

ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

JERRY SCHEIB,)	
)	
Employee,)	FINAL DECISION AND ORDER
Claimant,)	
)	AWCB Case No. 201209199
v.)	
)	AWCB Decision No. 15-0019
ANCHORAGE SCHOOL DISTRICT,)	
)	Filed with AWCB Anchorage, Alaska
Employer,)	on February 11, 2015
Defendant.)	
)	

Jerry Scheib's (Employee) June 17, 2014 amended claim was heard on its merits on the written record on February 11, 2015, in Anchorage, Alaska, a date selected on February 5, 2015. The parties waived their statutory right to 10 days' hearing notice. Attorney Michael Patterson represented Employee. Attorney Nora Barlow represented Anchorage School District (Employer). Because the parties stipulated to a hearing on the written record, there were no witnesses. The record closed at the hearing's conclusion on February 11, 2015.

ISSUES

Employee contends his June 18, 2012 work injury with Employer caused a permanent injury in his left shoulder, which will require additional medical care and treatment to include possible surgery. Furthermore, Employee contends a left hand laceration the same day he injured his left shoulder "seeded" his damaged left shoulder tissue causing a septic shoulder injury, which required additional medical care and treatment. He seeks an order finding his left shoulder was and remains a compensable injury.

Employer contends Employee has a long history of left shoulder degenerative arthritis. It contends at best the June 18, 2012 work injury was a temporary aggravation of a preexisting orthopedic condition. Employer further contends there is no convincing evidence there was a left hand laceration and consequently, the left shoulder strain could not have also resulted in a septic left shoulder. Since the temporary orthopedic aggravation and the septic shoulder have resolved, Employer contends Employee's left shoulder is no longer compensable.

1) Does Employee's left shoulder remain a compensable injury?

Employee contends he is entitled to additional temporary total disability (TTD) as well as temporary partial disability (TPD), permanent partial impairment (PPI), a vocational reemployment eligibility evaluation, past and ongoing medical and related transportation benefits for the left shoulder's septic and orthopedic symptoms and related attorney's fees, costs and interest. He seeks an order awarding these benefits from Employer.

Employer contends since both the left shoulder strain and the septic left shoulder have resolved and no further medical care is needed for either condition Employee is not entitled any additional workers' compensation benefits for this injury. It seeks an order denying his claims.

2) Is Employee entitled to any additional benefits from Employer?

FINDINGS OF FACT

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

- 1) On April 8, 2006, Employee told his family physician his bilateral shoulder pain had been made worse by barometric pressure changes. Employee said his shoulder pain was long-standing. However, Employee had "dramatic" range of motion loss in both shoulders. Shoulder x-rays showed severe degenerative changes in both shoulders. The physician referred him to an orthopedic surgeon for evaluation (Medical Park Family Clinic report, April 8, 2006).
- 2) Employee's file contains no relevant records for six years thereafter (agency record).
- 3) On June 18, 2012, Employee strained his left shoulder while working on a water heater as a plumber for Employer (Report of Occupational Injury or Illness, June 21, 2012).

- 4) On June 18, 2012, Employee went to the emergency room where his chief complaint was “shoulder pain.” Because Employee arrived at the emergency room later in the evening, he was not examined until the next day, June 19, 2012. Employee reported a long history of shoulder pain made acutely worse on June 18, 2012. He was pushing on a pipe with a wrench when he felt worsening left shoulder pain, which became so severe he could no longer move his arm. He had taken over-the-counter medication with no relief. He had also felt “subjective fevers” throughout the day. As a precaution, the emergency staff took blood samples and ultimately discovered an elevated white blood count, which was suspicious for a “septic shoulder.” The emergency room referred Employee to a specialist (Providence Hospital, June 18-19, 2012).
- 5) Employer ultimately paid Employee TTD benefits from June 19, 2012 through August 2, 2012 (Compensation Report, August 23, 2012).
- 6) On June 20, 2012, Employee on referral saw an orthopedic surgeon at Orthopedic Research Clinic of Alaska for his left shoulder pain, and for his fever. Employee gave a consistent history and the examiner diagnosed possible sepsis with underlying left shoulder arthritis. The clinic referred Employee to Megan Clancy, M.D., infectious disease specialist, for further evaluation (Orthopedic Research Clinic of Alaska report, June 20, 2012).
- 7) On June 28, 2012, Dr. Clancy evaluated Employee and diagnosed a left shoulder staph aureus bacteremia infection that was work-related arising from his June 18, 2012 injury. Employee’s left shoulder pain was so bad he could not “wipe [his] ass.” Dr. Clancy restricted Employee from work for four weeks with very limited upper extremity use. Dr. Clancy opined Employee may need surgery and recommended intravenous antibiotics for two to six weeks (Clancy Physician’s Report, June 28, 2012).
- 8) On or about June 30, 2012, Employee relocated to Grand Junction, Colorado, to stay with his sister while he recovered from his work injury (Employee’s arguments).
- 9) On July 2, 2012, Employee saw a family physician at Primary Care Partners in Grand Junction, Colorado. Employee provided a consistent history and wanted to see an infectious disease and orthopedic specialist to follow-up on his antibiotic treatment. The primary care physician referred Employee to specialists (Primary Care Partners report, July 2, 2012).
- 10) On July 3, 2012, Employee saw infectious disease specialists at St. Mary’s Regional Medical Center. One examiner thought Employee might have a septic shoulder and wanted him to see an orthopedic specialist (St. Mary’s Regional Medical Center Report, July 3, 2012).

11) Later on July 3, 2012, Employee saw an orthopedic specialist at Rocky Mount Orthopedic Associates in Grand Junction. This specialist diagnosed a left shoulder “sprain/strain” and septic shoulder versus a possible inflammatory arthropathy. He referred Employee back to the infectious disease specialist (Rocky Mount Orthopedic Associates report, July 3, 2012).

12) On July 10, 2012, Employee returned to St. Mary’s Regional Medical Center for follow-up. The examining physician recommended six more weeks’ antibiotics to resolve his shoulder infection, which would extend his antibiotic treatment through August 21, 2012 (St. Mary’s Regional Medical Center report, July 10, 2012; inferences drawn from the above).

