ALASKA WORKERS' COMPENSATION BOARD

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

MARK A. GIBBONS, Claimant, v. ERNEST BARNEY, d/b/a VALLEY WRECKERMAN, LLC; CLIFFORD BARNEY, d/b/a BARNEY'S REPAIR SERVICE; THE ALASKA WORKERS' COMPENSATION BENEFIT GUARANTY FUND; and WILTON ADJUSTMENT SERVICE, INC., Defendants.	FINAL DECISION AND ORDER AWCB Case No. 201324541M AWCB Decision No. 15-0047 Filed with AWCB Anchorage, Alaska On April 23, 2015

Ernest Barney's (Ernest) December 2, 2014 petition to dismiss, and Mark Gibbons' (Claimant) October 7, 2013 and November 12, 2013 claims were heard on March 24, 2015, in Anchorage, Alaska, a date selected on November 25, 2014. Claimant appeared telephonically, represented himself and testified. Attorney Elliot Dennis appeared and represented Ernest d/b/a Valley Wreckerman, who also appeared and testified. Clifford Barney (Clifford) appeared, represented himself d/b/a Barney's Repair Service, and testified. Clifford's wife Dorothy Barney appeared and testified for Clifford. Velma Thomas appeared telephonically, Joanne Pride appeared and testified and both represented the Alaska Workers' Compensation Benefit Guaranty Fund (the fund). Doug Love appeared and testified for the fund. Ernest's petition to dismiss him from this case was heard as a preliminary matter and granted. This decision examines the oral order dismissing Ernest as a party and decides Claimant's claims on their merits. The record closed at the hearing's conclusion on March 24, 2015.

ISSUES

As a preliminary matter, Ernest contended he was never Claimant's employer. Ernest contended the fact Ernest owned the wrecker Claimant drove and on which he was injured did not equate to an employer-employee relationship between them. Ernest sought dismissal from this case.

Claimant agreed with Ernest and contended he was never Ernest's employee. Claimant contended Ernest should be dismissed as they had no employer-employee relationship.

The fund contended Ernest should not be dismissed. The fund contended it joined Ernest as a party defendant because statements Ernest and Clifford had made led investigators to conclude Ernest may have been Claimant's employer.

Clifford vacillated on Ernest's petition to dismiss. Initially, Clifford contended Ernest should be dismissed, based primarily on the fact Ernest is Clifford's brother. Clifford then recanted his position and contended it was difficult for him to offer a position. Ultimately, Clifford contended he wanted to remain "neutral" on Ernest's petition to dismiss.

1) **Was the oral order dismissing Ernest as a party defendant proper?**

Claimant contends Clifford and he entered into an expressed, oral employment contract. Claimant contends he was Clifford's employee for several years.

The fund makes no contentions concerning any employment contract between Claimant and Clifford.

Clifford contends he was never Claimant's employer. After an oral order dismissed Ernest from this case, Clifford contended Claimant had in fact worked for Ernest.

2) **Was there an employer-employee relationship between Clifford and Claimant?**

Claimant contends he was working as Clifford's employee when he injured his toe at work. Therefore, Claimant contends his injury is work-related.

The fund makes no contentions concerning Claimant's employee or Clifford's employer status at the time of Claimant's injury.

Clifford contends there was never an employer-employee relationship between him and Claimant. Clifford contends Claimant was not working for him when Claimant injured his toe.

3) Did Claimant's injury arise out of and in the course of employment with Clifford?

Claimant contends he was temporarily totally disabled following his toe injury. He seeks an order awarding temporary total disability (TTD) benefits.

The fund does not dispute Claimant's entitlement to TTD. The fund contends Claimant's TTD would be minimal as he was found medically stable and returned to work soon after the injury.

Clifford generally contends Claimant is committing fraud. Therefore, Clifford implicitly seeks an order denying any TTD award.

4) Is Claimant entitled to TTD?

Claimant contends he incurred medical expenses treating his toe. He seeks an order awarding medical benefits and medical transportation expenses against Clifford.

The fund does not dispute Claimant's entitlement to medical benefits or related transportation expenses. The fund contends Claimant incurred approximately $115,000 in medical expenses.

Clifford contends Claimant is committing fraud. Therefore, Clifford implicitly seeks an order denying any medical benefit and related transportation awards.

5) Is Claimant entitled to medical benefits and related transportation expenses?

Claimant contends he is entitled to a compensation rate adjustment. He contends his TTD rate should be based either upon $20 per hour, which was the shop rate Clifford agreed to pay him, or based upon the tow rate, which was an alternative payment method.

The fund contends Claimant failed to provide income tax information. Therefore, the fund contends Claimant's TTD rate should be the minimum, $239 per week.

Clifford contends Claimant is committing fraud. Therefore, Clifford implicitly seeks an order denying any compensation rate adjustment.

6) Is Claimant entitled to a compensation rate adjustment?

Claimant contends he is entitled to a permanent partial impairment (PPI) award for his amputated toe. He contends the fund's medical evaluator's five percent PPI rating is appropriate.

The fund does not dispute Claimant's entitlement to PPI. The fund contends its doctor's five percent PPI rating is correct.

Clifford contends Claimant is committing fraud. Therefore, Clifford implicitly seeks an order denying any PPI award.

7) Is Claimant entitled to PPI?

Claimant contends he is entitled to an unspecified penalty. Claimant contends he is uncertain about the basis for his penalty claim because he is unfamiliar with the law.

The fund contends it does not pay penalties. Therefore, it makes no contention regarding Claimant's penalty request.

Clifford contends Claimant is committing fraud. Therefore, Clifford implicitly seeks an order denying any penalty awards.

8) Is Claimant entitled to any penalties?

Claimant contends he is entitled to interest on all benefits.

The fund makes no contention regarding interest.

Clifford contends Claimant is committing fraud. Therefore, Clifford implicitly seeks an order denying any interest award.

9) Are Claimant or his medical providers entitled to interest?

Lastly, in general Clifford implied he did not receive a fair hearing. Clifford contended he had "zero rights" and felt like he was being assassinated.

Neither the fund nor Claimant expressed a position on Clifford's implied contention.

10) Did Clifford receive a fair hearing?

FINDINGS OF FACT

1) From October 7, 2007 through at least December 31, 2013, Clifford, as sole proprietor, owned Barney's Repair Service, which is a general automotive repair shop. (Division of Corporations, License Detail, accessed October 21, 2013; Alaska Business Licenses 416511, undated).

2) On December 8, 2010, Ernest created a limited liability company (LLC) called Valley Wreckerman. The only two officials listed on the State of Alaska "Entities Detail" screen are: "Ernest Barney, organizer" with zero percent ownership and "Ernest Barney, member," with 90 percent ownership. The documents do not disclose who owned the other 10 percent. Valley Wreckerman, LLC, was administratively dissolved on June 10, 2013. There is no written evidence Claimant had any ownership interest in Valley Wreckerman. (Division of Corporations License Detail, webpage, accessed March 26, 2014; observations).

3) On May 2, 2012, Claimant signed for a 2002 Chrysler Sebring purchased by Barney's Repair Service from Copart, Inc. (Copart). Copart released the vehicle to Claimant the same day. (Copart Sales Receipt/Bill of Sale, May 2, 2012).

4) On May 26, 2012, Claimant was loading a car on a "slide-back" tow truck for Clifford at Clifford's shop. Clifford and Dorothy Barney and their son were present. When the "wheel lift" device did not work properly, Claimant kicked it to make an adjustment and injured his great toe on his right foot. (Claimant).

5) It is undisputed neither Ernest nor Clifford had workers' compensation policies covering their respective businesses at the time Claimant hurt his toe. (Agency record).

6) Claimant did not give written notice of an injury to either Ernest or Clifford within 30 days. Clifford had actual knowledge of Claimant's injury because Clifford was present when it happened and was present the next day when Claimant discovered the injury. Clifford was not prejudiced by Claimant's failure to provide written notice within 30 days because Clifford investigated the injury, knew what happened and could have directed Claimant to obtain medical care. (Agency record; Claimant; experience, judgment and inferences drawn from the above)

7) On May 31, 2012, physicians admitted Claimant to Mat-Su Regional Medical Center. David Rudolf, M.D., asked specialist Gary Benedetti, M.D., to consult on Claimant who, at age 40, was already suffering from peripheral neuropathy resulting from poorly controlled diabetes. Claimant said approximately a week earlier he was kicking a heavy piece of metal trying to get it to fit into another object. He developed swelling in his toe and thought he had broken it but did not think there was much to do for a broken toe. While kicking the object, Claimant broke the skin on his toe and subsequently had increasing redness and pain with drainage from the break in the skin. On examination, Claimant's right great toe was "very swollen." There was a linear laceration with purulent drainage. X-ray studies demonstrated an acute transverse fracture across the distal phalange. Dr. Benedetti diagnosed a right great toe infection, right great toe cellulitis, and a right great toe distal phalange fracture. Dr. Benedetti recommended antibiotics but warned Claimant he might face toe amputation. (Benedetti report, May 31, 2012).

8) On June 8, 2012, Mat-Su Regional Medical Center discharged Claimant. The physicians prescribed oral antibiotics and advised Claimant to attend outpatient services for intravenous (IV) therapy and for wound dressing changes on his foot. Claimant was to continue on antibiotics until July 12, 2012. (Discharge Summary, June 8, 2012).

9) Claimant was temporarily, totally disabled by his toe injury for nine days. (Inferences drawn from the above).

10) On June 20, 2012, Claimant completed a registration packet for Denali Orthopedic Surgery, where Dr. Benedetti practices. On this form, for his physical address, Claimant wrote "Homeless (stay where I can)" and for his employer, Claimant stated "Unemployed." (Patient Registration Packet, June 20, 2012).

11) On June 20, 2012, Claimant also saw Dr. Benedetti. Claimant's toe was still bulbous and purplish in hue. Claimant was to come back in three weeks for additional x-rays. (Benedetti chart note, June 20, 2012).

12) On July 11, 2012, Claimant returned to Dr. Benedetti. X-rays demonstrated progressing osteomyelitis. Claimant's fracture was not healing and the infection was spreading. Dr. Benedetti recommended amputating the toe but Claimant wanted to save it. He was to return in two weeks. (Benedetti chart note, July 11, 2012).

13) On July 25, 2012, Claimant saw Dr. Benedetti again. The wound on his toe was healed but the toe was still bulbous and discolored. Dr. Benedetti again recommended amputation for fear the infection might come back and necessitate amputating the toe as an emergency procedure during a "raging infection." Claimant still wanted to wait and was told to return in four weeks. (Benedetti chart note, July 25, 2012).

14) On August 3, 2012, Dr. Benedetti reexamined Claimant's toe. Claimant was more inclined to discuss amputation. His toe was beginning to hurt. Though his toe looked a little better, Claimant did not think it was getting better. X-rays showed continued bone destruction from infection. (Benedetti chart note, August 3, 2012).

15) On August 10, 2012, Dr. Benedetti reevaluated Claimant's toe, which he called a "stinking fungating toe." Dr. Benedetti said the toe needed to come off before the infection spread to Claimant's foot. Dr. Benedetti had to wait for some superficial burn blisters on Claimant's foot to heal before he could amputate the toe. (Benedetti chart note, August 10, 2012).

16) On August 23, 2012, Dr. Benedetti amputated Claimant's right great toe in an outpatient procedure. (Operative Report, August 23, 2012; Claimant).

17) Claimant returned to work operating the wrecker the same day. (Claimant).

18) On September 6, 2012, Mark Clyde, M.D., evaluated Claimant's surgery site. Dr. Clyde noted some macerated skin and drainage at the incision site, and placed Claimant back on oral antibiotics. (Clyde chart note, September 6, 2012).

19) On September 14, 2012, Dr. Benedetti checked Claimant's toe and found it healing nicely. Claimant was to return in two weeks. (Benedetti chart note, September 14, 2012).

20) On September 19, 2012, Claimant signed for a 2003 Ford Taurus purchased by Barney's Repair Service from Copart. Copart released the vehicle to Claimant the same day. (Copart Sales Receipt/Bill of Sale, September 19, 2012).

21) On or about September 25, 2012, Claimant signed for a 2000 Chevrolet Venture purchased by Barney's Repair Service from Copart. (Copart Sales Receipt/Bill of Sale, undated).

22) On September 28, 2012, Dr. Benedetti noted the toe incision was healed nicely. Claimant was, however, having phantom pain symptoms from his missing toe. Dr. Benedetti opined this would probably go away. Claimant had already returned to wearing regular shoes and was to follow-up in four weeks for a final visit. (Benedetti chart note, September 28, 2012).

23) On March 6, 2013, Claimant signed for a 1976 Chevrolet pickup purchased by Barney's Repair Service from Copart. Copart released the vehicle to Claimant the same day. (Copart Sales Receipt/Bill of Sale, March 6, 2013).

24) On March 12, 2013, Claimant signed for a 1996 GMC Suburban purchased by Barney's Repair Service from Copart. Copart released the vehicle to Claimant the same day. (Copart Sales Receipt/Bill of Sale, March 12, 2013).

25) On March 14, 2013, Claimant signed for a 1999 Oldsmobile Cutlass purchased by Barney's Repair Service from Copart. Copart released the vehicle to Claimant the same day. (Copart Sales Receipt/Bill of Sale, March 14, 2013).

26) On October 8, 2013, Claimant filed a workers' compensation claim for a May 26, 2012 injury while working for Barney's Repair Service. Claimant said he was trying to load a car onto the "slide back," and was having difficulty. He kicked something to align parts and broke the great toe on his right foot. The toe got infected and was eventually amputated. Claimant further stated he wanted to file "at the time of accident," but "employer threatened me." Claimant requested permanent total disability (PTD), PPI, medical costs totaling $50,000, transportation costs totaling $400, a compensation rate adjustment, an unspecified penalty and interest. (Workers' Compensation Claim, October 7, 2013).

