ALASKA WORKERS' COMPENSATION BOARD

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

JADE L. BICKMORE, Employee, Claimant, v. STATE OF ALASKA, Self-Insured Employer, Defendant.	)	FINAL DECISION AND ORDER AWCB Case No. 201120228 AWCB Decision No. 15-0067 Filed with AWCB Juneau, Alaska on June 12, 2015

Jade Bickmore's (Employee) January 4, 2012 and October 11, 2012 claims were heard on January 27, 2015, in Juneau, Alaska, a date selected on July 15, 2014. Attorney Joseph Kalamarides appeared and represented Employee. Attorney Patricia Shake appeared and represented the State of Alaska (Employer). Employee was the only witness. The record was left open to receive Robert Urata, M.D.'s deposition, Employee's supplemental attorney's fees and costs affidavit and Employer's objection to the supplemental affidavit. The record closed on June 11, 2015, after further deliberation.

ISSUES

Employee contends she is entitled to temporary total disability (TTD), medical costs and related transportation expenses for treatment for her allergic reaction symptoms. She seeks an order awarding additional TTD and past and ongoing medical care and related transportation expenses.

Employer contends because Employee's disability and need for medical treatment are not work-related, Employee is not entitled to further benefits.

1) **Is Employee entitled to additional benefits for her allergic reaction symptoms?**

Employee contends she is entitled to interest. She seeks an order requiring Employer to pay interest on all benefits awarded. Employee also contends her attorney provided valuable legal services in a complex case. Employee contends he is entitled to actual attorney's fees under AS 23.30.145(b).

Employer contends Employee is not entitled to any additional benefit, and is thus not entitled to interest or attorney's fees and costs.

2) **Is Employee entitled to interest and attorney's fees and costs?**

FINDINGS OF FACT

The record establishes the following relevant facts and factual conclusions by a preponderance of the evidence:

1) In the early 1980s, the State of Alaska, Department of Labor (DOL) building in Juneau, Alaska was built. Water leakage was reported in 2005 and to address continuing water leakage concerns throughout the building, it was re-clad in three phases, beginning in 2007 and completed in 2009. (Alaska DOL Building Condition Survey of Water Staining at Interior Finishes, January 4, 2012).

2) On April 9, 2008, Justine Emerson, FNP, at Valley Medical Care, treated Employee for epistaxis in the left nare. In addition to daily bloody noses, Employee reported headaches, migraines, ear pain and sinus pain and pressure. FNP Emerson referred Employee to otolaryngologist John Raster, M.D. (Chart Note, FNP Emerson, April 9, 2008).

3) On May 15, 2008, Dr. Raster performed a septoplasty, bilateral anterior ethmoidectomy, and bilateral maxillary antrostomy to address Employee's nasal obstruction, deviated septum, and chronic sinusitis. (Operative Report, Dr. Raster, May 15, 2008).

4) On May 15, 2009, family practice physician Dr. Urata, at Valley Medical Care, treated Employee for headaches, which were unlike prior headaches Employee had experienced. Employee reported there was construction on the DOL building where she was working. (Chart Note, Dr. Urata, May 15, 2009).

5) On February 1, 2010, Dr. Urata treated Employee for sinus congestion, headaches, lightheadedness, hoarse voice, burning eyes and vision problems. Employee reported her symptoms worsened when she was at work, and began six to eight months prior. (Chart Note, Dr. Urata, February 1, 2010).

6) On November 14, 2011, environmental engineers from Wiss, Janney, Elstner Associates (WJE) inspected DOL's interior and observed water leakage in several areas, a pungent odor in office 104, and organic growth in a small area in suite 210's wallboard. Testing of suite 210's wallboard samples found two fungi, pencillium and stachybotrys chartum. (Alaska DOL Building Condition Survey of Water Staining at Interior Finishes, January 4, 2012).

7) On December 27, 2011, and January 3, 2012, air quality testing was performed in room 104, third floor commissioner's office and the second floor call center. The testing results indicated, "The detected concentrations of mold in the indoor air are non-detect or low." Additional air quality testing performed on January 30, 2012 and January 31, 2012 in room 103 and suite 210 found, "Few VOC species were present above quantifiable limits. Those that were quantifiable were present in trace amounts." The organic compounds found in trace amounts were Isopropanol, Ethanol, Acetone, 1 Di-flouroethane, and Limonene. On February 6, 2012, settled dust sampling conducted in suite 210 did not detect any mold. (Letter from Jolene Cox to Patrick Holmes, April 11, 2012; Letter from David Bleicher to Tanci Mintz, January 19, 2012; Letter from David Bleicher to Tanci Mintz, March 9, 2012).

