties (Fitzgerald hand-written letter, March 10, 2008).

8) Employee did not tell ANP Fitzgerald about the slip and fall on the ice. ANP Fitzgerald did not offer a causation opinion (observations).

9) On March 20, 2008, FedEx paid Employee for an additional seven days' TTD from March 10, 2008 through March 17, 2008 (Compensation Report, March 16, 2008).

10) On March 21, 2008, FedEx filed a notice denying all benefits after March 17, 2008, on grounds Employee failed to return a medical release or file for a protective order within 14 days after receiving the release (Controversion Notice, March 18, 2008).

11) On March 26, 2008, Employee saw Loren Jenson, M.D., orthopedic surgeon, for FedEx's employer's medical evaluation (EME). Her chief complaint was "right shoulder pain." Employee described two injuries to the right shoulder, the first being a fall that occurred on February 20, 2008, when Employee's vehicle was disabled and she had to walk on an icy street, where she slipped and fell. Employee told Dr. Jensen she landed on her hip and although she did not have any bruising on her arm, "she is not clear if she fell on the shoulder itself or her outstretched hand." The next injury occurred at a manager's meeting prior to a class that was supposed to teach her how to lift boxes correctly at FedEx. During the orientation, Employee had to lift boxes to show appropriate technique and while doing so, developed arm pain. Employee described going to Alaska Regional Hospital but claimed the examining doctor "never touched her arm." Employee also described seeing ANP Fitzgerald, who she claimed "never picked up her arm either." Dr. Jensen noted Employee was difficult to examine and her physical examination was accompanied by "inappropriate laughter and comments, which did not really relate to the examination experience itself." Dr. Jensen diagnosed "right shoulder pain" and "substantial emotional overlay." He opined:

> Separating out the patient's significant, multiple, emotional issues from physical issues is not readily accomplished. The patient cannot answer any of the questions without immediately describing some fault on the part of her employer or her other examining healthcare providers for causing her problems. The material that has been included for evaluation today includes that the box which she had to lift was a teaching box, to attempt to demonstrate appropriate technique, and that the weight of this box is 12.7 pounds. From the patient's subjective descriptions of both the fall and the lifting, it is clear that in her own mind, she feels that she has been tremendously damaged by this training session and that she does not feel that the fall produced any degree of injury. On the basis of objective findings, however, this examiner can identify no substantive findings other than subjective pain with substantial emotional overlay (Jensen report, March 26, 2008).

Dr. Jensen noted Employee had no identifiable treatment to date and he did not believe any medical treatment was necessary. When asked if the FedEx incident was "the substantial factor" causing right shoulder pain, Dr. Jensen stated the accident producing her shoulder condition appeared to be the "the slip and fall on the ice on a more probable than not basis." He did not identify lifting a 12.7 pound demonstration box during orientation as being a "significant degree of trauma to the shoulder." Dr. Jensen opined Employee's physical examination was "meaningless" and did not provide an objective basis for a valid diagnosis. Dr. Jensen could not identify any reason to restrict Employee from returning to work and opined if she continued to have symptoms, referral to an orthopedic surgeon for treatment might be appropriate, but would be related to the slip and fall on the ice rather than lifting the demonstration box (Jensen EME report, March 26, 2008).

12) On April 2, 2008, Burt Mason entered his appearance as Employee's attorney in the FedEx case (Entry of Appearance, March 30, 2008).

13) On April 8, 2008, Employee saw Laurence Wickler, D.O., orthopedic surgeon. Employee reported difficulty with her right shoulder since February 20, 2008. She reported a "minor slip and fall on the ice landing on her right hip." Employee told Dr. Wickler she did not have any difficulty with her shoulder until she was in orientation as a new hire with FedEx. During the safety briefing about how to pick up merchandise, she picked up a crate and felt something "pop" in her shoulder. Since then Employee had been unable to initiate more than a shrug, and had no forward flexion or lateral elevation. Dr. Wickler performed a physical examination and his impression was: "Painful right shoulder, etiology unclear. Rotator cuff tear cannot be ruled out." He recommended a magnetic resonance imaging (MRI) scan. Dr. Wickler also restricted Employee from lifting

anything heavier than 25 pounds but released her to work full time (Wickler Initial Evaluation; Medical Report, April 8, 2008).

14) On April 9, 2008, Employee had a right shoulder MRI without contrast. The radiologist's impression was a "possible complete but small rotator cuff tear" (Alaska Regional Diagnostic Imaging, April 9, 2008).

15) On April 11, 2008, Employee returned to Dr. Wickler who reviewed her MRI results. He opined it was unclear but she may have a full thickness rotator cuff tear. As Employee wanted to avoid surgery, Dr. Wickler suggested a therapy program with possible arthroscopic surgery to follow (Wickler chart note, April 11, 2008).

16) On April 15, 2008, Employee began physical therapy (Alyeska Physical Therapy, Plan of Treatment, April 15, 2008).

17) On April 22, 2008, Employee worked for Carrs for approximately 1.5 hours as a deli clerk, and left work to go to a previously arranged physical therapy appointment for her right shoulder. Employee did not file a timely, written injury report against Carrs for any work-related injury occurring on April 22, 2008 (Employee's deposition at 84-90, June 3, 2009; agency record).

18) On April 22, 2008, Employee reported to her physical therapist that she had shoulder soreness following her last treatment, but she was not sure if it was from the physical therapy or from "another fall on her bike." She also told the therapist "her shoulder is sore today from her new job" with Carrs (Physical Therapy Treatment Note, April 22, 2008).

19) On April 22, 2008, Dr. Wickler restricted Employee from all work until his next evaluation set for May 13, 2008 (Wickler Work Status Report, April 22, 2008).

20) On April 22, 2008, after seeing her physical therapist, Employee returned to Carrs. Employee told "Stan," the store manager, she had hurt her upper right extremity working at Carrs earlier in the morning and was awaiting a facsimile report from her physician. Employee told Stan she could not continue working because she was hurting, to an "eight" out of "ten" on a pain scale. When asked if she told Stan "the reason I'm hurting and the reason I can't work is because I hurt my shoulder at work," Employee answered "yes" (Employee deposition at 82-83, June 3, 2009).

21) Employee's testimony on the above point is credible (judgment).

22) On April 22, 2008, Employee gave Carrs actual notice that she claimed an injury to her right upper extremity resulting from her Carrs employment on that day (experience, judgment and inferences drawn from the above).

23) On April 24, 2008, attorney Mason withdrew as Employee's lawyer in the FedEx case (Withdrawal as Attorney for Employee, April 22, 2007 [sic]).

24) On May 13, 2008, Employee returned to Dr. Wickler and complained of shoulder difficulties. In some positions, Employee felt a "click or catch" in her right shoulder. Dr. Wickler opined this was consistent with her acromion dropping into her small rotator cuff tear. Employee had taken a job with Carrs. She reported she could not do the Carrs job "for the same reason." If she got her shoulder in an awkward position, Employee would have significant pain. Employee was doing physical therapy trying to improve her strength and posture without much success. Dr. Wickler stated Employee was a surgical candidate. According to an addendum, Dr. Wickler noted he had recommended physical therapy but because Employee had no financial resources and did not want to "run up a bill" she was trying at home to do the same exercises originally given to her by the physical therapist to control her symptoms (Wickler chart note, May 13, 2008).

25) To this point, Dr. Wickler had not given a causation opinion concerning Employee's injuries (observations).

26) On May 13, 2008, Dr. Wickler responded to a letter from Employee's second, former attorney Robert Rehbock inquiring whether, in Dr. Wickler's opinion, the February 20, 2008 lifting incident with FedEx was more likely than not "the substantial cause" for her required medical treatment for her right shoulder, as opposed to the slip and fall she had earlier that morning before she arrived at FedEx. Dr. Wickler checked the "yes" box and stated Employee "had no pain" after her fall but "felt something tear" as she picked up a 12 pound container at FedEx (Wickler response to April 28, 2008 letter, May 13, 2008).

27) On May 16, 2008, Employee through former attorney Rehbock filed a claim against FedEx. Employee's claim sought past and ongoing medical treatment, TTD, TPD, PPI when determined, eligibility for reemployment benefits, a second independent medical evaluation (SIME), attorney's fees, costs and interest (Workers' Compensation Claim, May 18, 2008).

28) On May 16, 2008, attorney Rehbock filed Dr. Jensen's EME report with the board on a medical summary. This was the first time Dr. Jensen's report was filed on a medical summary in this case (Medical Summary, May 15, 2008; agency record).

29) On May 16, 2008, attorney Rehbock properly filed and served a timely *Smallwood* objection against Dr. Jensen's March 26, 2008 EME report (Request for Cross-Examination, May 15, 2008).

30) On May 16, 2008, Employee through counsel filed a petition and associated documents for an SIME (Petition, May 15, 2008).

31) On June 2, 2008, Joseph Cooper entered his appearance on FedEx's behalf (Entry of Appearance, May 30, 2008).

32) On June 10, 2008, Employee called Dr. Wickler from Montana. She needed "clarification of an attempt at employment." Dr. Wickler sent Employee a note releasing her to work not to exceed lifting five pounds with her right arm in an extended position and minimal repetitive motion (Wickler chart note June 10, 2008).

33) On June 25, 2008, Employee and FedEx stipulated to an SIME (Prehearing Conference Summary, June 25, 2008).

34) On June 27, 2008, Dr. Wickler responded to a letter from FedEx's attorney. The letter included Employee's two-page statement dated February 20, 2008, describing her early-morning slip and fall and a memo from her instructor FedEx Jeff Pifer who described the FedEx lifting incident. Assuming the mechanism of injury described by Pifer was correct, and based upon Employee's description of her early morning slip and fall, Dr. Wickler checked the "no" box and opined the February 20, 2008 FedEx lifting injury was not "the substantial cause" of "her right shoulder condition" (Wickler response to June 19, 2008 letter, June 27, 2008).

35) On July 10, 2008, FedEx filed and served a medical summary to which was attached Dr. Wickler's June 27, 2008 opinion (Medical Summary, July 9, 2008).

36) On July 15, 2008, Employee through former counsel properly filed and served a timely *Smallwood* objection to Dr. Wickler's June 27, 2008 response to FedEx's lawyer's February 20, 2008 letter (Request for Cross-Examination, July 14, 2008).