13) On or about August 1, 2012, Employee returned to Alaska from Colorado. Employee’s first medical visit for his work injury upon returning to Alaska was at First Care Medical Center on or about August 3, 2012. The First Care intake form suggests Employee wanted “permission to return to work.” The examining physician referred Employee back to his orthopedist in Anchorage for follow-up and released him to “modified work” effective August 6, 2012, with a 10 pound limitation on lifting, pulling and pushing and no lifting above shoulder level (First Care Medical Center report, August 3, 2012; inferences drawn from the above).

14) On August 3, 2012, Employer sent Employee to an employer’s medical evaluation (EME) with Donald Schroeder, M.D., orthopedist. His chief complaint was a “weird feeling in the left shoulder.” Employee explained he had worked as a plumber for 35 years. In June 2012, Employee was working on pipes with a wrench and strained his left shoulder. A few hours later when the pain increased, Employee went to the emergency room where he waited and was seen early the next morning by emergency room staff; he complained of sudden onset of left shoulder pain. He reported both shoulders had been giving him trouble for the past 10 years. Employee mentioned he had felt “feverish all day” and his then-current pain level was at “10/10.” In the emergency room, Employee reported inability to move his left shoulder at all because of severe pain. Concurrent x-rays showed severe osteoarthritis in the glenohumeral joint and laboratory studies demonstrated a high white blood cell count. A specialist reviewed Employee’s shoulder and aspirated fluid, which looked normal. A subsequent magnetic resonance imaging (MRI) demonstrated advanced glenohumeral osteoarthritis. The emergency room discharged Employee, who followed up with an orthopedic surgeon the following day. Blood cultures taken earlier were positive for staph aureus. A few days later, Employee was admitted to the hospital where intravenous antibiotics were administered to address the bacterial infection. Three days

later, Employee was discharged with ongoing intravenous antibiotics. By June 29, 2012, a repeat MRI showed a probable septic acromioclavicular joint in the left shoulder. Employee went to Colorado where he consulted an infectious disease specialist in Grand Junction. His intravenous line was removed in Colorado and a physician placed him on oral antibiotics. Dr. Schroeder obtained the above history from Employee and performed an examination. Dr. Schroeder opined Employee had a left shoulder “strain” related to his June 18, 2012 injury but his septic acromioclavicular joint was unrelated as was his advanced degenerative glenohumeral joint disease. Though the left shoulder work strain was the substantial cause of the need for the initial emergency room visit, Dr. Schroeder opined subsequent treatment including antibiotics to address the staph infection were unrelated to the June 18, 2012 work injury. In Dr. Schroeder’s opinion, the work injury was not the substantial cause of Employee’s need for any additional medical treatment, or any disability or impairment. He released Employee to return to regular duty and said Employee may need bilateral shoulder replacements because of preexisting degenerative changes unrelated to the work injury (Schroeder report, August 3, 2012).

15) On August 21, 2012, Employee’s septic left shoulder became medically stable because he had completed his antibiotic treatment (inferences drawn from the above).

16) On August 27, 2012, Employer denied Employee’s right to all benefits based upon Dr. Schroeder’s report (Controversion Notice, August 22, 2012).

17) On August 29, 2012, Employee filed a claim for TTD, TPD, and medical costs. Employee’s claim stated he had injured his left shoulder while using a pipe wrench and had also cut his knuckle on a metal stud, which resulted in a staph infection. Employee filed his claim because Employer had denied all benefits (Workers’ Compensation Claim, August 29, 2012).

18) On September 12, 2012, Employer filed a notice denying “all benefits” requested in Employee’s claim (Controversion Notice, September 12, 2012).

19) On September 27, 2012, Employee saw a physician’s assistant at Orthopedic Physicians Alaska and reported he had called his prior orthopedic physician’s office and was told there was nothing further they could do for him and he should return to Dr. Clancy. Employee sought care at a new orthopedic clinic. A physician’s assistant completed a Disability Status form stating Employee was “partially disabled” and could lift no more than five pounds with no overhead work (Orthopedic Physicians Alaska Disability Status form, September 27, 2012).

20) On October 11, 2012, Robert Hall, M.D., orthopedic surgeon at Orthopedic Physicians Alaska said Employee would be permanently unable to do heavy physical labor, crawling, or working in tight spaces, due to his “shoulder arthritis” (Hall report, October 11, 2012).

21) From October 11, 2012 forward, Employee’s left shoulder orthopedic medical care addressed his preexisting degenerative arthritis and not his work injury. As he was no longer treating for his work-related left shoulder injury and Dr. Hall had determined he was permanently restricted from returning to work as a plumber due to his left shoulder “arthritis,” Employee was medically stable from his work-related left shoulder orthopedic issue effective October 11, 2012 (inferences drawn from all the above).

22) On October 22, 2012, Employee through counsel filed an amended claim seeking TTD, TPD, PPI, medical and transportation benefits, interest, a second independent medical evaluation (SIME), and attorney’s fees and costs (Workers’ Compensation Claim, October 19, 2012).

23) On November 7, 2012, Employer filed a notice denying all benefits requested in Employee’s amended claim (Controversion Notice, November 7, 2012).

24) On December 6, 2012, the parties stipulated to an SIME (stipulation, December 6, 2012).

25) On December 13, 2012, Dr. Hall said Employee was a surgical candidate for his left shoulder and, though he was mildly symptomatic before the injury, the work injury was the substantial cause of the need for shoulder surgery and other shoulder treatment after June 23, 2012. Dr. Hall did not think Employee would have needed surgery without the increase in symptoms caused by the work injury (Hall report, December 13, 2012).

