ALASKA WORKERS' COMPENSATION BOARD

P.O. Box 115512

Juneau, Alaska 99811-5512

THOMAS R. O'CONNELL,	)	
	)	INTERLOCUTORY
Employee,	)	DECISION AND ORDER
Claimant,	)	ON RECONSIDERATION
	)	
v.	)	AWCB Case No. 201014260
	)	
CHEVRON CORPORATION,	)	AWCB Decision No. 15-0124
	)	
Self-Insured Employer,	)	Filed with AWCB Anchorage, Alaska
Defendant.	)	on September 25, 2015
	)	

Thomas O'Connell's (Employee) petition for reconsideration of *O'Connell v. Chevron Corporation,* AWCB Decision No. 15-0108 (August 28, 2015) (*O'Connell I*) was heard on the written record in Anchorage, Alaska, on September 16, 2015. The matter was heard by a two-member panel, a quorum under AS 23.30.005(f). Attorney Eric Croft represented Employee. Attorney Robert McLaughlin represented Employer. The record closed on September 16, 2015.

ISSUE

Employee contends *O'Connell I* should be reconsidered in consideration of Jason Doppelt, M.D.'s May 5, 2015 opinion concurring with physical therapist Columb's recommendation physical therapy is reasonable and necessary for right shoulder strengthening and stabilization, joint mobility and range of motion to improve function with activities of daily living, physical therapy is reasonable and necessary one time per week for up to six months, and it is unreasonable to limit Employee's treatment to one visit per month. Employee contends Dr. Doppelt's opinion creates a medical dispute regarding continuing and future physical therapy

and the finding a dispute does not exist on the extent of physical therapy needed should be reconsidered.

Employer opposes Employee's petition for reconsideration. Employer contends Employee's arguments supporting reconsideration assumes Employee's deposition, and physical therapist Columb's and Dr. Doppelt's opinions were not reviewed because they were not cited. Employer contends it is not disputed Employee is medically stable and Employer is not liable for Employee's palliative care unless an exception applies. Employer contends none of the three exceptions apply to Employee and Employee's argument evidence regarding compensability of ongoing physical therapy was overlooked is moot. Employer contends the evidence cited by Employee highlights Dr. Doppelt's uncertainty regarding Employee's need for ongoing physical therapy and Dr. Doppelt's uncertainty does not provide a basis from which to conclude a dispute exists. Employer contends the finding a self-directed home exercise program rather than formal physical therapy is all Employee needs for future care was correct. Employer contends Employee's request for reconsideration should be denied.

Should *O'Connell I* be reconsidered?

FINDINGS OF FACT

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

1) On August 28, 2015, *O'Connell I* made the following findings of fact:

> 1. On April 7, 2010, Employee was working as an oil well services field supervisor for Employer and injured his right shoulder during fire training. He was donning gear, reached behind his back to grab a strap and felt a popping sensation and pain in his right arm. (Report of Occupational Injury or Illness, April 7, 2010.)
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> 2. On September 8, 2012, at Employer's request, Keith Holley, M.D., evaluated Employee. (EME Report, Dr. Trumble, December 12, 2012.)
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> 3. On December 12, 2012, Thomas Trumble, M.D., performed an evaluation on Employer's behalf (EME). Dr. Trumble found the two surgeries Employee received for his work related right shoulder injury were reasonable, but no additional medical treatment was necessary and actually may be harmful to Employee's function and symptoms. He noted, "It is unfortunate that he has had to have two surgeries for this condition, which again is somewhat unusual for an

individual without a severe full thickness and retracted rotator cuff tear." Employee was found medically stable. Dr. Trumble imposed no restrictions "given the excellent quality of the surgery that was performed." (EME Report, Dr. Trumble, December 12, 2012.)

4. On December 2, 2012, Employee returned to work. (ICERS, Injuries Screen, Accident Site Information.)

5. Employee required three surgical procedures on his right shoulder due to his work injury, the last being a right shoulder arthroscopy with mini open biceps tenodesis on April 4, 2013. The third procedure was performed after Employee treated with an extensive course of nonsurgical interventions, including multiple courses of physical therapy and a corticosteroid injection in his bicipital sheath. All treatments were provided to address Employee's chronic right shoulder pain and limited strength and mobility. (Operative Note, Henry Krull, M.D., April 4, 2013.)