37) On July 18, 2008, attorney Rehbock withdrew as Employee's attorney and filed a notice he was claiming a lien for attorney's fees (Notice of Withdrawal as Counsel of Record; Notice of Attorney Fee Lien, July 16, 2008).

38) On or about August 4, 2008, Employee filed an injury report with the Montana Department of Labor and Industry. Employee stated on August 3, 2008, she was with other employees on a truck being transported to her employer's trailer on the fairgrounds. Employee stated: "I re-injured my right shoulder by jumping down from flatbed trailer from hitch." Attached to this report was a typed statement from Employee. Among other things, she stated in reference to her right shoulder: "I was not in pain in June 2008." She criticized Dr. Wickler who, on the telephone, had given her

medical advice while she was visiting her sister in Montana. Employee claimed Dr. Wickler was not licensed to practice medicine in Montana and was somehow involved in politics involving Alaska land claims. Employee implied Dr. Wickler never should have released her to work in Montana (Notice of Filing, January 9, 2013, with attached First Report of Injury or Occupational Disease, August 4, 2008; Employee's typewritten statement, August 4, 2008).

39) On October 7, 2008, notwithstanding her previously expressed displeasure, Employee nonetheless saw Dr. Wickler again complaining of difficulty with her right shoulder since an industrial injury on August 3, 2008, while working in Montana. Employee described getting down off a flatbed truck when she slipped and pulled on her right arm. Since then, Employee had increasing pain and range-of-motion loss. Dr. Wickler noted the February 2008 right shoulder injury and presumed it had "resolved after her move to Montana." On physical examination, Employee had limited range of motion and her internal and external rotation were "basically nil." Dr. Wickler diagnosed posttraumatic adhesive capsulitis. He recommended another MRI scan and steroid injections. Meanwhile, Dr. Wickler restricted Employee from work (Wickler Initial Evaluation, October 7, 2008).

40) On October 10, 2008, Employee saw Dr. Wickler and said she slipped and fell the day before, landing directly on her shoulder. Dr. Wickler released Employee to return to modified duty with no lifting, climbing, reaching overhead, pushing or pulling with the right upper extremity (Wickler chart note; Work Status Report, October 10, 2008).

41) On October 15, 2008, Employee filed a written injury report against Carrs, and gave notice she injured "under right arm pit" and was unable to lift her right arm. She attributed her inability to use her right upper extremity to pain resulting from "lowering shoulder" and reaching under a counter to get beverage cups over a 1.5 hour period while working for Carrs. Employee did not give a specific injury date for this event. However, Employee completed Carrs' section on the injury report as well as her own. Eventually, April 22, 2008 was the date associated with the Carrs deli incident. Employee did not dispute this injury date (Report of Occupational Injury or Illness, October 15, 2008; agency record; Employee).

42) Employee's October 15, 2008 written injury report for an injury with Carrs on April 22, 2008 was not timely (experience, judgment, observations).

43) On October 21, 2008, Carrs' adjuster Darla Sundberg completed the white portion of Employee's injury report hand-writing at the bottom: "Original -- we never received blue copy."

The adjuster wrote "use 4/22/08" in block nine for the "date of injury or exposure to disease," and otherwise corrected or added information in Employer's section, which Employee had previously completed. Employer stated "10/17/08" was the date it first knew of Employee's injury. Employer further stated Employee left work on "4/22/08." It hand-wrote: "No known work injury at Safeway" and, in the section reserved for "doubts," hand-wrote: "Previous shoulder problem & no work injury with Safeway was reported. Employee only worked 1½ hours with us" (Report of Occupational Injury or Illness, October 21, 2008).

44) On October 27, 2008, Carrs filed a notice advising all benefits were denied related to Employee's alleged April 22, 2008 right arm injury. Carrs contended the injury was not timely reported under AS 23.30.100, and stated there was no medical evidence supporting a work-related injury with Carrs. Carrs also alleged Employee said she was then-currently undergoing medical treatment including physical therapy for a previous work injury with a prior employer and had to leave work to attend a physical therapy appointment. Accordingly, Carrs denied any injury occurred to Employee while she was under its employ (Controversion Notice, October 22, 2008).

45) On October 29, 2008, *Olson v. Federal Express*, AWCB Decision No. 08-0199 (October 29, 2008) (*Olson I*) denied Employee's petition to cancel an October 15, 2008 hearing, denied FedEx's July 29, 2008 and August 26, 2008 petitions to cancel an SIME, and ordered Employee to attend an SIME with Thomas Gritzka, M.D. (*Olson I* at 13).

46) On November 4, 2008, Employee appealed *Olson I* to the Alaska Supreme Court (Docketing Statement A, November 4, 2008).

47) On November 26, 2008, *Olson v. Federal Express*, AWCB Decision No. 08-0234 (November 26, 2008) (*Olson II*) denied Employee's November 6, 2008 reconsideration petition (*Olson II* at 7).

48) On December 3, 2008, the Alaska Supreme Court closed Employee's case on her petition for review of *Olson I* because Employee failed to provide a copy of the final order from which her petition was taken (Notice of Closure, December 3, 2008).

49) On December 11, 2008, Dr. Wickler completed a report stating Employee's injury began August 3, 2008, and she suffered from posttraumatic frozen shoulder (Medical Report, December 11, 2008).

50) On December 16, 2008, Employee reported she fell off a rolling stool at the "Department of Safety on Eagle Street and Denali" and landed on her right shoulder. On examination, Dr. Wickler

found "dramatic improvement in her range of motion which is extremely hard to [explain], but good for her" (Wickler chart note, December 16, 2008).

51) Fifteen minutes later on December 16, 2008, Employee saw Dr. Wickler again, stating she could not get her hand above about 60° of elevation. Dr. Wickler had no idea why "the motion continues to change" (Wickler chart note, December 16, 2008).

52) On December 22, 2008, Employee appealed *Olson I* & *II* to the Alaska Workers' Compensation Appeals Commission (AWCAC) (Notice of Appeal, December 22, 2008).

53) On December 23, 2008, Dr. Wickler released Employee to return to work with no lifting over 25 pounds in the right upper extremity (Wickler Work Status Report, December 23, 2008).

54) On January 27, 2009, Dr. Wickler stated Employee could be employed with her hands below shoulder level and could pick up 10 to 15 pounds from floor to counter height, eight hours a day five to seven days per week (Wickler letter, January 27, 2009).

55) On March 5, 2009, Carrs filed a notice denying all benefits. Carrs asserted Employee's injury was not timely reported, it was prejudiced by her failure to report the injury and she had no medical evidence to support a work injury occurred with Carrs (Controversion Notice, March 5, 2009).

56) On March 20, 2009, the AWCAC denied Employee's appeal, which it treated as a petition for extraordinary review (Final Decision, March 20, 2009).

57) Between March 24 and June 30, 2009, Employee continued to see Dr. Wickler for her right shoulder (Wickler chart notes, March 24, 2009, May 7, 2009, and June 30, 2009).

58) On July 10, 2009, the designated chair, concerned over Employee's mental status following a lengthy prehearing conference, asked the chief of adjudications to ask the division director to require appointment by the court of a guardian or other representative for Employee pursuant to AS 23.30.140 (Prehearing Conference Summary, July 10, 2009).

59) On July 23, 2009, Employee saw Douglas Bald, M.D., orthopedic surgeon, for a Carrs EME. Her chief complaints were right shoulder pain and stiffness with intermittent aching pain in her right forearm and wrist. Employee reported she had no injuries or problems with her right shoulder before February 20, 2008. On that date, two incidents occurred. She was on her way to work early in the morning and her vehicle became stuck. She decided to walk to her friend's house and, when she got out of the car, slipped on the ice and fell backwards, landing on her hip and "apparently rolling onto her right shoulder." She continued on her way to work and when arriving at FedEx was going through orientation during which she lifted a milk crate. The weight in the crate shifted to her

right and she felt a "tearing sensation" with acute and fairly severe pain in her right shoulder and anterior chest. Employee later went to the emergency room. Dr. Bald reviewed Dr. Jensen's EME report and Employee's other medical records. Employee reported on April 22, 2008, she had fallen on her bike and her shoulder was sore from the fall as well as from a new job. The job to which she referred was her Carrs deli position. On or about April 22, 2008, one hour into her first day at work with Carrs, Employee reached into an extra-deep, below-counter-level cupboard with her right arm. She felt a "pop" in her right shoulder and soon left the worksite to go to her previously arranged physical therapy appointment for her right shoulder. Employee also recounted her August 2008 right shoulder carnival injury while working in Montana. On this occasion, she slid or jumped from a flatbed truck to the ground and jarred her right shoulder. The pain was bad enough to make her cry. Employee also recounted the December 16, 2008 event when she was at a government office filing a complaint and went to sit down on a rolling chair and it "skated" out from under her. She fell, rolled over and reinjured her right shoulder. Ironically, Employee reported her shoulder range of motion improved significantly following this event, though the pain increased. Dr. Bald performed an examination and recorded range of motion measurements. He also reviewed radiographic images and related studies. His impression was: "Post-traumatic adhesive capsulitis right shoulder and mild acromioclavicular joint arthrosis and chronic rotator cuff tendinosis, preexisting." In Dr. Bald's opinion, one of the two events of February 20, 2008 caused the adhesive capsulitis in Employee's right shoulder. However, the insignificant event at Carrs, reaching underneath a cupboard to grab drinking glasses, could not be responsible for her current symptoms, and was merely a temporary, symptomatic aggravation. In short, Dr. Bald opined the Carrs employment was not the substantial cause of "her diagnosed right shoulder condition." The adhesive capsulitis condition was "already active" prior to this event. As to "the substantial cause" of Employee's need for right shoulder treatment, Dr. Bald opined 50 percent causation related to the early morning slip and fall incident on the ice and 50 percent related to the FedEx lifting injury. Dr. Bald did not provide a PPI rating as he felt it was premature. Further treatment included shoulder specific, self-directed exercise. He did not think Employee was limited in her ability to work (Bald EME report, July 23, 2009).

60) On August 7, 2009, Dr. Bald responded to a letter from Carrs' former attorney asking when he believed Employee reached "preinjury status" from the Carrs injury. Dr. Bald pinpointed May 13, 2008 as the appropriate date (Bald response to August 5, 2009 letter, August 7, 2009).