26) On September 23, 2013, Employee saw SIME physician Peter Marsh, M.D., infectious disease specialist. Dr. Marsh reviewed Employee’s medical records and performed a physical examination. Dr. Marsh opined Employee’s medical treatment on June 19, 2012, resulted from an “acute injury” to his left shoulder, which caused tissue damage and swelling, followed by a left hand laceration, which allowed bacteria into his damaged shoulder tissues. In Dr. Marsh’s opinion, these bacteria “seeded” Employee’s left shoulder resulting in his septic illness. Dr. Marsh opined Employee’s left shoulder and left hand were both acute injuries and not the result of any preexisting condition. In Dr. Marsh’s view, the shoulder and hand injuries on June 18, 2012, were “the substantial cause” of Employee’s left shoulder infection and the need for subsequent treatment. As the infection had been eradicated, Dr. Marsh said no further medical care was necessary (Marsh SIME report, September 23, 2013).

27) On September 25, 2013, Employee saw Paul Puziss, M.D., orthopedic surgeon and shoulder expert, for the second part of his SIME. Employee gave Dr. Puziss a consistent injury history. By work-day's end on June 18, 2012, Employee noted fairly severe left shoulder pain. By the time he arrived at the emergency room, Employee felt severe left shoulder pain. Blood samples showed a possible infection as did an MRI. Blood cultures eventually disclosed staph aureus. Another examining physician could not discern by history any "obvious infection source." Employee had reported chronic intermittent shoulder pain. However, a June 20, 2012 nursing note indicated Employee had a cut to his finger, which had scabbed over and was healing. Employee told Dr. Puziss he had cut his ring finger when he reached into an access door and contacted a jagged metal stud. He had hurt his left shoulder at about 11:30 AM and cut his finger at approximately 2:30 PM. A subsequent MRI was suspicious for septic arthritis in the left acromioclavicular (AC) joint. Dr. Puziss performed an examination and reviewed radiographic evidence. He diagnosed preexisting, severe degenerative arthritis of both shoulders; preexisting degenerative arthritis of both AC joints; history of staph aureus infection; probable septic arthritis left AC joint, healed; and a left shoulder strain. Dr. Puziss opined the cause for Employee's left shoulder pain related to his degenerative arthritis. He had "tenderness" in his left AC joint, but did not actually have "pain" in that joint. In Dr. Puziss' view, the work injury caused a temporary aggravation because a bacterial infection developed in the left AC joint, which caused a need for treatment. As of Dr. Puziss' examination, the degenerative arthritis was the cause of Employee's continued shoulder pain and Dr. Puziss could not determine any cause for shoulder pain connected to the work-related shoulder strain. Any ongoing disability was not work-related in Dr. Puziss' opinion. No additional treatment was needed for the work injury. In respect to his work injury, Employee could return to duty without any limitations or restrictions. Dr. Puziss agreed the left hand laceration was the substantial cause of the staph aureus infection and need for treatment in the AC joint. Wrenching the pipe was a causative factor for his strain, but not for Employee's left shoulder AC joint infection. Dr. Puziss further opined the work injury was the substantial cause of Employee's inability to work for a period following June 19, 2012. Employee could have returned to at least light duty work by August 3, 2012. Dr. Puziss disagreed with Dr. Schroeder's return to work opinion and thought Dr. Schroeder was apparently unaware Employee had a left AC joint infection. Objectively, Dr. Puziss said Employee was not much different from his "2006 examination"

given the degenerative arthritis in both shoulders. Without an additional MRI or left shoulder x-rays, Dr. Puziss could not determine if Employee's left shoulder had degenerated further as a result of the staph infection (Puziss SIME report, September 25, 2013).

28) On April 8, 2014, Dr. Hall referred Employee to Edward Barrington, D.C., for a left shoulder PPI rating (Hall referral, April 8, 2014).

29) On April 9, 2014, Dr. Barrington saw Employee on referral from Dr. Hall. Dr. Barrington reviewed Employee's history, performed a left shoulder examination, reviewed selected records and provided a PPI rating in accord with the proper guides. Dr. Barrington assigned one percent, work-related, whole-person PPI to Employee's work injury with Employer based upon a left shoulder strain. The parties stipulated Dr. Barrington's bill for the PPI rating was \$1,400 (Barrington report, April 9, 2014; parties' stipulation).

30) On April 17, 2014, Dr. Hall released Employee to light duty work only with no heavy physical labor, crawling, or working in tight spaces. These restrictions were "permanent" at least until his next re-evaluation (Hall disability work status, April 17, 2014).

31) On July 11, 2014, Dr. Hall opined Employee would not have permanent physical capacities sufficient to perform plumber duties required for the job at the time of his injury. Dr. Hall opined it was difficult to determine whether Employee would have a PPI rating given his preexisting shoulder condition. The June 18, 2012 work injury was the substantial cause of Employee's inability to return to work as a plumber (Hall report, July 11, 2014).

32) Employee contends Employer can show no alternative cause for his staph aureus infection. He contends his open wound was the seeding source for the infection and Employer has no evidence with which to rebut the raised presumption of compensability. Employee further contends there is no question he injured his left shoulder while using a pipe wrench on the injury date. He contends this caused tissue damage allowing the bacteria to grow within his shoulder joint. Employee contends Drs. Hall, Marsh, Clancy and Puziss all support his position in whole or in part. Employee further contends he incurred and documented \$7,176.90 in medical expenses related to his work injury, not including Dr. Barrington's PPI rating bill, all of which remain unpaid (Employee's arguments).

33) Employer contends Drs. Schroeder and Puziss both support its defenses to Employee's claims. It contends no physician ever saw the left hand laceration, which is only mentioned in passing in a nurse's note. Therefore, Employer contends this evidence is inadequate to

demonstrate the work injury to the left shoulder was the substantial cause of Employee's subsequent septic shoulder. The SIME physician only found a temporary strain aggravation of Employee's preexisting left shoulder degenerative arthritis. Dr. Puziss, therefore, did not support Employee's position. Even if Employee prevails on the left shoulder staph infection, in Employer's view SIME physician Dr. Marsh said the infection had been eradicated and Employee needed no further care. Employer contends Employee is entitled to additional TTD benefits only if the staph infection was Employer's responsibility, and even then, any disability would have resolved by the time Employee completed his antibiotics on or about August 8, 2012. As the rehabilitation benefits administrator (RBA) has never evaluated Employee, Employer contends any claim for reemployment benefits is premature (Employer's arguments).