27) On October 22, 2013, Claimant gave a recorded statement to Carl Trexler who was investigating the injury for Wilton Adjusting Services. Claimant said the following: Barney's Repair Service was his employer. He was hired around the last part of October 2009. His pay rate was $20 per hour in cash daily, and there were no records kept. Claimant had no bank account at the time. When Claimant first started working for Barney's Repair Service, he was paid in accordance with this agreement. Eventually, Claimant started living on the work premises because he was on call with the tow truck 24 hours a day, seven days a week. At that point, Barney's Repair Service "wasn't paying me worth a crap" and every time Claimant tried to leave, it was "a big chaotic thing and I was threatened if I left." Clifford's poor pay performance began approximately October 2010. When Claimant tried to leave "he," which

Claimant later clarified referred to Clifford, told Claimant if he left, Clifford would kill him. Clifford took the keys to Claimant's car. Claimant was buying a Buick Century from Clifford and Clifford made him put Clifford's name as a "lienholder" on the title. Clifford did the same thing with a truck Claimant subsequently purchased from him. Clifford threatened to burn the truck to the ground if he ever saw it, so Claimant sold it and got another vehicle. For a while, Claimant lived in a recreational vehicle on Clifford's lot. Clifford later obtained an Atco trailer and Claimant lived in that with two other workers. On average, Clifford had two or three employees at any given time, all paid "off the books." Clifford tried to get his customers to pay cash so income would not be taxable. Clifford told Claimant he had workers' compensation insurance, but also said if Claimant ever got injured Clifford would "drive us down the street, drop us off, call the paramedics and that's where we'd be picked up at." Claimant identified other employees working for Clifford including a "young kid" whose name he could not recall, Mikey Leffingwell and Sam Gordon. Claimant would work anywhere from eight to 20 hours a day and was the only one properly licensed to drive the tow truck. He operated Clifford's tow truck, on call. The tow truck was an older "slide back" model. Claimant's name was on the truck's insurance as a covered driver. Claimant believed Clifford's wife Dorothy paid for the insurance. On one occasion after his toe injury, Claimant was working on Clifford's former lawyer Christopher Cyphers' vehicle. Cyphers said to Claimant, "What happened to your foot?" Clifford, standing nearby, laughed and said, "Dumb ass broke it on the slide deck." As for the injury, Claimant explained he broke his big toe on his right foot, had a "split" and a "hole" in it and tried to take care of it himself. The toe got infected and doctors admitted Claimant to the hospital and wanted to cut the toe off but Claimant wanted to avoid amputation. The doctors put a peripherally inserted central catheter (PICC) line in Claimant's arm and he traveled back and forth to the hospital in Wasilla to obtain antibiotics. After about three weeks on antibiotics, the toe did not improve and doctors advised Claimant to have it amputated, which he did. Amputation was an outpatient procedure, and when Claimant returned to work, Clifford "forced" Claimant to get back in the wrecker immediately. Clifford was aware of the injury because he was present along with his wife when it occurred. Claimant was kicking something on the truck to get it to move and did not immediately realize he had injured his toe. The next morning he found blood on his sock and told Clifford he had probably broken his toe. Clifford said "bullshit," so Claimant removed his sock and showed his toe to Clifford. Claimant was the only

person in the shop with a commercial driver's license (CDL) and a "medical card." Clifford did not even have a driver's license, which was one reason he hired Claimant. On occasion, Clifford would get Claimant out of bed at 4:00 a.m. and ask Claimant to drive him to McDonald's. Claimant has insulin-dependent diabetes. He first met Clifford because he was married to Clifford's niece. Clifford offered him a place to live and it was supposed to be rent free. Once he moved in, Clifford said Claimant owed him for rent and electricity. Claimant thinks Clifford is "very violent" and Claimant says he saw Clifford choke Clifford's son twice. On one occasion Clifford's son actually "turned purple" from being choked. Clifford pushed and kicked Claimant once and has thrown things at him as well. When Claimant got injured while working for Clifford, Clifford got Claimant "to the side one day" and said if "you ever turn me in or go after me on Workers' Comp or try to sue me, I'll hunt you down and kill you." Claimant believed Clifford was capable of carrying out his threat. Claimant obtained two protective orders and eventually left the premises in May or June 2013. (Claimant's statement, October 22, 2013).

28) On October 28, 2013, the fund filed and served an answer to Claimant's October 7, 2013 claim. The fund defended on grounds it was unclear whether there was an employee-employer relationship between Claimant and Clifford, there had been no decision finding an uninsured employer liable for any benefits, no putative employer had failed to pay any board-ordered benefits, and Claimant had not filed a claim against the fund. (Answer, October 23, 2013).

29) On November 1, 2013, Clifford's Craigslist advertisement said he operated a full service auto repair shop in Wasilla, Alaska and stated, "I also have a slidebed on site for towing which I will discount for the job." (Craigslist advertisement, November 1, 2013).

30) On November 15, 2013, the board served Claimant's October 7, 2013 claim on the fund and on Claimant, but not on any other party. (ICERS database, accessed April 15, 2015).

31) On November 20, 2013, Claimant filed another claim for his May 26, 2012 injury with Clifford. Claimant wrote "May 26, 2013" on the first page, but on the second page wrote the correct injury date. On this claim form, Claimant said he was loading a car on the slide back. The truck was rusty and Claimant did not have a hammer. He was therefore kicking two pieces of metal together and broke his right great toe and split it open, resulting in an infection. Claimant requested PPI, $40,000 in medical costs, a compensation rate adjustment, $25,000 in penalties, and interest. (Workers' Compensation Claim, November 12, 2013).

32) On November 27, 2013, the board served Claimant's November 12, 2013 claim on the fund, Claimant and Barney's Repair Service. (*Id.*).

33) Clifford did not file an answer to Claimant's November 12, 2013 claim within 30 days. (Observations; agency record).

34) Clifford never controverted Claimant's right to benefits or his claims. (*Id.*).

35) On January 14, 2014, Claimant, Love representing the division's special investigations unit, and Thomas and Pride from the fund attended a prehearing conference. The board designee, apparently having been told attorney Cyphers was representing Clifford in a related failure to insure matter against Clifford, called attorney Cyphers' office as no appearance had been received by the board in this case from him. Attorney Cyphers' receptionist informed the board designee that Cyphers represented Clifford only in the failure to insure case. The designee called Clifford who insisted the designee speak with attorney Cyphers who, Clifford said, represented Clifford in this case as well. Clifford then hung up on the board's designee. At prehearing, Employee amended his October 7, 2013 and November 12, 2013 claims to include TTD from May 26, 2012 through current, unspecified temporary partial disability, medical costs, transportation expenses, a compensation rate adjustment, penalty and interest. Claimant explained he did not file an injury report and did not tell medical providers his toe injury was work-related because Clifford threatened to kill him if he told doctors he got hurt at work. (Prehearing Conference Summary, January 14, 2014).

36) On January 31, 2014, attorney Cyphers with Frontier Law Group filed his appearance in this case as Clifford's counsel. (Entry of Appearance, January 29, 2014).

37) On March 25, 2014, the fund filed a petition to join Ernest as a potentially liable employer. (Petition, March 24, 2014).

38) On March 26, 2014, Claimant, Love, Thomas, Pride, and Clifford's attorney attended a prehearing conference. The parties agreed the board's database included a duplicate entry for this injury in AWCB case number 201402080, which the parties agreed should be deleted. Claimant said he was "simultaneously" Clifford's and Ernest's employee. Claimant mentioned attorney Cyphers may be a material witness because he has knowledge of Claimant's employment and how he was injured while working for Clifford. The summary states attorney Cyphers continued to maintain Clifford was not an employer and therefore refused to cooperate in discovery. (Prehearing Conference Summary, March 26, 2014).

39) On May 23, 2014, Claimant, Thomas, Pride, Clifford and his attorneys attended a prehearing conference. The parties were to discuss joining Ernest as a putative employer. However, when Ernest did not appear, the designated chair called him. Ernest refused to participate in the prehearing conference "on advice of his attorney," Cyphers. The fund was directed to re-file and re-serve its joinder petition, as there was no evidence it had been served on Ernest. As Claimant, who was living in Alabama, had no funds with which to obtain a PPI rating from his attending physician, the board designee suggested the fund pay to send Claimant to the board's second independent medical evaluator located in Atlanta, Georgia. Claimant stated his witnesses were being threatened. (Prehearing Conference Summary, May 23, 2014).

40) On July 8, 2014, Claimant, Love, Thomas, Pride, and Clifford's attorney attended a prehearing conference. Ernest said attorney Cyphers represented him, while Cyphers stated he did not. The designee gave Ernest and Clifford's lawyer 14 days to clarify the attorney-client relationship. Claimant said his witnesses were still being threatened, and a reward was being offered to anyone who could locate Claimant. Claimant was reluctant to give defendants any personal information. (Prehearing Conference Summary, July 8, 2014).

41) On July 24, 2014, Claimant, Love, Thomas, Pride, and Frontier Law Group representing both Clifford (against Claimant's claims) and Ernest (limited to defending against the fund's petition to join Ernest) attended a prehearing conference. The designee determined the petition to join Ernest had been properly served on Ernest and gave Ernest an additional 20 days to answer the petition. The designee advised Frontier Law Group to file a new entry of appearance on Ernest's behalf if it intended to represent his interests in the petition to join Ernest. (Prehearing Conference Summary, July 24, 2014).

42) On July 24, 2014, attorney Cyphers on Clifford's behalf filed an answer to Claimant's October 7, 2013 claim. Clifford denied an employer-employee relationship existed between Clifford and Claimant "on the date of the alleged injury or at any other relevant time." Further, Clifford stated any claim Claimant may have had against Clifford "for injury has already been settled under the terms of a previous agreement between the parties." (Answer, July 23, 2014).

43) Clifford's July 24, 2014 answer was about seven months late. (*Id.*; observations).

44) Clifford produced no settlement documents purporting to settle this case. (Agency record).

45) On July 29, 2014, attorney Cyphers filed a "limited" appearance representing Ernest d/b/a Valley Wreckerman, LLC in this case to oppose the fund's petition to join Ernest as a party defendant. (Limited Entry of Appearance, July 23, 2014).

46) On July 29, 2014, attorney Cyphers on Ernest's behalf also filed a "response" to what it believed was Claimant's amended petition seeking to join Ernest as an additional employer. Ernest stated he was not a party to the petition or amended petition and had not been properly served. His attorneys "were not at liberty to accept service" on Ernest's behalf. (Response to Mark Gibbons' Petition to Join "Ernest Barney DBA Valley Wreckerman, LLC," July 23, 2014).

47) On or about November 13, 2014, the division subpoenaed documents from Copart. Copart provided documents signed by Clifford stating Barney's Repair Service was in the business of selling motor vehicles and parts. Copart also provided sales receipts showing Claimant signed for and picked up at least six vehicles Clifford purchased from Copart. (Mills letter, December 3, 2013, and attachments).

48) On June 28, 2014, Joseph Lynch, M.D., saw Claimant for the fund's employer's medical evaluation (EME). Claimant told Dr. Lynch he was working in his usual capacity for Barney's Repair Service as a tow truck driver when, while having difficulty aligning a piece of equipment, he kicked the equipment with his toe. This resulted in pain and swelling, so Claimant was seen shortly thereafter and diagnosed with an open fracture of his right great toe. A toe infection ensued, and Claimant ultimately had the toe amputated in August 2012. His toe had healed nicely since then. Claimant subsequently left Alaska and was working. Claimant occasionally had phantom toe pain. Dr. Lynch performed an examination and reviewed Claimant's medical records. Dr. Lynch diagnosed a right great toe metatarsophalangeal joint amputation, diabetes, peripheral neuropathy and tobacco dependence. Using the American Medical Association *Guides to the Evaluation of Permanent Impairment*, Sixth Edition (*Guides*), Dr. Lynch opined Claimant had 13 percent lower extremity impairment, which equaled a five percent whole-person PPI rating. Dr. Lynch said causes for the right great toe amputation included the May 26, 2012 trauma related to the injury causing the open fracture in Claimant's right great toe, uncontrolled diabetes, peripheral neuropathy and tobacco dependence. Of these causes, in Dr. Lynch's opinion, the May 26, 2012 trauma was "the substantial cause" of the great toe amputation. In Dr. Lynch's view, medical treatment rendered to date had been within the realm of medically reasonable options to treat Claimant's toe condition. Claimant's toe amputation was medically

stable effective June 28, 2014. No further medical treatment was necessary for the May 26, 2012 work injury, in Dr. Lynch's opinion. (Dr. Lynch EME report, June 28, 2014).

49) There is no contrary medical evidence. (Agency record).

50) On July 10, 2014, the fund served Dr. Lynch's EME report on Frontier Law Group, which represented Clifford d/b/a Barney's Repair Service defending against Claimant's claims, and to a "limited" extent represented Ernest d/b/a Valley Wreckerman, LLC, defending against the fund's joinder petition. (Medical Summary, July 10, 2014; Entry of Appearance, January 29, 2014; Limited Entry of Appearance, July 23, 2014).

51) Attorney Cyphers died in a plane crash on August 10, 2014. (Official notice).

52) On December 3, 2014, Ernest filed a petition seeking to be dismissed from this case. Ernest based his petition on Claimant's statements made at a November 25, 2014 prehearing conference at which Claimant allegedly said he worked for Clifford, not Ernest. (Petition, December 1, 2014).

53) On December 15, 2014, attorney Gregory Parvin filed and served on all parties a letter stating attorney Cyphers had died, no longer represented "Mr. Barney," and Frontier Law Group was closing its doors effective December 31, 2014. The superior court had appointed Parvin to close attorney Cyphers' solely-owned private practice. (Parvin letter, December 1, 2014).

54) On January 15, 2015, Claimant, Love, Thomas, Pride, Clifford and Ernest all appeared at a prehearing conference. The designee stated Ernest's petition to dismiss would be heard at a March 24, 2015 hearing as a preliminary issue, after which Claimant's issues would be addressed. (Prehearing Conference Summary, January 15, 2015).

55) At hearing on March 24, 2015, the panel first addressed Ernest's petition to dismiss. Neither Ernest nor Clifford raised Claimant's lack of timely, written injury notice as a defense. (Hearing record).

56) Since Claimant, the fund, and Clifford were not represented at hearing by attorneys, the designated chair gave all parties considerable leeway in making opening statements, mixed with testimony. It was difficult controlling the hearing. (Observations, judgment and experience).

57) For his opening statement, Ernest said there was no evidence Claimant ever worked for him. Consequently, Ernest contended he should be dismissed from the claim to avoid incurring additional attorney's fees and costs. (Ernest's opening statement).

58) The fund's opening statement said it had joined Ernest as a potentially liable party because statements Clifford and Ernest had made could be construed to make Ernest Claimant's employee. It opposed dismissal. (The fund's opening statement).

59) When asked for his position on Ernest's petition to dismiss, Clifford stated, before being placed under oath, it was a "complicated matter." Clifford said he never in his wildest dreams imagined a case like this could have such an adverse impact on people's lives. Clifford did not want to object to what "Ernest was doing," because Clifford loves his brother Ernest and did not want to "undermine him as a person." When asked if he was going to testify on the preliminary dismissal issue, Clifford did not "know how to answer." The designated chair nonetheless placed Clifford and all other witnesses under oath. (Clifford; hearing record).

60) Eventually, Clifford provided an opening statement. Referring to the hearing process, Clifford said he did not know "how all this works" but he would be "listening." When he read Claimant's recorded statement taken by adjuster Trexler, Clifford "did not even like" himself because the statement made him sound so bad. Clifford urged the panel to pay attention to "what makes sense." In Clifford's opinion, the whole claim and hearing processes are based on "lies and fraudulent claims." Clifford singled out witness Love, addressed him directly and reminded Love he was "under oath." (Clifford's opening statement).

61) For his opening statement, Claimant supported dismissing Ernest because Claimant contended he never worked for Ernest. (Claimant's opening statement).

62) Ernest called Claimant as his first witness on the preliminary issue. Claimant considered Clifford his employer. Claimant was never hired or employed by Ernest. Rather, Clifford hired Claimant to drive the slide-back tow truck approximately three years earlier. Claimant operated the truck on an "almost daily basis" over that three-year period. "Everything went through Clifford" and Claimant never considered himself Ernest's employee. Ernest never exercised control over Claimant's use of the truck. Ernest never paid Claimant any money for driving the truck. Ernest never directed how Claimant was to perform his duties with the truck. Claimant knew Ernest worked full time as a mechanic and performed snow removal for Spain & Sons and Claimant rarely saw him. Claimant knew Ernest owned the slide-back truck, but also knew Clifford paid for insurance, maintenance, and fuel and paid Claimant to drive it. In Claimant's view, Ernest had nothing to do with his employment with Clifford. "It was all solely on Clifford." Everything Claimant did "was through Clifford." (Claimant).