61) On September 1, 2009, Employee saw Dr. Wickler and reported she was working at the "carnival." She had a "repetitive motion occupation" and had increasing right shoulder aching (Wickler chart note, September 1, 2009).

62) On October 6, 2009, Dr. Wickler responded to a letter from Carrs' former attorney following an August 4, 2009 visit. The attorney's letter stated, to a reasonable degree of medical probability, Dr. Wickler did not believe reaching for cups while working at Carrs was the substantial cause of any "disability" or "need for" Employee's "treatment." It was Dr. Wickler's opinion that Employee's need for treatment arose from a previous slip and fall in February "of 2009," and not an event that occurred while Employee worked for Carrs. Dr. Wickler checked the "yes" box stating: "I agree with the above" (Wickler response to October 1, 2009 letter, October 6, 2009).

63) On October 16, 2009, Carrs denied all benefits based upon Dr. Bald**'s** July 23, 2009 report and upon Dr. Wickler's recently expressed opinions (Controversion Notice, October 15, 2009).

64) On October 20, 2009, Employee filed a petition requesting joinder of Carrs in case 200815961 to her pending FedEx claim. Though the record is not clear how or when this occurred, the FedEx and Carrs claims were judicially joined (Petition, October 20, 2009; observations).

65) On November 12, 2009, Dr. Wickler wrote a letter stating Employee was recovering from a post-traumatic frozen shoulder and lacked strength. She also lacked training to obtain employment other than manual labor, which she could not perform (Wickler letter, November 12, 2009).

66) On January 28, 2010, Employee saw Dr. Wickler again reporting a left shoulder injury on January 14, 2010, when she slipped and fell at the "DEC" building near Ship Creek (Wickler Initial Evaluation, January 28, 2010).

67) On February 12, 2010, Employee filed another claim against FedEx and Carrs for her left shoulder, a rotator cuff tear, and damage to joints in both shoulders, somehow arising from the February 20, 2008 FedEx injury. Employee sought PTD from February 20, 2008 through the future, PPI for "disfigurement," medical costs, interest, attorney fees and costs, and other indecipherable relief (Workers' Compensation Claim, February 12, 2010).

68) On February 24, 2010, Carrs filed a notice denying all benefits to Employee based upon Dr. Bald's July 23, 2009 EME report and Dr. Wickler's October 6, 2009 opinion, both of which said Employee's work with Carrs was not the substantial cause of her disability or need for medical treatment (Controversion Notice, February 23, 2010).

69) On April 20, 2010, Employee filed a claim against Carrs for injury to her neck, nerves, upper body and shoulder arising from an April 20-22, 2010 (sic) event. It is assumed Employee meant 2008. Employee claimed physicians misdiagnosed her true condition and there was a separate injury resulting in a claim for TTD from April 2008 to the present, medical costs, PTD, a reemployment "rating," a finding of an unfair or frivolous controversion and other, indecipherable relief (Workers' Compensation Claim, April 20, 2010).

70) On March 5, 2010, FedEx filed a notice denying all benefits based upon Dr. Jensen's March 26, 2008 EME report (Controversion Notice, March 3, 2010).

71) On April 20, 2010, Employee filed a claim against Carrs for a possible "meniscus injury" or tear, and injuries to her neck, upper body and shoulder (Workers' Compensation Claim, April 20, 2010).

72) On April 28, 2010, Carrs filed another notice denying all benefits based upon Dr. Bald's July 23, 2009 and Dr. Wickler's October 6, 2009 reports (Controversion Notice, April 27, 2010).

73) On September 9, 2010, Employee returned to Dr. Wickler telling him of additional medical issues and related procedures she had undergone since last seeing him. Though he had no written documentation to corroborate her accounts, Dr. Wickler had no reason to disbelieve the occurrences Employee described. He concluded:

> However, I have no knowledge that any of the ensuing medical issues have anything to do with her job injury and/or her rotator cuff tear. If that can be substantiated by another physician and elsewhere, I would be happy to consider it, but at this point, since my only real care has been for her shoulder, the diagnosis continues to be resolving frozen shoulder for which she does not have complete range of motion and a small, but complete rotator cuff tear
>
> In the interim, since April of 2008, she may also have extended this tear, but an additional MRI has not been ordered at this time (Wickler report, September 9, 2010).

74) On November 2, 2010, Employee saw John Boston, D.O., internal medicine specialist. She told Dr. Boston she had a "sternum injury" and on February 20, 2008, while employed by FedEx, she had used "some adrenaline strength," lifted a crate and felt a "give or jerk" in the sternum and described feeling right shoulder pain. The sternum had not been "worked up" but Employee believed she had an "artery injury." Back pain had also affected her over the last couple years. Dr. Boston performed an examination and assessed a "sternum sprain not otherwise specified" and a

torn "pec. minor." Dr. Boston noted decreased shoulder motion of about 80 percent. He also recorded two stents had been inserted in August 2010, with no cardiology follow-up to date. Dr. Boston suggested Employee use caution lifting weights overhead and stated it "appears that the mechanism of injury that she describes that with the sudden weight landing on the right arm with the left arm extended can cause the right rotator cuff and possible muscle tear" (Boston report, November 2, 2010).

75) Employee did not advise Dr. Boston she had also slipped and fallen on the ice before the event at FedEx on February 20, 2008 (observations).

76) On February 22, 2011, Employee told Dr. Wickler she was dramatically improved. She was "quite functional." Employee still had chest wall pain but had been in vocational rehabilitation, which had taught her how to improve her posture. Employee also complained of pain going all the way down her arm into her wrist (Wickler chart note, February 22, 2011).

77) On February 22, 2011, Dr. Wickler wrote a letter stating Employee's activity level should be no more than "sedentary" and not repetitive in respect to her right upper extremity (Wickler letter, February 22, 2011).

78) On May 19, 2011, Employee saw Charles Kase, M.D., for an independent medical evaluation for the State of Alaska, Division of Vocational Rehabilitation. Employee had pain in the base of her neck on the right side occasionally going down her spine into her lower back. She had neck pain when she moved her neck, and had right shoulder pain, right sternal pain, right clavicular pain and pain in the bottom of her right foot. Employee described her FedEx injury, and said she attempted work for Carrs and Fred Meyer, and a job at the fair, which aggravated a foot injury. Upon examination, Dr. Kase stated the only issue with Employee's right shoulder was "mild impingement, certainly nothing to suggest a large rotator cuff tear or frozen shoulder." Her clavicle pain was not "readily explainable by any pathology I am familiar with." Dr. Kase found no cervical radiculopathy. She may have some arthritis or perhaps even a herniated disc. The only orthopedic issue Dr. Kase observed was a chronic, plantar fasciitis. In respect to the right shoulder, Employee believed she should "baby" it to prevent further injury while Dr. Kase suggested an exercise program and employment that avoided repetitive overhead use of Employee's right shoulder. He further opined psychiatric factors affecting her physical condition "are almost certainly present here; although, this is outside my area of expertise" (Kase report, May 19, 2011).

79) Employee did not describe her slip and fall on the ice on February 20, 2008. Dr. Kase did not give a causation opinion relevant to this decision (observations).

80) On July 20, 2011, Employee filed a typed document with several attachments, which reflected her Internet-based medical research. Employee cited from numerous articles related to sternum and "subclavian" injuries (Petition to Re-Open Claim Controverted by Process, July 20, 2011).

81) On July 25, 2011, Carrs filed a notice denying all benefits based upon Dr. Bald's July 23, 2009 EME report, and on Dr. Wickler's report stating that reaching for cups at work with Carrs was not the substantial cause of Employee's disability or need for medical treatment (Controversion Notice, July 22, 2011).

82) On December 28, 2011, the superior court granted the Alaska Workers' Compensation Division's unopposed motion to dismiss a petition for limited guardianship that the division had filed at the designated chair's request in 2009, without prejudice (Order, December 28, 2011).

83) On February 17, 2012, Employee filed two claims in case 20082181 (FedEx) claiming "Heart attack by clot," and a sternum and eye injury. Attached to this claim was Employee's hand-written document, much of which is difficult to understand. However, Employee claimed she had a heart attack on August 21, 2010, "within four years" of her February 20, 2008 FedEx injury. Through unexplained "buoyancy" and "hydrostatic pressure" theories, Employee reasons she had a subclavian artery issue somehow related to her lifting incident at FedEx. She implied she "instantly lost the ability to move the right arm away from [her] side," in 2008 following her FedEx injury. Employee criticized Dr. Wickler's examination and treatment plan and implied he missed an important diagnosis (Workers' Compensation Claim, February 17, 2012).

84) On February 17, 2012, Employee also filed another claim in case 20082181 (FedEx) claiming a "sternum injury." Notably, attached to this claim was a hand-written description from Employee of how her work injury with FedEx occurred. Employee described meeting with a supervisor at FedEx and going to a room where there was a square "milk crate" with plastic formed handles. A FedEx supervisor, "Paul," placed several items including coiled rope into the milk crate and placed the crate on the floor. Employee was directed to squat and lift the milk crate off the floor. Employee used her legs to "push off" but, to her surprise, her right leg did not lift as expected. Consequently, Employee immediately began falling forward and she reacted instinctively and threw up her arms in which she held the crate. Employee's left arm was higher than her right arm because her right leg was not fully extended. She was off-balance. Employee's arms were at this point

extended with the crate held in her hands. Employee began to slowly lower the crate awkwardly and she moved her left arm more rigidly to compensate for the differences in the height of her two extended upper extremities. Employee was trying to avoid having the crate and the items within it hit her. She instinctively feared falling and being hit on the head. Employee described the items in the crate shifting from left to right because her left arm was higher than her right arm. This put more weight on her right shoulder which got the "main jerk." Following this "jerk," Employee felt a "burning, tearing sensation" in her right shoulder. Surprised, Employee said "I think I hurt my arm." Employee attributes her injury to "abduction incapacity (immediate)" (Workers' Compensation Claim, February 17, 2012).

85) On March 8, 2012, Carrs filed a notice denying all benefits related to a "heart attack by clot" while Employee was employed with Carrs. Carrs alleged Employee provided no notice of any such injury and no medical evidence related such condition to any employment with Carrs. Carrs further contended the heart attack claim was barred by three statutes of limitations and noted she was not a Carrs employee on the date the heart attack occurred (Controversion Notice, March 8, 2012).