PRINCIPLES OF LAW

The board may base its decision not only on direct testimony and other tangible evidence, but also on the board's "experience, judgment, observations, unique or peculiar facts of the case, and inferences drawn from all of the above." *Fairbanks North Star Borough v. Rogers & Babler*, 747 P.2d 528, 533-34 (Alaska 1987).

AS 23.30.010. Coverage. (a) Except as provided in (b) of this section, compensation or benefits are payable under this chapter for disability or 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. . . . 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 23.30.095. Medical treatments, services, and examinations. (a) The employer shall furnish medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus for the period which the nature of the injury or the process of recovery requires, not exceeding two years from and after the date of injury to the employee. . . . It shall be additionally provided that, if continued treatment or care or both beyond the two-year period is indicated, the injured employee has the right of review by the board. The board may authorize continued treatment or care or both as the process of recovery may require. . . .

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 or 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 Alaska Workers' Compensation Act (Act), if the employee establishes the link, the presumption may be overcome 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 at 7 (March 25, 2011). If 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 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. In the third step, the evidence is weighed, inferences are drawn from the evidence, and credibility is considered. 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).

Lay evidence in relatively uncomplicated cases is adequate to raise the presumption and rebut it. *VECO, Inc. v. Wolfer*, 693 P.2d 858 (Alaska 1985). If an employer fails to rebut the raised presumption, the injured worker is entitled to benefits based solely on the raised but un rebutted presumption. *Williams v. State, Department of Revenue*, 938 P.2d 1065 (Alaska 1997).

AS 23.30.122. Credibility of witnesses. The board has the sole power to determine the credibility of a witness. A finding by the board concerning the weight to be accorded a witness's testimony, including medical testimony and reports, is conclusive even if the evidence is conflicting or susceptible to contrary conclusions. The findings of the board are subject to the same standard of review as a jury's finding in a civil action.

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

AS 23.30.145. Attorney Fees. (a) Fees for legal services rendered in respect to a claim are not valid unless approved by the board, and the fees may not be less than 25 percent on the first \$1,000 of compensation or part of the first \$1,000 of compensation, and 10 percent of all sums in excess of \$1,000 of compensation. When the board advises that a claim has been controverted, in whole or in part, the board may direct that the fees for legal services be paid by the employer or carrier in addition to compensation awarded; the fees may be allowed only on the amount of compensation controverted and awarded. When the board advises that a claim has not been controverted, but further advises that bona fide legal services have been rendered in respect to the claim, then the board shall direct the payment of the fees out of the compensation awarded. In determining the amount of fees the board shall take into consideration the nature, length, and complexity of the services performed, transportation charges, and the benefits resulting from the services to the compensation beneficiaries.

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

In *Uresco Construction Materials, Inc. v. Porteleki*, AWCAC Decision No. 152 (May 11, 2011) the appeals commission addressed the employer's claim the board erred by awarding attorney's fees under both §145(a) and (b). Though the commission vacated the board's decision on other grounds, it discussed attorney's fee awards anticipating the issue would arise again, and stated:

The board awarded reasonable fees under AS 23.30.145(b), but concluded 'the employee is entitled to mandatory statutory minimum attorney fees under AS 23.30.145(a) when, and if, the statutory minimum amount based on the payment of past and future medical, indemnity, and all other benefits exceeds the attorney fee awarded under AS 23.30.145(b)' (footnote omitted). Although the Supreme Court has held that fees under subsections (a) and (b) are distinct, the court has noted that the subsections are not mutually exclusive (footnote omitted). Subsection (a) fees may be awarded only when claims are controverted in actuality or fact (footnote omitted). Subsection (b) may apply to fee awards in controverted claims, (footnote omitted) in cases in which the employer does not controvert but otherwise resists, (footnote omitted) and in other circumstances (footnote omitted). It is undisputed that Uresco controverted Porteleki's claim.

Thus, we see no reason his attorney could not seek fees under either AS 23.30.145(a) or (b) and find no error in the board's decision to award fees under the higher of (a) or (b).

AS 23.30.155. Payment of compensation. (a) Compensation under this chapter shall be paid periodically, promptly, and directly to the person entitled to it, without an award, except where liability to pay compensation is controverted by the employer. . . .

. . . .

(p) An employer shall pay interest on compensation that is not paid when due. . . .

AS 23.30.185. Compensation for temporary total disability. In case of disability total in character but temporary in quality, 80 percent of the injured employee's spendable weekly wages shall be paid to the employee during the continuance of the disability. Temporary total disability benefits may not be paid for any period of disability occurring after the date of medical stability.

In *Olson v. AIC/Martin, J.V.*, 818 P.2d 669 (Alaska 1991), the board held the employee was not entitled to TTD because he was capable of performing work without regard to the work's availability. The Alaska Supreme Court applied the "odd lot" doctrine to TTD claims and said:

Under the odd-lot doctrine, which is accepted in virtually every jurisdiction, total disability may be found in the case of workers who, while not altogether incapacitated for work, are so handicapped that they will not be employed regularly in any well-known branch of the labor market. The essence of the test is the probable dependability with which claimant can sell his services in a competitive labor market, undistorted by such factors as business booms, sympathy of a particular employer or friends, temporary good luck, or the superhuman efforts of the claimant to rise above his crippling handicaps. *Larson, supra*, §57.51 at 10-53 (emphasis added). Therefore, the Board's termination of TTD because Olson was capable of performing any work, regardless of availability of employment, was error (*id.* at 674).

The Alaska Supreme Court in *Runstrom v. Alaska Native Medical Center*, 280 P.3d 567 (Alaska 2012) said: "'Once an employee is disabled, the law presumes that the employee's disability continues until the employer produces substantial evidence to the contrary.' We therefore examine whether the employer rebutted the presumption" (*id.* at 573).

AS 23.30.190. Compensation for permanent partial impairment; rating guides. (a) In case of impairment partial in character but permanent in quality, and not resulting in permanent total disability, the compensation is \$177,000

multiplied by the employee's percentage of permanent impairment of the whole person. . . .

