ALASKA WORKERS' COMPENSATION BOARD

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

ANGELINE L. EDGE, Employee, Claimant,	)	FINAL DECISION AND ORDER
v.	)	AWCB Case No. 201214122
SPORTSMAN'S WAREHOUSE, INC., Employer,	)	AWCB Decision No. 15-0092
and	)	Filed with AWCB Anchorage, Alaska on July 30, 2015
NATIONAL FIRE INSURANCE COMPANY, Insurer, Defendants.	)	

Angeline L. Edge's January 2, 2013 claim for benefits and July 14, 2015 petition to continue the hearing were heard July 15, 2015 in Anchorage, Alaska by a two member panel. This hearing date was selected on February 24, 2015. Angeline L. Edge (Employee) declined to participate. Attorney Jeffrey Holloway appeared and represented Sportsman's Warehouse, Inc. and National Fire Insurance Company (Employer). Witnesses included Carl Pajak and Ronald Hagele. The record closed at the hearing's conclusion on July 15, 2015.

ISSUES

Employee called the board's office at the time scheduled for the hearing and was transferred to the hearing room. The designated chair told Employee the board had received her July 14, 2015 petition to continue the hearing, and that the panel would go on record, begin the hearing, address her petition for a continuance, and then depending on the outcome possibly proceed with the hearing on her claim. Employee stated she did not have to participate in a hearing because

she had "fulfilled her duty," and hung up. After considering Employee's petition and the record, the panel orally denied the petition for a continuance and proceeded with the hearing on the merits of Employee's claim.

1. Were the oral decisions denying the continuance and proceeding with hearing correct?

In her claim, Employee contends an August 20, 2012 incident at work was the substantial cause of her disability and need for medical treatment for her low back, entitling her to benefits. Employer acknowledges the workplace incident occurred, but contends Employee suffered no injury, so the incident is not the substantial cause of her disability or need for medical benefits.

2. Was the August 20, 2012 workplace incident the substantial cause of Employee's disability or need for medical treatment?

FINDINGS OF FACT

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

1. On July 7, 1998, Employee underwent a CT scan of her lumbar spine. (South Peninsula Hospital, X-ray Report, July 7, 1998). The next day, Employee's doctor, William Bell, M.D., wrote to Employee explaining the CT scan showed disc bulging with a probable herniation at L4-5 and a "fair amount" of arthritis between her vertebrae. (Dr. Bell, Letter to Employee, July 8, 1998).
2. On August 3, 1998, Employee reported to a physical therapist that she had shooting pains in her lower back that she rated as 8 to 9 out of 10; she stated her low back pain began during a pregnancy in 1991. (Physical Therapy Notes, August 8, 1998).
3. On April 26, 1999, Employee returned to Dr. Bell with a recurrence of her back pain. She stated the pain "has always been there," but recently became worse while mopping. Dr. Bell diagnosed a probable herniation of the L4-5 disc and recommended another CT scan. (Homer Medical Clinic, Chart Note, April 26, 1999).
4. On April 29, 1999, Employee reported a work injury while working for the Kenai Peninsula Borough School District. She stated that on April 27, 1999, she suffered a low back strain while lifting a mop bucket to empty it. (Report of Occupational Injury or Illness, AWCB Case No. 19908078).

