ALASKA WORKERS' COMPENSATION BOARD

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

MARK MCALPINE, Employee, Petitioner, v. DENALI CENTER, Employer, and SENTRY INSURANCE, A MUTUAL COMPANY, Insurer, Respondents.	)	INTERLOCUTORY DECISION AND ORDER AWCB Case No. 200906835 AWCB Decision No. 15-0132 Filed with AWCB Fairbanks, Alaska on October 8, 2015

Mark McAlpine's (Employee) December 12, 2014 petition to vacate *McAlpine v. Fairbanks Memorial Hospital*, AWCB Decision No. 12-200 (November 16, 2012) was heard in Fairbanks, Alaska on July 16, 2015, a date selected on April 13, 2015. Attorney Zane Wilson represented Denali Center (Employer). Non-attorney representative Kelly Giese represented Employee, who also appeared and testified on his own behalf. Adjuster Molly Friess appeared and testified on Employer's behalf. The record closed at the conclusion of the hearing on July 16, 2015.

ISSUES

On direct examination, Employee testified regarding a conversation he and Paul Jensen, M.D., had at Dr. Jensen's office concerning the signature that appears on a February 17, 2012 letter sent from Employer's adjuster. Employer objected to Employee's testimony on the basis of hearsay.

Employee did not offer an exception to Employer's objection or otherwise respond. It is presumed Employee contends Employer's objection should be overruled.

1) Should portions of Employee's testimony be disregarded on the basis of hearsay?

Employee contends "mistakes" were made at the hearing in *McAlpine III*, such as relying on Dr. Jensen's March 1, 2012 written opinion, which Employee contends was not personally signed by Dr. Jensen. He further contends *McAlpine III* erred because "out of four physicians[,] only Dr. Joosse contended [Employee] was not medically stable." Finally, Employee contends *McAlpine III* should not have relied on Dr. Jensen's opinion because Dr. Jensen has a conflict of interest by virtue of his employment with Employer. He further contends the conflict of interest caused Dr. Jensen to change his medical decision making as evidenced by his "inconsistent" treatment recommendations. Employee requests *McAlpine III* be vacated. In response to Employer's contention his petition seeking modification is untimely, Employee contends lawyers have told him the correct time limitation is two years pursuant to AS 23.30.105, not one year as Employer contends. He also contends he has dyslexia and attention deficit hyperactivity disorder, which prohibited him from pursuing his claim in a timely manner, and he complaints regarding the representation provided by his former counsel.

Employer makes numerous contentions in response to Employee's petition. It contends Employee's petition for modification is untimely. It also contends it is "obvious" Dr. Jensen did not sign the adjuster's February 17, 2012 letter, and at the time of *McAlpine III*, neither party cared who signed the letter because it was signed by a licensed provider working in Dr. Jensen's practice, which could have been Jan DeNapoli, PA-C, who evaluated Employee more often than Dr. Jensen did. Employer further contends the signatory to the Jensen letter is irrelevant because Employee was in possession of it at hearing in *McAlpine III*, so it is therefore not "new" evidence, and Employee could have raised his concerns with it at that time, but did not, so he should be prohibited from doing so now. In response to Employee's contention Dr. Jensen had a conflict of interest, Employer contends it has no control over with whom Employee chose to treat and he chose to treat with Dr. Jensen. Employer also contends Dr. Jensen's privilege to use Employer's facilities do not create an employment contract, and further contends every physician in Fairbanks presumably has such privileges, but this should not be a basis to disqualify the

opinions of every Fairbanks-based medical provider. Employer made no contentions in response to Employee's contentions regarding the number of physicians who opine he was medically stable.

2) Should *McAlpine III* be modified or reconsidered?

FINDINGS OF FACT

The following facts and factual conclusions are either reiterated from *McAlpine v. Fairbanks Memorial Hospital*, AWCB Decision No. 12-200 (November 16, 2012) (*McAlpine III*) or established by a preponderance of the evidence:

1) On May 17, 2009, Employee injured his back while working as a certified nursing assistant (CNA) for Employer. (Report of Injury, May 19, 2009).

2) On May 18, 2009, Employee began conservative chiropractic treatment with William A. Tewsen, D.C., who initially took Employee off work until May 26, 2009. (Tewsen report, May 19, 2009).

3) Employee continued to treat with Dr. Tewsen until January 27, 2010. (Tewsen reports, May 18, 2009 to January 27, 2010).

4) Employee reported progressive improvement in his symptoms with chiropractic treatment. In July 2009, Employee returned from two weeks' vacation in Maryland, and felt he was doing "really well" and "getting back to normal." He reported he had essentially no pain other than an "occasional twinge." (Bald report, August 21, 2008).

5) On June 2, 2009, a magnetic resonance imaging study (MRI) of Employee's lower spine showed normal disc spaces at all levels except at L4-5, which showed facet joint degenerative changes with fluid in the facet joints. (Stella report, June 2, 2009).

6) On July 11, 2009, Employee returned to work performing many of his regular duties, including transferring patients. Employee noted recurrent, increasing symptoms, progressive in nature, though no specific injury was reported. (*Id.*; record).