86) On March 15, 2012, FedEx filed a notice denying all benefits for a heart attack or blood clot because there was no medical evidence documenting these conditions were caused by Employee's February 20, 2008 shoulder injury. FedEx similarly denied a sternum, neck, nerve, or eye problems related to the FedEx lifting incident (Controversion Notice, March 14, 2012).

87) On March 23, 2012, Carrs filed a notice denying all benefits based upon Employee's failure to return signed discovery releases (Controversion Notice, March 22, 2012).

88) On April 24, 2012, Employee filed but did not serve a document to which was attached a psychological evaluation from Grace Long, PhD. This evaluation was done for the State of Alaska, Division of Vocational Rehabilitation. Dr. Long noted during her interview, Employee's thoughts were "noticeably disjointed, tangential, and circumstantial." After interviewing Employee and administering numerous tests, Dr. Long diagnosed a "reading disorder," a "personality disorder" not otherwise specified, problems with Employee's feet needing corrective shoes, dental decay, problems with familial relationships including financial concerns, lack of access to health and dental care, and reliance upon public transport. Dr. Long did not say Employee was unemployable or psychologically disabled. Dr. Long suggested vocational activities could be directed toward Employee's passion in horticulture (Employee Denies Controversions, undated but filed April 24, 2012; Long Psychological Evaluation, July 20 and 27 and September 23, 2010).

89) On June 13, 2012, *Olson v. Federal Express & Carrs/Safeway*, AWCB Decision No. 12-0097 (June 13, 2012) (*Olson III*) reviewed a prehearing conference order directing Employee to sign and return discovery releases, affirmed the order and again directed Employee to sign and deliver the releases (*Olson III* at 28-29).

90) Employee did not sign and return the releases as *Olson III* required (observations; record).

91) On June 18, 2012, Employee filed numerous documents with the AWCAC. The commission treated Employee's non-specific filings as a petition for review of *Olson III* (Request by Self-Represented Litigant, June 18, 2012; Brief Cover Sheet for Brief Filed by Self Represented Appeal Participant, June 18, 2012; Motion to Exclude Financial Affidavit, June 16, 2012; Certificate of Service by Self-Represented Appeal Participant, June 18, 2012; Order Re Appellate Proceedings, June 19, 2012).

92) On June 27, 2012, the AWCAC dismissed Employee's petition for review based on her request to voluntarily dismiss the filing "because more clarification is needed" (Order Dismissing Petition for Review, June 27, 2012).

93) On July 3, 2012 and July 9, 2012, respectively, Carrs and FedEx filed petitions to dismiss Employee's claims for failure to comply with *Olson III* (Petitions, July 3, 2012; July 9, 2012).

94) At a hearing on these petitions on December 12, 2012, after panel members explained Employee's rights and discovery obligations under the Act, including her right to file a petition for a protective order to recover irrelevant records from the parties, Employee signed and delivered to Employers all releases subject of the employers' petitions to dismiss (observations; record).

95) On November 9, 2012, Employee saw Travis Taylor, D.O., with neck complaints which began approximately one year earlier and were chronic resulting from being run off the road by a snowplow while she was walking. Employee reported she had "intermittent neck pain since then." On this visit date, Employee had also slipped but did not fall. Rather, her head "jerked back" and she had felt cervical muscle spasms since. The diagnosis was "muscle pain" (Taylor chart note, November 9, 2012).

96) On December 31, 2012, *Olson v. Federal Express & Carrs/Safeway*, AWCB Decision No. 12-0220 (December 31, 2012) (*Olson IV*) affirmed an oral order entered at the December 12, 2012 hearing, which had declined to disqualify the hearing officer, and mooted the petitions to dismiss, since Employee had signed and returned the subject releases at hearing (*Olson IV* at 10).

97) On July 17, 2013, *Olson v. Federal Express & Carrs/Safeway*, AWCB Decision No. 13-0082 (July 17, 2013) (*Olson V*) denied the employers' joint request for an order rescinding *Olson I*'s SIME order (*Olson V* at 10).

98) On August 1, 2013, Employee filed a petition for review of *Olson V* with the AWCAC (Petition for Review, August 1, 2013).

99) On August 26, 2013, the commission denied Employee's petition for review of *Olson V* (Order on Petition for Review, August 26, 2013).

100) On April 7, 2014, *Olson v. Federal Express & Carrs/Safeway,* AWCB Decision No. 14-0048 (April 7, 2014) (*Olson VI*) denied Carrs' petition to dismiss Employee's claims and ordered her to attend the previously ordered SIME. *Olson VI* further ordered if Employee failed to appear for the scheduled appointment with the SIME physician, the SIME was to proceed in her absence as a record review (*Olson VI* at 17-18).

101) On May 19, 2014, Employee saw Dr. Gritzka for the long-awaited SIME. Employee declined to complete a standard pain diagram. She shared with Dr. Gritzka a book entitled "The Physics of Dance," and cited to this book as support for her injury theories. Employee told Dr. Gritzka that on February 20, 2008, she was wearing stiff boots which did not bend at the ankle. In the process of lifting a crate, she began to fall backwards and pushed the crate away from her. When Employee lifted the crate overhead with extended arms, she regained her balance but the material in the crate shifted while she was lowering it. As she lowered the crate, the "vortex of the crate" absorbed most the energy involved in this movement. In short, while doing this maneuver, Employee felt something "tear" in her right shoulder. Dr. Gritzka reviewed the medical records including radiographic studies, and performed a physical examination. Dr. Gritzka diagnosed internal derangement in the right shoulder not otherwise specified; generalized ligamentous hyper-laxity; and a complicated "almost paranoiac" medical self-diagnosis based on Employee's "lay interpretation of medical literature." Dr. Gritzka, as was the case with many other examiners, found Employee extremely difficult to interview. He determined there were "psychological factors affecting physical condition." Dr. Gritzka stated people with generalized ligamentous hyper-laxity are subject to musculoskeletal sprains and strains from joint laxity in general. Employee's symptoms suggested right shoulder multidirectional instability but she lacked a specific sign to confirm this diagnosis. By history, Employee had a subcoracoid or anterior shoulder subluxation, which "reduced" but following which she developed some "posttraumatic shoulder stiffness."

Employee's description of her work cleaning tables at Carrs suggested the Carrs activity "worsened or caused an exacerbation of her right shoulder condition." Dr. Gritzka noted Employee had multiple other nonindustrial injuries to her right shoulder. Employee told Dr. Gritzka all these incidents followed her work injury at FedEx. After this FedEx injury, any time Employee stressed or fell onto her right upper extremity, she would have a symptom flare-up. Employee stated she had another claim related to working in a "snow cone booth" at a carnival in Montana. Dr. Gritzka suggested plain right shoulder x-rays to determine if Employee had anterior subluxation in the shoulder. He also suggested a psychiatric evaluation to determine the relationship such diagnoses might have to her work activities at FedEx and Carrs. Dr. Gritzka planned to complete the SIME report after the x-ray results were received (Gritzka SIME report, May 19, 2014).

102) On July 5, 2014, Dr. Gritzka completed another report. He reviewed his previous SIME report and stated, based on Employee's history as she gave it, she had a subcoracoid or anterior shoulder subluxation that had "spontaneously reduced," following which she developed posttraumatic shoulder stiffness. He had opined this condition, "if it existed," was "due to the work injury of 02/20/08." Dr. Gritzka reviewed the previously recommended x-rays done on June 12, 2014, along with a computerized tomography (CT) scan of the right shoulder. Dr. Gritzka concluded neither radiographic study showed any evidence of a persistent subcoracoid mal-position or dislocation. He concluded Employee's "right shoulder condition more probably than not was initiated by the incident at FedEx" but "subsequently aggravated by the reported work activities" at Carrs. He revised his diagnoses to include: internal derangement right shoulder; generalized ligamentous hyper-laxity; and psychological factors affecting physical condition. In response to specific questions, Dr. Gritzka opined the cause for Employee's need for evaluation and treatment to the right shoulder was initially the February 20, 2008 FedEx incident. He also stated Employee had a "preexisting condition," which the February 20, 2008 FedEx incident "exacerbated or combined with" but "did not aggravate or accelerate." Dr. Gritzka said the February 20, 2008 injury caused Employee's preexisting right shoulder condition to become symptomatic. In speaking to the relative contribution of different causes of Employee's disability or need for medical treatment, Dr. Gritzka stated the preexistent right shoulder condition was "asymptomatic prior to 02/20/08." Therefore, he concluded the need for medical treatment "following the 02/20/08 injury was that injury on that date." Dr. Gritzka further stated the "substantial cause" of Employee's need for treatment for the right shoulder was the FedEx injury until the Carrs injury exacerbated the

symptoms. According to Dr. Gritzka, FedEx's liability for disability or medical care for the right shoulder ended on April 22, 2008, when the Carrs incident occurred. Effective April 22, 2008, the Carrs work activities combined with Employee's preexisting acromioclavicular joint arthritis with impingement and the February 20, 2008 FedEx injury to become "the substantial cause" of Employee's need for treatment thereafter. Dr. Gritzka believed Employee was no longer disabled from her work injury, though the date was difficult to determine because she had subsequent right shoulder injuries. Nevertheless, Dr. Gritzka opined Employee needed no further medical treatment for either the FedEx or the Carrs injury. Dr. Gritzka further stated the contribution of Employee's FedEx employment after February 20, 2008 constituted "a substantial cause" for continuing need for treatment. Dr. Gritzka expressed concern over Employee's mental health and thought "some substantial mental health issues" affected her pain perception. Employee did not need any surgery to address her right shoulder. She should be limited to work activities in the light category restricted to below shoulder level. In Dr. Gritzka's opinion, "the substantial cause" of these physical restrictions is Employee's "preexistent or antecedent" right shoulder derangements. Reaching under the counter at Carrs to retrieve cups was not "the substantial cause" of any right shoulder pathology but was the substantial cause of a temporary symptomatic aggravation of preexisting pathology. By working in Montana, Employee demonstrated she had recovered enough to return to work by August 3, 2008. Therefore, Dr. Gritzka opined Carrs' liability to Employee for disability or medical benefits ended when she returned to work in Montana. Dr. Gritzka further stated neither the FedEx nor the Carrs injury was "the substantial cause" of any other claimed medical conditions, including a sternal injury, heart attack or other heart conditions, blood clots, nerve, neck or eye problems. Employee has no evidence of a sternal injury. Employee's current right shoulder conditions preexisted the FedEx and Carrs events, each of which caused a "temporary aggravation" or exacerbation of her preexistent non-industrial condition. The effects from these two injuries have resolved and any current restrictions are due to Employee's persistent, preexisting right shoulder condition. Dr. Gritzka added, if Employee were his patient, he would have her evaluated psychiatrically because some of her right shoulder complaints "have a delusional quality" (Gritzka SIME report, July 5, 2014).