5. On June 26, 1999, Employee was seen by Samuel Scheinberg, M.D., an orthopedic surgeon, for an employer's medical evaluation (EME) requested by the school district. Dr. Scheinberg diagnosed chronic low back pain that was temporarily aggravated by the April 26, 1999 lifting incident. He opined the aggravation had resolved, and Employee had reached medical stability without any permanent impairment relative to the April 26, 1999 incident. (Dr. Scheinberg, EME Report, June 26, 1999).
6. On November 9, 2000, Employee was seen by Alan Gross, M.D. Employee reported she had slipped and fallen at a K-Mart store injuring her back and left shoulder. An x-ray of her thoracic spine was normal. Dr. Gross diagnosed a strain and referred her for pain management. (Dr. Gross, Chart Note, November 9, 2000).
7. On July 3, 2001, Employee was seen John Bursell, M.D. for a disc herniation in her neck and a torn rotator cuff in her left shoulder. Employee reported low back discomfort. (Dr. Bursell, Chart Note, July 3, 2001.
8. A September 9, 2001, lumbar MRI showed a mild disc bulge with some central canal narrowing at L3-4 and a more prominent bulge and central canal narrowing at L4-5. (Bartlett Regional Hospital, Radiology Report, September 7, 2001).
9. On October 28, 2002, Dr. Bursell wrote a letter to Employee's attorney about her various conditions. He stated Employee continued to have pain in her low back due to degenerative changes in her lumbar spine. (Dr. Bursell, Letter, October 28, 2002).
10. On April 2, 2008 Employee was seen by John Godersky, M.D. She reported that she had low back pain since her injury in 2000. (Anchorage Neurosurgical Associates, Outpatient Consultation, April 2, 2008).
11. On April 20, 2012 while working for Employer, Employee heard a "boom" from the staircase and saw that two pictures had fallen from the wall and were "hung up" and "bouncing" on the railing. She ran and held both pictures up, straining her low back. Employee reported the injury occurred on September 8, 2012. (Report of Occupational Injury or Illness, September 19, 2012).
12. Employee later clarified that the injury occurred on August 20, 2012. (Employee Deposition, February 22, 2013).
13. August 20, 2012 security video from Employer's store shows one picture falling from the wall and landing behind the stair railing. As it fell, the picture hit an adjacent picture,

knocking it crooked. The second picture remained hanging on the wall. Both pictures are approximately 24 by 30 inches. Ten to fifteen seconds after the picture fell Employee walked up the stairs, placed her right hand on the second picture at about shoulder height, held it in place with light horizontal pressure, and called for assistance. While waiting for assistance, Employee also placed her left hand on the picture, again about shoulder height. Less than 20 seconds after Employee arrived at the picture, her supervisor, Carl Pajak, arrived to assist her. Mr. Pajak lifted the picture from its hook, straightened it, and re-hung it. Mr. Pajak was unable to re-hang the first picture and gave it to Employee who carried it down the stairs. (Employer, Surveillance Video, August 20, 2012).

14. At no time did Employee move, lift, or bear the weight of the second picture; it remained hanging on the wall, and Employee merely held it against the wall. Employee exhibited no apparent distress or discomfort either while holding up the second picture or while carrying the first picture down the stairs. (Observation).
15. On September 25, 2012, Employee was seen by Stephen Wahl, M.D. at Mat-Su Regional Urgent Care. She told medical staff that on September 8, 2012, she had reached overhead trying to support two large pictures that had fallen, and she had to wait a minute or two before assistance arrived. She stated she was not aware of any pain that day or the next, but several days later she began to experience pain in her lower back on the left side. Employee told Dr. Wahl that she had one prior episode of back trouble in 1994 from lifting a bucket at work, but she had no recurrent problems since. Dr. Wahl diagnosed low back pain with L5-S1 radiculopathy and recommended an MRI. He released Employee to light duty work. (Mat-Su Urgent Care, Progress Note, September 25, 2012).
16. An MRI taken September 27, 2012 showed mild disc desiccation and degenerative changes at L3-4 causing moderate spinal canal stenosis and a broad-based hard disc bulge and degenerative changes at L4-5 causing spinal canal narrowing with significant crowding of the cauda equina. (Imaging Report, September 27, 2012).
17. On October 12, 2012, Employee was seen by Douglas Bald, M.D., for an EME. Employee told Dr. Bald the injury occurred on August 20, 2012, when after hearing a “boom” and seeing that two very large paintings had fallen, she ran up the staircase, pushed them back into position, and held them for about five minutes until a manager came. Employee told Dr. Bald she had no symptoms at the time but about two weeks later she began to feel pain in the