7) After leaving work on July 11, 2009, Employee never returned to work. (Record, observations).

8) On July 28, 2009, an MRI of Employee's lower spine was interpreted by Richard Lund, M.D. Dr. Lund's impressions were mild L4-5 disc bulging that did not appear to impact the nerve rootlets. Dr. Lund disagreed with the interpretation of the June 2, 2009 MRI report. He opined the

study showed mild central canal narrowing and opined the central canal was adequate and likely of normal dimensions. (Lund report, July 29, 2009).

9) On August 21, 2009, Douglas Bald, M.D., examined Employee for an EME and opined Employee suffered from a lumbar strain related to the May 17, 2009 workplace injury and recommended continued conservative care, including epidural steroid injections and physical therapy. Although Dr. Bald believed Employee could not return to work, he anticipated progressive improvement with a conservative course of treatment and predicted Employee would be able to return to work without restrictions at some point in the future. Dr. Bald opined Employee's subjective complaints were supported by objective findings. (Bald report, August 21, 2009).

10) On September 23, 2009, an MRI of Employee's lower spine interpreted by Keir Fowler, M.D., showed: 1) mild degenerative disc disease at L4-5 with minimal canal narrowing; and 2) suggestion of early disc protrusion at L5-S1 without canal compromise. (Fowler report, September 24, 2009).

11) On January 5, 2010, the RBA found Employee eligible for reemployment benefits based on Dr. Tewsen's opinion that Employee would not have the permanent physical capacities to return to his job at the time of injury or any other jobs Employee held ten years previous to the injury, and also based on Dr. Tewsen's prediction of a permanent partial impairment (PPI). (Torgersen letter, January 5, 2010).

12) Because Employee continued to have low back and left leg pain, Dr. Tewsen referred Employee to Paul Jensen, M.D. Dr. Jensen's impression was a small L4-5 foraminal disc and he recommended a left L4 selective nerve root injection. (Jensen report, January 12, 2010).

13) On February 23, 2010, following a series of three transforaminal left L4 selective nerve root injections, Employee returned to Dr. Jensen for continuing severe low back pain and left lower extremity radicular pain. The injections only provided Employee with 48-72 hours of relief and Employee did not wish to proceed with another epidural steroid injection. Dr. Jensen reviewed the MRI study from September 2009, which he opined demonstrated a small lateral disc at L4-5 with a foraminal component. Other levels showed a normal hydration pattern and very little central lateral stenosis. Dr. Jensen scheduled a three-level discography to determine the pain generator of Employee's low back pain. (Jensen report, February 23, 2010).

14) On March 22, 2010, Dr. Jensen stated to the adjuster he did not know when Employee would become medically stable or when he would be able to participate in vocational retraining, as Employee was undergoing more testing. (Jensen reply letter, March 22, 2010).

15) On April 24, 2010, John Ballard, M.D. examined Employee for an EME and opined Employee's disability and need for medical treatment were related to the May 17, 2009 work injury, and Employee was not yet medically stable. Dr. Ballard opined Employee's subjective complaints were "partially" supported by objective findings; however, he stated it was hard to determine why Employee had significant pain complaints despite ten months of treatment. He further opined there may be a psychological component causing Employee to have a significant amount of symptoms, which could not be entirely explained by objective criteria or testing. (Ballard report, April 24, 2010).

16) On June 2, 2010, Nancy Cross, M.D. performed a three-level discography on Employee. Employee's pain responses at L3-4, L4-5 and L5-S1 were all negative. (Cross report, June 2, 2010).

17) On June 16, 2010, Employee returned to Dr. Jensen following the discography. Dr. Jensen noted Employee did not have significant reproducible mechanical pain during the discography, though he did have left lower extremity radicular pain. Dr. Jensen did not feel Employee was an ideal candidate for disc replacement, but he proposed a microdiscectomy to Employee in order to treat Employee's left lower extremity radicular pain. (Jensen report, June 16, 2010).

18) On June 29 2010, rehabilitation specialist Tommy Hutto submitted a reemployment plan to the Reemployment Benefits Administrator (RBA). (Reemployment Benefits Plan, June 29, 2010).

19) On September 30, 2010, the RBA notified Mr. Hutto the plan was not approved. (Notice of denial of reemployment benefits plan, September 30, 2010).

20) On February 16, 2011, attorney John Franich entered an appearance on behalf of Employee. (Employee Entry of Appearance, February 16, 2011).

21) A fee dispute developed between the parties regarding the development of the plan. This dispute was subsequently decided by the Board. (*McAlpine v. Fairbanks Memorial Hospital,* AWCB Decision No. 11-0125, August 24, 2011) (*McAlpine I*).

22) Both parties sought appeals of *McAlpine I* to the Alaska Workers' Compensation Appeals Commission (AWCAC or Commission). The Commission affirmed *McAlpine I* in all respects.

(*Hutto Consulting & Mark McAlpine v. Banner Health System*, AWCAC Decision No. 169 (September 12, 2012).