(b) All determinations of the existence and degree of permanent impairment shall be made strictly and solely under the whole person determination as set out in the American Medical Association Guides to the Evaluation of Permanent Impairment, except that an impairment rating may not be rounded to the next five percent. . . .

AS 23.30.200. Temporary partial disability. (a) In case of temporary partial disability resulting in decreased of earning capacity to compensation shall be 80 percent of the difference between the injured employee's spendable weekly wages before the injury and the wage-earning capacity of the employee after the injury in the same or another employment, to be paid during the continuance of the disability, but not be paid for more than five years. Temporary partial disability benefits may not be paid for a period of disability occurring after the date of medical stability. . . .

AS 23.30.395. Definitions. In this chapter,
. . . .

(16) 'disability' means incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment;
. . . .

(28) 'medical stability' means the date after which further objectively measurable improvement from the effects of the compensable injury is not reasonably expected to result from additional medical care or treatment, notwithstanding the possible need for additional medical care or the possibility of improvement or deterioration resulting from the passage of time; medical stability shall be presumed in the absence of objectively measurable improvement for a period of 45 days; this presumption may be rebutted by clear and convincing evidence;

8 AAC 45.142. Interest. (a) If compensation is not paid when due, interest must be paid at the rate . . . in AS 09.30.070(a) for an injury that occurred on or after July 1, 2000. If more than one installment of compensation is past due, interest must be paid from the date each installment of compensation was due, until paid. If compensation for a past period is paid under an order issued by the board, interest on the compensation awarded must be paid from the due date of each unpaid installment of compensation.

(b) The employer shall pay the interest
. . . .

(3) on late-paid medical benefits to

(A) the employee . . . if the employee has paid the provider or the medical benefits. . . .

(B) to an insurer . . . if the insurer . . . has paid the provider of the medical benefits; or

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

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

ANALYSIS

1) Does Employee’s left shoulder remain a compensable injury?

Both parties agree Employee suffered at least a left shoulder strain injury while using a wrench at work on June 18, 2012. However, Employee contends his left shoulder injury was more than a simple strain, and was further complicated by the staph aureus infection arising from his left hand laceration suffered a couple of hours after he strained his left shoulder. He contends his need for medical care and related disability for his left shoulder continued far beyond the date Employer controverted his right to benefits. Employer disputes this assertion. This raises factual issues to which the presumption of compensability applies. AS 23.30.120.

As to the left shoulder orthopedic issues, Employee raises the presumption with his lay reporting to his physicians concerning increased symptoms after using the wrench on June 18, 2012, and with opinions from Drs. Clancy, Hall and Barrington, all of whom link Employee’s need for additional medical care including surgery, and his left shoulder PPI entitlement to his June 18, 2012 work injury with Employer. *Meek; Tolbert; Wolfer*. Employer rebuts the raised presumption with Drs. Schroeder’s and Puziss’ opinions stating Employee suffered only a left shoulder strain, which has resolved. *Runstrom*.

As for the left shoulder staph aureus infection, Employee raises the presumption with Drs. Clancy’s and SIME Marsh’s reports, which state Employee’s left hand laceration suffered a few hours after his left shoulder strain seeded the damaged left shoulder tissue, which caused

Employee's septic left shoulder. *Meek; Tolbert*. Employer rebuts the raised presumption concerning the left shoulder staph aureus infection with Dr. Schroeder's EME report, which states the septic left shoulder has no connection to Employee's June 18, 2012 left shoulder strain. *Runstrom*. Therefore, since the presumption of compensability has been rebutted as to both the septic and orthopedic shoulder issues, Employee must prove his claim by a preponderance of the evidence. *Saxton*.

a) Left shoulder orthopedic injury.

Employee undeniably has a long history of 20 years' pain and motion loss in both shoulders. As far back as 2006, Employee reported his left shoulder was extremely painful and had dramatically reduced motion. This had been going on at that time for over 10 years. There was, however a six-year hiatus in the medical reports. Either Employee did not see a physician for his left shoulder during this period, or the parties were not able to obtain records. Based on the available records, the six-year lack of any medical treatment or complaints related to the left shoulder makes Employee's compensability issue murky at best.

Employee's injury-contemporaneous MRI reports disclosed extensive osteoarthritis in the glenohumeral joint. Physicians at Rocky Mountain Orthopedic Associates in Grand Junction, Colorado diagnosed a left shoulder sprain or strain. EME Dr. Schroeder made a similar diagnosis. These physicians' opinions are given some weight. AS 23.30.122; *Smith*. Even Dr. Hall stated Employee's shoulder arthritis, as opposed to his work injury, permanently precluded him from returning to work as a plumber. Dr. Hall did, however, opine Employee's work injury with Employer was "the substantial cause" of the need for further medical treatment, and possible shoulder surgery. Dr. Hall based his opinion on the fact Employee was only mildly symptomatic before the work injury but was still able to work. Dr. Hall did not think Employee would have needed surgery now without the increase in symptoms caused by his work injury with Employer. Dr. Hall's opinion is also given some weight. AS 23.30.122; *Smith*.

Nonetheless, SIME physician, and shoulder expert, Dr. Puziss stated Employee is objectively not much different now than he was back in 2006. His subjective increase in left shoulder pain was "not explainable" as there was no residual effect from the infection on the glenohumeral joint

and probably no residual effect on the AC joint either. Dr. Puziss opined Employee could objectively perform his usual work duties. As an independent examiner in this case, SIME Dr. Puziss is given greater weight than the other examining physicians. AS 23.30.122; *Smith*. In addition to being impartial, Dr. Puziss' opinion is supported by the medical records showing Employee's extensive history of left shoulder complaints spanning two decades. Therefore, though Employee suffered a left shoulder strain on June 18, 2012, while working for Employer, the effects from that injury have long since resolved and, according to Dr. Puziss, Employee had returned to his 2006 left shoulder status by the time Dr. Puziss examined him on September 25, 2013. The medical records and expert opinions support the inference that Employee's left shoulder sprain ceased to be work-related and compensable at the latest by September 25, 2013. AS 23.30.010(a); *Rogers & Babler*. Employee's request for an order finding his left shoulder sprain continues to be compensable will be denied.

b) Left shoulder staph aureus infection.