left buttock that spread down her thigh. Dr. Bald asked Employee about prior back injuries, and she reported that in 1999 she had low back pain after lifting a bucket which completely resolved and she had no ongoing back pain prior to this injury. Employee stated she continued to work until September 25, 2012, when she was seen by Dr. Wahl. She had not had any further medical treatment since seeing Dr. Wahl and the MRI. In addition to reviewing Employee's medical records and the September 27, 2012 MRI, Dr. Bald viewed the security video of the August 20, 2012 incident. Dr. Bald concluded the work incident did not cause any significant injury to Employee's lower back. He noted the activities shown on the video were not "back intensive," which coupled with the lack of symptoms for about two weeks, did not suggest any acute injury had occurred. Dr. Bald opined the substantial cause of Employee's symptoms was the calcified disk and degenerative disc disease shown on the MRI. (Dr. Bald, EME Report, October 12, 2012).

18. On October 18, 2012, Employer controverted all benefits based on Dr. Bald's opinion the August 20, 2012 work incident was not the substantial cause of Employee's disability or need for medical treatment. (Controversion Notice, October 17, 2012).
19. On October 22, 2012, Dr. Bald issued an addendum to his October 12, 2012 report after reviewing additional medical records. Dr. Bald had reviewed medical records from 2006 to 2008 related to Employee's October 2000 slip and fall at K-Mart. Dr. Bald stated the opinions in his October 12, 2012 report were unchanged. (Dr. Bald, EME Addendum, October 22, 2012).
20. On October 31, 2012, Employee was seen by Timothy Cohen, M.D., a neurosurgeon. Employee told Dr. Cohen that on August 20, 2012, a large picture began to fall off the wall at work. She rushed over and held up the picture in a hyperextended posture for five to fifteen minutes before a coworker came to help. She did not recall if symptoms started that day, but over the next few days her low back pain continued to worsen. Employee stated that prior to the August 20, 2012 incident she had not had any significant low back or lower extremity symptoms. Dr. Cohen reviewed the September 27, 2012 MRI and noted the degenerative arthritis and the disc bulge at L4-5. He concluded the work incident most likely caused a worsening of the L4-5 disc bulge because despite her degenerative arthritis, Employee had been completely asymptomatic until the incident. Dr. Cohen recommended surgical decompression or fusion. (Dr. Cohen, Outpatient Consultation, October 31, 2012).

21. An x-ray taken November 12, 2012 showed degenerative endplate changes throughout Employee's lumbar spine and facet arthropathy at L4-5 and L5-S1. A CT scan performed at the same time showed moderate spinal canal stenosis due to a broad disc bulge at L4-5. (Imaging Associates of Providence, Imaging Reports, November 12, 2012).
22. On November 26, 2012, in response to questions about Employee's workers' compensation case, Dr. Cohen stated the August 20, 2012 work injury was the substantial cause of Employee's L4-5 herniated disc and radiculopathy. (Dr. Cohen, Response to Questions, November 26, 2012).
23. On January 13, 2013 Employee, who was represented by an attorney, filed a claim based on the August 20, 2012 injury requesting temporary total disability (TTD) benefits, permanent partial impairment (PPI) benefits, medical and transportation costs, interest, attorney fees, and requesting a reemployment benefits eligibility evaluation. (Claim, January 13, 2013).
24. On January 24, 2013, Employer filed its answer to Employee's claim. Employer denied all requested benefits, relying on Dr. Bald's opinion the work injury was not the substantial cause of Employee's disability or need for medical treatment. (Answer, January 23, 3013).
25. On April 29, 2013, Employee was seen by Giulia Tortora, M.D. Employee told Dr. Tortora that while working on August 20, 2012, a picture fell off the wall and she was underneath the picture pushing up with both arms. Although she did not have symptoms initially, about two weeks later she started to have pain in her left buttock and leg which gradually got worse. Employee stated that workers' compensation had been reluctant to treat her due to her age. Dr. Tortora stated it was unreasonable to assume Employee had a preexisting condition due to her age. (Homer Medical Center, Progress Note, April 29, 2013).
26. On June 24, 2013, Employee returned to Dr. Tortora. Dr. Tortora reviewed radiology reports and determined Employee's L4-5 disc herniation was worsening. Dr. Tortora stated the injury was related to what happened at work. (Homer Medical Center, Progress Note, June 24, 2013).
27. On June 24, 2013, Dr. Tortora wrote to Employee's attorney stating Employee had been a patient at Homer Medical Center for more than 10 years, and while she had been treated for neck problems she had not had back or leg weakness prior to her injury while working for Employer. Dr. Tortora stated she was not adequately trained to watch a video tape of the injury and make an intelligent comment on it. Attached to Dr. Tortora's letter is her response