8) On December 28, 2011, Tina Pleasants, ANP, at Valley Medical Care, treated Employee for dyspnea. Employee reported she had experienced a severe allergic reaction to mold at work. Her throat "felt like broken glass" on the inside. Employee reported she had seen Dr. Raster in the past for severe allergies and had an allergen-free home and air purifier. ANP Pleasants released Employee from work for one week. (Chart Note, ANP Pleasants, December 28, 2011).

9) On January 3, 2012, ANP Pleasants treated Employee for dyspnea. Employee reported chest tightness and fatigued respiratory muscles when exposed to work allergens. Employee was off work but returned to work to sign her time card. Employee reported "within minutes of being at work her throat felt like 'swallowing glass again.'" Employee stated this occurred even though she had pre-medicated with Benadryl before going in. ANP Pleasants released Employee from work for another week. (Chart Note, ANP Pleasants, January 3, 2012).

10) On January 6, 2012, Dr. Urata treated Employee for itchy throat, burning eyes, sinus headaches, burning throat, and shortness of breath. Employee reported her symptoms worsened when she was indoors and alleviated when she went outdoors. Dr. Urata referred Employee to allergist Charles Jackson, M.D. (Chart Note, Dr. Urata, January 6, 2012).

11) On January 7, 2012, Employee reported on December 27, 2011, she developed severe allergic reactions to allergens in her work place. (Report of Injury (ROI), January 7, 2012).

12) On January 10, 2012, Dr. Urata opined Employee's allergy symptoms were related to environmental allergens in the DOL building, most likely mold. (Letter from Dr. Urata, January 10, 2012).

13) On January 28, 2012, Dr. Jackson evaluated Employee for allergy symptoms. He diagnosed bacterial rhinitis or rhinosinusitis and opined Employee did not have a mold allergy, stating the "role of molds in triggering pathology is greatly exaggerated by media, trial lawyers, and general perception compared to available evidence. The coincidence of garden variety medical complaints and the presence of mold does not constitute proof of cause and effect." (Evaluation Report, Dr. Jackson, February 13, 2012).

14) On March 29, 2012, Dr. Urata treated Employee for sinus pain and diagnosed chronic sinusitis related to environmental molds and chemicals. (Chart Note, Dr. Urata, March 29, 2012).

15) On April 5, 2012, Employee was tested for mycotoxins. Real Time Laboratories, Inc. reported no presence of Aflatoxin or Ochratoxin but an abnormal presence of Trichothecenes. (Mycotoxin Panel Report Form, Real Time Laboratories, Inc., April 5, 2012).

16) On April 11, 2012, environmental professional Jolene Cox with Carson Dorn, Inc., reported samples for mold in DOL's indoor air prior to and after the remodel. Abatement activities indicated mold levels and types in the indoor air in suite 210 were similar to or lower than those found in the outdoor air and to non-complaint areas from earlier sampling events. (Letter from Jolene Cox to Patrick Holmes, April 11, 2012).

17) On April 16, 2012, Dr. Urata noted Employee tested positive for Trichothecenes at 1.21 ppb, and stated abnormal is greater than 0.2 ppb. (Chart Note, Dr. Urata, April 16, 2012).

18) On April 23, 2012, Dr. Urata referred Employee to an internist and toxicologist Employee had located in Arizona, Michael Gray, M.D., for evaluation of "an anaphylaxis/severe allergic reaction to possible molds in her workplace." Dr. Urata reiterated Employee showed a positive

presence of Trichothecenes in her blood, with results showing 1.21 ppb. (Employee Hearing Testimony, Letter from Dr. Urata to Dr. Gray, April 23, 2012).

19) On May 17, 2012, Dr. Gray evaluated Employee and treated her for Mixed Mold Mycotoxicosis. Dr. Gray opined, "After her initial evaluation, it has become quite clear that she is suffering from a condition of workplace induced Mixed Mold Mycotoxicosis with multiple organ system impacts, including severe Toxic Encephalopathy with objectively demonstrable neurologic deficits present at this time." Dr. Gray placed Employee on mandatory medical leave "until further notice" and stated she could overcome the condition, "over a period of 2-3 years of intensive therapy." (Letter from Dr. Gray to Dr. Urata, May 17, 2012).