Employee contends his left hand laceration allowed bacteria to enter his blood, which seeded his damaged left shoulder tissue, which he had injured when he strained his left shoulder a few hours earlier on the job on September 18, 2012. Employer contends other medical evidence disputes this theory. This raises a factual dispute to which the presumption of compensability applies. AS 23.30.120.

Employee raises the presumption with his lay reports to his providers concerning the left hand laceration and his subsequent fever, and with Dr. Marsh's SIME report. *Meek; Tolbert; Wolfer*. Employer rebuts the raised presumption with Dr. Schroeder's EME report, which states the work injury is not connected to the septic left shoulder. *Runstrom*. Therefore, Employee must prove his claim for a compensable, septic left shoulder by a preponderance of the evidence. *Saxton*.

There is no question Employee had a septic left shoulder, which numerous physicians diagnosed as early as September 19, 2012. The question is, was the September 18, 2012 work injury the substantial cause of the need to treat the septic left shoulder, and the substantial cause of any related disability? AS 23.30.010(a). EME Dr. Schroeder opined the September 18, 2012 work injury had no connection to the septic left shoulder. As Dr. Schroeder is an orthopedic surgeon

and not an infectious disease specialist, his opinion is given little weight. AS 23.30.122; *Smith*. Employee's historical account is given considerable weight. His reports he lacerated his left hand a few hours after injuring his left shoulder are credible. AS 23.30.122; *Smith*. At least one medical witness, a registered nurse, observed a laceration on Employee's left hand, and noted it was scabbing over. This evidence supports the notion the laceration occurred as Employee stated and it allowed bacteria into Employee's blood, which later seeded the left shoulder tissue damaged by the strain incident a few hours earlier.

More importantly, SIME Dr. Marsh, an infectious disease specialist, unequivocally stated the substantial cause of Employee's need for medical treatment for his septic left shoulder was the June 18, 2012 work injury. The wrenching incident caused an "acute injury" of the left shoulder causing tissue damage and swelling, followed by the left hand laceration, which allowed bacteria into the shoulder tissues. In Dr. Marsh's opinion, the bacteria seeded the injured area and resulted in a septic shoulder. Dr. Marsh opined the substantial cause of Employee's disability and need for medical treatment to address the septic shoulder was the shoulder injury followed by the hand laceration. Because Dr. Marsh is an infectious disease specialist, and an unbiased evaluator, his medical opinions are given the greatest weight. AS 23.30.122; *Smith*. Dr. Clancy agrees with his opinion. Employee's credible historical report of injuring his left shoulder and then lacerating his left hand form a credible background supporting Drs. Marsh's and Clancy's expert opinions. Employee met his burden of proof and persuasion in respect to the left shoulder staph aureus infection. *Saxton*. The left shoulder staph aureus infection was a compensable injury. AS 23.30.010(a); *Rogers & Babler*.

2)Is Employee entitled to any additional benefits from Employer?

Employee successfully demonstrated he had a compensable left shoulder strain injury from using a wrench and a compensable left shoulder septic injury resulting from a hand laceration suffered after his left shoulder injury on September 18, 2012. The next question is whether or not Employee is entitled to additional benefits as a result of either or both of these compensable conditions. Employee seeks TTD, TPD, PPI, a vocational reemployment eligibility evaluation, past and continuing medical benefits and attorney fees, costs and interest.

a) TTD.

(1) Left shoulder orthopedic injury:

This decision determined Employee suffered only a left shoulder strain on June 18, 2012, which resolved. Employer paid Employee TTD benefits through August 2, 2012. It controverted his right to additional TTD based upon Dr. Schroeder's EME report. Employee contends he is entitled to additional TTD for his left shoulder based upon a more serious orthopedic injury. AS 23.30.185. This raises a factual dispute to which the presumption of compensability applies. AS 23.30.120.

Employee raises the presumption on his TTD claim for his left shoulder orthopedic issues with his lay reports and through Dr. Hall's opinion, which states Employee remained disabled and not medically stable because he needs shoulder surgery to address his work-related injury. *Meek; Tolbert; Wolfer*. Employer rebuts the presumption with Dr. Schroeder's report, which says Employee suffered merely a left shoulder strain which has long since resolved. *Runstrom*. As the presumption drops out, Employee must prove his claim for additional TTD for his left shoulder orthopedic issues by a preponderance of the evidence. *Saxton*.

As noted above, this decision determined Employee had a compensable left shoulder strain on June 18, 2012. However, as discussed above, the strain resolved and Employee returned to his 2006 left shoulder orthopedic status by the time Dr. Puziss examined him on September 25, 2013. To obtain additional TTD after August 2, 2012, Employee must prove he continued to be disabled by a left shoulder strain and his left shoulder strain was not yet medically stable. AS 23.30.185; AS 23.30.395(16), (28). For his TTD claim, Employee relies upon Dr. Hall's opinions stating the work injury was the substantial cause of Employee's need for medical care for his damaged left shoulder including possible surgery. However, as Dr. Hall did not provide a detailed analysis supporting his opinion, it is given lesser weight. AS 23.30.122; *Smith*.

Dr. Marsh's SIME opinion, which focused on the infectious disease issue, stated Employee suffered an acute left shoulder injury which allowed bacteria to seed damaged tissue. However, his opinion is also given lesser weight because he is not an orthopedic surgeon. AS 23.30.122;

Smith. Dr. Schroeder's EME report is given some weight because he is an orthopedic surgeon and the medical history going back 20 years supports his strain and disability theories. AS 23.30.122; *Smith.* Lastly, SIME Dr. Puziss is given greatest weight because he is an impartial evaluator and stated any ongoing disability from an orthopedic standpoint was caused by left shoulder degenerative arthritis causing shoulder pain, and not the work injury. AS 23.30.122; *Smith.* Dr. Puziss' opinions also comport with the historical medical evidence.