to several questions about the case. Most relevant is her response to the question of whether the work injury was the substantial cause of Employee's disability and need for medical treatment. Dr. Tortora replied "Yes, was doing fine prior to injury, and after the injury has had nonstop pain and a markedly poor level of funct. and leg weakness left side." (Dr. Tortora, Letter and Response to Questions, June 24, 2013).

28. On November 11, 2013, Employee was again seen by Dr. Tortora. Employee denied any leg or back pain prior to the injury at work. (Homer Medical Center, Chart Note, November 27, 2013).
29. On December 12, 2013, Employee was seen by Brent Adcox, M.D. Employee told Dr. Adcox that while working on August 20, 2012, she heard a "boom," and raced downstairs to where a picture had fallen off the wall and was "braced" inside the handrail. She held the picture up to prevent it from breaking for what she felt was at least five minutes. During that time, the picture was "pushing her back" and she felt trapped under the picture. At that point, she began having pain down her legs and around her hips that progressively got worse over the next 2 to 3 weeks. Employee reported that she had a history of low back pain in the 1980s that resolved after an injection, and she had no pain from then until her work injury on August 12, 2012. Dr. Adcox reviewed an MRI and diagnosed severe stenosis at L4-5 with facet arthropathy at both L3-4 and L4-5. Dr. Adcox stated that while the majority of the pathology appeared to be degenerative, because she had no symptoms prior to the work injury, the work injury caused an exacerbation of the asymptomatic degenerative process.
30. On August 29, 2014, Employee was seen by Bruce McCormack, M.D., for a second independent medical evaluation (SIME). Dr. McCormack examined Employee, and reviewed her medical records and imaging studies as well as the security video. Employee told Dr. McCormack that she was injured on August 12, 2012 when she heard a loud "boom." She saw a picture hanging precariously and held it up until her manager, Mr. Pajak, could assist her. She continued to do her job and did not know she was hurt. Employee stated that two days after the injury she spoke to a "director," a woman and asked if there was a report of the incident. The director referred her to a doctor. Employee also told Dr. McCormack she had a second injury within a week when she held up a 350 pound generator while a coworker changed the tires.

Dr. McCormack noted Employee has a history of back pain and sciatica dating to the late 1990s, which would be expected to worsen with time. He diagnosed preexisting degenerative disc disease with stenosis and spondylolisthesis at L3-L5 with sciatica. He opined the substantial cause of her disability or need for medical treatment as "100% her pre-existing condition," and while it was possible Employee had a strain on August 20, 2012, it would have lasted only a few days and would not have been disabling. The incident shown on the video would not, in and of itself, cause a debilitating low back condition. Dr. McCormack noted that the month-long gap between the work incident and Employee seeking treatment, combined with slow onset of symptoms makes it likely it was a spontaneous flare of pain that frequently occurs with severe spinal stenosis. (Dr. McCormack, SIME Report, August 29, 2014).

31. On May 8, 2015, Employee's attorney withdrew as Employee's counsel. (Withdrawal of Attorney, May 8, 2015).
32. On May 12, 2015, Dr. Adcox performed an L4-5 laminectomy and decompression. (South Peninsula Hospital, Discharge Summary, May 16, 2015). This is the most recent medical record in Employee's file. (Observation).
33. On May 26, 2015, a prehearing conference was held to address the issues for the July 15, 2015 hearing. Employee participated telephonically. The board designee noted Employee's attorney had withdrawn, and explained to Employee when her documentary evidence needed to be filed, how to prepare a witness list and when it had to be filed, and what a hearing brief was and when her brief was due. (Prehearing Conference Summary, May 26, 2015).
34. On June 12, 2015, Employee was served with a notice of the July 15, 2015 hearing by both regular and certified mail. (Hearing Notice, June 12, 2015). Employee signed the return receipt for the certified mail on June 16, 2015. (Return Receipt).
35. Dr. Bald was deposed on June 25, 2015. He had reviewed Employee's medical records since his October 12, 2012 report, including the report of Dr. Adcox's May 12, 2015 surgery. Dr. Bald also reviewed the security video. He stated it was apparent from the video that Employee had not experienced any acute injury, and while the activity could have caused a very minor strain, a strain would not be consistent with the fact her symptoms did not begin until two weeks later. He stated the arthritis and disc bulge shown on the 1998 x-ray and CT