63) Clifford mused aloud, if Claimant lied in response to Ernest's questions, would that be enough to end the case? Clifford later testified Claimant's answers were all lies, and he "could prove it." Clifford objected repeatedly to the hearing being fraught with lies and questioned how he could possibly "have a fair hearing" when everything "coming out of his mouth," referring to Claimant, was "a lie." Clifford demanded to take Claimant "to court" where he would be placed under oath and subject to penalties for perjury. Clifford stated, referring to the hearing, "this is a fraud," the panel had "no jurisdiction over me and I'm going to leave." Clifford remained and participated in the hearing to its conclusion. (Clifford; observations).

64) The designated chair instructed Clifford that the administrative hearing was the proper forum to decide the issues, and all witnesses were under oath and subject to penalties for perjury. The designated chair also advised Clifford he could attempt to demonstrate Claimant was being untruthful through clever and skillful cross-examination. Clifford was advised if he could show through questioning that Claimant or other witnesses were not being truthful, the panel would weigh such testimony and decide credibility accordingly. (Hearing record).

65) During Clifford's cross-examination, Claimant denied he ever entered into an employment agreement with Ernest. To the contrary, Claimant explained he was previously married to Clifford's niece and through this relationship met Clifford, who hired him because he had a medical card and a commercial driver's license. Ernest was, however, present in the shop when Clifford hired Claimant. Ernest never dispatched Claimant to any wrecker calls. All such calls came through Clifford. Ernest never paid Claimant for any wrecker jobs. On many occasions, Clifford told Claimant to not write a tow bill when Claimant towed vehicles to Clifford's shop. Clifford then added the tow bill to the bill for repairing the vehicles. Claimant and Clifford had an agreement that Claimant would get one-third of each tow bill and Clifford would get two-thirds. Claimant could not "do anything" with the wrecker without "going through" Clifford. For example, if a friend called Claimant and asked him to tow the friend's broken-down vehicle, Claimant would have to first ask Clifford for permission. Claimant had no control over the tow truck. If Claimant did not return quickly enough from a tow job, Clifford was "blowing my phone up" to find Claimant. The tow truck was "completely controlled" by Clifford. The only way Claimant knew where and when to pick up a vehicle with the tow truck was when Clifford told him. At Clifford's firm instruction, Claimant did no advertising or promoting for the tow truck business. The tow truck was used primarily to bring vehicles in need of repair to Clifford's

shop, although it was also used to retrieve wrecked vehicles Clifford purchased for parts. When Claimant used the tow truck to pick up Clifford's vehicles, or perform shop services, Clifford was to pay Claimant $20 per hour. Claimant never had an agreement with Ernest concerning driving the tow truck. Similarly, Claimant and Ernest never had any kind of "an understanding" about Claimant driving the tow truck. Claimant knew Ernest owned the tow truck but also knew Clifford insured and maintained the truck. Claimant did not know whose name was on the truck's insurance card as he never looked at it, but thought there was "shady paperwork" going on in respect to the truck. Claimant initially did not keep timecards and Clifford kept no payroll paperwork. At first, Clifford paid him "right." When Clifford stopped paying him as they had agreed, Claimant started keeping a journal and kept track of his time and earnings. Eventually, when Claimant had to get a restraining order to keep Clifford away from him, someone stole Claimant's personal paperwork, including the record-keeping journal. Claimant was planning to take Clifford to "wage and hour" for past wages. (Claimant).

66) In Clifford's view, regarding Claimant's alleged perjury, which should result in criminal charges, "if each lie is a new charge," Claimant was "racking them up." (Clifford).

67) Ernest testified the tow truck was titled to Valley Wreckerman, LLC, with him and Claimant listed as the LLC's owners. (Ernest).

68) Claimant denied he was ever part of an LLC with Ernest. In stark contrast, Claimant testified Clifford told him he needed to sign some "paperwork." He was to have a two to three percent ownership in the wrecker service. Claimant told Clifford he declined to sign anything and reaffirmed he worked for Clifford and if Clifford did not like it, Claimant would no longer work for Clifford. Claimant never signed any paperwork making him part of any LLC. Clifford hired Claimant to drive the wrecker just after Halloween 2009. The tow truck said "Barney's Towing" on the doors when Claimant began driving it. He and Clifford later scraped the old letters off and put "Valley Wreckerman" on the doors. (Claimant).

69) As Ernest's next witness on the preliminary issue, Ernest testified he was a full-time employee of Spain & Sons as a mechanic and operator. He considered himself "illiterate" when it came to paperwork. He caused an LLC to be created called Valley Wreckerman. Ernest testified Claimant and he entered into a "business relationship" in which Claimant had 10 percent ownership in Valley Wreckerman. Ernest conceded Claimant never signed any paperwork. Papers filed with the State of Alaska show only Ernest, as a 90 percent owner. When asked why,

Ernest explained he was shown as a 90 percent owner because he was to hold 90 percent ownership and Claimant was supposed to be a 10 percent owner. Ernest leased the tow truck back to himself. He obtained a telephone number for Valley Wreckerman, and the number was forwarded to Clifford's shop in 2011. Ernest forwarded the telephone because he did not want to answer wrecker calls as he had a full-time job with Spain & Sons. Once Valley Wreckerman's phone was forwarded to Clifford, Ernest never received any money from any tows. In January 2012, when the tow truck's license plates and registration were due for renewal, Ernest decided he "had enough" and was not going to renew them. He concluded he was "done in January 2012." He told Clifford and Claimant he was "done." Ernest said he was "done" because the truck was at Clifford's shop, and Ernest was paying insurance and registration but was making no money whatsoever from the truck. Ernest told Clifford if Clifford wanted to pay for the registration and insurance on the wrecker, he could use the truck. Ernest did not make the same offer to Claimant because he knew Claimant had no money. Thereafter, Ernest only used the wrecker on occasion to tow vehicles to Clifford's shop as a personal favor or for a relative. From January 2012 forward, Ernest had no dealings with Claimant. At no time did Ernest consider Claimant his employee. In April 2012, the billing address for the tow truck's liability insurance changed to Clifford's mailing address. Ernest paid no bills for the tow truck after January 2012. In June 2013, the State of Alaska dissolved Valley Wreckerman, LLC for failure to renew its LLC status. When the state dissolved the LLC, Ernest did not pay anything to Claimant for his alleged 10 percent interest in the LLC because the LLC had no assets. So far as Ernest was concerned, when the LLC agreement ended, so did the tow truck lease back to Valley Wreckerman, LLC. There was never a written leaseback agreement for the truck. Ernest said when he annually submitted documents to his tax preparer, all he gave was his earnings information from Spain & Sons. Ernest had a Department of Transportation (DOT) number for the tow truck. He testified the tow truck did not need an annual inspection because he was not on a towing contract with police or other organizations and did not have multiple trucks. So far as Ernest knew, the DOT number was registered to him. The DOT number is not current and has expired. The vehicle is currently parked and is not licensed as of January 15, 2015. (Ernest).

70) On cross-examination, Clifford did not want to put his brother Ernest "on the spot" but asked him questions anyway. Ernest disputed Clifford's contention that Ernest sent Claimant on wrecker calls. Ernest testified he could not send Claimant on calls because Claimant was a

partner in the Valley Wreckerman business and Ernest could not tell him what to do. Ernest denied he had Claimant pick up Spain's vehicle; Ernest picked it up himself. Ernest denied he directed Claimant to go to "Subaru Dave's" to pick up vehicles. Dave Dooley, also known as Subaru Dave, contacted Claimant directly. When Subaru Dave asked Ernest why Ernest did not just send Claimant to pick up a vehicle, Ernest said he told Subaru Dave he could not tell Claimant what to do because Claimant was a business partner. Ernest conceded his name remained on the insurance policy for a time after he was "done." Claimant was a named insured on the tow truck's liability policy. Ernest reiterated he and Claimant had a "business relationship," and Claimant was supposed to complete paperwork for this arrangement but never did. According to Ernest, Claimant pressed for the business arrangement and Ernest did not initially want a business partner. Ernest said after Claimant persisted, in December 2010, Ernest relented and agreed to a business arrangement and Claimant was supposed to get two-thirds of all funds made through towing. (*Id.*).

71) Clifford, clearly agitated and frustrated, had more questions for Ernest but entreated the panel, saying "to create a foundation" and "go in a certain direction," "we have to have some truth," implying Ernest was also not being truthful. "Everybody doesn't care what the oath means to them," Clifford said referring to those who had already testified. Clifford testified a commercial vehicle such as Ernest's tow truck must have an annual inspection, contradicting Ernest's testimony. According to Clifford, he was not at the hearing "to cook my brother," but Ernest and Claimant "both know" Ernest had a business agreement with Claimant and "this whole thing is just a fraud." (Observations; Clifford).

72) Ernest further testified the tow truck's title was in Ernest's name, but the insurance on the vehicle was initially in Valley Wreckerman, LLC's name. Clifford does not have a driver's license. Ernest was present but could not remember "the exact conversation" where Claimant's ex-wife Valerie introduced Claimant to Clifford. After Clifford learned Claimant had a valid commercial driver's license and medical card, Ernest heard Clifford say, "I got somebody to drive the tow truck and drive me around where I need to go." When asked if he recalled Clifford turning to him and stating "I got somebody to drive the tow truck," Ernest recalled that conversation. However, Ernest could not say who hired Claimant that evening and said he did not know about the "business relationship" between Claimant and Clifford. (Ernest).

73) Neither Ernest nor Clifford produced any documents showing Claimant was part owner in Valley Wreckerman. (Agency record).

74) Claimant's account of his interaction with Subaru Dave was dramatically different than Clifford's. According to Claimant, Clifford called Claimant first and told him Subaru Dave would later be calling him regarding towing jobs. Clifford gave Claimant permission to tow vehicles for Subaru Dave. Claimant testified Ernest should be dismissed from this case because Claimant never worked for him, Ernest never gave him any money, and Claimant always worked for Clifford from "day one." Subaru Dave did not have a tow truck. Subaru Dave paid Claimant for these tows and Claimant would return to the shop and give the money to Clifford. On some occasions, Clifford would subsequently give Claimant his one-third share and on other occasions Clifford gave Claimant nothing. Claimant conceded he occasionally towed cars from Dave's Subaru to Ernest's lot, but Subaru Dave paid Clifford for the tows. Hypothetically, if Claimant were driving the wrecker down the road and saw a car in a ditch, he would stop and ask the motorist if he needed a tow. However, he would always call Clifford and get permission to perform the tow and would take the vehicle to Clifford's shop. Claimant never towed anyone without Clifford's knowledge and approval. All money Claimant collected from customers for towing went to Clifford. (Claimant).

75) Clifford did not "know how to respond" to the above-referenced testimony from Claimant. In Clifford's view, that is "not the way it went down." Clifford, again clearly agitated, dramatic, emotional and frustrated queried, "When are these lies going to stop?" Clifford did not point to a specific part of Claimant's testimony with which he disagreed. (Clifford).

76) Doug Love has been an investigator with the division's special investigation unit for two and one-half years. Love attended the Alaska State Troopers Academy and has been trained in witness interviewing. He has a four-year degree in criminal justice. Love investigated "insurance claims" for three and one-half years and "employer claims" for six and one-half years for the State of Alaska. Love denied he had training to "lock" a witness into saying what Love wanted them to say. Love investigated a failure to insure situation resulting from Claimant's injury and spoke with Clifford and Ernest. Clifford initially said he did not want to "throw his brother under the bus," but he eventually told Love Claimant was "working for Ernest." This, however, was not the sole reason Ernest was brought in as a party defendant in this case. Love's conversation with Clifford simply provided "probable cause" to investigate further. Love made

dozens of phone calls during his investigation. Love also talked to Claimant whose statements suggested he might have been working for Ernest. More recently, Claimant said he had not worked for Ernest. Love also had a conversation with Ernest. Initially, Ernest told Love he employed Claimant. Love expressly denied he coerced Ernest into making this admission. About a week after Love asked Ernest to provide records, Ernest called Love, said he could not find the discovery Love had requested and "recanted" his statement admitting Claimant was his employee. Love recalled, however, that in a subsequent conversation with Ernest, Ernest said he thought Love had been "leading him" into making admissions. Love obtained other discovery, such as the wrecker's liability policy, which listed Valley Wreckerman as the named insured, and Claimant as a covered driver. All this led Love to suspect Ernest may be Claimant's employer and prompted the fund to join Ernest as a party. (Love).

77) Clifford testified Love's interviewing technique made him feel "about this high," gesturing and indicating a small distance between his two fingers. (Clifford; observations).

78) Clifford denied Ernest's allegation, gleaned from Ernest's witness list, that at the time Claimant was injured, the wrecker was leased to Barney's Repair Service. Clifford also denied the truck was leased for the value of insurance payments made by Clifford. Clifford never heard Ernest in January 2012 say he was "done." According to Clifford, Ernest simply said he did not have adequate funds to continue paying truck expenses. Clifford said at no time did Ernest look at him and say "there's my tow truck; there's the insurance policy; it's yours for the lease." Clifford testified "that conversation didn't exist." When Ernest did not have finances to insure the tow truck, Clifford used his wife Dorothy's credit card to purchase insurance. Clifford claimed he paid the insurance to "help my brother" so Ernest could "grow his business." Clifford reluctantly conceded Claimant was driving the wrecker and it was stored in Clifford's "yard." Clifford had no idea who went to the Department of Motor Vehicles to renew the license on the tow truck. In Clifford's view, his wife's credit card payment for the insurance was a "loan" to Ernest. (Clifford).

79) Ernest testified he did not go to the Department of Motor Vehicles to renew the license. Ernest is "pretty sure" Clifford reregistered the vehicle. (Ernest).

80) After all testimony and evidence on the preliminary issue had been presented, when asked if he objected to Ernest being dismissed as a party, Clifford initially contended Ernest should be dismissed, "because he's my brother, I'll always answer yes, and I love him." Aside from that

reasoning, Clifford contended this "fraudulent" claim should be dismissed against both him and Ernest because there was a "partnership" and no basis for a claim. Clifford then vacillated said he could not say whether he objected to Ernest being dismissed because he would have to answer "from my heart" and "not my head." Clifford was given several opportunities to express a position on Ernest's dismissal. Ultimately, Clifford wanted to stay "neutral" and would not offer a firm position on dismissing Ernest. (Clifford's closing argument).

81) In its closing arguments, the fund opposed dismissing Ernest as a party defendant. Ernest and Claimant favored dismissal. (Parties' closing arguments).

82) After hearing the evidence and following deliberation, the panel granted Ernest's petition to dismiss and entered an oral order dismissing Ernest from this case. The panel could find no oral or written, implied or expressed contract between Claimant and Ernest for employment. Similarly, the panel could find no evidence Claimant was ever a loaned employee, joint employee, or emergency employee. Nor was there any evidence Clifford and Ernest were Claimant's joint employers at the time of injury. (Oral order at hearing).

83) The panel then moved to Claimant's issues. Before leaving the hearing, Ernest testified he was not present when the alleged injury occurred. After the injury, Ernest spoke to Claimant who told him he kicked the wheel lift on the tow truck. Subsequently, Ernest saw Claimant at Clifford's shop on a couple occasions. Claimant called Ernest from the hospital and asked him to bring him some personal items, which Ernest did. Claimant again told Ernest that he kicked the tow truck's wheel lift and eventually had to have his toe amputated. Ernest was aware Claimant and Clifford had "some agreement what they were" but he was not privy to their business arrangement. Ernest had no idea why Claimant left the state. (Ernest).

84) Clifford was happy Ernest, having been dismissed from the case, was in a position to leave the hearing and said, "I wish he would leave" so the hearing could proceed. (Clifford).