103) The division inadvertently failed to send Employee's SIME questions to Dr. Gritzka. This oversight was quickly rectified and Employee's questions were promptly sent to Dr. Gritzka with a request for him to respond (agency file).

104) On July 21, 2014, Dr. Gritzka responded to Employee's SIME questions. He opined an MRI would not be appropriate as the sternoclavicular joint is difficult to assess. But a CT scan would be an appropriate radiographic test. Employee does not need a neurological test, but Dr. Gritzka reiterated his suggestion for a psychological or psychiatric evaluation. Dr. Gritzka found no physiological or biomechanical connection between Employee's sternal complaints and her ankle. Dr. Gritzka did not observe any "neck tremor," and even if there were some sort of tremor involving the carotid artery, in his opinion, this would not be causative for a heart attack. Dr. Gritzka opined a "jerk" type injury as Employee alleged occurred with FedEx could produce a temporary sprain to the sternoclavicular joint but it would have become symptomatic immediately following the event. The medical records do not indicate this was the case. Hypothetically, a "75 pound pull test" done before the February 20, 2008 injury would demonstrate Employee was able to use her right upper extremity without difficulty. However, Dr. Gritzka noted no such test was included in the records he was given. It was possible Employee had a preexistent sternoclavicular joint condition prior to either work injury. Dr. Gritzka noted Employee did not emphasize or explain her right sternoclavicular joint symptoms when he saw her on May 19, 2014. Nevertheless, she now claims she injured this joint and to "leave no stone unturned," he recommended Employee have a right sternoclavicular joint CT scan to check for arthritic changes or subluxation. She should also have a total body bone scan to determine if she has an active inflammatory process. If all the scans were negative, then "the most probable cause for the examinee's ongoing complaints is a mental health condition" (Gritzka SIME report, July 21, 2014).

105) According to Dr. Gritzka's reports, Employee did not advise him she had fallen on the ice and landed on her right shoulder during her commute to work on February 20, 2008. Dr. Gritzka's opinions are based on the incorrect assumption that Employee's right shoulder was asymptomatic before the lifting incident at FedEx (Gritzka SIME report, May 19, 2014; observations and inferences drawn from the above).

106) On September 3, 2014, *Olson v. Federal Express & Carrs/Safeway,* AWCB Decision No. 14-0124 (September 3, 2014) (*Olson VII*) declined to order a psychiatric or psychological evaluation or a right sternoclavicular joint CT scan and total body bone scan suggested by Dr. Gritzka, but allowed any party to obtain these tests at their own expense and file and serve the resulting reports (*Olson VII* at 7).

107) On September 5, 2014, the division served Employee at her address of record with a notice setting a prehearing conference for September 24, 2014 (Prehearing Notice, September 5, 2014).
108) On September 5, 2014, the division served Employee at her address of record with another notice canceling the September 24, 2014 prehearing conference and rescheduling it to September 22, 2014 (Prehearing Notice, September 5, 2014).
109) On September 22, 2014, FedEx's and Carrs' attorneys appeared at a prehearing conference. Employee did not appear. The designee attempted to call Employee at her telephone number of record and received no answer. The parties waited approximately 15 minutes and, when Employee did not appear or participate by phone at the prehearing conference, the designee proceeded in Employee's absence. Both employers requested the two cases be set for a hearing on their merits. The designee reviewed and listed Employee's various claims and issues. The designee directed the parties to serve and file witness lists and legal memoranda in accordance with the appropriate regulations and specifically stated evidence had to be filed and served on before December 17, 2014, while briefs and witness lists were due no later than December 30, 2014. The designee set the matter on for a merits hearing on January 6, 2013, on all claims and specifically advised Employee:

> **Employee is reminded, at hearing, she must present some evidence in support of her claims. For example, if Employee is claiming temporary total disability (TTD), Employee must point to some medical reports or other evidence in the record is proof establishing the dates of disability. Similarly, if Employee is claiming medical costs, at hearing she should provide some evidence establishing or showing these expenses in the form of bills, receipts, or invoices from healthcare providers** (Prehearing Conference Summary, September 22, 2014; emphasis in original).

110) The division served the September 22, 2014 prehearing conference summary on Employee at her address of record (*id*.).
111) On October 9, 2014, the division received returned certified mail from Employee previously sent to her address of record. The returned mail was Employee's copy of *Olson VII*. Postal Service markings on the envelope stated the Postal Service left a notice for Employee to pick up the certified item on September 4, 2014, and again on September 17, 2014, and when she did not claim it, the Postal Service returned the item to the division on September 27, 2014, marked "unclaimed" (United States Postal Service markings on envelope received October 9, 2014).

112) On October 14, 2014, the designee served an "amended" summary for the September 22, 2014 prehearing conference. The designee carefully reviewed Employee's previous claims and added additional claims omitted from the original September 22, 2014 summary. This summary reiterated the January 6, 2015 hearing date (Amended Prehearing Conference Summary, September 22, 2014).

113) The division served the amended September 22, 2014 prehearing conference summary on Employee at her address of record (*id.*).

114) On December 5, 2014, the division served the hearing notice for the January 6, 2015 hearing on Employee at her address of record (Hearing Notice, December 5, 2014).

115) Employee has had the same mailing address in these two cases for several years. On numerous occasions, Employee's certified mail from the division was returned to the division as "unclaimed" (agency files; observations).

116) At a previous hearing Employee confirmed the Wasilla, Alaska address in the board's ICERS database is her correct mailing address (Employee).

117) On December 30, 2014, FedEx filed a petition to except its over-length brief (Petition to Accept Over-Length Brief, December 30, 2004).

118) The panel remains concerned about Employee's mental and emotional ability to understand and exercise the powers granted to her and perform the duties required of her under the Act in respect to her workers' compensation claims (observations).

119) Employee is at most times difficult to understand, makes confusing arguments, drifts off onto bizarre tangents, and typically does not address the matter at hand (*id.*).

120) Employee has had very little medical attention since her injuries in 2008, and the medical record is relatively minimal (Employee; observations).

121) As a preliminary matter at the January 6, 2015 hearing, Employee objected to FedEx's request for an over-length brief for unspecified reasons. She also claimed she did not receive adequate hearing notice (Employee).

122) Employee admitted she did not attend a prehearing conference at which the hearing was scheduled and stated she deliberately declined to read the prehearing conference summary, in which the hearing date was memorialized. However, Employee did not say she did not receive the actual hearing notice, which was served on her by certified mail at her address of record, which she has

been using for years. Employee said she also declined to submit a hearing brief, believing incorrectly that to do so would somehow jeopardize her rights (Employee).

123) The division properly served Employee with the prehearing conference summary in which the hearing was first noticed, the amended prehearing conference summary and the formal hearing notice at her address of record (agency file and ICERS database, accessed January 6, 2015).

124) An oral order at hearing overruled Employee's objection to the over-length brief, provided her an opportunity to file a post-hearing brief within 14 days, and determined she had received adequate hearing notice (oral order).

125) At hearing on January 6, 2015, Employee demanded a "script" from which she could present her case. She was emotionally agitated and had difficulty focusing on the issues at hand. She rambled incessantly about random, irrelevant issues and the designated chair had to repeatedly redirect her attention to the issue or question raised. Still, Employee gave very little relevant testimony. She did, however, explain how she slipped on the ice on February 20, 2008, how she later the same day claims she injured various body parts lifting a demonstration crate at FedEx, and subsequently allegedly reinjured the same areas or suffered new injuries while reaching under a counter while working for Carrs. Employee also explained, with great emotion, how she suffered a heart attack, which she attributes to her employment with one or both employers (judgment, observations and inferences drawn from all the above; Employee).

126) In response to Employee's request for a "script," the designated chair provided Employee with a copy of the September 22, 2014 amended prehearing conference summary and advised her to focus her testimony on facts addressing each listed issue. When Employee's testimony became consistently non-directional and rambling, the designated chair repeatedly attempted to refocus her attention to the issues in an effort to assist Employee in meeting her burden of production and proof. When this direction proved mostly unproductive, the designated chair advised Employee she would have specific time limitations in which to present her testimony and evidence. While this approach worked to some degree, Employee still presented little testimony addressing factual and legal elements addressing her claims for TTD, TPD, PPI, PTD, past and ongoing medical benefits including transportation expenses, vocational reemployment benefits, a finding of an unfair or frivolous controversion, interest, attorney's fees and costs. Employee did not explain how her equal protection rights have been denied (*id.*).

127) Employee at hearing, after repeated questioning, said she relied solely on reports from Dr. Wickler as support for all her claims (Employee).

128) At hearing, Employee was able to gesticulate wildly, raise both hands and arms far above her shoulders and demonstrate how she lifted the demonstration crate at FedEx and reached under the cabinet at Carrs for the beverage cups. Employee performed these movements and maneuvers without any apparent pain or difficulty (observations).

129) FedEx contends only Dr. Gritzka's SIME reports supported Employee's claim. FedEx suggests Dr. Gritzka's reports should be given little weight as Employee apparently neglected to tell him she fell on the ice during her commute to work before her incident at FedEx on February 20, 2008. Otherwise, FedEx contends Employee produced no evidence supporting her claims against it for her right shoulder or for any other claimed injury (Employer Federal Express' Brief for 01/06/15 Hearing, December 30, 2014).

130) Carrs contends Employee did not have any work injury during her brief employment with Carrs at the deli counter. It contends Employee did not even report an injury until six months after it allegedly occurred. Therefore, Carrs contends Employee's claim should be barred for failure to give adequate notice. Carrs questions Employee's credibility because her medical records and history changed as time went by (Hearing Brief of Carrs/Safeway, December 30, 2014).