scan would be expected to progress and degenerate on their own even in the absence of any trauma. Dr. Bald, Deposition, June 25, 2015).

36. On July 8, 2015, Employee called the Division's office requesting a continuance of the July 15, 2015 hearing. She spoke to a workers' compensation officer who advised her to file a petition and orally request a continuance at the hearing. (ICERS Database, Phone Call Event, July 8, 2015).
37. On July 10, 2015, Employee called the Division's office and spoke with a workers' compensation technician about cancelling the July 15, 2015 hearing. The technician explained Employee would have to file a petition requesting cancellation of the hearing, and because the petition would be filed so close to the hearing, she needed to call in for the hearing and explain why she was seeking the cancellation. (ICERS Database, Phone Call Event, July 10, 2015).
38. Also on July 10, 2015, Employee called the Division's office and spoke to the chief of adjudications. Employee complained about Employer's attorney's aggressive behavior, and saying she wanted to petition to continue the July 15, 2015 hearing. The chief of adjudications faxed Employee a list of attorneys that represent injured workers. (ICERS Database, Phone Call Event, July 10, 2015).
39. On July 14, 2015, Employee filed a petition asking that the July 15, 2015 hearing be continued because she was "in a post-operative state (spinal surgery at the end of June)." She asked for a continuance until she was "well enough to concentrate on the issues." (Petition July 14, 2015).
40. On July 15, 2015, Employee called the Division's office at the time her hearing was scheduled and was transferred to the hearing room. Employee stated she had filed a petition for a continuance. The designated chair acknowledged the board had received her petition and explained it would be addressed when the hearing went on the record. Employee stated there should not be a hearing because she had "fulfilled her duty" by filing the petition. Employee then hung up. (Observation).
41. After going on the record, Employer objected to a continuance. The panel deliberated and concluded there was no evidence in the record to support the continuance requested by Employee, and her petition was orally denied. (Record). Because the petition for a continuance was denied, the hearing proceeded in Employee's absence. (Record).

42. At the hearing, Ronald Hagele, Employer's loss prevention manager, stated he was responsible for maintaining video from Employers security cameras. He confirmed the video filed with the board and viewed at the hearing is a true and correct copy of the video taken on August 20, 2012 by one of Employer's security cameras. (Hagele).
43. Mr. Pajak is one of the managers at Employer's Wasilla, Alaska store, and he was Employee's supervisor when she worked for Employer. He confirmed that he was the individual on the video that came to assist Employee. After Employee reported her injury, Mr. Pajak weighed the picture Employee had held against the wall and found that it weighed 16 ¼ pounds. Mr. Pajak explained Employee had been hired as a temporary employee to work in the camping department during the busy summer season. Because Employee worked in the camping department, she would not have been involved in assisting someone repair a generator. After the incident with the picture, Employee continued to work until the season ended. Under Employer's policies, any time a manager learns an employee may have been injured, the first priority is to obtain medical care if needed and then report the incident. During her employment, Employee did not report any injury to Mr. Pajak, and he found no record that she had reported an injury to any manager. (Pajak).

PRINCIPLES OF LAW

> **AS 23.30.001. Intent of the legislature and construction of chapter.** It is the intent of the legislature that
>
> . . . .
>
> (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).