85) On the merits of his case, Claimant testified: on May 26, 2012, Claimant was using a "wheel lift" device to tow a vehicle. The wheel lift would not go into place properly so Employee kicked it a few times. The injury happened about 2:00 or 3:00 PM. Claimant did not know he injured his toe at first, possibly because Clifford was "yelling" at him to "hurry up" and get the car moved. When Claimant first began working for Clifford, he was married to Valerie, Clifford's niece. They divorced shortly thereafter. Clifford suggested Claimant move into Clifford's recreational vehicle in Clifford's shop yard so he would have a place to live and for

Clifford's convenience as Claimant would be closer to work and could provide yard security. Claimant first began living in the recreational vehicle around January 2010. Claimant did not, however, live there for free. When Claimant moved on site, Clifford ceased paying him as he had previously agreed. Claimant might get $20 to $40 a day from Clifford for a full day's work. Claimant purchased propane, but the recreational vehicle was plugged into Clifford's shop for electrical service. Nevertheless, Claimant believed he "paid" for electricity because once he moved in, Clifford ceased paying him full wages. Claimant assumed Clifford simply withheld electricity costs from Claimant's pay. Claimant considered living in Clifford's recreational vehicle on-site part of his payment for working for Clifford. The morning following the injury, Clifford came into the recreational vehicle to awaken Claimant and told him his sock was bloody. Claimant discovered his toe was "split open." Claimant tried to take care of it for several days but the toe became infected. Consequently, Claimant was in the hospital for about one and one-half weeks. He required a PICC line and antibiotic treatments every day. He had to go to the hospital several times a week for a month. Unfortunately, the treatment was unsuccessful and his toe was eventually amputated. Claimant had no idea why there were two different AWCB case numbers and two different injury dates. (Claimant).

86) In Claimant's mind, when he began working for Clifford in 2009, he had an oral employment agreement with Clifford. The terms were as follows: Claimant would operate the wrecker for Clifford for one-third of all tow receipts. He would also work in Clifford's shop and drive Clifford around and do whatever else was needed. For this, Clifford would pay him $20 per hour. Claimant would drive Clifford anywhere he needed to go. He was listed on Clifford's personal automobile insurance as a covered driver. There was no written employment agreement. Clifford never withheld any taxes or other money from funds he gave Claimant. Claimant ran the shop when Clifford went on vacation; he took care of Clifford's house when he was gone; he drove Clifford anywhere he needed to go; Claimant had total access to the shop and believed he worked for Clifford. (Claimant).

87) Clifford did not present testimony refuting each part of Claimant's account. However, in general Clifford maintained his position Claimant was committing "fraud." (Clifford).

88) Effective 2009 and continuing until Claimant left, Claimant and Clifford had an express, oral contract of hire in an employee-employer relationship. There was an employment offer, acceptance, a meeting of the minds, consideration and intent to be bound shown by mutual

performance. Thereafter, Claimant's and Clifford's actions were those of parties in an employee-employer relationship. (Experience, judgment and inferences drawn from the above).

89) Claimant testified that on May 26, 2012: Claimant did not own his own business. He held no business licenses. He had no authority to hire anyone to assist him in performing his tasks at Clifford's shop. Clifford directed his use of the tow truck. Claimant never picked up a vehicle with the tow truck without Clifford's pre-approval. When Claimant drove Clifford around, Clifford told him when and where to go. For example, Claimant drove Clifford to the auto parts store, to his friend's shop, to look at cars people were trying to sell Clifford for parts, and to the doctor's office in Anchorage. In the shop, Claimant performed anything from minor automotive repair work and tires up to and including assisting Clifford replacing engines and transmissions. Clifford supervised and directed Claimant's work in all these areas. On the injury date, Claimant had taken Clifford to Wasilla in the morning, returned to the shop, cleaned it, and then began loading two vehicles onto the wrecker. Clifford told him which cars to load and where to deliver the vehicles. Had Claimant decided he did not want to work for Clifford anymore, he would have had difficulty quitting only because Clifford kept him "broke" all the time and would not remove Clifford's name from the title on a truck Claimant had purchased from Clifford. Ultimately, Claimant obtained a restraining order, which told Clifford "I quit." Claimant believed Clifford owned the shop, and the two large toolboxes in the shop were also Clifford's. Clifford prohibited Claimant from bringing his own tools into the shop, though Claimant had his own tools. Claimant estimates the wrecker is worth approximately $10,000. The shop is big and has nice equipment, including hydraulic lifts. The hydraulic lifts cost anywhere from $9,000 to $15,000. If somebody had asked Claimant on May 26, 2012, for whom he worked, he would have said he worked for Clifford at Barney's Repair Service, even though Clifford told him to never tell anyone for whom he worked. On May 26, 2012, if somebody had asked Claimant what kind of business Barney's Repair Service was, he would have answered it provided towing and automotive repair work. It was a full-service motor vehicle repair shop. Over the years from time to time, Clifford had additional employees including: Matthew, Brad, Will, Mikey and Gordon. These were Clifford's full-time employees. On May 26, 2012, Claimant had no personal liability, workers' compensation or disability insurance. He could not have afforded these insurances. Claimant has operated a wrecker for approximately six years. He learned to operate a wrecker by observing a wrecker operator for about two weeks. In Claimant's view,

learning to operate a wrecker involves "a lot of common sense." It is a "pretty easy job" though it can be dangerous at times. Other than getting "yelled at a lot," driving Clifford around in Clifford's vehicles was "easy." As for mechanical work, Claimant learned by working on his own vehicles as a young person. He never had any particular training as a mechanic, but learned from Clifford, who was a "good mechanic." In Claimant's view, the employment agreement he had with Clifford was for continuous employment. Clifford could have fired Claimant any time he wanted, in Claimant's opinion. (Claimant).

90) During Clifford's cross-examination, Claimant testified: if Dorothy was home, she would occasionally come out to the shop and "hang out." He thinks Dorothy was no longer employed by the railroad on Claimant's injury date, which may explain why she was present. In respect to loading the two vehicles in Clifford's yard, "Peggy" was the customer's name and one vehicle was a car and the other was a pickup truck. Claimant thinks the pickup truck was a Chevy though he could not recall the color or whether it was a full-sized vehicle. He could not remember the make of the car. Peggy lived approximately five miles from Clifford's shop. When asked about a "threat" mentioned on Claimant's injury report, Claimant clarified that "Clifford Barney" is the person who had threatened him. According to Claimant, Clifford told Claimant if he filed any kind of workers' compensation claim Clifford would shoot him with his 45 pistol. If he ran, Clifford would "hunt him" down. The threat from Clifford is why Claimant left Alaska, because Clifford would not "leave me alone." Claimant did not call law enforcement at the time the threat was made, but when he filed for a protective order, he considered it reported. Claimant obtained a restraining order against Clifford. Eventually, Clifford gave him the title to Claimant's truck and Claimant retrieved the items Clifford "did not steal from me" and they parted ways. Claimant left Clifford alone but Clifford would not leave Claimant alone. Claimant also told Wasilla police that Clifford and someone driving Clifford's truck had on one occasion chased him down the road. Claimant denied calling Clifford at 1:30 a.m. to make an "abusive phone call." Claimant and Ernest never had a conversation concerning Claimant becoming a partner with Ernest. Claimant denied having hauled a street sweeper "or any pieces of equipment" for Spain & Sons. He did, however, pick up a vehicle from Spain & Sons, that Clifford had dispatched him to retrieve. Claimant denied ever hauling vehicles from Subaru Dave's lot to Ernest's yard at Ernest's request. Claimant reiterated it was Clifford who directed Claimant to take vehicles to Ernest's property, where Subaru Dave was storing them.

Claimant denied he testified falsely about the injurious event and reiterated that Clifford, Dorothy and their son were all present when he kicked the wheel lift device and injured his toe. Claimant conceded he had received energy assistance from the state and bought propane with it. The state paid the energy assistance money directly to the propane company where Claimant had a credit. He never received energy assistance cash from the state. Claimant said he harbored no resentment against Clifford. He acknowledged his time with Clifford taught him a lot about life, a lot "about being respectful" and a lot about mechanical work. Claimant just wanted Clifford to leave him alone. Claimant denied he ever called Clifford after he ceased living on his property. When asked if he was aware phone records could disprove his testimony, Claimant said Clifford had stolen his telephone when he left the premises and Claimant got a new phone and a new phone number, which he was "not about to give" to Clifford. (Claimant).

91) Clifford muttered "lies" following some of Claimant's testimony. (Clifford).

92) Clifford produced no phone records to disprove Claimant's testimony. (Agency record).

93) In rebuttal, Clifford said not one single statement from Claimant "rings true" to him. In Clifford's view, Claimant "assassinated me" with his testimony. It can be inferred from Clifford's remarks that he disagrees with everything Claimant said, though Clifford was reluctant to testify and did not provide specific rebuttal testimony on most points. (Clifford).

94) While still cross-examining Claimant, a clearly frustrated Clifford asked the designated chair how he was supposed to defend himself. The designated chair advised Clifford there were several ways: Clifford could use skillful cross-examination to "poke holes" in Claimant's testimony; Clifford could call himself or another witness to corroborate his version of the facts; and he could produce documents such as medical records containing information he could use to impeach Claimant's testimony. The designated chair offered Clifford an opportunity to testify and cross-examine Claimant later if he was having difficulty formulating questions. Clifford declined the invitation. (Hearing record).

95) While questioning Claimant, Clifford repeatedly and sometimes emotionally expressed frustration over his inability to extract the answers he desired from Claimant. The designated chair repeatedly advised Clifford he did not need to ask Claimant any questions, and encouraged Clifford to testify and rebut Claimant's testimony. Clifford suggested he had no idea how to proceed at hearing. (Observations; Clifford; hearing record).

96) Joanne Pride testified she attempted to reach Clifford on numerous occasions to discuss the case but he did not return her calls. (Pride).

97) After receiving advice from the designated chair, Clifford wanted to call his wife Dorothy Barney as a rebuttal witness. Clifford had not filed a witness list because he refused to put his name down as a putative employer in this case. (Clifford).

98) Claimant objected to allowing Dorothy's testimony because Clifford failed to file a witness list. The fund did not object to Dorothy testifying. (Hearing record).

99) The designated chair overruled Claimant's objection and gave procedural leeway to Clifford as an unrepresented litigant. Dorothy was sworn and later testified. (*Id.*).

100) During the panel's cross-examination, Claimant reiterated his prior testimony. He added sometimes Clifford wanted him to work at midnight and if Claimant refused, Clifford would unplug his electricity, use a forklift to "shake" the recreational vehicle and on one occasion lit firecrackers to roust Claimant from his bed. When hired, Claimant thought the arrangement was an ordinary workday but that was "not the way it worked out." There was no agreement for overtime, other than Claimant knew Clifford did not pay overtime. (Claimant).

101) Claimant clarified he is no longer seeking permanent total disability because of his toe injury. He was not seeking temporary partial disability. No one assisted Claimant in completing his claim forms and he did not really know to which benefits he might be entitled. His treating physicians tried to treat his toe injury conservatively and he was on antibiotics for about three weeks. Eventually, the doctors told him the infection was spreading and if he did not get his toe amputated he might lose his foot. He seeks TTD for the period he was disabled while hospitalized. The same day Claimant's toe was amputated Clifford put him back to work in the tow truck. Once he returned to work for Clifford, Claimant did not thereafter lose any time from work because of his toe injury. He continued working for Clifford for a few months until he obtained a restraining order against Clifford and left the state. He ceased working for Clifford the day he obtained a restraining order. (*Id.*).

102) Claimant incurred no out-of-pocket expenses for his medical care. According to the fund's calculations, Claimant incurred the following, work-injury related medical expenses, which to Claimant's knowledge were never paid, though some may have been "written off":

Table I		
Date of Service	**Provider**	**Amount**
May 31, 2012	Denali orthopedic surgery	$700
May 31, 2012-June 8, 2012	Mat-Su Regional Medical Center	$42,792.65
June 1, 2012-June 6, 2012	Denali orthopedic surgery	$1,680
June 7, 2012	Denali orthopedic surgery	$280
June 8, 2012	Mat-Su Regional Medical Center	$282
June 6, 2012-June 30, 2012	Mat-Su Regional Medical Center	$33,938.40
July 11, 2012	Denali orthopedic surgery	$300
July 1, 2012-July 31, 2012	Mat-Su Regional Medical Center	$18,887.29
July 25, 2012	Denali orthopedic surgery	$130
August 3, 2012	Denali orthopedic surgery	$300
August 10, 2012	Denali orthopedic surgery	$480
August 12, 2012-August 15, 2012	Mat-Su Regional Medical Center	$329
August 23, 2012	Denali orthopedic surgery	$2,980
August 23, 2012	Mat-Su Regional Medical Center	$11,429.75
Total		**$114,509.09**

103) The trauma while kicking the wheel lift on May 26, 2012, was "the substantial cause" of Claimant's broken toe, infection, related hospitalization with disability and eventual great toe amputation. (Dr. Lynch; Experience, judgment and inferences drawn from the above).

104) The trauma while kicking the wheel lift on May 26, 2012, was "the substantial cause" of the medical treatment Claimant received for his toe injury. The treatment was all reasonable and necessary. (*Id.*).

105) Clifford had received the medical records served by the fund associated with Table I, above but had never seen the actual billings. (Pride; Clifford).

106) At hearing, the fund provided the panel and the parties with a demonstrative exhibit showing the medical expenses in Table I. While maintaining his continuous "fraud" objection against Claimant, Clifford expressed no objection to any specific bill or treatment. (Clifford).

107) Claimant estimated his transportation expenses were approximately $400 for mileage to drive his vehicle to and from treatments after his toe injury. Claimant knew it was approximately 21 miles round-trip from Clifford's shop to his medical provider. For three weeks, Claimant drove three times a week, twice a day from Clifford's shop to the doctor's office for injury-related care. (Claimant).

108) The mileage rate for travel to and from medical treatment for Claimant's injury date was $0.555 per mile. (Workers' Compensation Bulletin 11-01; State of Alaska POV rate table, accessed April 16, 2015).

109) While maintaining his continuous "fraud" objection against Claimant, Clifford did not object to Claimant's mileage calculations. (Hearing record).

110) Claimant provided testimony supporting medical mileage costs of $209.79 for his work injury (3 weeks x 3 times per week x twice per day = 18 trips x 21 miles per trip = 378 miles x $0.555 per mile = $209.79). (Experience, judgment and inferences drawn from the above).

111) Claimant requested a compensation rate adjustment based on $20 per hour for an eight hour day. Claimant did not know how much money he made in 2011 and did not file an income tax return in either 2011 or 2010. (*Id.*).

112) Claimant did not provide evidence to support a compensation rate adjustment calculation. (Experience, judgment and inferences drawn from the above).

113) The division calculated Claimant's compensation rate at $239 per week, which is the statutory minimum, based upon Claimant's lack of wage documentation. (Pride; Workers' Compensation Bulletin 11-06, accessed April 16, 2015).

114) Claimant also made a claim for an unspecified "penalty." He was uncertain about the legal basis for his penalty claim but said he was entitled to a penalty because he lost his toe while at work. Claimant conceded he checked many blocks on his claim forms simply to "cover his bases" as he was unfamiliar with his entitlements. (Claimant).

115) Claimant sought five percent PPI based upon the rating provided by the fund's physician. Claimant had no objection to the rating. (*Id.*).

116) While maintaining his continuous "fraud" objection against Claimant, Clifford expressed no objection to the PPI rating. (Hearing record).

117) The fund had no objection to the PPI rating. (*Id.*).