The next question is when did Employee's entitlement to TTD end in respect to his left shoulder orthopedic issues? On September 25, 2013, Dr. Puziss stated on August 3, 2012, Employee could have returned to at least modified duty work. This comports somewhat with Dr. Schroeder's opinion. Dr. Puziss further stated as of September 25, 2013, "objectively" there was no reason Employee could not return to normal duties. Employee's medical records demonstrate that while he had "dramatic" shoulder pain and motion loss as far back as 2006, he was able to continue working as a plumber, and his symptoms apparently waxed and waned. There is no reason to think the September 18, 2012 left shoulder strain would react any differently than his previous symptomatic episodes. However, there is no evidence Employer offered Employee any modified duty beginning August 3, 2012. Therefore, he continued to be disabled from the work-related left shoulder orthopedic injury because he could not return to his regular work. AS 23.30.395(16); *Olson; Runstrom.* The septic shoulder complicated Employee's diagnosis and treatment. But on October 11, 2012, Dr. Hall opined Employee was permanently precluded from returning to work as a plumber due to his left shoulder arthritis, as opposed to his work injury. By that date, Employee was no longer treating his left shoulder orthopedic issues arising from his work injury, but rather, was obtaining treatment recommendations directed to his preexisting left shoulder arthritis. Therefore, as of October 11, 2012, Employee's work-related left shoulder strain was medically stable because there would not be any expected improvement as the result of any medical treatment addressing the work injury. AS 23.30.395(28). Consequently, Employee successfully demonstrated his left shoulder orthopedic issues continued to disable him from August 3, 2012 through October 11, 2012. *Olson; Runstrom; Saxton.* Employee's claim for additional TTD for left shoulder orthopedic issues after August 2, 2012 will be granted and he will be awarded TTD from August 3, 2012 through October 11, 2012.

(2) Septic left shoulder:

Employee had a septic left shoulder interacting with his left shoulder strain injury. Employee contends the septic shoulder also disabled him entitling him to TTD benefits after August 2, 2012. Employer contends it does not. This raises factual disputes to which the presumption of compensability applies. AS 23.30.120.

Employee raises the presumption of compensability as to his claim for TTD for his septic left shoulder with his lay reports to his physician stating he had considerable left shoulder pain and was on intravenous antibiotics for weeks following his work injury, and with SIME Dr. Marsh's report, who stated the substantial cause for additional treatment and disability was Employee's shoulder injury followed by his hand injury, which allowed bacteria to enter into his arm and seed the injured area. *Meek; Tolbert; Wolfer*. Employer rebuts the presumption with Dr. Schroeder's EME opinion stating Employee was released to work effective August 2, 2012, and the septic left shoulder was not work-related. *Runstrom*. Therefore, Employee must prove his septic left shoulder TTD claim by a preponderance of the evidence. *Saxton*.

Dr. Schroeder said Employee could return to unrestricted work effective August 3, 2012. Employer has already paid Employee TTD benefits through that date. Employee's best evidence supporting his TTD claim is Dr. Hall's opinion. He opines Employee needs left shoulder surgery, the substantial cause of which was the June 18, 2012 injury. But this decision determined Employee has orthopedically returned to his pre-injury status and Dr. Hall's opinion is based on orthopedic factors. *Roger & Babler*. Therefore, Dr. Hall's opinion does not support Employee's TTD claim based on a septic shoulder injury. AS 23.30.122; *Smith*. Several physicians released Employee to modified work. However, Employer offered no modified work. *Olson; Runstrom*. It is clear from the medical reports that Employee was on antibiotics to treat the left shoulder infection until August 21, 2012. The medical evidence shows it was unlikely Employee could have returned to work while taking antibiotics for his left shoulder infection at least until August 21, 2012. *Olson*. He was medically stable on that date because his treatment for the septic shoulder was completed. AS 23.30.395(28). Thus, as he cannot receive TTD benefits for the septic shoulder after the medical stability date for that condition, and since this decision already awarded TTD for the orthopedic left shoulder problems through October 11,

2012, Employee's request for additional TTD resulting from his septic left shoulder will be denied. AS 23.30.185.

b) TPD.

Employee did not present any evidence or argument supporting a TPD claim. AS 23.30.200. Therefore, his TPD claim will be denied. *Saxton*.

c) PPI.

Employee contends he is entitled to PPI for his left shoulder injury. AS 23.30.190(a). Employer contends he is not. This raises a factual dispute to which the presumption of compensability applies. AS 23.30.120. Employee raises the presumption with Dr. Barrington's one percent PPI rating for Employee's left shoulder. *Tolbert*. Employer rebuts the presumption with Dr. Schroeder's opinion stating Employee has no permanent impairment to his left shoulder resulting from his work injury. *Runstrom*. Therefore, Employee must prove his PPI claim by a preponderance of the evidence. *Saxton*.

Employer relies exclusively on Dr. Schroeder's EME opinion. Dr. Schroeder's opinion, however, is conclusory and is not based upon a PPI evaluation, but on his overall opinion that Employee's left shoulder injury did not give rise to a permanent impairment. Therefore, Dr. Schroeder's PPI opinion is given lesser weight. AS 23.30.122; *Smith*. This decision found Employee had a compensable strain injury to his left shoulder. *Saxton*. Dr. Barrington provided a one percent PPI rating addressing "a strain," and supported his rating with reference to the appropriate sections in the rating manual. AS 23.30.190(b). Dr. Barrington's PPI rating is therefore given greater weight. AS 23.30.122. Accordingly, Employee's request for an order awarding PPI will be granted and he is entitled to a one percent PPI rating for his left shoulder injury. *Saxton*.

d) Vocational reemployment eligibility evaluation.

Employee contends he is entitled to a vocational reemployment eligibility evaluation. Employer contends he is not, because his left shoulder injury was only a temporary aggravation of a preexisting condition, which has resolved without any permanent impairment. This decision

determined Employee was entitled to a one percent whole-person PPI rating for his left shoulder work injury. AS 23.30.190(a). However, this decision does not have authority to determine eligibility for vocational reemployment benefits before the rehabilitation benefits administrator (RBA) has had an opportunity to review the case and determine eligibility. Therefore, this case will be directed to the RBA's office for further action.

e) Past and continuing medical and related transportation benefits.