> **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.
>
> . . .
>
> (e) The employee shall, after an injury, at reasonable times during the continuance of the disability, if requested by the employer or when ordered by the board, submit to an examination by a physician or surgeon of the employer's choice authorized to practice medicine under the laws of the jurisdiction in which the examination occurs, furnished and paid for by the employer. . . . .
>
> **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 is applicable to any claim for compensation under the workers' compensation statute, including medical benefits. *Id.*

Application of the presumption 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. See, e.g., *Tolbert v. Alascom, Inc.*, 973 P.2d 603, 610 (Alaska 1999). Medical evidence may be needed to attach the presumption of compensability in a complex medical case. *Burgess Constr. v. Smallwood*, 623 P.2d 312, 316 (Alaska 1981). In less complex cases, lay evidence may be sufficiently probative to establish the link. *VECO, Inc. v. Wolfer*, 693 P.2d 865, 871 (Alaska 1985). The employee need only 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). "In making the preliminary link determination, the Board may not concern itself with the witnesses' credibility." *Excursion Inlet Packing Co. v. Ugale*, 92 P.3d 413, 417 (Alaska 2004).

If the employee establishes the preliminary link, then the employer can rebut the presumption by presenting substantial evidence that demonstrates that a cause other than employment played a greater role in causing the disability or need for medical treatment or by substantial evidence that employment was not the substantial cause. *Runstrom v. Alaska Native Medical Center*, AWCAC Decision No. 150 (Mar. 25, 2011) at 7); *Atwater Burns Inc. v. Huit*, AWCAC Decision No. 191 (March 18, 2014). Substantial evidence" is the amount of relevant evidence a reasonable mind might accept as adequate to support a conclusion. *Miller v. ITT Arctic Services*, 577 P.2d 1044, 1046 (Alaska 1978). Because the employer's evidence is considered by itself and not weighed at this step, credibility is not examined at this point. *Veco, Inc. v. Wolfer*, 693 P.2d 865, 869-870 (Alaska 1985). If the presumption is raised and not rebutted, the Employee need produce no further evidence and the Employee prevails solely on the raised but un-rebutted presumption. *Williams v. State*, 938 P.2d 1065 (Alaska 1997). "If the employer rebuts the presumption, it drops out, and the employee must prove, by a preponderance of the evidence, that in relation to other causes, employment was the substantial cause of the disability, need for medical treatment, etc. Should the employee meet this burden, compensation or benefits are payable." *Runstrom* at 8.

> **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.

> **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. . . ..

> **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.

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.

8 AAC 45.070. Hearings
(a) Hearings will be held at the time and place fixed by notice served by the board under 8 AAC 45.060(e). A hearing may be adjourned, postponed, or continued from time to time and from place to place at the discretion of the board or its designee, and in accordance with this chapter.

(f) If the board finds that a party was served with notice of hearing and is not present at the hearing, the board will, in its discretion, and in the following order of priority,

(1) proceed with the hearing in the party's absence and, after taking evidence, decide the issues in the application or petition;

(2) dismiss the case without prejudice; or

(3) adjourn, postpone, or continue the hearing.

8 AAC 45.074. Continuances and cancellations
(a) A party may request the continuance or cancellation of a hearing by filing a

(1) petition with the board and serving a copy upon the opposing party; a request for continuance that is based upon the absence or unavailability of a witness

(A) must be accompanied by an affidavit setting out the facts which the party expects to prove by the testimony of the witness, the efforts made to get the witness to attend the hearing or a deposition, and the date the party first knew the witness would be absent or unavailable; and

(B) will be denied and the affidavit may be introduced at the hearing as the testimony of the absent witness if the opposing party stipulates that the absent witness would testify as stated in the affidavit;

(2) stipulation signed by all the parties requesting a continuance or cancellation together with evidence of good cause for the request.

(b) Continuances or cancellations are not favored by the board and will not be routinely granted. A hearing may be continued or cancelled only for good cause and in accordance with this section. For purposes of this subsection,

(1) good cause exists only when

. . . .

> (C) a party, a representative of a party, or a material witness becomes ill or dies;
> . . . .
>
> (N) the board determines that despite a party's due diligence, irreparable harm may result from a failure to grant the requested continuance or cancel the hearing;

8 AAC 45.142. Interest.
(a) If compensation is not paid when due, interest must be paid at the rate established in AS 45.45.010 for an injury that occurred before July 1, 2000, and 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.