20) On May 24, 2012, allergy and immunology specialist Emil Bardana, M.D., examined Employee for an employer's medical evaluation (EME). Dr. Bardana diagnoses included: (1) longstanding chronic rhinosinusitis without polyposis, (2) obstructive sleep apnea, (3) idiopathic environmental intolerance, (4) dermatographism with probable episodic psychogenic urticarial, (5) generalized anxiety state, (6) clinical depression, and (7) clinically insignificant evidence of grass pollen allergy. He opined none of Employee's conditions are related to her workplace exposure. He explained the amount of mold uncovered in Employee's workplace was remarkably low and posed no health risks. He also stated, "There were occasions where relative humidity was low and although this might contribute in a transient way to produce minor ocular symptoms and dryness of the mouth and nose, these symptoms would have been transient and of a minor nature and inconsistent with her broad pattern of symptomatology." (EME Report, Dr. Bardana, May 24, 2012).

21) Employer paid Employee benefits, including time loss and medicals, until June 18, 2012, when it controverted all benefits based on Dr. Bardana's report. (Compensation Report, June 1, 2012; Controversion, June 18, 2012).

22) On September 19, 2012, Dr. Gray opined Employee's diagnoses included: (1) mycotoxicosis, (2) systemic inflammatory response syndrome, (3) toxic encephalopathy, (4) autonomic neuropathy, (5) tachycardia, (6) chronic rhinitis, and (7) chronic sinusitis. He opined all these were caused by Employee's workplace exposure. Dr. Gray opined Employee could return to work on September 27, 2012, at half time for two weeks and then full time afterwards, as long as she did not return to work at the DOL building. (Letter from Dr. Gray, September 19, 2012).

23) On April 23, 2013, Employee saw toxicologist Edward Holmes, M.D., for a second independent medical evaluation (SIME). Dr. Holmes diagnosed anxiety with panic/hyperventilation attacks, pollen/plant allergies and chronic sinusitis unrelated to Employee's workplace exposures. He stated Employee's allergies and chronic sinusitis existed long before her workplace exposure and opined there is no evidence of a mold allergy. He also opined Dr. Gray's treatment to date and prescribed in the future is not accepted as reasonable or necessary by the medical community. He opined Dr. Urata's treatment has been reasonable and necessary but was unrelated to Employee's workplace exposures. He stated Employee has had no objective disease attributable to her workplace exposures and consequently assessed zero percent work-related PPI. He opined Employee's workplace exposure was not the substantial cause of any disability or need for medical treatment. (SIME Report, Dr. Holmes, June 23, 2013).

24) On June 24, 2013, Dr. Gray again opined Employee's conditions were caused by her workplace exposures. (Letter from Dr. Gray, June 24, 2013).

25) At a July 15, 2014 prehearing conference, the parties agreed to schedule a November 18, 2014 hearing on Employee's claims. The hearing was later rescheduled to January 27, 2015, by the parties' stipulation. (Prehearing Conference Summary, July 15, 2014, Prehearing Conference Summary, November 24, 2014; Emails to and from Employer, Employee, and Hearing Officer Marx, November 18, 2014, November 24, 2014, and January 8, 2014).

26) At a November 24, 2014 prehearing conference, the parties agreed to narrow the hearing issues to TTD from June 19, 2012 to October 10, 2012, medical and related transportation costs, interest, and attorney's fees and costs related to allergic reaction. (Prehearing Conference Summary, November 24, 2014).

27) On March 26, 2015, Dr. Urata was deposed and opined Employee's allergy symptoms are related to environmental allergens in the DOL building because her symptoms increased when entering the building but decreased when leaving the building. He stated Employee found Dr. Gray in Arizona who agreed with Employee's theories that the cause of her symptoms was a mold allergy. (Deposition of Robert Urata, M.D., March 26, 2015).