131) On January 6, 2015, Employee filed a document to support her claims. This document discussed: Montana wages, Dr. Wickler's failure to perform appropriate tests, interchangeable attorneys, a "challenging words" dictionary with some associated definitions, "sumptuary laws," binoculars, "procaine" applied to her back for sunburn, the Miller's Reach Fire lawsuit, her sister's Montana homestead exemption, "Erse," Druids and Vikings "preying on horses," a civil war in Alaska over set-netting, the "Aerosol Treaty," genealogy and its effect on various physical traits, short stories about the "Black Night and Star Blindness," "eye intensity" as a genetic trait, a conspiracy concerning carbon dioxide, Ted Stevens, Barack Obama, and Sen. Baucus and his trip to China (Petitions to Show Cause Are Not Appropriate, January 5, 2015).

132) On January 7, 2015, Employee filed the first page of the September 22, 2014 amended prehearing conference summary on which she had hand-written the words: "I do not recognize this as a valid document as it has no state seal and the W.C. director Monagle refused a second injury [a different (indecipherable)]. Dana L. Olson 1/6/2015" (Employee's handwritten comments on Amended Prehearing Conference Summary, page 1, September 22, 2014).

PRINCIPLES OF LAW

The board may base its decision not only on direct testimony, medical findings, and other tangible evidence, but also on the board's "experience, judgment, observations, unique or peculiar facts of the case, and inferences drawn from all of the above." *Fairbanks North Star Borough v. Rogers & Babler*, 747 P.2d 528, 533-34 (Alaska 1987). Under the Act, coverage is established by work connection. The test of work connection is, if accidental injury is connected with any incidents of one's employment, then the injury both would "arise out of" and be "in the course of" employment. The "arising out of" and the "in the course of" tests should not be kept in separate compartments but should be merged into a single "work connection" concept. *Northern Corp. v. Saari*, 409 P.2d 845 (Alaska 1966).

> **AS 23.30.010. Coverage.** (a) Except as provided in (b) of this section, compensation or benefits are payable under this chapter for disability or death or the need for medical treatment of an employee if the disability or death of the employee or the employee's need for medical treatment arose out of and in the course of the employment. . . . When determining whether or not the death or disability or need for medical treatment arose out of and in the course of the employment, the board must evaluate the relative contribution of different causes of the disability or death or the need for medical treatment. Compensation or benefits under this chapter are payable for the disability or death or the need for medical treatment if, in relation to other causes, the employment is the substantial cause of the disability or death or need for medical treatment.

> **AS 23.30.100. 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 to the employer.
>
> (b) 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. . . .
>
> (c) Notice shall be given to the board by delivering it or send it by mail addressed to the board's office, and the employer by delivering it to the employer or by sending it by mail addressed to the employer at the employer's last place of business. . . .
>
> (d) failure to give notice does not bar a claim under this chapter

> (1) if the employer, and agent of the employer in charge of the business in 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) if the board excuse the failure on the ground for some satisfactory reason notice could not be given;
>
> (3) unless objection to the failure is raised before the board at the first hearing of a claim for compensation in respect to the injury or death.

In *Kolkman v. Greens Creek Mining Co*., 936 P.2d 150 (Alaska 1997), the board denied an injured worker's claim because his employer, though it had actual notice of his heart attack on the job, did not have notice the worker claimed his heart attack was work-related. The board had relied on *State v. Moore*, 706 P.2d 311 (Alaska 1985), which had been read to require not only notice of injury within 30 days, but notice that the injury was "work-related." In other words, "simple knowledge" of an injury under *Moore* was not enough. Reviewing AS 23.30.100, the Alaska Supreme Court said to the extent *Moore* may be read to add a third requirement to the two-part statutory test for notice, *Moore* was "disapproved" (*id*. at 155). As for prejudice to the employer, *Kolkman* held the employer provided no evidence to support a conclusion it was prejudiced by the late notice (*id*. at 156).

> **AS 23.30.120. Presumptions.** (a) In a proceeding for the enforcement of a claim for compensation under this chapter it is presumed, in the absence of substantial evidence to the contrary, that
>
> (1) the claim comes within the provisions of this chapter. . . .

Under AS 23.30.120(a)(1), benefits sought by an injured worker are presumed to be compensable. *Meek v. Unocal Corp*., 914 P.2d 1276, 1279 (Alaska 1996). The presumption of compensability is applicable to any claim for compensation under the workers' compensation statute (*id*.; emphasis omitted). The presumption application involves a three-step analysis. To attach the presumption of compensability, an employee must first establish a "preliminary link" between his injury and the employment. *Tolbert v. Alascom, Inc.*, 973 P.2d 603, 610 (Alaska 1999). For injuries occurring after the 2005 amendments to the Act, if an employee establishes the link, the presumption may be overcome at the second stage when the employer presents substantial evidence, which demonstrates 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 (March 25, 2011) at 7.

If the board finds the employer's evidence is sufficient to rebut the presumption, it drops out and the employee must prove his case by a preponderance of the evidence. He must prove that in relation to other causes, employment was "the substantial cause" of the disability or need for medical treatment. *Runstrom*, AWCAC Decision No. 150 at 8. This means the employee must "induce a belief" in the minds of the fact finders the facts being asserted are probably true. *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964). In the third step, the 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. . . .

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). The board has the sole power to determine witness credibility, and its findings about weight are conclusive even if evidence is conflicting. *Thoeni v. Consumer Electronic Services*, 151 P.3d 1249, 1253 (Alaska 2007).

> **AS 23.30.135. Procedure before the board.** (a) . . . 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 45.052. Medical summary**. (a) A medical summary on form 07-6103, listing each medical report in the claimant's or petitioner's possession which is or may be relevant to the claim or petition, must be filed with a claim or petition. The claimant or petitioner shall serve a copy of the summary form, along with copies of the medical reports, upon all parties to the case and shall file the original summary form with the board.
> . . . .
>
> (5) A request for cross-examination must specifically identify the document by date and author, generally describe the type of document, state the name of the person to be cross-examined, state a specific reason why cross-examination is requested, be timely filed under (2) of this subsection, and be served upon all parties.

> (A) If a request for cross-examination is not in accordance with this section, the party waives the right to request cross-examination regarding a medical report listed on the updated medical summary.
>
> (B) If a party waived the right to request cross-examination of an author of a medical report listed on a medical summary that was filed in accordance with this section, at the hearing the party may present as the party's witness the testimony of the author of a medical report listed on a medical summary filed under this section.

8 AAC 45.060. Service. . . .

. . . .

(e) Upon its own motion or after receipt of an affidavit of readiness for hearing, the board will serve notice of time and place of hearing upon all parties at least 10 days before the date of the hearing unless a shorter time is agreed to by all parties or written notice is waived by the parties.

(f) Immediately upon a change of address for service, a party or a party's representative must file with the board and serve on the opposing party a written notice of the change. Until a party or the board receives written notice of a change of address, documents must be served upon a party at the party's last known address. . . .

8 AAC 45.065. Prehearings. (a) After a claim or petition has been filed, a party may file a written request for a prehearing, and the board or designee will schedule a prehearing. Even if a claim, petition, or request for prehearing has not been filed, the board or its designee will exercise discretion directing the parties or their representatives to appear for a prehearing. At the prehearing, the board or designee will exercise discretion in making determinations on

. . . .

(c) After a prehearing the board or designee will issue a summary of the actions taken at the prehearing, the amendments to the pleadings, and the agreements made by the parties or their representatives. The summary will limit the issues for hearing to those that are in dispute at the end of the prehearing. Unless modified, the summary governs the issues and the course of the hearing.

. . . .

(e) The board or designee may set a hearing date at the time of the prehearing. The board or designee will set the hearing for the first possible date on the board's hearing calendar unless good cause exists to set a later date. The primary considerations in setting a later hearing date will be whether a speedy remedy is assured and if the board's hearing calendar can accommodate a later date. . . .

> **8 AAC 45.070. Hearings.** (a) Hearings will be held at the time and place fixed by notice served by the board under 8 AAC 45.060(e). . . .
>
> **8 AAC 45.114. Legal memoranda**. Except when the board or its designee determines that unusual and extenuating circumstances exist, legal memoranda must
> . . . .
>
> (2) not exceed 15 pages. . . .
>
> **8 AAC 45.120. Evidence**. . . .
> . . . .
>
> (f) Any document . . . that is served upon the parties, accompanied by proof of service, and that is in the board's possession 20 or more days before hearing, will, in the board's discretion, be relied upon by the board in reaching a decision unless a written request for an opportunity to cross-examine the document's author is filed with the board and served upon all parties at least 10 days before the hearing. The right to request cross-examination specified in this subsection does not apply to medical reports filed in accordance with 8 AAC 45.052; a cross-examination request for the author of a medical report must be made in accordance with 8 AAC 45.052.
> . . . .
>
> (h) If a request is filed in accordance with (f) of this section, an opportunity for cross-examination will be provided unless the request is withdrawn or the board determines that
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> (1) under a hearsay exception of the Alaska Rules of Evidence, the document is admissible;
>
> (2) the document is not hearsay under the Alaska Rules of Evidence; or
>
> (3) the document is a report of an examination performed by a physician chosen by the board under AS 23.30.095 (k) or AS 23.30.110 (g).
>
> **8 AAC 45.900. Definitions**. (a) In this chapter
> . . . .
>
> (11) "Smallwood objection" means an objection to the introduction into evidence of written medical reports in place of direct testimony by a physician; see *Commercial Union Insurance Companies v. Smallwood*, 550 P.2d 1261 (Alaska 1976). . . .

In *Commercial Union Insurance Companies v. Smallwood*, 550 P.2d 1261 (Alaska 1976), the Alaska Supreme Court addressed a party's objection to an employee's medical records being

admitted as evidence without affording his opponent the right to cross-examine the physicians. *Smallwood* held that in the "particular factual circumstances of this case" the employer did not waive its right to cross-examine the medical reports' authors. *Smallwood* concluded: "We therefore hold that the statutory right to cross-examination is absolute and applicable to the Board." *Smallwood* at 1265. *Smallwood* also said the right of cross-examination "does not carry a price tag." In other words, a party does not waive its right to cross-examination when to exercise that right would require that party to bear the initial cost of producing the witness at the hearing. The *Smallwood* court strongly recommended the board adopt procedures to fill the "procedural void" relating to medical reports and the right to cross-examination. *Id.* at 1267.