ANALYSIS

1. Were the oral decisions denying the continuance and proceeding with hearing correct?

Continuances and cancellations are not favored by the board and are granted only for good cause. 8 AAC 45.074. When a party is medically incapacitated or recovering from a medical procedure, a continuance may be appropriate under either 8 AAC 45.074(b)(1)(C) or (N). However, as is clear from 8 AAC 45.074(a), a party must produce some evidence to establish good cause; an unsworn statement in a petition that is not supported by documentary evidence or sworn testimony is insufficient. In this case, there is no evidence in the record or any sworn testimony that Employee had surgery in June, how significant the surgery was, or how it might affect Employee's ability to participate in a hearing. The last medical record in the board's file relates to Employee's May 12, 2015 surgery. Employee spoke with both a workers' compensation officer and a workers' compensation technician about a continuance; they both told her she needed to file a petition *and* appear or call in for the hearing. Unfortunately, Employee did not "fulfill her duty" by merely filing the petition. Because Employee did not testify and produced no evidence in support of her petition, the decision denying the continuance was correct.

Because Employee hung up before the hearing began, a determination had to be made as to whether to proceed with the hearing in her absence. When a party is not present at a hearing but was served notice, 8 AAC 45.070(f) prescribes the various options. The first option, in order of priority, is to proceed with the hearing. Here, Employee was served notice of the hearing on June 12, 2015 by certified mail, and she signed the receipt for the hearing notice on June 16, 2015. Employee was properly served notice of the hearing. The decision to proceed with the hearing in her absence was correct.

2. Was the August 20, 2012 workplace incident the substantial cause of Employee's disability or need for medical treatment?

It is undisputed that Employee was Employer's employee, but Employer denies the August 20, 2012 incident was the substantial cause of Employee's disability or need for medical treatment. The presumption analysis under AS 23.30.120 applies to questions of causation. To attach the presumption, an employee must first establish a preliminary link between his or her injury and the employment. The preliminary link requires only "some," or "minimal," relevant evidence. In complex medical cases, medical evidence may be needed to establish the link, but in simpler cases lay evidence is sufficient. In determining whether the presumption is met, credibility is not considered nor is the evidence weighed against competing evidence.

Often it is within a lay person's experience whether a particular mechanism of injury might cause a specific condition. In those cases medical evidence is not needed to raise the presumption. In other cases, such as this one, medical education or training is needed to establish a connection between a mechanism of injury and a medical condition. Here, Employee successfully raised the presumption through the reports of Dr. Cohen, Dr. Tortora, and Dr. Adcox. In his October 31, 2012 report, Dr. Cohen opined the work incident most likely caused a worsening of Employee's L4-5 disc bulge. In her June 24, 2013 report, Dr. Tortora opined the injury was related to what happened at work, and on December 12, 2013, Dr. Adcox stated the work injury caused an exacerbation of Employee's preexisting degenerative condition.

To rebut the presumption, Employer was required to present substantial evidence demonstrating employment was not the substantial cause or that a cause other than employment played a greater

role in causing Employee's disability and need for medical treatment. Again, credibility is not considered nor is the evidence weighed against competing evidence at this step. Employer successfully rebutted the presumption through Dr. Bald's EME reports and testimony and Dr. McCormack's SIME report. In his October 12, 2012 report, Dr. Bald stated the cause of Employee symptoms was the calcified disc and degenerative disc disease. In his deposition, after viewing the security video, Dr. Bald testified that Employee had not experienced an acute injury. While she could have incurred a minor strain, that would not be consistent with symptoms that did not arise until two weeks later. In his SIME report, Dr. McCormack noted Employee's long history of back pain, and stated the substantial cause of her disability and need for medical treatment was "100 % her preexisting condition."

Because Employer rebutted the presumption, Employee needed to prove by a preponderance of the evidence that the work injury was the substantial cause of her disability or need for medical treatment. She did not do so. Employee is clearly a poor historian. The medical history she gave to doctors varied widely, as did her description of August 20, 2012 event.