118) Clifford had concerns about the two different AWCB case numbers and different injury dates listed on several documents. Clifford noted the November 20, 2013 claim listed both May 26, 2012 and May 26, 2013 as the injury date. Clifford also pointed out discrepancies in dates written on some claims and petitions filed by both the fund and by Claimant. (Clifford).

119) The fund argued both it and Claimant made common, inadvertent errors when they filed their claims and petitions. The fund also conceded there were two AWCB dates of injury and two case numbers because the division transitioned from a paper file to an electronic file system around the time Claimant filed his claims. (Pride; Thomas).

120) Different dates on various pleadings in the agency file in this case resulted from common, human error and do not affect the credibility of any party completing or filing the documents. (Experience; judgment and inferences drawn from the above).

121) The fund asked Claimant if he ever told his physicians his toe was a work-related injury. Claimant testified he never did, because Clifford warned him if he ever said anything about his injury being work-related, "he'd kill me." Clifford told him to tell the physician he was unemployed or homeless. Claimant sold personal belongings and borrowed money from friends so he could afford to leave Alaska. (Claimant).

122) Claimant explained that Valerie, Claimant's ex-wife, not Claimant, was in a lawsuit against McDonald's. Claimant conceded McDonald's had a special investigator who was trying to find him and who claimed they had video surveillance of Claimant putting "rubber" in the hamburger into which Valerie bit, which apparently formed the basis for Valerie's lawsuit. He did not agree the McDonald's investigator's claim was true. Claimant went to a pain clinic for his toe injury but said he was "kicked out" because an "anonymous" caller told the pain clinic he was "doing something stupid" with his pain pills. Claimant denied he was on methadone. Claimant filed for disability and received interim assistance because he has diabetes. Claimant quit getting interim assistance when he left Alaska. He was receiving this for the latter part of 2012. Claimant denied he went to the doctor for mental health care. He denied he left Alaska for "about a year" before he returned and moved onto Clifford's property. Claimant denied he beat up his prior girlfriend, which resulted in her evicting him from their residence, which prompted Claimant return to Alaska and seek a place to live and seek employment with Clifford. To the contrary, Claimant testified he left for about a month and Clifford said he could return and

work for him. When Claimant returned to Alaska, Clifford had a concrete slab poured and Claimant helped him build a new shop. (*Id.*).

123) In rebuttal, Clifford testified he told Claimant he could not return to work for him, implying Claimant had no part in constructing the back shop. However, Clifford testified he felt bad for Claimant and did not want to put anyone "out on the street." Clifford let Claimant live in the recreational vehicle on Clifford's property of out kindness. (Clifford).

124) Claimant denied Clifford's account and said he could prove he constructed the back shop because if he were to pull off a particular sheet of tin siding, Claimant's signature would be visible. (Claimant).

125) Following this testimony from Claimant, Clifford and Dorothy became extremely emotional and agitated. Clifford exclaimed, "This guy, he didn't touch my building." Dorothy exclaimed, "That's it, it's over, we need to seek counsel." (Clifford; Dorothy).

126) The designated chair advised Clifford that if he was requesting a continuance, the panel would deliberate such a request, but at that juncture, having listened to testimony and considered evidence for several hours, the panel would probably not be favorably disposed to granting a continuance. Clifford did not request a continuance. (Hearing record).

127) Dorothy angrily testified, "We are so damn broke it ain't funny." The business had been going under for many years, and according to Dorothy, this proves they could not have paid Claimant the money he suggested they paid him. (Dorothy).

128) Near the hearing's conclusion, Clifford concluded the workers' compensation system was "broken." It was broken in Clifford's view because the panel gave weight to a person's testimony alone. Clifford believed he had "zero rights." Clifford noted the panel had already heard from Ernest and, in Clifford's view, either Ernest was a liar or somebody else was a liar. When you "shake it all out," the truth will come forward, in Clifford's opinion. Clifford pounded on the table and explained if he lost he was going to appeal, take the case to court, and obtain a lawyer who will "flex his muscles" and obtain justice for Clifford. In Clifford's estimation, Claimant perjured himself repeatedly. Clifford argued investigator Love's main purpose was to bring in money for his department through fines and penalties. He implied Love was being dishonest. Clifford said he felt like he had been "pulled over" by police for bad taillights when his taillights are working just fine and "you're not letting me go." According to Clifford, he called Valerie and inquired about the McDonald's lawsuit, and she told Clifford that

Claimant is the one who initiated the McDonald's lawsuit. Clifford asserted Claimant had a workers' compensation claim while employed at Rumrunners, and thus has a "working knowledge" of how the compensation process works. Clifford asserted if investigator Love had shown him Claimant's recorded statement when Love first contacted Clifford, the case would have taken "a completely different turn." Clifford did not elaborate. Clifford said he told Claimant he did not want Claimant to work for him because Claimant did not know how to work on cars. (Clifford).

129) Following Clifford's additional testimony, Dorothy became angry, stated she was "done with this shit," took off her wedding ring, slammed it down on Clifford's briefcase, and said "we're getting a divorce." As she left the hearing room, Dorothy exclaimed she had warned Clifford not to allow Claimant onto the property. (Dorothy; observations).

130) In his combined closing argument and testimony, Clifford further testified his friend "Tim" told him Claimant had been selling methadone from the front seat of Claimant's pickup. There never was an employment contract between Claimant and Clifford, in Clifford's view. Clifford testified he told Claimant that if the day ever came when Claimant thought he was something other than "a friend" and thought he was working for him, he should leave immediately. Clifford testified several witnesses overheard this conversation, which occurred on several occasions. "In a nutshell," Clifford testified he simply let Claimant live on his property because he felt sorry for him and Clifford was a nice guy. He emphatically stated he never wanted Claimant working for him. On the other hand, Clifford knew his brother Ernest "needed a driver." Clifford was trying to help Ernest and he did not want Claimant to be out on the street. Clifford testified his niece Valerie came to Clifford and asked him to help her separate from Claimant because she was sick of Claimant "beating her up" when he went into "diabetic shock." Clifford testified he "cannot be responsible" for his brother Ernest's business. Clifford knows Ernest dispatched Claimant, Ernest received money for tow jobs, and Ernest paid money to Claimant. "I know all these things," Clifford said. Referring to Claimant, Clifford's former lawyer Cyphers told Clifford to "leave that man alone," and he did. (Clifford).

131) Clifford repeatedly stated he could provide corroborating witnesses to refute virtually all of Claimant's testimony. Other than Dorothy's and his own limited testimony, Clifford provided no corroborating witnesses. (Clifford; hearing record).

132) When asked if his brother Ernest had been untruthful in his earlier testimony, Clifford initially evaded the question and said the panel's "system" was broken because "I am not [Claimant's] employer." In his further attempt to respond to the question, Clifford reviewed statements made on Ernest's witness list. The designated chair explained the panel would not be relying on statements set forth in Ernest's witness list because the witnesses did not testify at hearing. (Clifford; hearing record).

133) According to Clifford, Claimant repeatedly asked him for a job. Clifford testified he repeatedly told Claimant he did not want him to work for Clifford and eventually asked him to leave his property. Clifford admitted Claimant took him to McDonald's one evening at midnight but claimed it was because his son had been sick, was feeling better and was hungry. Clifford implied Claimant was doing this as a friend. (Clifford).

134) In rebuttal, Claimant suggested investigator Love obtained documents or discovery which showed Claimant signed for Clifford's vehicles he picked up with the wrecker. These documents and vehicles were all for Barney's Repair Service. (Claimant).

135) In response to Claimant's testimony regarding sales receipts, Clifford expressly contradicted Ernest's prior testimony. According to Clifford, Ernest is the one who preauthorized Claimant's use of the wrecker every time Claimant drove it. Clifford emotionally exclaimed, "Every move I made I ran through my brother." Contrary to Ernest's testimony that Ernest could not tell Claimant what to do because Claimant was Ernest's partner, Clifford said he asked Ernest "what do you want me to do, Ernest?" In response, Clifford said Ernest told him to just have Claimant drive the wrecker to pick up vehicles. (Clifford).

136) Dorothy eventually returned to the hearing room and testified. According to Dorothy, Claimant continually called her and Clifford after Claimant's injury and "threatened to burn down" their home. Dorothy said she had just had surgery and could not get out of bed for about two weeks. She testified under these trying circumstances, Claimant's late-night threatening phone calls were extremely stressful and troubling to her. Claimant called and made threats at one o'clock in the morning "many times," according to Dorothy. When the designated chair asked why she thought Claimant would call Clifford and Dorothy and threaten to burn down their home, Dorothy said it was "because he was trying to aggravate Clifford." Dorothy said Claimant was somehow getting Dorothy's and Clifford's son to steal money from them. Clifford interjected that the reason Claimant called their home late at night and threatened them was

because Claimant was afraid they would spoil Claimant's "drug deals." Upon hearing Clifford's explanation, Dorothy agreed this probably was the real reason Claimant made threatening late-night phone calls. The reason they did not turn Claimant over to police for allegedly selling drugs from the front seat of his pickup truck was because their son, a minor at the time, was with Claimant and he might get in trouble. According to Dorothy, Claimant did not work "for my husband, he worked for Ernie." When asked if Ernest was not telling the truth earlier, Dorothy agreed he was not, and said she was "very upset" Ernest was let out of the case. Dorothy explained she had bought the property including the repair shop before she and Clifford married, and it was her property, not Clifford's. (Dorothy).

137) Clifford offered no evidence of actual income or loss from his business. (Agency record).

138) Neither Clifford nor Dorothy testified they called police about Claimant's alleged numerous, threatening phone calls. Neither explained why. (Hearing record).

139) In Dorothy's opinion, Claimant is "the biggest liar I've ever seen." Dorothy said she treated Claimant as a human being and even made him birthday cakes. "When you extend a hand to someone you don't expect it to slap you in the face." Dorothy vowed at hearing to "never let another soul" live on her property again. (Dorothy).

140) Claimant reiterated he never took methadone and never sold his hydrocodone. He had regular pill counts with his attending physicians, which were always accurate. (Claimant).

141) Clifford argued Claimant never picked up a vehicle at Clifford's direction, without first clearing it through Ernest. Clifford explained that Claimant took directions from Clifford because, "he was my brother's business partner." Though he was evasive, Clifford ultimately admitted he told Claimant to tow vehicles. In short, Clifford implied he simply passed on towing instructions from Ernest to Claimant. When asked to explain why receipts with Claimant's signature on them were for items purchased by Barney's Repair Service, Clifford evaded the question. (Clifford; judgment, observations and inferences drawn from the above).

142) Dorothy testified Clifford gave money to Ernest from all towing jobs and Ernest then paid one-third to Claimant and kept two-thirds for himself, pursuant to Claimant's and Ernest's contractual agreement. (Dorothy).

143) Claimant has moved on with his life and is now fully employed elsewhere. (Claimant).

144) Once Ernest was dismissed and left the hearing room, Clifford and Dorothy eventually both testified Claimant had worked for Ernest, not Clifford. (Clifford; Dorothy; observations).

145) Love and Pride were credible. (Experience, judgment, inferences drawn from the above).

146) Ernest was somewhat credible, and more credible than Clifford and Dorothy. (*Id.*).

147) Claimant was somewhat credible, and more credible than Clifford and Dorothy. (*Id.*).

148) Clifford and Dorothy were not credible. (*Id.*).

149) Neither Ernest nor Clifford contended Claimant was a volunteer for either putative employer. (Hearing record; agency record).

150) Claimant was not a volunteer. (Experience, judgment, inferences drawn from the above).

151) Neither Ernest nor Clifford contended Claimant was an independent contractor working for either putative employer. (Hearing record; agency record).

152) Claimant was not an independent contractor working for either putative employer. (Experience, judgment, inferences drawn from all the above).

153) Clifford never paid any workers' compensation benefits to Claimant or on his behalf for the May 26, 2012 injury. Clifford offered no reason, and none is found in the record, why he should be excused from having had to timely pay workers' compensation benefits to Claimant or on his behalf. (*Id.*; inferences drawn from all the above).

154) The applicable interest rate for this case is 3.75 percent. (Official notice).

PRINCIPLES OF LAW

> **AS 23.30.001. Intent of the legislature and construction of chapter**. It is the intent of the legislature that
>
> (1) this chapter be interpreted so as to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of this chapter;
>
> (2) workers' compensation cases shall be decided on their merits except where otherwise provided by statute;
>
> . . . .
>
> (4) hearings in workers' compensation cases shall be impartial and fair to all parties and that all parties shall be afforded due process and an opportunity to be heard and for their arguments and evidence to be fairly considered.

The board may base its decision 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). A finding employment was a cause of the employee's disability and impose liability is, "as are all subjective determinations, the most difficult to support." That "some reasonable persons may disagree with a subjective conclusion does not necessarily make that conclusion unreasonable." (*Id*. at 534).

> **AS 23.30.005. Alaska Workers' Compensation Board**.
> . . . .
>
> (h) . . . Process and procedure under this chapter shall be as summary and simple as possible. The department, the board or a member of it may for the purposes of this chapter subpoena witnesses, administer or cause to be administered oaths, and may examine or cause to have examined the parts of the books and records of the parties to a proceeding that relate to questions in dispute. . . .

The Alaska Supreme Court held the board's authority to hear and determine questions in respect to a claim is "limited to the questions raised by the parties or by the agency upon notice duly given to the parties." *Simon v. Alaska Wood Products*, 633 P.2d 252, 256 (Alaska 1981).

> **AS 23.30.010. Coverage**. (a) Except as provided in (b) of this section, compensation or benefits are payable under this chapter for disability . . . or the need for medical treatment of an employee if the disability . . . of the employee or the employee's need for medical treatment arose out of and in the course of the employment. To establish a presumption under AS 23.30.120(a)(1) that the disability . . . or the need for medical treatment arose out of and in the course of the employment, the employee must establish a causal link between the employment and the disability . . . or the need for medical treatment. A presumption may be rebutted by a demonstration of substantial evidence that the . . . disability or the need for medical treatment did not arise out of and in the course of the employment. When determining whether or not the . . . disability or need for medical treatment arose out of and in the course of the employment, the board must evaluate the relative contribution of different causes of the disability . . . or the need for medical treatment. Compensation or benefits under this chapter are payable for the disability . . . or the need for medical treatment if, in relation to other causes, the employment is the substantial cause of the disability . . . or need for medical treatment. . . .
>
> **AS 23.30.020. Chapter part of contract of hire**. This chapter constitutes part of every contract of hire, express or implied, and every contract of hire shall be construed as an agreement on the part of the employer to pay and on the part of the employee to accept compensation in the manner provided in this chapter for all personal injuries sustained.

"The relationship of employer-employee can only be created by a contract, which may be express or implied. Once created, the relationship cannot be changed to substitute another employer without the employee's consent." *Selid Construction Company v. Guarantee Insurance Co*., 355 P.2d 389, 393 (Alaska 1960). In *Alaska Pulp v. United Paperworkers' International Union*, 791 P.2d 1008 (Alaska1990), the Alaska Supreme Court held:

> . . . APC argues . . . the Board erred by not applying the 'relative nature of the work' test to determine . . . employee status. We adopted this test to distinguish between employees and independent contractors for the purpose of determining whether an individual is an 'employee,' and thus eligible for workers' compensation benefits. . . . (Citation omitted). However, both relationships presuppose a contractual undertaking. Therefore, in the absence of a contract for hire, the Board was not required to make this distinction. (*Id*. at 1012).

In *Childs v. Kalgin Island Lodge*, 779 P.2d 310 (Alaska 1989), a pilot was injured in an automobile accident while allegedly employed by a hunting lodge. He filed a workers' compensation claim and the board denied coverage. On appeal, the Alaska Supreme Court reversed and set forth the appropriate test for a contract for hire, express or implied. *Childs* noted the board correctly recognized "that before an employee/employer relationship exists under the Act, an express or implied contract of employment must exist." (*Id*. at 312). *Childs* further held while a "formalization of a contract for hire is not the controlling factor" in determining whether an employment contract exists, a hiring contract is still necessary. An "express contract" requires an offer encompassing its essential terms, unequivocal acceptance by the offeree, consideration and an intent by the parties to be bound. (*Id*. at 313). An "implied employment contract" is formed by a "relation resulting from the manifestation of consent by one party to another that the other shall act on his behalf and subject to his control, and consent by the other to so act." (*Id*. at 314). The parties' words and actions should be given such meaning "as reasonable persons would give them under all the facts and circumstances present at the time in question." (*Id*.).

> **AS 23.30.045. Employer's liability for compensation**. (a) An employer is liable for and shall secure the payment to employees of the compensation payable under . . . 23.30.095 . . . and 23.30.180 - 23.30.215. . . .
>
> (b) Compensation is payable irrespective of fault as a cause for the injury. . . .

AS 23.30.070. Report of injury to division. (a) Within 10 days from the date the employer has knowledge of an injury or death or from the date the employer has knowledge of a disease or infection, alleged by the employee or on behalf of the employee to have arisen out of and in the course of the employment, the employer shall send to the division a report setting out

(1) the name, address, and business of the employer;
(2) the name, address, and occupation of the employee;
(3) the cause and nature of the alleged injury or death;
(4) the year, month, day, and hour when and the particular locality where the alleged injury or death occurred; and
(5) the other information that the division may require.

. . . .

(f) An employer who fails . . . to send a report required of the employer by this section . . . shall, if so required by the board, pay the employee . . . or other person entitled to compensation by reason of the employee's injury . . . an additional award equal to 20 percent of the amounts that were unpaid when due. . . .

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. . . .

AS 23.30.097. Fees for medical treatment and services. (a) All fees and other charges for medical treatment or service are subject to regulation by the board consistent with this section. A fee or other charge for medical treatment or service may not exceed the lowest of

(1) the usual, customary, and reasonable fees for the treatment or service in the community in which it is rendered, for treatment or service provided on or after December 31, 2010, not to exceed the fees or other charges as specified in a fee schedule established by the board. . . . .

. . . .

(d) An employer shall pay an employee's bills for medical treatment under this chapter, excluding prescription charges or transportation for medical treatment, within 30 days after the date that the employer receives the providers' bill or a completed report as required by AS 23.30.095(c), whichever is later. . . .

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. . . .

An injured employee is entitled to the presumption of compensability as to each evidentiary question. *Sokolowski v. Best Western Golden Lion*, 813 P.2d 286, 292 (Alaska 1991). The presumption's application involves a three-step analysis. *Louisiana Pacific Corp. v. Koons*, 816 P.2d 1379, 1381 (Alaska 1991). First, an employee must adduce "some," "minimal" relevant evidence establishing a "preliminary link" between the claim and the employment. *Cheeks v. Wismer & Becker/G.S. Atkinson, J.V.*, 742 P.2d 239, 244 (Alaska 1987). Witness credibility is of no concern in this step. *Excursion Inlet Packing Co. v. Ugale*, 92 P.3d 413, 417 (Alaska 2004).

Second, for injuries occurring after the 2005 Act amendments, if the employee establishes the link, the presumption may be overcome at the second stage when the employer or, in appropriate cases, the fund presents substantial evidence demonstrating a cause other than employment played a greater role in causing the disability or need for medical treatment. *Runstrom v. Alaska Native Medical Center*, AWCAC Decision No. 150, at 7 (March 25, 2011). Because the board considers the employer's and the fund's evidence by itself and does not weigh the employee's evidence against the employer's or the fund's rebuttal evidence, credibility is not examined at the second stage. *See, e.g., Veco, Inc. v. Wolfer*, 693 P.2d 865, 869-70 (Alaska 1985).

Third, if the board finds the employer's or the fund's evidence is sufficient to rebut the presumption, it drops out and the employee must prove his case by a preponderance of the evidence. The party with the burden of proving asserted facts by a preponderance of evidence must "induce a belief" in the fact finders' minds that the asserted facts are probably true. *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964). In the third step, evidence is weighed, inferences are drawn from the evidence, and credibility is considered. *Ugale*, 92 P.3d 413 at 417.

The presumption analysis "simplifies" board proceedings. However, the presumption analysis need not be applied to an issue if there is no factual dispute and applying the analysis "does not promote the goals of encouraging coverage and prompt benefit payments." *Rockney v. Boslough Construction Co.*, 115 P.3d 1240, 1244 (Alaska 2005).

> **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 credibility findings are "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 the evidence is conflicting. *Thoeni v. Consumer Electronic Services*, 151 P.3d 1249, 1253 (Alaska 2007);

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

> **AS 23.30.150. Commencement of compensation**. Compensation may not be allowed for the first three days of the disability, except the benefits provided for in AS 23.30.095; if, however, the injury results in disability of more than 28 days, compensation shall be allowed from the date of the disability.

> **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. To controvert a claim, the employer must file a notice, on a form prescribed by the director, stating
>
> (1) that the right of the employee to compensation is controverted;
> (2) the name of the employee;
> (3) the name of the employer;
> (4) the date of the alleged injury or death; and
> (5) the type of compensation and all grounds upon which the right to compensation is controverted.
>
> (b) The first installment of compensation becomes due on the 14th day after the employer has knowledge of the injury or death. On this date all compensation then due shall be paid. Subsequent compensation shall be paid in installments, every 14 days, except where the board determines that payment in installments should be made monthly or at some other period.
> . . . .
>
> (e) If any installment of compensation payable without an award is not paid within seven days after it becomes due, as provided in (b) of this section, there shall be added to the unpaid installment an amount equal to 25 percent of the

> installment. This additional amount shall be paid at the same time as, and in addition to, the installment, unless notice is filed under (d) of this section or unless the nonpayment is excused by the board after a showing by the employer that owing to conditions over which the employer had no control the installment could not be paid within the period prescribed for the payment. The additional amount shall be paid directly to the recipient to whom the unpaid installment was to be paid. . . .
> . . . .
>
> (p) An employer shall pay interest on compensation that is not paid when due. Interest required under this subsection accrues at the rate specified in AS 09.30.070(a) that is in effect on the date the compensation is due.

Hammer v. City of Fairbanks, 953 P.2d 500 (Alaska 1998) held:

> 'Knowledge' does not appear to be a term of art. In context, it means no more than awareness, information, or notice (footnote omitted) of the injury. . . . Unless the employer is unsatisfied with the rating or is suspicious of the injury and chooses to controvert the rating, the payment 'becomes due' within fourteen days after the submission of the rating. Thus, construing AS 23.30.155(b) and (e) together, unless the employer files a controversion, the employer has twenty-one days after receiving the PPI rating to pay or be subject to the statutory penalty. (Citation omitted; *Id*. at 505).

> **AS 23.30.175. Rates of compensation**. (a) The weekly rate of compensation for disability or death may not exceed the maximum compensation rate, may not be less than 22 percent of the maximum compensation rate, and initially may not be less than $110. . . .

> **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.

Lowe's v. Anderson, AWCAC Decision No. 130 (March 17, 2010), says to obtain TTD benefits, assuming no presumptions apply, an injured worker must establish: (1) he is disabled as defined by the Act; (2) his disability is total; (3) his disability is temporary; and (4) he has not reached the date of medical stability as defined in the Act. (*Id*. at 13-14).

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

> multiplied by the employee's percentage of permanent impairment of the whole person. The percentage of permanent impairment of the whole person is the percentage of impairment to the particular body part, system, or function converted to the percentage of impairment to the whole person as provided under (b) of this section. The compensation is payable in a single lump sum, except as otherwise provided in AS 23.30.041, but the compensation may not be discounted for any present value considerations.
>
> (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. . . .

PPI payment is due within 21 days of notice of the PPI rating, unless controverted. *Sumner v. Eagle Nest Hotel*, 894 P.2d 628 (Alaska 1995).

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.
>
> . . . .
>
> (19) "employee" means an employee employed by an employer as defined in (20) of this section;
>
> (20) "employer" means the state or its political subdivision or a person employing one or more persons in connection with a business or industry coming within the scope of this chapter and carried on in this state. . . .

8 AAC 45.040. Parties. . . .

. . . .

(d) Any person against whom a right to relief may exist should be joined as a party. . . .

8 AAC 45.050. Pleadings. . . .

. . . .

(c) **Answers.**

(1) An answer to a claim for benefits must be filed within 20 days after the date of service of the claim and must be served upon all parties. A default will not be entered for failure to answer, but, unless an answer is timely filed, statements made in the claim will be deemed admitted. . . .

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

(b) Transportation expenses include

(1) a mileage rate, for the use of a private automobile, equal to the rate the state reimburses its supervisory employees for travel on the given date if the usage is reasonably related to the medical examination or treatment. . . .

. . . .

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

8 AAC 45.112. Witness list. . . . If a party directed at a prehearing to file a witness list fails to file a witness list as directed or files a witness list that is not in accordance with this section, the board will exclude the party's witnesses from testifying at the hearing, except that the board will admit and consider

(1) the testimony of a party. . . .

8 AAC 45.120. Evidence. (a) Witnesses at a hearing shall testify under oath or affirmation. The board will, in its discretion, examine witnesses and will allow all parties present an opportunity to do so. . . .

(b) The order in which evidence and argument is presented at the hearing will be in the discretion of the board, unless otherwise expressly provided by law. All proceedings must afford every party a reasonable opportunity for a fair hearing.

(c) Each party has the following rights at hearing:

(1) to call and examine witnesses;
(2) to introduce exhibits;
(3) to cross-examine opposing witnesses on any matter relevant to the issues even though the matter was not covered in the direct examination;
(4) to impeach any witness regardless of which party first called the witness to testify; and
(5) to rebut contrary evidence.

> . . . .
>
> (e) Technical rules relating to evidence and witnesses do not apply in board proceedings, except as provided in this chapter. Any relevant evidence is admissible if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but it is not sufficient in itself to support a finding of fact unless it would be admissible over objection in civil actions. . . .
>
> **8 AAC 45.142. Interest.** (a) If compensation is not paid when due, interest must be paid at the rate established in . . . AS 09.30.070 (a) for an injury that occurred on or after July 1, 2000. If more than one installment of compensation is past due, interest must be paid from the date each installment of compensation was due, until paid. If compensation for a past period is paid under an order issued by the board, interest on the compensation awarded must be paid from the due date of each unpaid installment of compensation.
>
> (b) The employer shall pay the interest
>
> (1) on late-paid time-loss compensation to the employee or, if deceased, to the employee's beneficiary or estate;
> (2) on late-paid death benefits to the widow, widower, child or children, or other beneficiary who is entitled to the death benefits, or the employee's estate;
> (3) on late-paid medical benefits to
>
> (A) the employee or, if deceased, to the employee's beneficiary or estate, if the employee has paid the provider or the medical benefits;
> (B) to an insurer, trust, organization, or government agency, if the insurer, trust, organization, or government agency 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 release . . . money due." *Moretz v. O'Neill Investigations,* 783 P.2d 764, 765-66 (Alaska 1989).

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

In *Searfus v. Northern Gas Co.*, 472 P.2d 966 (Alaska 1982), the Alaska Supreme Court adopted the "relative nature of the work test." *Searfus* said:

> We believe that the 'nature of the work' test should be adopted in resolving future employee status issues under the Alaska Workmen's Compensation Act (footnote omitted; *id.* at 969).

> **8 AAC 45.890. Determining employee status.** For purposes of AS 23.30.395(19) and this chapter, the board will determine whether a person is an "employee" based on the relative-nature-of-the-work test. The test will include a determination under (1) - (6) of this section. Paragraphs (1) and (2) of this section are the most important factors, and at least one of these two factors must be resolved in favor of an "employee" status for the board to find that a person is an employee. The board will consider whether the work
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> (1) is a separate calling or business; if the person performing the services has the right to hire or terminate others to assist in the performance of the service for which the person was hired, there is an inference that the person is not an employee; if the employer
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> (A) has the right to exercise control of the manner and means to accomplish the desired results, there is a strong inference of employee status;
> (B) and the person performing the services have the right to terminate the relationship at will, without cause, there is a strong inference of employee status;
> (C) has the right to extensive supervision of the work then there is a strong inference of employee status;
> (D) provides the tools, instruments, and facilities to accomplish the work and they are of substantial value, there is an inference of employee status; if the tools, instruments, and facilities to accomplish the work are not significant, no inference is created regarding the employment status;
> (E) pays for the work on an hourly or piece rate wage rather than by the job, there is an inference of employee status; and
> (F) and person performing the services entered into either a written or oral contract, the employment status the parties believed they were creating in the contract will be given deference; however, the contract will be construed in view of the circumstances under which it was made and the conduct of the parties while the job is being performed;
>
> (2) is a regular part of the employer's business or service; if it is a regular part of the employer's business, there is an inference of employee status;
> (3) can be expected to carry its own accident burden; this element is more important than (4) - (6) of this section; if the person performing the services is

> unlikely to be able to meet the costs of industrial accidents out of the payment for the services, there is a strong inference of employee status;
> (4) involves little or no skill or experience; if so, there is an inference of employee status;
> (5) is sufficient to amount to the hiring of continuous services, as distinguished from contracting for the completion of a particular job; if the work amounts to hiring of continuous services, there is an inference of employee status;
> (6) is intermittent, as opposed to continuous; if the work is intermittent, there is a weak inference of no employee status.

ANALYSIS

1) Was the oral order dismissing Ernest as a party defendant proper?

The fund petitioned to join Ernest as a party based upon Ernest's and Clifford's, and to some extent Claimant's, statements to investigator Love. Ernest initially conceded Claimant was his employee, and Clifford supported this notion. Even Claimant, at one point at a prehearing conference, suggested he was employed by both Ernest and Clifford simultaneously. These statements could be construed to make Ernest Claimant's employer. For judicial economy and to prevent inconsistent decisions and orders, a person against whom a right to relief "may" exist should be joined as a party. 8 AAC 45.040(d). Therefore, there was nothing improper or vindictive about the fund joining Ernest as a potential employer. *Rogers & Babler*.

However, at hearing both Ernest and Claimant agreed Ernest was never Claimant's employer and Claimant was never Ernest's employee. The fund offered no position on any employer-employee contract between Ernest and Claimant and said it joined Ernest based on the parties' statements. Clifford ultimately remained "neutral." Since no party contended there was an express or implied oral or written contract between Ernest and Claimant, there was no factual dispute on this issue and the presumption of compensability need not be applied. *Rockney*.

There was, however, a factual dispute between Claimant, Ernest and Clifford over whether Claimant was Ernest's business partner in Valley Wreckerman, LLC. Claimant said he was not; Ernest and Clifford said he was. If Claimant was Ernest's business partner in the LLC, this could raise questions such as the possibility of joint employers or a "lent employee" or "special employer" situation, which could insulate Clifford from liability. Therefore, the statutory

presumption of compensability was applied to this factual dispute. AS 23.30.120; *Sokolowski*. Claimant raised the presumption by stating he did not want to be Ernest's business partner, was not his business partner and signed no paperwork to become an owner in Valley Wreckerman, LLC. *Ugale*. Ernest rebutted the presumption by stating he and Claimant formed Valley Wreckerman, LLC, in which Claimant had 10 percent ownership interest. *Cheeks*. This shifts the burden to Claimant. *Saxton*.

Claimant's testimony on this point is credible. AS 23.30.122; *Smith*. Other than Ernest's testimony he intended to create an LLC in which Claimant was part owner, and Clifford's testimony Claimant and Ernest were partners, there is no evidence supporting a finding this "agreement" ever came to fruition. Ernest and Clifford cannot demonstrate Claimant was Ernest's business partner in Valley Wreckerman, LLC, or in any other business venture. The State of Alaska did not consider Claimant an owner in Valley Wreckerman, LLC, according to the documents provided. No documentary evidence supports Clifford's and Ernest's contention.

Furthermore, Ernest's testimony on this issue is not credible. When he was "done" with Valley Wreckerman, LLC, in January 2012, Ernest offered the wrecker to his brother Clifford to use, rather than to Claimant, Valley Wreckerman's purported co-owner. When asked at hearing why he did not offer the truck to Claimant, Ernest was evasive. Ultimately, Ernest said he did not offer Claimant the truck because he knew Claimant had no money. However, Ernest also testified the truck remained insured in Ernest's name for some time after he was "done." Thus, the truck remained insured at least temporarily and all Claimant would have to do was re-register the wrecker. This supports Claimant's more credible testimony that he never wanted to be co-owner with Ernest in Valley Wreckerman, and never was. AS 23.30.120; *Smith*; *Thoeni*. Claimant was not part owner in Valley Wreckerman, LLC. *Rogers & Babler*.

No party contended Claimant was volunteering for Ernest at the time he was injured. Thus, the remaining question determined before deciding to dismiss Ernest was whether Ernest was Claimant's employer. If Ernest had no employer-employee relationship with Claimant he could not be liable for Claimant's workers' compensation benefits. AS 23.30.045. It was understandable why Ernest would want to be dismissed from this case. But there was no

evidence Claimant had much to gain by dismissing Ernest. Logically, Claimant would not care from where his benefits came, so long as he obtained them. To Claimant, two potentially liable employers were probably better than one. Yet Claimant supported Ernest's petition to dismiss. There was no evidence Ernest threatened Claimant in any way or placed him under duress. The fact Ernest owned the truck Claimant drove and on which he was injured is immaterial. There was simply no evidence of a contract of hire between Ernest and Claimant. *Selid*. There was no prerequisite employment contract, oral or written, express or implied, between Ernest and Claimant. AS 23.30.020; AS 23.30.045; *Alaska Pulp*; *Childs*.

Since there was no business relationship between Ernest and Claimant, there was no factual basis to conclude Claimant was a lent, special or emergency employee, or worked for joint employers at the time of his injury. Because Claimant was not volunteering and there was no employment contract between Ernest and Claimant, the inquiry ends here. *Alaska Pulp*. Thus, as there was no legal basis to keep Ernest in the case, the oral order dismissing him was proper.

2) Was there an employer-employee relationship between Clifford and Claimant?

a) Was there a contract of hire?

Ernest's dismissal left Clifford as Claimant's only putative employer. The first step in analyzing Claimant's claims is to determine whether there was a hiring contract between Clifford and Claimant. *Selid*. Without a hiring contract, there can be no employer-employee relationship. *Childs*. Without an employer-employee relationship, Clifford is not an "employer" and can have no liability to Claimant. AS 23.30.045; AS 23.30.395(20). Claimant contends there was a hiring contract making him Clifford's "employee." AS 23.30.395(19). Clifford says no. This creates a factual dispute to which the presumption of compensability applies. AS 23.30.120; *Sokolowski*.

Claimant testified he agreed to an express, oral hiring contract with Clifford. Claimant recounted the offer with specific duties and pay agreements for operating the tow truck versus performing shop work. He said he accepted the employment offer and performed duties as assigned by Clifford. Thereafter, Claimant says he and Clifford acted as though they were in an employer-employee relationship, demonstrating the parties' intent to be bound by their contractual

agreement. Without regard to credibility, this evidence establishes a preliminary link and raises the presumption. *Cheeks*; *Ugale*.

Though reluctant to testify, Clifford, and to some extent Dorothy, said there was no employment agreement between Clifford and Claimant. As credibility is not considered in the second step of the presumption analysis, this testimony is adequate to rebut the presumption and shift the burden back to Claimant. *Runstrom*. Claimant must prove there was a contract of hire between Clifford and Claimant. *Saxton*.

In the presumption analysis' third and final step, evidence is weighed and credibility determined. *Ugale*. This case turns on witness credibility. Though there are some inconsistencies in Claimant's testimony, they are relatively minor. For example, at one prehearing conference Claimant said he worked for Ernest and Clifford simultaneously. At hearing he said he worked solely for Clifford and never worked for Ernest. While this could be considered inconsistent, the prior statement attributable to Claimant could indicate his unfamiliarity with employment relationships and his expression of a legal basis for relief. Claimant was inconsistent when he told investigator Trexler he was paid $20 per hour, but testified at hearing he had two payment arrangements -- $20 per hour for shop and personal work, and one-third of each tow bill. This inconsistency, however, is not so troubling because it was an omission of a fact in an earlier statement, not a fabrication. He also failed to tell his medical providers his toe injury was work-related, and said he was "homeless." Neither of these was true. Ordinarily, this would be cause for concern. However, Claimant convincingly said Clifford threatened him with harm if he reported the injury. The parties do not dispute the fact Claimant lived on Clifford's premises in Clifford's recreational vehicle when he went to the doctor for his toe injury. Therefore, Claimant was clearly not "homeless." Not explaining how his injury occurred at work and telling his physicians he was homeless was consistent with Claimant having been threatened by Clifford. Intentionally not mentioning the work-relatedness of his injury is understandable given the threat. Claimant would say he was homeless to deflect questions about why he lived at Barney's Auto Service, the answers to which might indicate a work-related injury. AS 23.30.122.

Claimant generally testified credibly about his meeting with Clifford in Clifford's shop when Clifford offered him a job and he accepted. Claimant provided specific details about his hiring contract with Clifford. Other than the above-referenced exceptions, Claimant's recorded statement, reports to his physicians, and hearing testimony were all consistent and credible. He also comported himself well at hearing. AS 23.30.122; *Smith*; *Rogers & Babler*.

By contrast, Clifford spoke in generalities, and was vague and was often evasive. He flip-flopped on his view of the relationship between Ernest and Claimant after Ernest was dismissed. Clifford never specifically addressed, and therefore did not refute, most of Claimant's factual accounts. Credible evidence shows an important factor in Clifford hiring Claimant was the fact Clifford had no driver's license at all, while Claimant had a CDL and a current medical certificate. Ernest, who was present during the hiring conversation, supported Claimant's account of Clifford stating he now had someone to drive his tow truck and chauffeur him around.

While asserting virtually everything Claimant said was a lie, Clifford did not refute most of Claimant's testimony including his account of living in Clifford's recreational vehicle on Barney's Repair Service property. It is undisputed Claimant operated the tow truck. It is undisputed Claimant was supposed to be paid to operate the tow truck. The fact he was not always paid according to the employment arrangement is immaterial. There was a factual dispute about who paid Claimant. Ernest and Claimant said it was Clifford; eventually, Clifford and Dorothy said it was Ernest. There was a factual dispute about who told Claimant which vehicles to tow. Ernest and Claimant said it was Clifford; Clifford said it was Ernest. While each of these four witnesses would benefit from self-serving testimony, Ernest's and Claimant's testimony is more credible than Clifford's and Dorothy's. AS 23.30.122; *Smith*; *Thoeni*.

Dorothy's testimony is not credible because she only offered testimony corroborating her husband's position after Ernest had been dismissed. Both Clifford and Dorothy testified Ernest had not been truthful earlier, but only after Ernest was dismissed and had left the room. Clifford stated, referring to Ernest, "I wish he would leave" apparently so Clifford could foist the employment relationship onto Ernest's empty chair. Furthermore, Clifford's evasiveness, Clifford's and Dorothy's tendency toward dramatic, emotional outbursts, their general demeanor

at hearing and their effortless willingness to call all other witnesses liars, including singling out investigator Love with the reminder he was "under oath," seriously damages their credibility. AS 23.30.122; *Smith*; *Thoeni*.

Clifford never contended Claimant was a volunteer at Barney's Repair Service. No evidence supports volunteerism. This decision already determined Claimant was not Ernest's business partner nor was he Ernest's employee. The weight of credible evidence supports the finding that Clifford and Claimant had an express, oral hiring contract for Claimant to work for Clifford.

b) Was Claimant Clifford's "employee"?

Claimant could have worked for Clifford in a capacity other than as an "employee." For example, he could have worked for Clifford as an independent contractor. Though Clifford did not assert Claimant was an independent contractor, employment status is established through the "relative nature of the work test." *Selid*; 8 AAC 45.890. Because Clifford failed to articulate a position on most of Claimant's claims, and failed or refused to rebut most of his testimony, it is difficult to determine whether or not there is a factual dispute on this issue. Thus, to best obtain the parties' rights, the presumption analysis will be applied. AS 23.30.120; AS 23.30.135.

Without regard to credibility, Claimant raises the presumption he had an employer-employee relationship with Clifford through his testimony. *Ugale*; *Cheeks*. Claimant provided sufficient testimony to address and satisfy each factor in the "relative nature of the work test" to demonstrate he was an employee. Again without regard to credibility, Clifford and Dorothy rebut the presumption with their testimony that everything Claimant said was a lie, implying that they disagreed with all his statements. *Runstrom*. The burden shifts back to Claimant. *Saxton*.

The "relative nature the work test" is a six part legal analysis. The first two parts are the most important factors in the test and at least one factor must be resolved in favor of an "employee" status to find a person is an employee.

(1) Is the work a separate calling or business?

This is one of the two most important factors in determining whether Claimant was Clifford's "employee." 8 AAC 45.890. Driving a wrecker and working in a repair shop can be a separate calling or business. However, Claimant had no personal business and no business licenses. Though he had his own tools, Clifford forbade him from bringing them into Clifford's shop. Claimant did not have the right to hire or terminate others to assist him performing the services for which he was hired. Claimant and Ernest both said Clifford controlled the manner and means to accomplish the towing for which Claimant was hired. Claimant did nothing without direction from Clifford. Though Claimant conceded Clifford made it difficult for him to terminate employment by requiring Clifford's name on the titles of vehicles Claimant was purchasing from him, Claimant and Clifford both had the right to terminate their relationship at will without cause. Claimant did so eventually by filing a protective order against Clifford and leaving. Clifford had a right to supervise Claimant's work and exercised it as he thought Claimant was not a very good mechanic. Clifford taught Claimant how to perform mechanical work. Clifford provided the tools, instruments and facilities to accomplish the work. The fact Dorothy owned the shop is immaterial. Clifford provided the shop for Claimant's use. The tools, including hydraulic lifts and a wrecker are relatively significant and expensive. Clifford was to pay Claimant both an hourly rate for shop and personal work and a piecemeal rate for towing. As already discussed, Claimant and Clifford entered into an express, oral contract for hire. Though Clifford denies this, the parties' subsequent behavior proves otherwise. All these factors create a strong inference Claimant was Clifford's "employee." 8 AAC 45.890(1).

(2) Is the work a regular part of the employer's business or service?

This is the second of the two most important factors in the test. Claimant described Clifford's business as a full service automobile repair shop. Clifford did not deny this. Clifford's 2012 Craigslist posting demonstrates he was in the business of repairing and selling automobiles and had a wrecker available for towing. The services Claimant performed, including operating the wrecker to retrieve vehicles for repair, is an integral part of Clifford's business. This is especially true since Clifford had no driver's license and could not drive the wrecker. These factors create an inference of employee status. 8 AAC 45.890(2).

(3) Can the work be expected to carry its own accident burden?

As demonstrated by this case, in which Claimant incurred nearly $115,000 in medical bills for a relatively minor toe injury, Claimant could not have been expected to carry his own accident burden. This is especially true since Clifford failed to pay Claimant his full, agreed wages. This creates a strong inference Claimant was Clifford's employee. 8 AAC 45.890(3).

(4) Does the work involve little or no skill or experience?

Claimant learned to drive a wrecker by watching a wrecker operator work for a couple of weeks. He said it required common sense but could be dangerous. Claimant learned how to do mechanical work as a youth by working on his own car. He also learned from observing Clifford. Driving Clifford around on errands required no special expertise. With all due respect to wrecker operators, mechanics and drivers, Claimant's work for Clifford involved little skill and experience. This creates an inference of employee status for Claimant. 8 AAC 45.890(4).

(5) Is the service continuous?

Claimant said the services he performed for Clifford were continuous. The fact Claimant performed at least three specific kinds of services for Clifford, wrecker operator, mechanic assistant and driver bears this out. There is no evidence Clifford hired Claimant to perform a particular, short-term job. This creates an inference of employee status. 8 AAC 45.890(5).

(6) Is the work intermittent?

With exception of a 30-day hiatus when he left the state, Claimant's work for Clifford was continuous. The fact he performed his services for Clifford for about three years supports this finding. This also creates an inference claimant was Clifford's employee. 8 AAC 45.890(6).

Claimant satisfies all six "relative nature the work test" factors. *Selid*. Both of the two most important factors are resolved in favor of Claimant being Clifford's employee. This test clearly demonstrates Claimant was Clifford's employee at the time of his injury. *Rogers & Babler*.

3) Did Claimant's injury arise out of and in the course of employment with Clifford?

Claimant said he kicked the wheel lift on the wrecker to make some parts fit together. Claimant performed this work to move vehicles for Clifford's benefit, for Clifford's customers at Clifford's direction. He says as a result of this kicking, he broke his right great toe, split it open, and the toe became infected. Clifford did not specifically dispute this account. However, Clifford implied the event did not happen as Claimant stated, by suggesting Clifford's wife was at work and could not have been present as Claimant had said. In general, Clifford argued Claimant was committing fraud. Clifford's blanket statement that nothing Claimant said "rings true" makes it difficult to discern Clifford's position on Claimant's various benefit claims, especially given his failure to provide contradictory testimony or evidence in most instances. Given Clifford's vague suggestion the injury may not have happened as Claimant stated, and to best ascertain the parties' rights, the presumption analysis will be applied to this issue. AS 23.30.120; AS 23.30.135; *Sokolowski*.

Without regard to credibility, Claimant raises the presumption with his testimony about how he broke his toe, split the skin, and the toe became infected. *Cheeks*; *Ugale*. Clifford, again without regard to credibility, rebuts the presumption with his suggestion the injury did not happen as Claimant stated. *Runstrom*; *Wolfer*. The burden shifts back to Claimant who must prove his toe injury arose out of and in the course of his employment with Clifford. *Saxton*.

Claimant has poorly controlled diabetes and resultant peripheral neuropathy. Claimant convincingly testified he was kicking the wheel lift on the wrecker on May 26, 2012, to align some parts. Given his peripheral neuropathy, it is not surprising Claimant did not immediately recognize the kicking trauma had injured his right great toe. The next day, Clifford noticed blood on Claimant's sock and Claimant discovered the split in his toe. An x-ray later disclosed an acutely fractured right great toe. There is no evidence the traumatic toe injury happened at some other time or some other place. Except for Claimant's understandable failure to mention a work connection given Clifford's threat, Claimant's medical records all consistently report Claimant kicking metal objects and breaking and cutting his toe.