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 . . . to ensure . . . quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at . . . reasonable cost to . . . employers . . . subject to . . . this chapter; . . . .
>
> **AS 23.30.005. Alaska Workers' Compensation Board.**
> . . . .
>
> (h) The department shall adopt rules . . . and . . . regulations to carry out the provisions of this chapter. . . . Process and procedure under this chapter shall be as summary and simple as possible. . . .

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).

> **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.

A finding reasonable persons would find employment was or was not a cause of the Employee's disability and impose or deny liability is, "as are all subjective determinations, the most difficult to support." *Rogers & Babler*, 747 P.2d at 534.

> **AS 23.30.095. Medical treatments, services, and examinations.** (a) The employer shall furnish medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus for the period which the nature of the injury or the process of recovery requires, not exceeding two years from and after the date of injury to the employee. . . . It shall be additionally provided that, if continued treatment or care or both beyond the two-year period is indicated, the injured employee has the right of review by the board. The board may authorize continued treatment or care or both as the process of recovery may require. . . .
>
> **AS 23.30.120 Presumptions**. (a) In a proceeding for the enforcement of a claim for compensation under this chapter it is presumed, in the absence of substantial evidence to the contrary, that
>
> (1) the claim comes within the provisions of this chapter. . . .

Under AS 23.30.120(a)(1), benefits sought by an injured worker are presumed to be compensable. *Meek v. Unocal Corp*., 914 P.2d 1276, 1279 (Alaska 1996). The presumption of compensability is applicable to any claim for compensation under the workers' compensation statute. *Id*.; (emphasis omitted). The presumption application involves a three-step analysis. To attach the presumption of compensability, an employee must first establish a "preliminary link" between his or her injury and the employment. *Tolbert v. Alascom, Inc.*, 973 P.2d 603, 610 (Alaska 1999). The evidence necessary to raise the presumption of compensability varies depending on the claim. In claims based on highly technical medical considerations, medical evidence is often necessary to make that connection. *Burgess Construction Co. v. Smallwood*, 623 P.2d 312, 316 (Alaska 1981). In less complex cases, lay evidence may be sufficiently probative to establish causation.

For injuries occurring after the 2005 amendments to the Act, if the employee establishes the link, the presumption may be overcome at the second stage when the employer presents substantial evidence, which demonstrates a cause other than employment played a greater role in causing the disability or need for medical treatment. *Runstrom v. Alaska Native Medical Center*, Alaska Workers' Comp. App. Comm'n Dec. No. 150 at 7 (March 25, 2011). Because the board considers the employer's evidence by itself and does not weigh the employee's evidence against the employer's rebuttal evidence, credibility of the parties and witnesses is not examined at the second stage. *Veco, Inc. v. Wolfer*, 693 P.2d 865, 869-70 (Alaska 1985).

If the board finds the employer's evidence is sufficient, in the third step the presumption of compensability drops out, the employee must prove her case by a preponderance of the evidence, and must prove in relation to other causes, employment was the substantial cause of the disability or need for medical treatment. *Runstrom* at 8. This means the employee must "induce a belief" in the minds of the fact finders the facts being asserted are probably true. *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964). In the third step, the evidence is weighed, inferences are drawn from the evidence, and credibility is considered.

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

The board's finding of credibility "is binding for any review of the Board's factual findings." *Smith v. CSK Auto, Inc.*, 204 P.3d 1001, 1008 (Alaska 2009). The board has the sole power to determine witness credibility, and its findings about weight are conclusive even if the evidence is conflicting. *Harnish Group, Inc. v. Moore*, 160 P.3d 146, 153 (Alaska 2007). The board has the sole discretion to determine the weight of the medical testimony and reports. When doctors' opinions disagree, the board determines which has greater credibility. *Moore v. Afognak Native Corp.*, Alaska Workers' Comp. App. Comm'n Dec. No. 087 at 11 (Aug. 25, 2008).