The description of the incident that Employee gave Dr. Cohen is significantly at odds with the security video. Employee told Dr. Cohen that she held the picture in a hyperextended posture for five to fifteen minutes before help arrived. In reality, she placed her hands on the picture, which remained suspended on the wall, at about shoulder height for less than 20 seconds before help arrived. She told Dr. Cohen she did not recall symptoms that day, but her low back pain worsened over the next few days. Employee told Dr. Cohen she had no significant low back or lower extremity symptoms before the August 20, 2012 incident. In reality, she had back problems since at least 1998, and even had a workers' compensation claim for the low back injury she suffered while working for the school district. Based the medical history provided by Employee, Dr. Cohen concluded the work incident caused a worsening of the disc bulge because she had been completely asymptomatic prior to the incident. Because Dr. Cohen's opinion is based on incorrect facts, it is given little weight.

Employee described the incident to Dr. Tortora stating the picture had fallen off the wall and she was underneath pushing up with both arms. The video clearly shows that Employee was never

underneath the picture pushing up. Employee told Dr. Tortora that she did not have symptoms initially, but they began about two weeks later and gradually got worse. Dr. Tortora apparently reviewed Employee's past medical records at Homer Medical Center in concluding Employee had no back or leg weakness prior to the work incident, but there is nothing to suggest Dr. Tortora was aware Employee had been treated elsewhere for low back problems. Consequently, her opinion was based on incomplete and incorrect facts. Additionally, Dr. Tortora's refusal to view the security video suggests she had no interest in any facts that might conflict with her opinion. For those reasons, Dr. Tortora's opinion is given no weight.

Employee told Dr. Adcox she held the picture up for what felt like five minutes while the picture was pushing her back and she felt trapped under the picture. Again, the video clearly shows Employee held the picture against the wall with slight horizontal pressure for less than 20 seconds; she was never trapped underneath the picture. Employee told Dr. Adcox she began having pain immediately, and it progressively got worse over the next two to three weeks. Employee told Dr. Adcox she had a history of low back pain going back to 1980, well before any of the medical records filed in this case. However she stated she had not had any pain since then, which is clearly contrary to the medical records. Dr. Adcox's conclusion that Employee had suffered an exacerbation of an asymptomatic degenerative process is based on an incomplete and incorrect medical history, and his opinion is given little weight.

In contrast, because both Dr. Bald and Dr. McCormack reviewed the medical records relating to Employee's prior low back problems, and both doctors reviewed the security video, their opinions are given more weight. Both doctors acknowledged that the actions shown on the video could have caused a minor strain at most. However, Dr. Bald explained that if Employee had suffered such a strain, she would have had symptoms immediately, not weeks later. Because she did not exhibit symptoms immediately, the incident did not even cause a minor strain. Dr. Bald and Dr. McCormack opined the work incident was not the substantial cause of Employee's disability and need for medical treatment. Their opinions are given the greatest weight.

Employee did not prove by a preponderance of the evidence that the August 20, 2012 work incident was the substantial cause of her disability or need for medical treatment. Her claim will be denied.

CONCLUSIONS OF LAW

1. The oral decisions denying the continuance and proceeding with hearing were correct.
2. The August 20, 2012 workplace incident is not the substantial cause of Employee's disability or need for medical treatment.

ORDER

1. Employee's July 14, 2015 petition for a continuance is denied.
2. Employee's January 2, 2013 claim is denied.

Dated in Anchorage, Alaska on July 30, 2015.

ALASKA WORKERS' COMPENSATION BOARD

_____

Ronald P. Ringel, Designated Chair

_____

Stacy Allen, 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 board 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 ANGELINE L. EDGE, employee / claimant; v. SPORTSMAN'S WAREHOUSE, INC., employer; NATIONAL FIRE INSURANCE COMPANY, insurer / defendants; Case No. 201214122; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties by First-Class U.S. Mail, postage prepaid, on July 30, 2015.

_____

Pamela Murray, Office Assistant