6. On July 17, 2013, Employer controverted temporary total disability benefits, permanent partial impairment benefits greater than three percent, and medical benefits based upon Dr. Trumble's December 15, 2012 opinion Employee's April 7, 2010 injury is not the substantial cause of Employee's ongoing disability or need for medical treatment. (Controversion Notice, July 17, 2013.)

7. On August 6, 2013, Jason Doppelt, M.D., evaluated Employee's right shoulder. He was aware Employee had extensive problems with his right shoulder and had undergone three surgical procedures. The first was a superior labral repair, which failed. In 2012, the second surgery was revision of the superior labral repair. Employee's most recent surgery was in 2013, which was a mini open biceps tenodesis. Employee reported "persistent pain since his last surgery in April of 2013." Dr. Doppelt found Employee's right shoulder's range of motion severely compromised. Radiographs of Employee's shoulder showed a "lucency in the proximal humerus likely consistent with placement of interference screw for biceps tenodesis in the intertubercular groove." There was no degenerative change in the glenohumeral joint, but there was evidence of prior partial distal clavicle excision with some remaining bone, with the most superiorly along the joint. Dr. Doppelt diagnosed right shoulder stiffness and pain, status post biceps tenodesis. The main pain generator was determined to be Employee's shoulder stiffness, for which Dr. Doppelt ordered Employee to work on range of motion for two months with physical therapy. If physical therapy did not work, Dr. Doppelt would consider injections or surgery. Because Employee had three previous surgeries, Dr. Doppelt stated there is a chance additional surgery is not in Employee's best interest and Employee may not have pathology that can be corrected with surgery. Therefore, non-operative pain management was the recommended course of treatment. (Chart Note, Dr. Doppelt, August 7, 2013.)

8. On October 8, 2013, Employee's range of motion had improved a small degree; although his pain had not. Dr. Doppelt did not advocate injections because in the past Employee received no more than three days' relief. The treatment options discussed were physical therapy and injections, neither of which resolved Employee's pain, and revision surgery. Employee was going to think about his options and "get back" to Dr. Doppelt. (Chart Note, Dr. Doppelt, October 11, 2013.)

9. On November 26, 2013, Employee continued to have persistent pain in his right shoulder, and was interested in an injection. Dr. Doppelt was not certain an injection would be beneficial if Employee's pain was generated at his tenodesis site. If Employee did poorly in the future, the next step would be open exploration of his biceps tenodesis site with debridement and biceps tendon release. (Chart Note, Dr. Doppelt, November 29, 2013.)

10. Employee had physical therapy from February 20, 2014 to April 24, 2015. (Northern Michigan Physical Therapy Daily Notes / Billing Sheets, David Columb, DPT, OCS, MT (ASCP), February 20, 2014 through April 24, 2015.)

11. On May 7, 2014, Employer controverted medical treatment, including physical therapy services. Employer relied upon Dr. Trumble's December 15, 2012 opinion work is not the substantial cause of Employee's current condition or need for medical treatment. (Controversion Notice, May 5, 2014.)

12. On January 20, 2015, considering Employee's multiple previous surgeries and cardiac condition, Dr. Doppelt recommended continued non-operative management for Employee's right shoulder pain. Employee was "interested in another round of physical therapy" and finding it a reasonable option, Dr. Doppelt ordered continued physical therapy. (Chart Note, Dr. Doppelt, January 21, 2015.)

13. On January 22, 2015, during physical therapy, Employee complained of continuing shoulder pain, which increased with activity. Employee noted improved mobility and overall function continued to progress. Physical Therapist Columb noted Employee tolerated treatment "fairly well with decreased frequency and intensity of exacerbations;" however, despite Employee's persistent pain and limitations, he continued to progress with improved mobility, increase strength and function, and improved quality of life. Employee's problems, which physical therapy intended to address, included pain, tenderness, and increased muscle tension; decreased glenohumeral joint mobility and range of motion; decreased strength and stability of the shoulder girdle; and difficulty with activities of daily living including bathing, grooming, dressing, sleeping and lifting. The treatment plan provided for therapy one to two times a week for 12 to 16 months and included therapeutic exercises for range of motion, strength, endurance, and stability; therapeutic activities specific to activities of daily living; neuromuscular rehabilitation to reeducate muscles and improve coordination;

manual therapy; iontophoresis; and patient education to teach a home exercise program and postural training. (Physical Therapy Recertification Note, Columb, January 22, 2015.)