23) Employer began paying Employee rehabilitation stipend on September 29, 2010. (Compensation Report, February 24, 2011).

24) On June 29, 2010, Dr. Jensen performed a microdiscectomy at L4-5, finding a sharp knob of posterolateral disc that had not been "fully appreciated" on the MRI, that was deforming and/or constricting the nerve root. (Jensen report, June 29, 2010).

25) Immediately following the procedure, which Dr. Jensen described as routine and uneventful, Employee reported total paralysis of his left leg while recovering from the surgery and was admitted to Alaska Regional Hospital for observations and testing. Employee had an immediate lumbar MRI study that indicated no hematoma, unusual disc sequestrum or other mass occupying the lesion in the microdiscectomy site. Additional MRI's were performed of the brain and cervical and thoracic spine, and all were unremarkable. The spine incision appeared excellent, with no evidence of local erythema or hematoma. Straight leg raising on the left revealed no radiculopathy, but only some mechanical pain in the incision site. However, when Employee's left leg was raised approximately 50-60 degrees and suddenly let go, Employee slowly let the leg descend to the bed. Dr. Jensen noted an "unusual discrepancy between sensation and motor" and saw no causation for Employee's symptoms. His impression was there may have been unintentional psychological overlay. (PACU Records, June 29, 2010; Jensen report, June 30, 2010).

26) On August 25, 2010, Dr. Jensen predicted Employee would be medically stable by September 29, 2010. (Adjuster's letter, August 25, 2010).

27) On December 15, 2010, at the request of Employer's adjuster, John W. Joosse examined claimant for an EME. Dr. Joosse opined Employee did sustain a lumbar strain related to the May 17, 2009 work-place injury, which resolved by July 10, 2009 when Employee was released to work. Dr. Joosse concluded Employee's subjective complaints of low back pain, left leg pain and sensory loss in his left foot were not supported by objective findings, and he opined the substantial cause of Employee's disability and need for medical treatment was the development of pain syndrome and behavioral issues. Dr. Joosse noted Employee had not suffered any additional injuries that would explain his continued back pain, and his left lower extremity radicular complaints "defy diagnosis." Dr. Joosse stated Employee's work restrictions were "unknown,"

and opined Employee was "probably" medically stable. Dr. Joosse specifically declined to provide a PPI rating at that time and recommended additional neurological testing. (Joosse report, December 15, 2010).

28) On January 5, 2011, Employee saw Dr. Jensen for a follow-up after his left L4-5 discectomy. Dr. Jensen noted Employee was in high spirits and doing well post-operatively. Dr. Jensen approved Employee's participation in job retraining. (Jensen report, January 5, 2011).

29) On January 18, 2011, Employer's adjuster wrote Dr. Jensen inquiring about a referral for Employee to participate in physical therapy. The letter was addressed to Dr. Jensen at the business address for Alaska Neuroscience Associates and provided blank space for Dr. Jensen to respond. (Adjuster's letter, January 18, 2011).

30) On January 26, 2011, Employee again saw Dr. Jensen for a follow-up. Employee reported his pre-operative pain had resolved but stated he still had weakness in his leg. Employee was taking very little, if any, pain medication. (Jensen report, January 26, 2011).

31) On February 21, 2011, Dr. Jensen's office replied to Employer's January 18, 2011 letter by handwriting an explanation in the space provided on the original letter. The explanation stated Employee's pre-operative symptoms had resolved with surgery, but he had residual weakness that needed to be resolved with physical therapy. (Jensen's reply, February 21, 2011).

32) The signature on Dr. Jensen's February 21, 2011 reply is illegible, but the professional designation "PAC" is legible. (*Id.*; observations).

33) During the spring of 2011, Employee's low back pain returned without evidence of an additional, subsequent injury. Dr. Jensen ordered an MRI. (Jensen reports, April 18, 2011; May 31, 2011).

34) On June 7, 2011, an MRI was performed of Employee's lower spine and interpreted by Jeffrey Zuckerman, M.D., to show: 1) Prior L4-5 left pinhole laminotomy and discectomy with enhancing epidural fibrosis and enhancement of the left L4-5 facet joint. Diffuse annular bulging without focal disc space abnormality; and 2) stable, small disc osteophyte complex at L5-S1. (Zuckerman report, June 8, 2011).

35) On July 28, 2011, Kevin Lankford, LPA, performed a psychological evaluation of Employee, which concluded Employee's overall cognitive skill sets showed "extreme variability with average language-based problem-solving, average visual-spatial reasoning, borderline to low average working memory skills, and poor visual-motor/graphomotor processing speed." It also

included an attention deficit hyperactivity disorder (ADHD) screening, which showed Employee was "in the average range but [Employee] does exhibit symptomology consistent with ADHD, Inattentive Type." (Lankford report, July 28, 2011).

36) On September 19, 2011, at the request of Employer's adjuster, Dr. Joosse examined Employee for a second EME. Dr. Joosse noted Employee continued to complain of profound weakness and paralysis in his left lower extremity, stated Employee's complaints "defy explanation," and opined the substantial cause of Employee's disability is pain syndrome with functional and behavioral components. Dr. Joosse believed Employee was medically stable and rated Employee at 0 percent PPI, assuming neurological testing showed no evidence of radiculopathy or neuropathy. (Joosse report, September 19, 2011).