> **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 23.30.145. Attorney Fees.** (a) Fees for legal services rendered in respect to a claim are not valid unless approved by the board, and the fees may not be less than 25 percent on the first $1,000 of compensation or part of the first $1,000 of compensation, and 10 percent of all sums in excess of $1,000 of compensation. When the board advises that a claim has been controverted, in whole or in part, the board may direct that the fees for legal services be paid by the employer or carrier in addition to compensation awarded; the fees may be allowed only on the amount of compensation controverted and awarded. When the board advises that a claim has not been controverted, but further advises that bona fide legal services

> have been rendered in respect to the claim, then the board shall direct the payment of the fees out of the compensation awarded. In determining the amount of fees the board shall take into consideration the nature, length, and complexity of the services performed, transportation charges, and the benefits resulting from the services to the compensation beneficiaries.
>
> (b) If an employer fails to file timely notice of controversy or fails to pay compensation or medical and related benefits within 15 days after it becomes due or otherwise resists the payment of compensation or medical and related benefits and if the claimant has employed an attorney in the successful prosecution of the claim, the board shall make an award to reimburse the claimant for the costs in the proceedings, including reasonable attorney fees. The award is in addition to the compensation or medical and related benefits ordered.

AS 23.30.145(b) requires an employer to pay reasonable attorney's fees when the employer delays or "otherwise resists" payment of compensation and the employee's attorney successfully prosecutes his claim. *Harnish Group, Inc.*, 160 P.3d at 150-51.

> **AS 23.30.155. Payment of compensation.**
> . . . .
>
> (p) An Employer shall pay interest on compensation that is not paid when due. . . .
>
> **AS 23.30.185. Compensation for temporary total disability.** In case of disability total in character but temporary in quality, 80 percent of the injured employee's spendable weekly wages shall be paid to the employee during the continuance of the disability. Temporary total disability benefits may not be paid for any period of disability occurring after the date of medical stability.
>
> **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 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. . . .
> . . . .
>
> (2) on late-paid medical benefits to
> . . . .

(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.

8 AAC 45.180. Costs and attorney's fees.

. . .

(b) A fee under AS 23.30.145(a) will only be awarded to an attorney licensed to practice law in this or another state. An attorney seeking a fee from an employer for services performed on behalf of an applicant must apply to the board for approval of the fee; the attorney may submit an application for adjustment of claim or a petition. An attorney requesting a fee in excess of the statutory minimum in AS 23.30.145(a) must (1) file an affidavit itemizing the hours expended, as well as the extent and character of the work performed, and (2) if a hearing is scheduled, file the affidavit at least three working days before the hearing on the claim for which the services were rendered; at the hearing, the attorney may supplement the affidavit by testifying about the hours expended and the extent and character of the work performed after the affidavit was filed. If the request and affidavit are not in accordance with this subsection, the board will deny the request for a fee in excess of the statutory minimum fee, and will award the minimum statutory fee.

(c) Except as otherwise provided in this subsection, an attorney fee may not be collected from an applicant without board approval. A request for approval of a fee to be paid by an applicant must be supported by an affidavit showing the extent and character of the legal services performed. . . .

(d) The board will award a fee under AS 23.30.145(b) only to an attorney licensed to practice law under the laws of this or another state.

(1) A request for a fee under AS 23.30.145(b) must be verified by an affidavit itemizing the hours expended as well as the extent and character of the work performed. . . . Failure by the attorney to file the request and affidavit in accordance with this paragraph is considered a waiver of the attorney's right to recover a reasonable fee in excess of the statutory minimum fee under AS 23.30.145(a), if AS 23.30.145(a) is applicable to the claim, unless the board determines that good cause exists to excuse the failure to comply with this section.

(2) In awarding a reasonable fee under AS 23.30.145(b) the board will award a fee reasonably commensurate with the actual work performed and will consider the attorney's affidavit filed under (1) of this subsection, the nature, length, and complexity of the services performed, the benefits resulting to the

> compensation beneficiaries from the services, and the amount of benefits involved.
>
> . . .
>
> (f) The board will award an applicant the necessary and reasonable costs relating to the preparation and presentation of the issues upon which the applicant prevailed at the hearing on the claim. The applicant must file a statement listing each cost claimed, and must file an affidavit stating that the costs are correct and that the costs were incurred in connection with the claim…

ANALYSIS

1) Is Employee entitled to additional benefits for her allergic reaction symptoms?

This issue raises factual disputes to which the statutory presumption of compensability applies. AS 23.30.120; *Meek.* Employee satisfied the presumption analysis' first step with Dr. Urata's records and deposition testimony. Without regard to credibility, Drs. Urata and Gray opined Employee's disability and need for allergic reaction medical treatment are related to environmental allergens in the DOL building. This is adequate evidence to raise the presumption and cause it to attach to her claim.