14. On February 5, 2015, Employee filed a claim for medical treatment recommended by Dr. Doppelt, medical costs, transportation costs, and attorney fees and costs. He also filed a petition for an SIME. (Workers' Compensation Claim, February 5, 2015; Petition for SIME, February 5, 2015.)

15. On April 2, 2015, therapist Columb opined continued physical therapy is reasonable and necessary for Employee's recovery. Employee's treatment plan included right shoulder strengthening and stabilization, joint mobility and range of motion to improve function with activities of daily living to include modalities as needed for symptom management. Treatment would be one time per week, up to six months, and it is unreasonable to limit Employee's treatment to one visit per month. Mr. Columb indicated the physical therapy Employee had received improved and was likely to continue to improve his condition. (Responses to Mr. Croft's Questions, David Columb, April 2, 2015.)

16. On May 5, 2015, Dr. Doppelt concurred with physical therapist Columb's opinions that physical therapy once a week for up to six months is reasonable and likely to improve Employee's condition, and agreed it is unreasonable to limit Employee's physical therapy to one visit per month. (Responses to Mr. Croft's Questions, Dr. Doppelt, May 5, 2015.)

17. On April 6, 2015, at Employer's request, Amit Sahasrabudhe, M.D., evaluated Employee (EME). Dr. Sahasrabudhe noted Employee has had three separate surgeries to the right shoulder and none have helped in any significant manner. Employee complained of pain in the same location he did when injured in 2010, the anterior aspect of the right shoulder. Dr. Sahasrabudhe reported, "therapy is helping with his pain, as well as helping him sleep." Dr. Sahasrabudhe described Employee's current symptoms to include Employee cannot lift his right arm above shoulder level and has aching pain in the right shoulder.

> He states that he has no difficulty carrying a shopping bag or briefcase, using a knife to cut food, or doing social activities. He has mild difficulty with work/activities of daily living. He has moderate difficulty opening a tight or new jar, washing his back, and sleeping because of his shoulder pain. He has severe difficulty doing recreational activities. He is unable to do heavy household chores. He states he is unable to do his job as an offshore oil platform operator. He has no difficulty playing a guitar. He notes that his pain level is decreasing but made worse by pushing, pulling, and lifting. On average, his pain is a 3.5/10, at its best 2/10, and at its worst 7/10.

Dr. Sahasrabudhe chronicled Employee's medical history acknowledging he sustained a work-related injury on April 7, 2010, and, as a result, was diagnosed about one year later with a SLAP tear and has undergone three separate surgeries; the first, a SLAP repair; the second, a revision SLAP repair along with a subacromial decompression and distal clavicle resection; and, the third, a mini-open biceps tenodesis. Employee reported none of the surgeries helped him and he continues to experience anterior right shoulder pain and limited function, including range of motion. Dr. Sahasrabudhe noted a discrepancy between Employee's range-of-motion ability described in physical therapy progress notes, and exhibited upon Dr. Sahasrabudhe examination. Dr. Sahasrabudhe found Employee's persistent symptoms could have been predicted considering the following:

> The orthopedic literature does not support SLAP repairs in individuals generally over the age of 40. It could have therefore been predicted by Mr. O'Connell's age alone that a SLAP repair, let alone a revision SLAP repair, would not have been successful.
>
> Furthermore, Mr. O'Connell has a history of chronic tobacco use, which increases the likelihood of soft tissue not healing. In other words, it again could have been predicted that a SLAP repair would have failed not once but twice in Mr. O'Connell because of his history of smoking. Nonetheless, he somehow underwent two separate work related SLAP repairs. Thereafter, Dr. Trumble indicated, during the Independent Medical Examination of December 15, 2012, that the mechanism of injury of a single reaching activity would not be expected to cause the constellation of symptoms that Mr. O'Connell presented with. He further indicates that it is unfortunate that Mr. O'Connell has had to have two surgeries for a condition, which is somewhat unusual for an individual without a severe full thickness and retracted rotator cuff tear. Additional surgery would be noted to cause further disability and would be unlikely to improve Mr. O'Connell's symptoms and function, which clearly appears to be the case. No further surgical intervention is being recommended at this time for Mr. O'Connell. Physical therapy is being recommended by Dr. Doppelt.