37) On November 8, 2011, Employer controverted Employee's medical benefits based on Dr. Joosse's September 19, 2011 report. (Notice of Controversion, November 8, 2011).

38) On November 8, 2011, Employer petitioned to terminate reemployment benefits, including AS 23.30.041(k) stipend, based on Dr. Joosse's report. (Employer's Petition, November 8, 2011).

39) On January 15, 2012, Dr. Joosse performed a records review for Employer's attorney and provided clarifications of his previous opinions. He stated Employee was medically stable by mid July 2009, and reiterated his September 19, 2011 rating of 0 percent impairment for lumbar strain with persistent non-verifiable radicular complaints. Dr. Joosse felt the substantial cause of Employee's current need for treatment was pain syndrome, which was likely psychiatric in nature. Dr. Joosse reported he found "strong evidence" Employee had developed functional and behavioral complaints that were not related to the May 17, 2009 work injury. (Joosse report, January 15, 2012).

40) On January 23, 2012, Employee filed a workers' compensation claim to continue reemployment benefits. (Claim, January 23, 2012).

41) On February 17, 2012, Employer's adjuster wrote Dr. Jensen inquiring whether he agreed with Dr. Joosse's January 15, 2012 EME report, which was enclosed with the letter. The letter was addressed to Dr. Jensen at the business address for Alaska Neuroscience Associates and provided check boxes for either "yes," or "no," as well as additional space for Dr. Jensen to write comments. (Adjuster's letter, February 17, 2012).

42) On March 1, 2012, Dr. Jensen's office replied to Employer's February 17, 2012 letter by checking "yes," indicating agreement with Dr. Joosse's report, did not provide further comment in the space provided, and faxed the letter back to Employer. (Jensen's reply, March 1, 2012).

43) The signature on Dr. Jensen's March 1, 2012 reply is illegible, but the professional designation "PAC" is legible. (*Id.*; observations).

44) Dr. Jensen and Jan DeNapoli, PA-C, both practice at Alaska Neuroscience Associates, Employee's provider. (Jensen report, January 26, 2011; DeNapoli report, January 26, 2011).

45) PA DeNapoli evaluated Employee numerous times during his course of treatment with Alaska Neuroscience Associates. (DeNapoli reports, August 11, 2010; October 20, 2010; January 5, 2011; January 26, 2011; March 21, 2011; April 18, 2011; May 31, 2011; June 9, 2011; October 10, 2011).

46) PA DeNapoli evaluated Employee a greater number of times than did Dr. Jensen. (Record; observations).

47) The provider's signature on the adjuster's February 17, 2012 letter appears numerous times in the medical record. (Faxed prescription request addressed to "JAN DENAPOLI PA-C," for a left ankle-foot arthrosis (AFO), February 8, 2011; physical therapy prescription request addressed to "Jan DeNapoli PA-C," March 14, 2011; prescription for Flexeril by "Jan DeNapoli, PA-C," April 18, 2011; physical therapy prescription recommendations addressed to Dr. Jensen, May 10, 2011; order requisition form for a transcutaneous electrical nerve stimulation (TENS) trial by "Jan DeNapoli, PA-C," October 10, 2011; faxed prescription request for a TENS rental, October 17, 2011; observations).

48) A signature, also illegible, but distinctly different from those mentioned in the finding of fact immediately above, appears on other reports that provide signature lines for Dr. Jensen. (Alaska Regional Hospital History and Physical, June 30, 2010; adjuster's letter, July 23, 2011; adjuster's letter, August 25, 2011).

49) The signature's on the July 23, 2011 and August 25, 2011 adjuster's letters appear to have been made with a signature stamp, while June 30, 2010 Alaska Regional Hospital report appears to be an original signature. (*Id.*; observations, experience).

50) When compared to the signatures on June 30, 2010 Alaska Regional Hospital report and the August 25, 2010 adjuster's letter, the signature on the July 23, 2010 adjuster's letter is inverted,

indicating signature was stamped with the signature stamp upside down. (*Id.*; inferences drawn therefrom).

51) Dr. Joosse attributed the signatures on the adjuster's January 18, 2011 letter, the February 8, 2011 prescription request and the October 10, 2011 TENS requisition form to Jan DeNapoli, PA-C. (Joosse reports, September 19, 2011; January 15, 2012).

52) The provider's signature that appears on the adjuster's January 18, 2011 and February 17, 2012 letters is that of Jan DeNapoli, PA-C. (*Id.*; faxed prescription request, February 8, 2011; physical therapy prescription request, March 14, 2011; prescription for Flexeril, April 18, 2011; physical therapy prescription recommendations, May 10, 2011; order requisition form, October 10, 2011; faxed prescription request for a TENS rental, October 17, 2011; observations and inferences drawn therefrom).