Viewing the evidence in isolation, and without regard to credibility, Drs. Jackson, Bardana, and Holmes stated Employee's disability and need for allergic reaction medical treatment are unrelated to her workplace exposure and were caused by non-work related factors. Their opinions provide substantial evidence to rebut the presumption, cause it to drop out, and require Employee to prove causation, by a preponderance of the evidence. *Saxton.*

Employee's treating physician Dr. Urata opined Employee's symptoms were caused by mold in the DOL building, while another treating physician Dr. Jackson opined Employee did not have a mold allergy. Dr. Jackson attributed Employee's symptoms to bacterial rhinitis or rhinosinusitis and not workplace exposure. Dr. Gray opined Employee's disability and need for allergic reaction medical treatment were caused by workplace exposure but Dr. Holmes diagnosed anxiety with panic/hyperventilation attacks, pollen/plant allergies and chronic sinusitis unrelated to Employee's workplace exposures. Dr. Holmes opined Employee's workplace exposure was not the substantial cause of any disability or need for medical treatment. He stated Employee's allergies and chronic sinusitis existed long before her workplace exposure and opined there is no evidence of a mold

allergy. Dr. Holmes also opined Dr. Gray's treatment to date and prescribed in the future is not accepted as reasonable or necessary by the medical community. He opined Dr. Urata's treatment has been reasonable and necessary but was unrelated to Employee's workplace exposures. Dr. Bardana opined none of Employee's conditions or need for medical treatment are related to her workplace exposure, explaining the amount of mold uncovered in Employee's workplace was remarkably low and posed no health risks.

There is clearly disagreement among the physicians regarding the substantial cause of Employee's disability and need for allergic reaction medical treatment. A finding reasonable persons would find employment was a cause of Employee's need for medical treatment and impose liability is a subjective determination. *Rogers & Babler*, 747 P.2d at 534. The board has the sole discretion to determine the weight of the medical testimony and reports. When doctors' opinions disagree, the board determines which has greater credibility. *Harnish Group, Inc.*, 160 P.3d at 153; *Moore v. Afognak Native Corp.*, Alaska Workers' Comp. App. Comm'n Dec. No. 087 at 11.

The preponderance of the evidence shows Employee's workplace exposure is not the substantial cause of her disability or need for medical treatment and related transportation expenses. Drs. Jackson, Holmes and Bardana's credible and clear testimony is the most persuasive and probative evidence on the issue of whether Employee's workplace exposure was the substantial cause of her disability or need for allergic reaction medical treatment. Their opinions are supported by environmental testing which showed the amount of mold uncovered in Employee's workplace was remarkably low and posed no health risks. AS 23.30.122. Accordingly, her claim for TTD and medical benefits and related transportation costs will be denied.

2) Is Employee entitled to interest on unpaid medical benefits and an award of attorney's fees and costs?

Employee failed to meet her burden of proving her ongoing complaints and symptoms are work-related. The foundation for Employee's claims for interest and an award of attorney's fees and costs was the work-relatedness of her conditions and symptoms. In the absence of adequate proof of work-relatedness, Employee is not entitled to these benefits. The evidence does not support an award of additional benefits for the reasons stated in section one, above. Therefore, she is not entitled to interest or attorney's fees or costs.

CONCLUSIONS OF LAW

1) Employee is not entitled to additional benefits for her allergic reaction symptoms.

2) Employee is not entitled to interest on unpaid medical benefits or an award of attorney's fees and costs.

ORDER

1) Employee's claim for additional TTD and allergic reaction medical treatment and related transportation costs is denied.

2) Employee's claim for an award of interest, attorney's fees and costs is denied.

Dated in Juneau, Alaska on June 12, 2015.

ALASKA WORKERS' COMPENSATION BOARD

Marie Marx, Designated Chair

Bradley Austin, Member

Linda Hutchings, 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 Jade L. Bickmore, employee / claimant v. State Of Alaska, self-insured employer; Case No. 201120228; dated and filed in the Alaska Workers' Compensation Board's office in Juneau, Alaska, and served on the parties on June 12, 2015.

Sue Reishus-O'Brien

Sue Reishus-O'Brien, Workers' Compensation Officer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 12th day of June , 2015,

a true and correct copy of this document was mailed, First-Class U.S. Mail, postage prepaid, to the following:

Sue Reishus-O'Brien

By: