

ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

MARIE M. EDENSHAW,)	
Employee,)	
Claimant,)	INTERLOCUTORY DECISION
)	AND ORDER
v.)	
)	AWCB Case No. 201105565
PENINSULA AIRWAYS, INC.,)	
Employer,)	AWCB Decision No. 15-0058
)	
and)	Filed with AWCB Anchorage, Alaska
)	on May 14, 2015
WAUSAU UNDERWRITERS)	
INSURANCE COMPANY,)	
Insurer,)	
Defendants.)	

Both parties' April 16, 2015 petitions to strike portions of the other party's questions to the second independent medical evaluation (SIME) physicians were heard May 6, 2015, in Anchorage, Alaska. This hearing date was selected on April 16, 2015. Attorney Michael Patterson appeared and represented Marie M. Edenshaw (Employee). Attorney Martha Tansik appeared and represented Peninsula Airways, Inc. and Wausau Underwriters Insurance Company (Employer). There were no witnesses. The record closed at the hearing's conclusion on May 6, 2015.

ISSUE

Employee contended Employer's questions misstated the legal standard and mischaracterized facts. Employer contended Employee's questions misstated the causation standard and included narrative preambles and compound questions. Just prior to the hearing, the parties reached an

agreement in which each would remove portions of their questions. At the hearing, the parties presented their stipulation for approval.

Should the parties' hearing stipulation on questions to be submitted to the SIME physicians be approved?

FINDINGS OF FACT

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

1. On April 13, 2011, Employee was injured when she fell from the wing of a plane during a training exercise. (Report of Occupational Injury or Illness, April 13, 2011).
2. Disputes arose between Employee's doctors and Employer's medical evaluators, and on March 9, 2015, the parties filed an SIME form. (SIME form, March 9, 2015).
3. At a March 10, 2015 prehearing conference, the board designee initiated the SIME process, setting various deadlines. He informed the parties they "may each submit up to 3 non-compound questions per medical issue/body part on or before April 8, 2015." Prehearing Conference Summary, March 10, 2015).
4. Both parties submitted their questions for the SIME doctors on April 8, 2015. (Record).
5. On April 16, 2015, both parties filed petitions to strike portions of the other party's questions. (Petitions, April 16, 2015). Among other things, Employer sought to strike introductory paragraphs in Employee's questions which ask the SIME doctors to assume certain facts are correct. (Employer's Petition, April 16, 2015). Among other things, Employee sought to strike legal definitions included in Employer's questions. (Employee's Petition, April 16, 2015).
6. At the May 6, 2015 hearing, the parties stated they had reached a resolution. Employer stipulated to removing the paragraph containing legal definitions from its Question 2 regarding Employee's cervical spine and from its Question 2 regarding Employee's left foot. Employee stipulated to removing the paragraphs asking the SIME doctors to assume stated facts are correct that precede both her numbered questions regarding her neck and her numbered questions regarding her foot. The parties reserved any other objections they may have regarding the questions, and agreed to file their amended questions by May 15, 2015. (Record).

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;

(3) this chapter may not be construed by the courts in favor of a party;

(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.

AS 23.30.005. Alaska Workers' Compensation Board.

....

(h) The department shall adopt rules for all panels, and . . . shall adopt regulations to carry out the provisions of this chapter. The department may by regulation provide for procedural, discovery, or stipulated matters to be heard and decided . . . 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. . . .

AS 23.30.010. Coverage.

(a) Except as provided in (b) of this section, compensation or benefits are payable under this chapter for disability or death or the need for medical treatment of an employee if the disability or death of the employee or the employee's need for medical treatment arose out of and in the course of the employment. To establish a presumption under AS 23.30.120(a)(1) that the disability or death 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 death or the need for medical treatment. A presumption may be rebutted by a demonstration of substantial evidence that the death or 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 death or disability or need for medical treatment arose out of and in the course of the employment, the board must evaluate the relative contribution of different causes of the disability or death or the need for medical treatment. Compensation or benefits under this chapter are payable for the disability or death or the need for medical treatment if, in relation to other

causes, the employment is the substantial cause of the disability or death or need for medical treatment.

AS 23.30.095. Medical treatments, services, and examinations.

(a) The employer shall furnish medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus for the period which the nature of the injury or the process of recovery requires, not exceeding two years from and after the date of injury to the employee. However, if the condition requiring treatment, apparatus, or medicine is a latent one, the two-year period runs from the time the employee has knowledge of the nature of the employee's disability and its relationship to the employment and after disablement. It shall be additionally provided that, if continued treatment or care or both beyond the two-year period is indicated, the injured employee has the right of review by the board. The board may authorize continued treatment or care or both as the process of recovery may require. . . .