53) The provider's signature that appears on the July 23, 2011 and August 25, 2011 adjuster's letters and the June 30, 2010 Alaska Regional Hospital report is that of Dr. Jensen. (Alaska Regional Hospital History and Physical, June 30, 2010; adjuster's letter, July 23, 2011; adjuster's letter, August 25, 2011; inferences drawn therefrom).

54) On April 10, 2012, the parties attended a prehearing conference and agreed "the issues for hearing on June 28, 2012 are ER's Petition to Terminate Benefits and the issue of whether or not the board should order an SIME." (Prehearing Conference Summary, April 10, 2012).

55) On August 24, 2012, *McAlpine v. Fairbanks Memorial Hospital*, AWCB Decision No. 12-0147 (August 24, 2012) (*McAlpine II*) concluded: 1) Employer made an excessive change of physician; 2) the remedy for Employer's excessive change was to exclude Dr. Joosse's September 19, 2011 and January 15, 2012 reports from consideration; and 3) the RBA's January 5, 2010 determination finding Employee eligible for reemployment benefits would not be modified. (*McAlpine II*).

56) On September 6, 2012, Employer petitioned for reconsideration of *McAlpine II*. (Petition, September 6, 2012).

57) Attached to Employer's September 6, 2012 petition was an April 8, 2010 letter from Dr. Bald to the adjuster. Dr. Bald stated he was no longer going to be performing medical evaluations due to personal medical issues. He advised Employer to refer Employee to Dr. Ballard for future medical evaluations. (Bald letter, April 8, 2012).

58) On September 20, 2012, the designee advised the parties at a prehearing conference *McAlpine II* would be reconsidered. (Prehearing Conference Summary, September 20, 2012).

59) On November 16, 2012, *McAlpine v. Fairbanks Memorial Hospital*, AWCB Decision No. 12-200 (November 16, 2012) (*McAlpine III*) decided Dr. Bald's April 8, 2010 letter evidenced Employer had not made an unlawful change of physician as was decided in *McAlpine II*; and as a result, Dr. Joosse's September 19, 2011 and January 15, 2012 reports, along with Dr. Jensen's March 1, 2012 concurrence, should be considered. *McAlpine III* then went on to conclude, since these reports demonstrated Employee was medically stable with no ratable PPI, the RBA's January 5, 2010 eligibility determination should be modified to reflect Employee was no longer entitled to reemployment benefits. (*McAlpine III*).

60) *McAlpine III* correctly informed the parties of the statutory timelines for reconsideration, modification and appellate review. (*Id.*).

61) On January 30, 2013, Employee presented Dr. Jensen with a copy of the adjuster's February 17, 2012 letter that contained a handwritten annotation "Is this your signature" with an arrow pointing to the signature on the signature line for "Paul Jensen MD." "NO" is printed directly under the handwritten annotation. The letter was signed by Dr. Jensen on January 30, 2013. (Annotated adjuster's letter, January 30, 2013; observations and inferences drawn therefrom).

62) On March 29, 2013, attorney John Franich withdrew as Employee's attorney. (Employee Withdrawal of Attorney, March 28, 2013).

63) On November 7, 2014, Employee filed a claim seeking temporary total disability (TTD) from May 2009 to present, medical and transportation costs, review of reemployment eligibility determination, compensation rate adjustment, penalty, interest and a finding of unfair or frivolous controversions. (Claim, October 29, 2014).

64) On November 18, 2014, Employer answered Employee's October 29, 2014 claim, denying it in its entirety on the merits, and asserting statutory defenses based on an untimely filed claim and failure to timely request a hearing, as well as the affirmative defenses of *res judicata* and estoppel. (Employer's Answer, November 18, 2014).

65) On December 15, 2014, Employee filed a petition that states:

> Request to Vacate the D&O for reemployment benefits and rehabilitations stipend per D&O 12-0147 [*McAlpine II*]. Dr. Jensen stated that he did not sign the order that agreed with Dr. Joosse's disposition. Other signed documents by Dr. Jensen

> do not match the signed document. Also out of 4 physicians opinions only Dr. Joosse contended Mr. McAlpine was medically stable. Also have a conflict of interest with Dr. Jensen being employed by Fairbanks Denali Center.

(Employee petition, December 12, 2014).

66) It is presumed Employee's December 12, 2014 petition was intended to request *McAlpine III*, rather than *McAlpine II*, be vacated. (Experience, observations and inferences drawn therefrom).

67) On March 2. 2015, Kelly Giese entered an appearance as Employee's non-attorney representative. (Employee Entry of Appearance, February 25, 2015).

68) On March 24, 2015, Employer filed an affidavit of readiness for hearing (ARH) on an "11/16/2012" petition. (Employee ARH, March 24, 2015).

69) The only event in the record that occurred on November 16, 2012 was the issuance of *McAlpine III*. (Record; observations).

70) It is presumed Employer's March 24, 2015 ARH was intended to seek a hearing on Employee's December 12, 2014 petition to vacate *McAlpine III*. (Experience, observations and inferences drawn therefrom).