Dr. Sahasrabudhe concluded Employee's right shoulder complaints are related to subjective pain and inability to do overhead activities, which outweigh objective findings on physical examination. Despite Employee's three separate right shoulder surgeries, Dr. Sahasrabudhe found no evidence of right upper extremity or shoulder girdle muscle atrophy when compared to Employee's left side. Additionally, Dr. Sahasrabudhe found normal symmetric biceps contour. He found no significant objective abnormal finding on physical examination that correlates with Employee's subjective complaints. Dr. Sahasrabudhe identified the following causes of Employee's right shoulder pain: (1) age and degenerative joint disease; (2) April 7, 2010 work-related incident; and (3) history of smoking.

Dr. Sahasrabudhe opined the most likely substantial cause of Employee's right shoulder symptoms are Employee's age, degenerative changes, and history of smoking. Dr. Sahasrabudhe noted "smokers tend to have poorer pain patterns compared to the non-smoking population." Dr. Sahasrabudhe opined the treatment Employee "has received to date was not necessarily completely reasonable or necessary." Dr. Sahasrabudhe rationalizes his opinion based upon orthopedic literature, which does not support SLAP repairs in individuals over 40 years old, and finds no further treatment for Employee's right shoulder reasonable or necessary. Dr. Sahasrabudhe stated:

> None of the three surgeries have helped him in any way. It would be difficult to conclude that going to physical therapy now, five years after the original injury, status post three surgeries, status post multiple physical therapy sessions after each surgery, would in some way benefit Mr. O'Connell today. He has had ample opportunity during multiple courses of physical therapy over the past five years to learn a home exercise program, which he can maintain on his own. There is no orthopedic indication for further active treatment regarding Mr. O'Connell's right shoulder/work related incident of April 7, 2010.
>
> In my opinion, to a reasonable degree of medical probability, there are alternatives available for ongoing treatment recommendations. Specifically, I recommend a self-directed home exercise program. (EME Report, Dr. Sahasrabudhe, April 6, 2015.)

18. On April 28, 2015, Dr. Doppelt responded to Employer's April 22, 2015 inquiry. Dr. Doppelt reviewed Dr. Sahasrabudhe's April 6, 2015 EME report, and agreed with some of the findings. He agreed no additional intervention is presently needed and an unsupervised home physical therapy regimen is a reasonable next step. He stated, "unfortunately," no additional orthopedic interventions especially from surgical standpoint will be beneficial. Dr. Doppelt disagreed with Dr. Sahasrabudhe's opinion the initial round of surgery was unnecessary and a failure. Dr. Doppelt acknowledged success rates are decreased in the over 40 population; however, if tissue quality allows, repair is indicated. He did not think surgery was absolutely contraindicated in the over 40 population. Had Dr. Doppelt been Employee's treating physician, the second surgery would have been a biceps tenodesis after the failed SLAP repair. Dr. Doppelt found Employee has done poorly. (Response to Mr. McLaughlin's April 22, 2015 Note, Dr. Doppelt, April 28, 2015.)

19. On May 19, 2015, Employee withdrew his petition for an SIME and reserved his right to request an SIME at any time in the future pursuant to AS 23.30.095(k). (Withdrawal of Petition for SIME, May 19, 2015.)

20. On August 21, 2015, the parties filed a stipulation. They agreed and stipulated as follows:

> 1. A dispute regarding the compensability of physical therapy treatment exists between the employee's attending physician and the employer's IME physician.
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> 2. The dispute referenced above, concerns the compensability of ongoing physical therapy treatment under AS 23.30.095.
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> 3. The employee's claim for additional medical treatment is set for hearing on September 29, 2015. The parties recognize that should a second IME be scheduled, the hearing in late September will be postponed pending conclusion of the SIME process.
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> 4. The parties recognize that a dispute exists that might trigger a Board ordered SIME under AS 23.30.095(k). The dispute notwithstanding, the parties request that a second IME not be ordered so that this matter can proceed to hearing on the compensability issues set forth above.
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> 5. The parties knowingly waive their right to have a second IME under AS 23.30.095(k), regarding the disputed physical therapy services. (Stipulation, July 21, 2015.)