(k) In the event of a medical dispute regarding determinations of causation, medical stability, ability to enter a reemployment plan, degree of impairment, functional capacity, the amount and efficacy of the continuance of or necessity of treatment, or compensability between the employee's attending physician and the employer's independent medical evaluation, the board may require that a second independent medical evaluation be conducted by a physician or physicians selected by the board from a list established and maintained by the board. The cost of an examination and medical report shall be paid by the employer. The report of an independent medical examiner shall be furnished to the board and to the parties within 14 days after the examination is concluded. . . .

The purpose of an SIME is to have an independent expert provide an opinion to assist the board in deciding a contested issue. *Seybert v. Cominco Alaska Exploration*, 182 P.3d 1079, 1097 (Alaska 2008). The SIME physician is the board's expert. *Church v. Arctic Fire and Safety*, AWCAC Decision No. 126 (December 31, 2009) at 13; *Bah v. Trident Seafoods Corp.*, AWCAC Decision No. 073 (February 27, 2008) at 3. An SIME is not intended to give the parties an additional medical opinion. *Bah* at 5.

8 AAC 45.050. Pleadings

. . . .

(f) Stipulations.

. . . .

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

(3) Stipulations of fact or to procedures are binding upon the parties to the stipulation and have the effect of an order unless the board, for good cause, relieves a party from the terms of the stipulation. A stipulation waiving an employee's right to benefits under the Act is not binding unless the stipulation is submitted in the form of an agreed settlement, conforms to AS 23.30.012 and 8 AAC 45.160, and is approved by the board.

(4) The board will, in its discretion, base its findings upon the facts as they appear from the evidence, or cause further evidence or testimony to be taken, or order an investigation into the matter as prescribed by the Act, any stipulation to the contrary notwithstanding.

8 AAC 45.092. Selection of an independent medical examiner.

(a) The board will maintain a list of physicians' names for second independent medical evaluations . . .

. . .

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

. . . .

(5) . . . each party may submit to the board designee up to three questions per medical issue in dispute under AS 23.30.095(k), as identified by the parties, the board designee, or the board, as follows:

(A) if all parties are represented by counsel, the board designee shall submit to the physician all questions submitted by the parties in addition to and at the same time as the questions developed by the board designee;

Estes v. Sears Roebuck & Co., AWCB Decision No. 12-0141 (August 17, 2012), held that the parties' questions under 8 AAC 45.092(h)(5) should be limited to simple (non-compound) questions, without legal definitions.

ANALYSIS

Should the parties' hearing stipulation on questions to be submitted to the SIME physicians be approved?

As stipulations usually promote the quick, efficient, fair, and predictable delivery of benefits while reducing costs to employers, they are generally favored by the board. The parties' stipulation does just that. Although the parties agreed on several matters, by reserving any

remaining objections; the stipulation allows the SIME to proceed without further litigation or delay. The stipulation will be approved.

CONCLUSION OF LAW

The parties' hearing stipulation on questions to be submitted to the SIME physicians should be approved.

ORDER

1. The parties' hearing stipulation on questions to be submitted to the SIME physicians is approved.
2. Employer shall remove the paragraph containing legal definitions from its Question 2 regarding Employee's cervical spine and from its Question 2 regarding Employee's left foot.
3. Employee shall remove the paragraphs asking the SIME doctors to assume stated facts are correct that precede both her numbered questions regarding her neck and her numbered questions regarding her foot.
4. The parties shall submit their revised SIME questions to the board designee by May 15, 2015.
5. Any other objections the parties may have to the SIME questions are preserved.

MARIE M. EDENSHAW v. PENINSULA AIRWAYS, INC.

Dated in Anchorage, Alaska on May 14, 2015.

ALASKA WORKERS' COMPENSATION BOARD

Ronald P. Ringel, Designated Chair

Ron Nalikak, Member

Mark Talbert, Member

APPEAL PROCEDURES

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

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

RECONSIDERATION

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

MODIFICATION

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

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Final Decision and Order in the matter of MARIE M. EDENSHAW, employee / claimant; v. PENINSULA AIRWAYS, INC., employer; WAUSAU UNDERWRITERS INSURANCE COMPANY, insurer / defendants; Case No. 201105565; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties on May 14, 2015.

Pamela Murray, Office Assistant