71) At an April 13, 2015 prehearing conference, the parties agreed to set "Employee's Petition to Vacate 11/16/2012 Decision and Order" for hearing on July 16, 2015. (Prehearing Conference Summary, April 13, 2015).

72) On April 24, 2015, Employer deposed Employee, who repeatedly acknowledged, at the time of *McAlpine III*, he was aware of the adjuster's February 17, 2012 letter and Dr. Jensen's March 1, 2012 response. (McAlpine dep. at 49-50, 53-54, 118-120).

73) On May 28, 2015, Employee filed a petition to strike medical records from a certain provider, which he contends were outside the scope of the release. (Employee petition, May 28, 2015).

74) On June 12, 2015, Employer answered Employee's May 28, 2015 petition to strike medical records, contending some medical records from the provider were relevant to Employee's claimed injuries, while others were not. It contended Employee should specifically identify the objectionable records or, in the alternative, his petition should be denied. (Employer's Answer, June 12, 2015).

75) On June 19, 2015, Employee filed documentary evidence for hearing that included the January 30, 2013 annotated adjuster's letter bearing Dr. Jensen's signature. (Employee's evidence, undated).

76) On July 16, 2015, as a preliminary matter at hearing, the chair sought clarification on the parties' documents. Employee confirmed he intended his December 12, 2014 petition to vacate *McAlpine III*, rather than *McAlpine II*; and Employer confirmed it intended its March 24, 2015 ARH to be a hearing request on Employee's December 12, 2014 petition to vacate. Both parties also confirmed their respective understandings were in accordance with the intended purpose of the other party's documents. (Record).

77) At hearing, Employee clarified the four physicians who opined he was not medically stable were Drs. Tewsen, Bald, Ballard and Jensen. (*Id*.).

78) At hearing, Employee testified as follows: Following *McAlpine III*, he went to see Dr. Jensen at his office, showed Dr. Jensen the adjuster's February 17, 2012 letter and asked Dr. Jensen if that was his signature. Dr. Jensen denied the signature on the letter was his, wrote "NO" on the letter and signed the letter to demonstrate what his signature looked like. Dr. Jensen also told him he had not seen that document before and did not agree with it. Dr. Jensen did not charge Employee for that appointment. On cross-examination, Employee testified he had testified truthfully at his deposition regarding his conversation with Dr. Jensen following the November 2012 hearing. (Employee hearing testimony).

79) Employer objected to Employee's testimony regarding the conversation he had with Dr. Jensen on the basis of hearsay. (Record).

80) At hearing, Molly Friess testified as follows: She has been a workers' compensation claims examiner since 1989 and has served as the adjuster on Employee's claim since the beginning. She mailed her February 17, 2012 letter to Dr. Jensen's office and his office faxed it back to her on March 14, 2012. Ms. Friess also faxed Dr. Jensen's response to Employer's attorney the same day she received it from Dr. Jensen. The letter is the in the same form as when she received it and she has not modified it in any way. She noted at the time the letter had been signed by a physician's assistant and not Dr. Jensen, but it did not matter because the letter had come from Alaska Neuroscience Associates and she knew Employee had more than one provider. PA DeNapoli was involved in Employee's case, and was more involved in Employee's case than Dr. Jensen. The last time loss benefits paid to Employee were .041(k) stipend in

November 2012, and prior to that, TTD in February 2011. On cross-examination, Ms. Friess testified she does not have the original written response from Dr. Jensen and believes the original response would be at his office. (Friess hearing testimony).

81) Ms. Friess was credible. (Experience, observations and inferences drawn therefrom).

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 the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to . . . employers . . . .
>
> **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 23.30.041. Rehabilitation and reemployment of injured workers.**
> . . . .
>
> (f) An employee is not eligible for reemployment benefits if
> . . . .
>
> (4) at the time of medical stability, no permanent impairment is identified or expected.
> . . . .
>
> **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 legislative history of AS 23.30.122 states the intent was "to restore to the Board the decision making power granted by the Legislature when it enacted the Alaska Workers' Compensation Act." *De Rosario v. Chenega Lodging*, 297 P.3d 139, 146 (Alaska 2013). The Alaska Workers' Compensation Appeals Commission is required to accept the board's credibility determinations. *Id.* The Alaska Supreme Court defers to board's credibility determinations. *Id.* If the board is faced with two or more conflicting medical opinions, each of which constitutes substantial evidence, it may rely on one opinion and not the other. *Id.* at 147. The board may also choose not to rely on its own expert. *Id.*

> **AS 23.30.130. Modification of awards.** (a) Upon . . . the application of any party in interest . . . because of a mistake in its determination of a fact, the board may, before one year after the date of the last payment of compensation benefits …whether or not a compensation order has been issued, or before one year after the rejection of a claim, review a compensation case under the procedure prescribed in respect of claims in AS 23.30.110. Under AS 23.30.110 the board may issue a new compensation order which terminates, continues, reinstates, increases, or decreases the compensation, or award compensation.
> . . . .