Dr. Lynch reviewed the medical records and examined Claimant for the fund's EME. Contributing causes to Claimant's right great toe infection, which ultimately required amputation, included the May 26, 2012 kicking trauma, preexisting diabetes, and tobacco use. Of all these causes, Dr. Lynch concluded trauma from the May 26, 2012 kicking incident was the substantial cause of the right great toe fracture, laceration and subsequent infection. There is no contrary medical evidence. There is no question the infection created disability through hospitalization and required medical treatment including toe amputation. Aside from Clifford's vague generality suggesting the injury did not happen as Claimant stated because Clifford did not believe his wife was present, there is no contrary evidence whatsoever. As mentioned, Clifford is not credible. The overwhelming weight of credible lay and expert medical evidence shows Claimant's toe fracture, laceration, eventual infection and amputation arose out of and in the course of his employment with Clifford on May 26, 2012. AS 23.30.010; AS 23.30.122; *Smith*.

4) Is Claimant entitled to TTD?

Claimant requests TTD. AS 23.30.185. It is undisputed Claimant was hospitalized for his work injury for nine days, from May 31, 2012, through June 8, 2012. Clifford does not contend Claimant was not hospitalized during this nine day period. Further, Clifford does not contend he paid Claimant any wages while Claimant was hospitalized. Clifford's "fraud" allegation does not appear to apply to Claimant's hospitalization and resultant disability. Therefore, there is no factual dispute on this issue requiring the presumption analysis. *Rockney*. Assuming no presumption applies, for entitlement to TTD Claimant nevertheless must demonstrate: (1) he is disabled as defined in the Act; (2) his disability is total; (3) his disability is temporary; and (4) he has not reached the date of medical stability. *Anderson*.

The undisputed facts show Claimant was hospitalized for nine days because of his work injury. "Disability" means incapacity because of injury to earn wages Claimant was receiving at the time of his injury. AS 23.30.395(16). There is no evidence Claimant was employable while hospitalized. Thus, he was "disabled." There is no evidence Clifford paid him while he was hospitalized. Therefore, his disability was "total." However, upon being released from the hospital, Claimant returned to work for Clifford, thus making his disability only "temporary." Lastly, Dr. Lynch is the only medical provider offering a medical stability opinion, and he found

Claimant medically stable effective June 28, 2014, long after the disability period in question. Therefore, the undisputed evidence shows Claimant is entitled to TTD benefits. However, the law prohibits payment of TTD for the first three days of disability, unless disability lasts at least 28 days. AS 23.30.150. As Claimant was only disabled for nine days, his TTD request will be granted, but Clifford will be ordered to pay Claimant $204.86 in TTD benefits for six days ($239 per week / 7 days = $34.14 per day x 6 days = $204.86).

5) Is Claimant entitled to an award of medical benefits and related transportation expenses?

Claimant seeks an order requiring Clifford to pay his work-related medical bills and medical transportation expenses. AS 23.30.095(a). Again, Clifford maintained Claimant was committing fraud. However, it does not appear Clifford's fraud allegation applies to the claim for medical care and treatment Claimant necessarily received for his toe injury. Clifford did not allege Claimant did not need treatment, never received treatment, or that he falsified hospital bills. Therefore, the presumption analysis need not be applied to this issue. *Rockney*.

Clifford conceded at hearing, and Pride testified, that the fund served Claimant's relevant medical records on Clifford. Thus, Clifford has the medical records. Clifford voiced no objection to any particular record or treatment Claimant received for his toe injury. Dr. Lynch is the only medical expert to give an opinion about the care and treatment Claimant received for his toe injury. Dr. Lynch found all the treatment Claimant received reasonable and necessary. There being no contrary evidence, Claimant's request for an order requiring Clifford to pay his work-related medical bills will be granted.

However, at hearing Clifford said he had never seen the medical bills. Pride produced a demonstrative exhibit summarizing the medical bills as set forth in Table I, above, but conceded she had not sent the bills to Clifford. Therefore, the fund will be directed to file and serve on Clifford all the work-related medical bills set forth in Table I. Clifford will be ordered to pay these bills directly to the providers within 30 days of receiving them. However, the law limits the medical costs providers can obtain in a workers' compensation case to amounts set forth in the Alaska medical fee schedule. AS 23.30.097(a)(1). Therefore, Clifford's obligation to pay

$114,509.09 in work-related medical bills will be adjusted in accordance with the medical fee schedule. Clifford will be directed to contact a workers' compensation officer for information on how to access the medical fee schedule. Alternately, the fund may volunteer to process the bills through the medical fee schedule on Clifford's behalf.

As for medical transportation expenses, Claimant testified it was 21 miles round-trip to his medical providers and specified how many times he traveled to and from his doctor for work-related medical care. The medical records support his testimony. Clifford did not object to his calculations. Clifford did not contend Clamant never traveled to and from his residence to receive toe-related medical care. It does not appear Clifford's "fraud" allegation applies to this issue. Thus, there is no dispute requiring the presumption analysis on this issue. *Rockney*.

While a written transportation "log" is preferable, Claimant provided adequate, credible testimony supporting his medical transportation claim and his testimony was not refuted. Given Clifford made no objection, in the interest of speed and efficiency, and to make this process as summary and simple as possible, a written mileage log will not be required. AS 23.30.001(1); AS 23.30.005(h); AS 23.30.135; 8 AAC 45.195. Claimant's credible testimony supported 378 miles traveled in his personal vehicle to obtain work-related medical care. The personal vehicle mileage rate for travel to and from medical treatments in 2012 was $0.555 per mile. Clifford will be directed to pay Claimant $209.79 (378 x $0.555 = $209.79) for transportation costs.

6) Is Claimant entitled to a compensation rate adjustment?

Claimant requested a compensation rate adjustment based on either $20 per hour or on the one-third prorated payment arrangement he had with Clifford. Other than alleging Claimant committed fraud, Clifford offered no objection to the rate adjustment claim. However, the fund objected. Nevertheless, it was undisputed Claimant never filed any income tax or earnings evidence to support his compensation rate adjustment claim. Therefore, there is no factual dispute and the presumption analysis does not apply to this issue. *Rockney*.

Claimant filed no income tax returns in 2010 or 2011. He does not recall how much he made in either year. Neither Claimant nor Clifford kept any payroll records, though Claimant began

keeping a pay journal, which he says someone subsequently stole from his residence. The fund correctly notes that without earnings information, Claimant is only entitled to the minimum compensation rate for 2012 injury, which is $239 per week. AS 23.30.175(a). Therefore, Claimant's request for a compensation rate adjustment will be denied. Clifford will be directed to pay Claimant TTD benefits at the weekly rate of $239.

7) Is Claimant entitled to PPI?

Claimant seeks an order awarding PPI benefits against Clifford. AS 23.30.190. Clifford did not specifically object to the PPI request but relied on his overall fraud defense. Clifford did not dispute Dr. Lynch's five percent, whole-person PPI rating for Claimant's amputated great toe. Therefore, there is no factual dispute on the PPI issue and the presumption analysis need not be applied. *Rockney*. Dr. Lynch's PPI rating was performed in accordance with the proper *Guides* edition. The fund and Claimant were satisfied with the rating; Clifford offered no position on it. There being no contrary PPI rating, and no evidence to reduce Dr. Lynch's rating by any preexisting impairment, Claimant's request for PPI benefits based upon Dr. Lynch's five percent rating will be granted. Clifford will be directed to pay Claimant $8,850 in PPI benefits ($1,770 per every one percent x five percent = $8,850).

8) Is Claimant entitled to any penalties?

Claimant requests unspecified penalties. He properly preserved this issue and raised it at hearing. *Simon*. The Act provides for penalties in some instances. AS 23.30.070(a) requires an employer to file an injury report with the division within 10 days from the date the employer has knowledge of an injury. It is undisputed Clifford never filed a timely injury report. He had actual knowledge of Claimant's toe injury both when it happened, because he was present, and the next day when he observed blood on Claimant's sock. *Hammer*. Clifford failed or refused to send a timely injury report. Clifford claims he was not Claimant's employer, but the more likely reason he failed to file a timely injury report was to avoid liability for workers' compensation benefits. This is the same reason he told Claimant not to mention his injury was work-related to anyone, with threat of physical harm. Clifford offered no reason why he could not have filed an injury report. Therefore, Claimant's penalty request will be granted. Clifford will be directed to pay Claimant an additional 20 percent on benefits awarded to Claimant as follows:

Benefit Type	Amount	20 Percent Penalty
TTD	$204.86	$40.97
PPI	$8,850	$1,770
Total 070(f) Penalty		**$1,810.97**

A penalty will not be awarded to Claimant under AS 23.30.070(f) on transportation expenses, because prior to hearing Claimant had not itemized them and provided a mileage log to Clifford. Similarly, a penalty will not be awarded to Claimant's medical providers under AS 23.30.070(f) because Clifford's duty to pay the medical bills does not arise until he has received both the medical records and the associated billing statements. AS 23.30.097(d). As Clifford has not yet received the billing statements, his duty to pay has not yet arisen.

The Act is designed to be self-executing. AS 23.30.155(a). Benefits must be paid promptly, within 14 days after an employer has knowledge of an injury, without any award. AS 23.30.155(b). The law requires employers to either pay workers' compensation benefits directly to the person entitled to them, or deny those benefits. AS 23.30.155(a). An Employer denies benefits by filing and serving a controversion notice. AS 23.30.155(a). Unless an employer timely files and serves a controversion notice, the employer's obligation to pay arises without any hearings or award. If an employer fails to either timely pay benefits owed without an award within seven days after the benefits become due, or fails to controvert benefits, the law provides for an additional 25 percent penalty. AS 23.30.155(e).

Clifford never controverted Claimant's right to benefits or his claims for benefits. Clifford knew Claimant was disabled because Claimant was hospitalized for his toe injury. *Hammer*. Claimant's TTD was due and payable within 14 days of his hospital admission date. AS 23.30.155(b). TTD payments were late if not paid within seven days thereafter. AS 23.30.155(e). Clifford did not controvert Claimant's right to TTD and paid Claimant nothing while he was disabled and in the hospital. Further, on July 10, 2014, the fund served on Clifford's lawyer Dr. Lynch's EME report with his causation opinions and the five percent PPI rating clearly set forth. Clifford had actual knowledge of the PPI rating. *Hammer*. Again, Clifford neither paid Claimant PPI benefits nor controverted his right to PPI benefits, or his PPI

claim. Claimant's PPI was due and payable within 21 days of the date the fund served Dr. Lynch's EME report on Clifford. *Sumner*. Therefore, Claimant's penalty claim will be granted and Clifford will be directed to pay an additional penalty under AS 23.30.155(e) as follows:

Benefit Type	Amount	25 Percent Penalty
TTD	$204.86	$51.22
PPI	$8,850	$2,212.50
Total 155(e) Penalty		**$2,263.72**

9) Are Claimant or his medical providers entitled to interest?

Claimant also requested interest on all benefits awarded. AS 23.30.155(p). Interest is required as an incentive for prompt payment. *Moretz*. Clifford must pay interest to Claimant on benefits awarded to Claimant in this decision. 8 AAC 45.142(b)(1). Interest is calculated and must be paid from the due date of each period of compensation as set forth in this decision. Similarly, Clifford must pay Claimant's medical providers interest on each medical bill from the date of service until payment. 8 AAC 45.142(b)(3)(C). Clifford must pay interest on providers' medical bills even though the bills may have been "written off" by some providers. Interest on Claimant's providers' medical bills must be determined after the bills have been adjusted according to the Alaska medical fee schedule. AS 23.30.097(a)(1).

10) Did Clifford receive a fair hearing?

Lastly, Clifford expressed frustration during the hearing and suggested he had "zero rights." To the contrary, Clifford was afforded his due process rights. For example, neither Clifford nor his attorney timely filed an answer to Claimant's claim. Their eventual answer was about seven months late. Failure to file a timely answer normally results in the claim being "deemed admitted" by the defendant. 8 AAC 45.050(c)(1). Nevertheless, Clifford had an opportunity to present his case, and the issues were decided on their merits, not on his failure to timely answer the claim. AS 23.30.001(2). Further, the designated chair repeatedly and consistently assisted Clifford in cross examining witnesses and presenting his case. 8 AAC 45.120.

Though Clifford filed no witness list, which could have resulted in his witnesses being excluded from testifying at hearing, he was nonetheless allowed to call Dorothy as a witness over Claimant's objection. 8 AAC 45.112.

All unrepresented parties in this case were given considerable leeway in presenting their cases. Clifford tried to rely on hearsay statements from various individuals to support his position, especially in his efforts to impugn Claimant's credibility. Clifford's hearsay statements as to what other people told him, and hearsay statements from Ernest's witness list are not admissible and were not considered in this decision. 8 AAC 45.120(e).

At hearing, Clifford labored under the misconception that he could hire an attorney and present his evidence at some subsequent time and in some other place. The designated chair repeatedly reminded Clifford that the March 24, 2015 hearing was the time and place for these issues to be heard and decided. AS 23.30.020; *Simon*. The hearing was impartial and fair to all parties, and all parties were afforded due process and an adequate opportunity to be heard. Their arguments and evidence were fairly considered. AS 23.30.001(4); 8 AAC 45.120.

CONCLUSIONS OF LAW

1) The oral order dismissing Ernest as a party defendant was proper.
2) There was an employer-employee relationship between Clifford and Claimant.
3) Claimant's injury arose out of and in the course of employment with Clifford.
4) Claimant is entitled to TTD.
5) Claimant is entitled to medical benefits and related transportation expenses.
6) Claimant is not entitled to a compensation rate adjustment.
7) Claimant is entitled to PPI.
8) Claimant is entitled to penalties.
9) Claimant and his medical providers are entitled to interest.
10) Clifford received a fair hearing.

ORDER

1) Clifford is ordered to pay Claimant directly $204.86 in TTD benefits.

2) If it has not already done so, the fund is ordered to file and serve on Clifford within seven days from the date of this decision, all work-related medical bills as set forth in Table I, above.

3) Clifford is ordered to process the medical providers' bills through the Alaska medical fee schedule at Clifford's expense. The fund may voluntarily process the bills on Clifford's behalf.

4) Clifford is ordered to pay the medical providers' bills directly to the medical providers within 30 days after receiving them.

5) Clifford is ordered to pay Claimant directly $209.79 in transportation expenses.

6) Claimant's request for a compensation rate adjustment is denied.

7) Clifford is ordered to pay Claimant directly $8,850 in PPI benefits.

8) Claimant's penalty request is granted. Clifford is ordered to pay Claimant directly $1,810.97 for a penalty under AS 23.30.070(f), and an additional $3,236.50 for a penalty under AS 23.30.155(e).

9) Clifford is ordered to pay Claimant directly interest on the TTD and PPI awarded in this decision, at the statutory rate of 3.75 percent.

10) Clifford is ordered to pay Claimant's medical providers directly interest on each medical bill set forth in Table I, at the statutory rate of 3.75 percent.

Dated in Anchorage, Alaska on April 23, 2015.

ALASKA WORKERS' COMPENSATION BOARD

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William Soule, Designated Chair

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Linda Hutchings, Member

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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 Mark A. Gibbons, claimant v. Ernest Barney, d/b/a Valley Wreckerman, Clifford Barney; d/b/a Barney's Repair Service; the Alaska Workers' Compensation Benefit Guaranty Fund; and Wilton Adjustment Service / defendants; Case No. 201324541; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties on April 23, 2015.

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Vera James, Office Assistant