Employee contends he is entitled to have his past and ongoing medical bills, including transportation expenses, related to his septic left shoulder and his left shoulder orthopedic injuries paid by Employer. AS 23.30.095(a). Employer does not dispute the reasonableness or necessity of the medical treatment. It simply denies compensability. The presumption of compensability analysis need not be repeated in this respect. Based upon the above analysis, Employee's June 18, 2012 work injury with Employer was the substantial cause of his need for medical treatment for his septic left shoulder through the date it became medically stable and treatment ended, on August 21, 2012. AS 23.30.010(a). Therefore, Employer is liable for medical services and transportation expenses Employee incurred from the date of injury through August 21, 2012, in respect to his work-related septic left shoulder injury. *Saxton*.

As for the orthopedic left shoulder injury, this decision determined Employee's left shoulder strain resolved and became medically stable on October 11, 2012. Consequently, any further treatment is not related to the June 18, 2012 strain, but rather, the substantial cause of the need for further treatment is Employee's long-standing degenerative disease in both shoulders. AS 23.30.010(a); *Saxton*. Therefore, Employer is responsible for medical services and transportation expenses Employee incurred from the date of injury through October 11, 2012, in respect to orthopedic issues for his left shoulder. AS 23.30.095(a).

However, as discussed above, Employee's work-related septic left shoulder and his left shoulder strain have both resolved with no further work-related disability and with no further need for any additional work-related medical treatment. *Rogers & Babler*. Therefore, Employee's request for an order requiring Employer to pay for continuing medical care and treatment and related transportation expenses for his septic left shoulder and for his left shoulder strain injury will be

denied effective August 21, 2012 and October 11, 2012, respectively, with one exception. Employee is entitled to a PPI rating from his doctor or from a referral physician. AS 23.30.095(a). Dr. Barrington provided a PPI rating on referral. Employee is entitled to have Dr. Barrington's \$1,400 PPI rating bill paid by Employer. With exception of Dr. Barrington's rating bill, no further medical care or treatment for either left shoulder injury is compensable after these dates.

f) Attorney's fees, costs and interest.

Employer denied Employee's rights to all benefits following Dr. Schroeder's EME report. Employee retained an attorney to file a claim. Employer controverted the claim. Employee's attorney provided valuable legal services to Employee and prevailed on the two main issues, which are compensability of the septic left shoulder and the orthopedic left shoulder issues. Employer did not dispute Employee's attorney's fee claim either in terms of hours expended or hourly rate charged; it only disputed his overall entitlement to attorney's fees in the event Employer prevailed on all issues. But, since Employee prevailed on the main compensability issues, and Employee is entitled to additional TTD, PPI and past medical benefits, all of which are a significant benefit to him, he is entitled to award of attorney fees and costs. AS 23.30.145; *Porteleki*. However, Employee's affidavit of attorney's fees and costs has not yet found its way into his agency file. Therefore, Employee's request for attorney's fees and costs will be granted and the parties are directed to resolve the precise amounts without further hearing, if possible. If the parties disagree on the precise attorney's fee and cost award, either party may request an additional hearing and the issue will be decided with particularity.

Statutory interest is mandatory. AS 23.30.155(p). Therefore, Employee is entitled to statutory interest on all benefits awarded in this decision. Any medical expenses payable to third parties are also subject to statutory interest paid to the person to whom the bills are owed. 8 AAC 45.142(b)(3)(A) - (C); *Moretz*.

CONCLUSIONS OF LAW

- 1) Employee's left shoulder does not remain a compensable injury.
- 2) Employee is entitled to additional benefits from Employer.

ORDER

- 1) Employee's septic left shoulder was a compensable, work-related injury.
- 2) Employee's septic left shoulder ceased being a compensable, work-related related injury on August 21, 2012.
- 3) Employee's claim for past medical and related transportation benefits for his septic left shoulder is granted through August 21, 2012.
- 4) Employee's claim for ongoing medical and related transportation benefits for his septic left shoulder after August 21, 2012, is denied.
- 5) Employee's left shoulder strain was a compensable, work-related injury.
- 6) Employee's left shoulder strain ceased being a compensable, work-related injury on October 11, 2012.
- 7) Employee's claim for past medical and related transportation benefits for his left shoulder strain is granted through October 11, 2012.
- 8) Employee's claim for ongoing medical and related transportation benefits for his left shoulder strain after October 11, 2012, with exception of Dr. Barrington's PPI rating bill, is denied.
- 9) Employer is ordered to pay Employee TTD benefits from August 3, 2012 through October 11, 2012, in accordance with this decision.
- 10) Employee's claim for additional TTD benefits after October 11, 2012, is denied.
- 11) Employee's claim for TPD benefits is denied.
- 12) Employee's PPI claim is granted.
- 13) Employer is ordered to pay Employee one percent PPI based upon Dr. Barrington's rating.
- 14) Employer is ordered to pay Dr. Barrington \$1,400 for his PPI rating bill.
- 15) This matter is referred to the RBA for his consideration of a vocational rehabilitation eligibility evaluation.
- 16) Employer is ordered to pay interest in accordance with this decision.
- 17) Employer is ordered to pay Employee attorney's fees and costs in accordance with this decision.

Dated in Anchorage, Alaska on February 11, 2015.

ALASKA WORKERS' COMPENSATION BOARD

William Soule, Designated Chair

Ron Nalikak., Member

Mark Talbert, Member

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

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

APPEAL PROCEDURES

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

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

RECONSIDERATION

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

MODIFICATION

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

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Final Decision and Order in the matter of JERRY SCHEIB, employee / claimant v. ANCHORAGE SCHOOL DISTRICT, employer; ANCHORAGE SCHOOL DISTRICT, insurer / defendants; Case No. 201209199; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties on February 11, 2015.

Sertram Harris, Office Assistant II