The Alaska Supreme Court discussed AS 23.30.130(a) in *Sulkosky v. Morrison-Knudsen*, 919 P.2d 158, 162 (Alaska 1996), and said "under this statute, the Board 'is granted broad discretion to modify its prior decisions and findings' and may modify its prior factual findings if it finds they were mistaken" (citations omitted). "The concept of 'mistake' requires careful interpretation. It is clear that an allegation of mistake should not be allowed to become a back-door route to retrying a case because one party thinks he can make a better showing on the second attempt." *Interior Paint Co. v. Rodgers*, 522 P.2d 164; 169 (Alaska 1974) (citing 3 Larson, The Law of Workmen's Compensation § 81.52, at 354.8 (1971)).

The plain import of this statute was to vest the board with broad discretion to correct mistakes of fact, whether demonstrated by wholly new evidence, cumulative evidence, or merely further reflection on the evidence initially submitted. *Rodgers* (adopting standard set forth in *O'Keeffe v. Aerojet-General Shipyards, Inc.*, 404 U.S. 254; 256 for an analogous federal statute). The board's broad power under the statute gives it discretion to review a compensation award because of a change in condition or mistake in determination of a fact, even if the party cannot

produce any new evidence on the factual question at issue. *George Easley Co. v. Estate of Lindekugel*, 117 P.3d 734; 743 (Alaska 2005).

The statute confers upon the board continuing jurisdiction over workers compensation claims and thus provides a statutory exception to the common law doctrines that prohibit re-litigation of factual issues, such as waiver and *res judicata*. *Id.* (citing *Sulkosky*); *Fischback & Moore of Alaska, Inc. v. Lynn*, 453 P.2d 478; 483-84 (Alaska 1969). The modification proceeding originates in the initial claim for compensation; thus, the board correctly treated a claimant's petition to "reopen" her claim as a petition for modification. *Hulsey v. Johnson & Holen*, 814 P.2d 327; 328 (Alaska 1991).

The power of the board to grant a rehearing or to set aside or modify its decisions is limited to the authority expressly provided by statute. *Suryan v. Alaska Indus. Bd.*, 12 Alaska 571 (Alaska 1950). The statute imposes evidentiary standards and a limitations period in which review may occur. Thus, the board acts within its jurisdiction when it decides whether the limitations period has run. *Id.*; *Witbeck v. Superstructures, Inc.*, AWCAC Decision No. 014 (July 13, 2006). Modification is not the appropriate vehicle when a party alleges a mistake of law. *Lindekugel* at 744; *McShea v. State Dept. of Labor*, 685 P.2d 1242; 1246-47 (Alaska 1984). Black's Law Dictionary 1092 (9th ed. 2009) defines "mistake of law" as "a mistake about the legal effect of a known fact or situation," and "mistake of fact" as "a mistake about a fact that is material to a transaction or "any mistake other than a mistake of law."

> **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. . . .

The board has broad statutory authority in conducting its investigations and hearings. *Tolson v. City of Petersburg*, AWCB Decision No. 08-0149 (August 22, 2008); *De Rosario v. Chenenga Lodging*, AWCB Decision No. 10-0123 (July 16, 2010). The board may use relaxed evidentiary standards while conducting its hearings. *Thoeni v. Consumer Electronic Services*, 151 P.3d 1249; 1257 (Alaska 2007). AS 23.30.135 gives the workers' compensation board wide latitude in making its

investigations and in conducting its hearings, and authorizes it to receive and consider not only hearsay testimony, but any kind of evidence that may throw light on a pending claim. *Cook v. Alaska Workmen's Compensation Board*, 476 P.2d 29 (Alaska 1970).

> **AS 23.30.395. Definitions.** In this chapter,
> . . . .
>
> (3) "attending physician" means one of the following designated by the employee under AS 23.30.095(a) or (b):
> . . . .
>
> (D) a licensed physician assistant acting under supervision of a licensed medical doctor . . . .
>
> (28) "medical stability" means the date after which further objectively measurable improvement from the effects of the compensable injury is not reasonably expected to result from additional medical care or treatment, notwithstanding the possible need for additional medical care or the possibility of improvement or deterioration resulting from the passage of time . . . .
> . . . .
>
> **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. If no action is taken on a petition within the time allowed for ordering reconsideration, the petition is considered denied.
> . . . .

"The appropriate recourse for allegations of legal error is a direct appeal or petition to the board for reconsideration of the decision within the time limits set by AS 44.62.540(a)." *Lindekugel* at 744.

> **8 AAC 45.120. Evidence.**
> . . . .
>
> (e) Technical rules relating to evidence and witnesses do not apply in board proceedings, except as provided in this chapter. Any relevant evidence is admissible if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for

> the purpose of supplementing or explaining any direct evidence, but it is not sufficient in itself to support a finding of fact unless it would be admissible over objection in civil actions. . . .

Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. *Granus v. Fell*, AWCB Decision No. 99-0016 (January 20, 1999) (citing Alaska Evid. R. 401).