Many years later in *Frazier v. H.C. Price/CIRI Const. J.V.*, 794 P.2d 103 (Alaska 1990), the Alaska Supreme Court revisted this issue after the board in 1988 had promulgated evidence regulation 8 AAC 45.120, which addressed evidence filing and service deadlines, and the right to request cross-examination. *Frazier* reviewed decisions from other jurisdictions, which routinely held medical documents were admissible against the party "that authorized the report" because the party had in effect "vouched for the competence and credibility of the report's author." Thus, the need to impeach the author's credibility and competence through cross-examination was "less urgent." *Id.* at 105. In applying Alaska Evidence Rule 801(d)(2)(C), *Frazier* found such medical reports were not "hearsay," reversed the board's decision and remanded for an order requiring the employer to reimburse the employee for the costs of making the clinic physicians available for cross-examination, because the employer had "vouched for the credibility and competence of the physicians." *Id.* at 105-06.

ANALYSIS

1) Was the oral order accepting FedEx's over-length brief correct?

The administrative regulations allow for 15 page briefs. 8 AAC 45.114. FedEx filed a 22 page brief, including a full-page each for the case caption and certificate of service. FedEx's brief was thus about five pages over-length. Prior to hearing, FedEx filed a petition seeking acceptance of its over-length brief. At hearing Employee objected to the over-length brief, but could not articulate any cognizable basis for her objection. Instead, Employee stated she had not received adequate hearing notice, a contention addressed in section two, below.

Employee was not prejudiced by FedEx's over-length brief. The designated chair gave Employee the option of filing a post-hearing brief to address anything in FedEx's brief with which she disagreed. Employee filed a post-hearing document not responsive to FedEx's brief. Allowing FedEx's over-length brief, and giving Employee an opportunity to respond in a post-hearing memorandum protected all parties' rights and allowed each party the opportunity to provide extra arguments to support their positions. AS 23.30.135. Consequently, the oral decision allowing FedEx's over-length brief was correct.

2) Was the oral order overruling Employee's objection to lack of hearing notice correct?

In response to FedEx's request for acceptance of its over-length brief, Employee objected stating she had not received adequate hearing notice. The law requires parties be given at least 10 days written notice of a hearing. 8 AAC 45.060(e). Hearings are held in accordance with notice properly served. 8 AAC 45.070(a). The law further requires notices be served on parties at their addresses of record. 8 AAC 45.060(f). The agency record shows Employee had at least three written notices of the January 6, 2015 hearing all sent to her address of record. The hearing was scheduled at the September 22, 2014 prehearing conference. Employee did not attend this conference, even though it too was properly noticed. Nonetheless, the September 22, 2014 prehearing conference summary, also served on Employee at her address of record, provided written notice of the January 6, 2015 merits hearing. At hearing on January 6, 2015, Employee stated she received the prehearing conference summary but deliberately declined to look at it for reasons not entirely clear.

Subsequently, the designee issued an amended prehearing conference summary, which again advised Employee in writing that a hearing was scheduled on her claims on January 6, 2015. This summary was also served on Employee at her address of record. Lastly, on December 5, 2014, the division served Employee with a formal "Hearing Notice" stating her case had been set for hearing on January 6, 2015. 8 AAC 45.060(e). Employee has used the same mailing address for years. Employee's agency files contain numerous "unclaimed" certified mailings returned to the division after having been mailed to Employee's correct address. Employee was properly served with notice of the January 6, 2015 hearing, but either refused to pick up her mail or refused to read it. Therefore, the record shows Employee had adequate hearing notice, and the oral order overruling her "notice" objection was correct.

3) Are Employee's claims against Carrs barred for failure to give adequate notice?

Carrs contends Employee's claims against it should be barred because she failed to give timely written notice of any injury which she subsequently claimed occurred on April 22, 2008. Employee did not specifically address this defense. The law requires injured people to provide their employer with written notice of an injury within 30 days after the date of injury. AS 23.30.100. The statute implies a claim may be barred for failure to give notice. AS 23.30.100(d). However, the law also states failure to give notice "does not bar a claim" if the employer or the employer's agent in charge of the business in the place where the injury occurred "had knowledge of the injury" and the employer or carrier has not been prejudiced by the injured worker's failure to give notice. AS 23.30.100(d)(1).

As Employee contends she knew she was injured on April 22, 2008, she should have provided a written injury report to Carrs within 30 days of that date. As for her right shoulder injury, Employee gave Carrs actual notice on April 22, 2008, that she hurt her shoulder at work on April 22, 2008, when she reported to store manager "Stan" what had happened. Employee's testimony on this point is credible. AS 23.30.122; *Kolkman.* Thus, Carrs had actual "knowledge" of the alleged injury. Given this knowledge, Carrs could have required Employee to see a physician of its choosing and could have performed any investigation it thought necessary to corroborate Employee's account. Therefore, Carrs has not demonstrated it was prejudiced by Employee's failure to provide a formal, written injury report within 30 days of April 22, 2008. Employee's right shoulder claim against Carrs will not be barred under AS 23.30.100. However, as for the other alleged body parts and functions Employee claims were injured on April 22, 2008, or as a result of the Carrs event, Employee failed to give Carrs timely notice in any form. Consequently, Employee's other claims against Carrs will be barred under AS 23.30.100. As will be seen below, this technical claim bar means little, as Employee cannot prove her claims against Carrs even had they not been barred.

4) Does Employee have a compensable injury against either FedEx or Carrs?

Employee claims she injured her right upper arm, right shoulder and neck on February 20, 2008, while employed with FedEx. She claims further injuries with FedEx, and with Carrs on April 22,

2008. These contentions raise factual disputes to which the statutory presumption of compensability applies. AS 23.30.120; *Meek.*

a) Right upper arm, right shoulder and neck, including sternum.

Employee raises the presumption of compensability against FedEx for her right shoulder and possibly her sternum injury through her own testimony, and through Drs. Wickler's and Boston's opinions. *Tolbert.* This decision cannot consider Dr. Jensen's March 26, 2008 EME report, because Employee's former attorney Rehbock filed a *Smallwood* objection to Dr. Jensen's EME report, and FedEx has not provided Employee with an opportunity to cross-examine Dr. Jensen. *Smallwood*; 8 AAC 45.052(c)(5); 8 AAC 45.900(11). Employee does not raise the presumption as to any right upper arm or neck injury because she provided no evidence demonstrating these more complex medical issues are connected to her FedEx or Carrs employment. FedEx and Carrs rebut the raised presumption with Employee's February 20, 2008 written statement to her FedEx supervisor and with the February 20, 2008 Alaska Regional Hospital Emergency Room reports, both of which demonstrate the slip and fall before work was the cause of Employee's right shoulder injury, and with numerous medical records stating Employee has no "sternal injury." *Runstrom*. Employer has successfully rebutted the presumption and the burden of production shifts to Employee who must prove all elements of her right upper arm, right shoulder, neck and sternum injury claims by a preponderance of the evidence. *Runstrom*; *Saxton.*

Employee relies exclusively upon Dr. Wickler's opinions to support all her injury claims. Dr. Wickler's May 13, 2008 response to Employee's former lawyer's letter initially supported Employee's right shoulder and possibly her sternum claim. Dr. Wickler based his opinion on his understanding Employee "had no pain after fall & felt something tear as she picked up the 12# container." However, after being shown Employee's contemporaneous medical records and her supervisor's statement, on June 27, 2008, Dr. Wickler reversed his position and stated the FedEx incident was not "the substantial cause" of Employee's need for treatment and disability from her right shoulder. He did not address the right upper arm, neck or sternum. FedEx filed Dr. Wickler's June 27, 2008 opinion on a July 9, 2008 medical summary. To complicate this matter even further, on July 15, 2008, Employee's former counsel properly and timely filed a *Smallwood* objection to Dr. Wickler's June 27, 2008 revised opinion. Neither party has presented Dr. Wickler for cross-

examination. This raises a legal question of whether this decision can consider Dr. Wickler's June 27, 2008 report, as Employee objects to her own physician's opinion. *Smallwood*; *Frazier*.

However, this decision need not reach that legal question. Dr. Wickler's June 27, 2008 opinion will not be considered or relied upon in this decision. Rather, less weight is given to Dr. Wickler's May 13, 2008 opinion because it is based upon misinformation and is not in accordance with the facts. *Smith*; AS 23.30.122. On May 13, 2008, when he offered this supporting opinion on Employee's right shoulder, Dr. Wickler assumed Employee had "no pain" after falling on the ice during her commute to work. His assumption is inaccurate, as Employee in her own words stated in her hand-written statement that upon arriving to work at FedEx after having fallen on the ice on her way to work, Employee tried to "massage" her fall, *i.e.*, her shoulder, and did not want to participate in the safe lifting training. Nevertheless, to not appear as a "whiner," Employee decided to go ahead and lift the milk crate. Employee's admission in her hand-written statement shows she had pain after her slip and fall sufficient to 1) cause her both to massage the shoulder to reduce the pain, and 2) feel reluctant to participate in a lifting exercise at FedEx. Similarly, when Employee went to the emergency room more than 12 hours later on February 20, 2008, she first mentioned falling while getting out of her vehicle at 5:30 AM and "injuring her right arm." In respect to her FedEx work later in the day, Employee only secondarily said lifting at FedEx "caused increasing pain." Employee only lifted one item, the milk crate, one time at FedEx on February 20, 2008.

When Employee saw ANP Fitzgerald, she did not even mention the slip and fall on the ice. ANP Fitzgerald did not give any causation opinion. In November 2010, Employee told Dr. Boston she felt a "give or jerk" in the sternum while lifting the crate at FedEx. He opined the mechanism of injury Employee described can cause a right rotator cuff and possible muscle tear. Again, this "give or jerk" history was not seen in the prior two years' medical reports. Therefore, to the extent Dr. Boston's opinion can be considered support for Employee's right shoulder or sternum injury, it is given less weight because it is not based on accurate information. AS 23.30.122; *Smith*.

Employee's lay testimony and opinions about ballet, mechanics, leverage and quantum physics and their possible effects upon her right shoulder and sternum injuries are also given less weight.

Employee is not an expert in these areas, and her opinions gleaned from textbooks and other sources are not persuasive mainly because they are almost incomprehensible. *Thoeni*; AS 23.30.122.