> 21. On August 19, 2015, Robert McLaughlin asserted he believed Employer's change of EME physician from Dr. Holley to Dr. Trumble was based on a referral. Eric Croft, on behalf of Employee, stated even if Employer's change of physician from Dr. Trumble to Dr. Sahasrabudhe is an excessive change of physician, Employee waives any objection he may have to an excessive change of physician and Dr. Sahasrabudhe's April 6, 2015 EME report can be considered and Employee will not request the report be excluded from the record. (Record.)

(*O'Connell I.*)

2) On April 3, 2015, Employee testified for approximately one year he had been attending physical therapy once a week. Treatment involved lifting, range of motion, stretching and hands-on shoulder manipulation. Employee testified he does physical therapy at home, in addition to attending physical therapy with his therapist. Attending physical therapy enables him to use equipment he does not have at home such as pulley systems, weights, and a stationary bicycle with handlebars that move back and forth. If Employee had the equipment, he believed he could perform the required therapy at home or in a gym. However, he would not be able to do manipulation, or passive range of motion exercises the therapist performs with Employee. One of the benefits Employee receives from physical therapy is elimination of pain. He is able to move his arm "into areas where I couldn't move before without -- without the pain hitting, and I

can actually sleep." He's able to sleep at night, rollover, and not wake up. The tightness and tension he experienced all the time prior to physical therapy has been relieved. (Deposition, Thomas O'Connell, April 3, 2015.)

3) On May 5, 2015, upon review of therapist Columb's April 2, 2015 responses to Mr. Croft's April 1, 2015 questions, Dr. Doppelt concurred with therapist Columb that physical therapy once a week for up to six months is reasonable and likely to improve Employee's condition and agreed with therapist Columb's opinion it is unreasonable to limit Employee's treatment to one visit per month. (Responses to Mr. Croft's April 28, 2015 Questions, Dr. Doppelt, May 5, 2015.)

4) On September 9, 2015, Employee filed a timely petition requesting reconsideration of *O'Connell I* and requested the decision be modified to find a dispute exists regarding reasonable and necessary physical therapy. Employee does not request reconsideration of *O'Connell I*'s determination a SIME is not necessary on this limited issue. (Petition for Reconsideration of 8/28/2015 Interlocutory Decision and Order, September 9, 2015.)

5) On September 11, 2015, Employer opposed Employee's petition for reconsideration of *O'Connell I.* (Opposition to Petition for Reconsideration of Interlocutory Decision and Order, September 11, 2015.)

PRINCIPLES OF LAW

> **AS 23.30.001. Intent of the legislature and construction of chapter.** It is the intent of the legislature that
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> > (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 . . . employers. . . .
> >
> > (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.
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> **AS 23.30.095. Medical treatments, services, and examinations**. . . .
> . . . .
>
> (k) In the event of a medical dispute regarding determinations of causation, medical stability, . . . 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.
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> **AS 23.30.110. Procedure on claims**. . . .
> . . . .
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> (g) An injured employee claiming or entitled to compensation shall submit to the physical examination by a duly qualified physician which the board may require. The place or places shall be reasonably convenient for the employee. The physician or physicians as the employee, employer, or carrier may select and pay for may participate in an examination if the employee, employer, or carrier so requests. Proceedings shall be suspended and no compensation may be payable for a period during which the employee refuses to submit to examination.

The Alaska Workers' Compensation Appeals Commission (AWCAC) in *Bah v. Trident Seafoods Corp.,* AWCAC Decision No. 073 (February 27, 2008) addressed the board's authority to order an "SIME" under AS 23.30.095(k) and AS 23.30.110(g). With regard to §095(k), the AWCAC referred to its decision in *Smith v. Anchorage School District,* AWCAC Decision No. 050 (January 25, 2007), at 8:

> [t]he statute clearly conditions the employee's right to an SIME . . . upon the existence of a medical dispute between the physicians for the employee and the employer.

The AWCAC further stated in *dicta*, before ordering an SIME it is necessary to find the medical dispute is significant or relevant to a pending claim or petition and the SIME would assist the board in resolving the dispute. *Bah* at 4.

The AWCAC further outlined the board's authority to order an SIME under §110(g), as follows:

> [T]he board has discretion to order an SIME when there is a significant gap in the medical or scientific evidence and an opinion by an independent medical examiner or other scientific examination will help the board in resolving the issue before it. (*Id.* at 5).

Under either §095(k) or §110(g), the AWCAC noted the purpose of ordering an SIME is to assist the board, and is not intended to give employees an additional medical opinion at the expense of

employers when employees disagree with their own physician's opinion (*id.*). When deciding whether to order an SIME, the board typically considers the following criteria, though the statute does not require it:

1) Is there a medical dispute between Employee's physician and an EME?

2) Is the dispute significant? and

3) Will an SIME physician's opinion assist the board in resolving the disputes?

Deal v. Municipality of Anchorage (ATU), AWCB Decision No. 97-0165 at 3 (July 23, 1997). *See also*, *Schmidt v. Beeson Plumbing and Heating*, AWCB Decision No. 91-0128 (May 2, 1991). Accordingly, an SIME pursuant to §095(k) may be ordered when there is a medical dispute, or under §110(g) when there is a significant gap in the medical or scientific evidence.

> **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 in 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. . . .

Considering the broad procedural discretion granted in AS 23.30.135(a), wide discretion exists under AS 23.30.095(k) and AS 23.30.110(g) to consider any evidence available when deciding whether to order an SIME or other medical evaluation to assist in investigating and deciding medical issues in contested claims, to best "protect the rights of the parties."

> **AS 44.62.540. Reconsideration.** (a) The agency may order a reconsideration of all or part of the case on its own motion or on petition of a party. To be considered by the agency, a petition for reconsideration must be filed with the agency within 15 days after delivery or mailing of the decision. The power to order a reconsideration expires 30 days after the delivery or mailing of a decision to the respondent. . . .
>
> (b) The case may be reconsidered by the agency on all the pertinent parts of the record and the additional evidence and argument that are permitted, or may be assigned to a hearing officer. . . .

AS 44.62.540 limits authority to reconsider and correct a decision under this section to 30 days. *George Easley Co. v. Lindekugel*, 117 P.3d 734, 743 n. 36 (Alaska 2005).

ANALYSIS

Should *O'Connell I* be reconsidered?

Employee's timely petition requesting reconsideration contends *O'Connell I* erred when it did not consider Dr. Doppelt's May 15, 2015 opinion which concurs with therapist Columb's recommendation Employee needs continuing physical therapy assistance. Employee contends there is a medical dispute regarding continuing and future physical therapy. Employee acknowledges he can perform some portion of his physical therapy regime at home, but there are parts of his therapy he cannot do without help. For example, he cannot perform his own manipulations, and portions of his therapy require specialized equipment he does not have at home.

Employee seeks medical benefits for his right shoulder, injured while working for Employer in 2010. The parties agree a medical dispute exists; however, they have requested an SIME not be ordered so their dispute can proceed to hearing on compensability of past medical treatment and continuing, future physical therapy. At hearing on the merits determinations will be made whether past medical treatment was reasonable and necessary, if continued physical therapy is reasonable and necessary and, if so, is it unreasonable to limit physical therapy treatment to the permissible treatment under the frequency standards. *O'Connell I* did not order an SIME.

Employee experiences persistent shoulder pain due to shoulder stiffness. Dr. Doppelt ordered non-operative management and continued physical therapy. Physical therapist Columb developed a treatment plan on January 22, 2015, which called for physical therapy one to two times per week for 12 to 16 months. In addition to many other therapy modalities, the plan included patient education to teach Employee a home exercise program and postural training.

Dr. Sahasrabudhe, Employer's medical evaluator, identified three causes for Employee's right shoulder pain: age and degenerative joint disease; April 7, 2010 work incident; and Employee's smoking history. Of these three causes, he opined "the most likely" substantial cause of Employee's right shoulder symptoms are Employee's age, degenerative changes, and history of smoking. However, Dr. Sahasrabudhe opined Employee needed no further physical therapy

except, perhaps, a self-directed home exercise program. Dr. Sahasrabudhe felt Employee had ample time and opportunity during multiple courses of physical therapy since 2010 to learn a home exercise program Employee could maintain on his own.