Dr. Gritzka's SIME reports contain some medical opinions supporting Employee's position on the right shoulder and possibly the sternum in her claims against FedEx and Carrs. Notably, Dr. Gritzka authored three SIME reports in this case, and reviewed all the available medical records in his initial, May 19, 2014 report. In respect to the February 20, 2008 emergency room report, Dr. Gritzka mentions the slip and fall but does not mention where the emergency room physician said it occurred. Dr. Gritzka never again mentions the initial emergency room report, and does not discuss the slip on the ice during Employee's commute to work that day and the effect, if any, it has on his opinions. It seems Dr. Gritzka in his analysis overlooked the slip and fall on the ice altogether. For these reasons, Dr. Gritzka's opinions are given less weight. AS 23.30.122; *Moore*.

As for her right shoulder claim against Carrs, this decision has decided it is not barred by Employee's failure to give timely written notice of injury. Nonetheless, Employee cannot prove her right upper arm, right shoulder, sternum and neck claims against Carrs for the same reasons she failed in her claims against FedEx. The medical records and Employee's own statements show clearly that she injured her right shoulder when she slipped and fell on the ice on her commute to FedEx. There is no convincing medical evidence Employee even has a right upper arm, neck or sternum injury, but if she does, neither the FedEx nor the Carrs employment injured those body parts. Though reaching under a cabinet at Carrs two months later may have increased her right shoulder and sternum pain caused by the February 20, 2008 slip and fall, pain experienced later at work does not necessarily equate to a work-related "injury." Reaching under the counter simply was another movement causing pain originating from her February 20, 2008 slip and fall on the ice. Dr. Gritzka understood Employee to injure herself, among other ways, by wiping off tables at Carrs. But Employee specifically claimed her Carrs injury occurred when she awkwardly bent under an unusually deep counter to reach for drinking cups and felt right shoulder pain. Again, his opinions are based upon incorrect facts, undoubtedly provided by Employee. Thus, they are again given less weight. AS 23.30.122.

Further, the medical records demonstrate Employee's right shoulder injury history changed over time. The sternum component was added later. Not much has ever been said about the right upper arm or neck. When she first saw Dr. Wickler, Employee described her slip and fall on the ice as "minor" and said she landed on her hip, and did not mention landing on her right shoulder, contrary to her contemporaneous written statement to her FedEx supervisor. Employee told Dr. Wickler she had "no problems" with her shoulder until she picked up the demonstration box at FedEx. This is not consistent with the facts. AS 23.30.122.

On April 22, 2008, at a previously scheduled physical therapy appointment, Employee told the therapist she was not sure if her right shoulder was sore from her last therapy appointment, a recent fall on her bike, or was sore "from her new job" with Carrs. Employee did not mention to the physical therapist anything about reaching under the counter at Carrs to grab drinking cups or feeling a "pop" in her right shoulder while so doing. Again, the contemporaneous history is different from the current account. AS 23.30.122.

In August 2008, when she filed her Montana injury report, Employee stated she was not in pain in June 2008. This too is inconsistent with her subsequent statements to her physicians. In July 2009, when Employee saw Dr. Bald she said she slipped on the ice and fell on her right hip and "rolled" onto her right shoulder. This account is different from what she told her FedEx supervisor, to whom she reported falling and landing on her right shoulder and hip. Employee also told Dr. Bald she experienced a "tearing sensation" in her right shoulder when she lifted a milk crate at FedEx, contrary to her contemporaneous reports, which did not mention "tearing." Similarly, Employee told Dr. Bald she felt a "pop" when reaching under the counter at Carrs, which is not what she told her initial evaluators. AS 23.30.122.

Likewise, as time went by, Employee on April 8, 2008, mentioned feeling a "pop" in her right shoulder while lifting at FedEx. On July 23, 2009, Employee told Dr. Bald she felt a "burning or tearing" sensation in her right shoulder as she lifted the milk crate at FedEx and a "pop" when she reached under the counter at Carrs. In November 2010, she told Dr. Boston she felt a "give or jerk" in the sternum while lifting the crate at FedEx. The contemporaneous medical records do not support Employee's later revisionist history. If Employee had felt a "pop," a "burning or tearing

sensation" in the shoulder or a "give or jerk" in the sternum during either of the allegedly injurious events, she would have mentioned this to the contemporaneous physicians. As she did not, medical records and opinions containing the enhanced, revised right shoulder and sternum history are given less weight. AS 23.30.122.

Employee's need for medical treatment for her right upper arm, right shoulder, neck and sternum beginning February 20, 2008, and again on April 22, 2008, and any related disability, did not arise out of and in the course of her FedEx or Carrs' employments. AS 23.30.010(a). They arose out of the slip and fall on the ice during Employee's commute on February 20, 2008. This slip and fall on the ice was the substantial cause of Employee's need for right upper arm, right shoulder, neck, and sternum medical treatment and any related disability, at least until some other slip and fall, fall off a stool, fall off a bike, fall off a flatbed truck or some other event or process not related to the instant claims intervened and may have caused separate symptoms or injuries. *Id.*; *Rogers & Babler*.

b) Other claimed injuries.

Employee has also claimed injuries with FedEx and Carrs to her heart, arteries, right upper extremity down to the hand, back, "meniscus," feet and her eyes. Given Employee's complicated theories connecting these body parts to the FedEx and Carrs events, these are more medically complex issues requiring medical opinions to show how the reported injuries with FedEx or Carrs could have caused symptoms or conditions in these areas. Employee has not raised the statutory presumption as to any other claimed injury to any body part or function arising from her FedEx or Carrs employment, because she produced no medical evidence to support her argument that her FedEx or Carrs injuries caused any other physical symptoms, complaints or medically diagnoses. AS 23.30.120. Therefore, Employee must prove all aspects of her claims against FedEx and Carrs for these other injuries by a preponderance of the evidence. *Runstrom*; *Saxton.*

Employee again relies upon Dr. Wickler's medical opinions to support her claims for benefits related to this litany of other physical symptoms, diagnoses and conditions. Dr. Wickler was clear in his opinions concerning these other issues. In September 2010, Employee returned to Dr. Wickler telling him of additional medical issues and related procedures she had undergone since last seeing him. Dr. Wickler concluded: "I have no knowledge that any of the ensuing medical issues

have anything to do with her job injury and/or her rotator cuff tear. [B]ut at this point, since my only real care has been for her shoulder, the diagnosis continues to be resolving frozen shoulder for which she does not have complete range of motion and a small, but complete rotator cuff tear."

Employee presented no other medical evidence and no lay testimony supporting her theory that her employment with FedEx or Carrs was the substantial cause of any of the host of medical symptoms and conditions she experienced. Though this decision is sympathetic to Employee's serious medical concerns, no evidence supports her claims. The designated chair at hearing tried repeatedly to guide Employee's rambling testimony back to her "script," the prehearing conference summary from September 22, 2014, so she could present lay testimony or point to medical records supporting her causation theory in respect to all these other alleged injuries. The chair did so in an effort to best ascertain the rights of all parties. AS 23.30.135. Nevertheless, Employee could not focus long enough to present even lay testimony supporting her position. Therefore, Employee could not prove any of these diagnoses, symptoms or conditions arose out of and in the course of her employment with either FedEx or Carrs. She could not prove her FedEx or Carrs employment was the substantial cause of the need for treatment or disability related to any of these alleged conditions. Therefore, her claims related to all these other diagnoses, body parts and functions against FedEx and Carrs are not compensable. AS 23.30.010(a); *Saxton*.

5) Is Employee entitled to any benefits from either employer?

Employee has claims against FedEx and Carrs for TTD, TPD, PTD, PPI, vocational reemployment benefits, attorney's fees, costs, and interest. She also seeks an order finding FedEx and Carrs filed unfair or frivolous controversions, and stating her equal protection rights were denied. As this decision determined Employee does not have compensable injuries against either FedEx or Carrs for any of her alleged symptoms, diagnoses or conditions, she is not entitled to any additional workers' compensation benefits, and her claims will be denied.

However, an employer could conceivably file an unfair or frivolous controversion and still not be liable for benefits. Employee has not articulated how or why she believes either FedEx or Carrs filed unfair or frivolous controversions in this case. The record discloses each employer had a valid legal or factual basis for which to file their various controversion notices at the time the notices were

filed. Therefore, as there is no basis to find either FedEx or Carrs filed an unfair or frivolous controversion in this case, Employee's request for an order so finding will be denied.

Lastly, Employee contends her equal protection rights were violated. Again, Employee failed to articulate how FedEx or Carrs violated her equal protection rights. Her request for an order finding FedEx or Carrs violated her constitutional rights will be denied.

CONCLUSIONS OF LAW

1) The oral order accepting FedEx's over-length brief was correct.
2) The oral order overruling Employee's objection to lack of hearing notice was correct.
3) Employee's right shoulder claim against Carrs is not barred for failure to give adequate notice. Employee's other claims against Carrs are barred for failure to give adequate notice.
4) Employee did not have a compensable injury against either FedEx or Carrs.
5) Employee is not entitled to any benefits from either employer.

ORDER

1) Employee's right shoulder claim against Carrs is not barred by AS 23.30.100, but all other claims against Carrs are barred for Employee's failure to give adequate notice under AS 23.30.100.
2) Employee did not have a compensable injury with FedEx.
3) Employee did not have a compensable injury with Carrs.
4) Employee's claims for any and all benefits against FedEx are denied.
5) Employee's claims for any and all benefits against Carrs are denied.
6) Employee's requests for an order finding FedEx or Carrs filed an unfair or frivolous controversion are denied.
7) Employee's requests for an order finding FedEx or Carrs violated her equal protection rights are denied.

Dated in Anchorage, Alaska, on January 29, 2015.

ALASKA WORKERS' COMPENSATION BOARD

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William Soule, Designated Chair

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Dave Kester, Member

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Mark Talbert, Member

APPEAL PROCEDURES

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

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

RECONSIDERATION

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

MODIFICATION

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

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Final Decision and Order in the matter of DANA L. OLSON, employee / claimant v. FEDEX CORPORATION, employer, salt-insured and CARRS/SAFEWAY, INC., employer; self-insured / defendants; Case Nos. 200802181 and 200815961, respectively; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties on January 29, 2015.

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Elizabeth Pleitez