Employee's treating physician Dr. Doppelt ordered several rounds of physical therapy, the last being on January 20, 2015, after Employee expressed interest in undergoing additional physical therapy. On April 2, 2015, Dr. Doppelt stated treatment improved Employee's condition, is likely to continue to improve it, and it is unreasonable to limit treatment to one visit per month. On April 28, 2015, Dr. Doppelt agreed with Dr. Sahasrabudhe that no additional medical intervention is presently needed and an unsupervised home physical therapy program is a reasonable next step for Employee's treatment. On May 15, 2015, Dr. Doppelt, after reviewing therapist Columb's recommendations, concurred that physical therapy once per week for up to six months is reasonable and likely to improve Employee's condition and that it is unreasonable to limit physical therapy to one visit per month.

O'Connell I relied upon Dr. Doppelt's April 28, 2015 opinion in determining a medical dispute does not exist between Employee's treating physician and an EME. (*Deal*; *Schmidt.*) *O'Connell I* could have relied upon Dr. Doppelt's May 15, 2015 opinion and found a dispute exists. However, the dispute is not significant and an SIME would not assist in resolving the dispute. (*Bah*; *Deal*; *Schmidt.*)

An issue for hearing is what, if any future physical therapy is reasonable and necessary. Although Dr. Doppelt does not agree with all Dr. Sahasrabudhe's findings, he agrees an unsupervised home physical therapy regimen is reasonable and necessary medical treatment. Dr. Sahasrabudhe asserts Employee had ample opportunity during multiple courses of physical therapy over the past five years to learn a home exercise program, which he can maintain on his own. As of January 22, 2015, patient education to teach a home exercise program and postural training was a therapy modality included in Employee's treatment plan. After agreeing with Dr. Sahasrabudhe's recommendation for unsupervised home physical therapy on April 28, 2015, on May 15, 2015, Dr. Doppelt stated that physical therapy once a week for up to six months is reasonable and likely to improve Employee's condition, and that it is unreasonable to limit

Employee's treatment to one visit per month. The record contains no affirmative evidence Employee was trained to engage in a self-directed home exercise program. Whether or not Employee has been sufficiently educated to carry through with a self-directed home exercise program is a factual finding to be determined at hearing. Although this is a gap in the medical evidence, it is not necessary to order an SIME to fill this evidence gap. (*Bah.*)

The record contains sufficient evidence to determine if past medical treatment provided and recommended by Dr. Doppelt was reasonable and necessary. There exists a dispute between physical therapist Columb and EME Sahasrabudhe regarding Employee's need for ongoing physical therapy. Physical therapist Columb is not an "attending physician" and his opinion cannot be considered in determining if a medical dispute exists for purposes of an SIME. (AS 23.30.095) Whether there is a dispute regarding continuing or future physical therapy between Employee's attending physician and the EME is questionable. If there is a dispute, it is not a significant medical dispute, nor will an SIME opinion assist in reaching a determination on the case's merits. (*Deal*; *Schmidt*; *Harvey.*) Accordingly, an SIME will not be ordered.

CONCLUSION OF LAW

O'Connell I shall not be reconsidered.

ORDER

1) An SIME will not be ordered under AS 23.30.095(k).
2) Jurisdiction shall be retained to resolve the parties disputes.

[Dated in Anchorage, Alaska on September 25, 2015.

ALASKA WORKERS' COMPENSATION BOARD

_____

Janel Wright, Designated Chair

_____

Donna Phillips, Member

PETITION FOR REVIEW

A party may seek review of an interlocutory or other non-final Board decision and order by filing a petition for review with the Alaska Workers' Compensation Appeals Commission. Unless a petition for reconsideration of a Board decision or order is timely filed with the board under AS 44.62.540, a petition for review must be filed with the commission within 15 days after service of the board's decision and order. If a petition for reconsideration is timely filed with the board, a petition for review must be filed within 15 days after the board serves the reconsideration decision, or within 15 days from date the petition for reconsideration is considered denied absent Board action, whichever is earlier.

RECONSIDERATION

A party may ask the board to reconsider this decision by filing a petition for reconsideration under AS 44.62.540 and in accordance 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 accordance 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 Interlocutory Decision and Order in the matter of Thomas R. Oconnell, employee / claimant v. Chevron Corporation, employer; , insurer / defendants; Case No. 201014260; 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 September 25, 2015.

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Pamela Murray, Office Assistant