> **8 AAC 45.150. Rehearings and modification of board orders**. (a) The board will, in its discretion, grant a rehearing to consider modification of an award only upon the grounds stated in AS 23.30.130.
> . . . .
>
> (d) A petition for a rehearing or modification based on an alleged mistake of fact by the board must set out specifically and in detail
>
> (1) the facts upon which the original award was based;
>
> (2) the facts alleged to be erroneous, the evidence in support of the allegations of mistake, and, if a party has newly discovered evidence, an affidavit from the party or the party's representative stating the reason why, with due diligence, the newly discovered evidence supporting the allegation could not have been discovered and produced at the time of the hearing; and
>
> (3) the effect that a finding of the alleged mistake would have upon the existing board order or award.
>
> (e) A bare allegation of change of conditions or mistake of fact without specification of details sufficient to permit the board to identify the facts challenged will not support a request for a rehearing or a modification.
>
> (f) In reviewing a petition for a rehearing or modification the board will give due consideration to any argument and evidence presented in the petition. The board, in its discretion, will decide whether to examine previously submitted evidence.

When a party seeks modification based on a mistake of fact and desires to present new evidence, the key element in the regulation is the requirement the new evidence could not have been discoverable prior to the hearing through due diligence. *Lindhag v. State, Dept. of Natural Resources*, 123 P.3d 948; 956 (Alaska 2005). Due diligence requires the new evidence "could not" have been developed prior to hearing, and it is not an abuse of discretion to reject a petition for modification when the evidence simply "was not" developed. *Id*. at 957. Strict compliance

with specific pleading requirements at 8 AAC 45.150(d) may not always be required. *Griffiths v. Andy's Body & Frame*, 165 P.3d 619; 624 (Alaska 2007) (pro se claimant following instructions set forth in a prior decision and order); *Sulkosk*y at 164 (petition sufficiently specific to allow the board to identify the facts challenged).

When a party seeks modification based on a change in conditions, the term "change in conditions" might be limited to a change in the employee's physical or economic conditions. *Id*. at 957-58. An alleged change in conditions cannot be used to retry original issues. *Id*. at 958 (citing 8 Larson, Larson's Workers' Compensation Law § 131.03[1][e] (2005)). "Upon reopening a claim due to a change in conditions, 'the issue before the Board is sharply restricted to the question of the extent of the improvement or worsening of the injury on which the original award was based.'" *Id*. (citing Larson at § 131.03[2][a]). "In other words, 'neither party can raise original issues such as work-connection, employee or employer status, occurrence of a compensable accident, and degree of disability at the time of the first award.'" *Id*.

> **8 AAC 57.075. Procedure on petitions or cross-petitions for review.** (a) 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 no later than 15 days after the date that the board serves on the parties the decision or order for which commission review is sought.
>
> (b) If 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 no later than 15 days after the date that the board serves on the parties the reconsideration decision, or the date that the petition for reconsideration is considered denied in the absence of any board action, whichever is earlier.

Following *Monzulla v. Voorhees Concrete Cutting*, 254 P.3d 341 (Alaska 2011), wherein the Supreme Court held the Alaska Workers' Compensation Appeals Commission (Commission) has implied statutory authority to entertain discretionary review of interlocutory board orders, the Commission adopted the regulation prescribing 15-day limitation periods for a party seeking such review.

ANALYSIS

1) Should portions of Employee's hearing testimony be disregarded on the basis of hearsay?

At various points in Employee's testimony on direct examination, Employer objected on the basis of hearsay. Employee did not offer an exception to Employer's objection or otherwise respond; however, it is recognized Employee is not an attorney and he is represented by a non-attorney representative. It is presumed Employee contends Employer's objection should be overruled.

Employee's testimony on direct examination was brief. He testified, following *McAlpine III*, he went to see Dr. Jensen at his office, showed Dr. Jensen the adjuster's February 17, 2012 letter and asked Dr. Jensen if that was his signature. Dr. Jensen denied the signature on the letter was his, and he wrote "NO" on the letter and signed the letter to demonstrate what his signature looked like. Dr. Jensen also told him he had not seen that document before and did not agree with it. Dr. Jensen did not charge Employee for that appointment.

The statute makes clear workers' compensation hearings can be conducted under relaxed evidentiary standards, AS 23.30.135(a), and the regulation makes clear hearsay can be received at hearings, 8 AAC 45.120(e). However, the regulation also limits the permissible uses of hearsay. *Id*. It may be used for the purpose of supplementing or explaining any direct evidence, but it is not sufficient in itself to support a finding of fact unless it would be admissible over objection in civil actions. *Id*.

It is unknown what hearsay exception would apply to Employee's conversation with Dr. Jensen, but portions of Employee's hearsay testimony do supplement or explain the January 30, 2013 annotated adjuster's letter bearing Dr. Jensen's signature, which Employee filed as evidence on June 19, 2015, while other portions do not. Specifically, Dr. Jensen's purported statements he had not seen the adjuster's February 17, 2012 letter prior to seeing Employee January 30, 2013, and did not agree with it, neither supplement the letter, nor any other evidence known to already be in the record, so they will not be considered. Meanwhile, the relevance of whether or not Dr.

Jensen charged Employee for the January 30, 2013 office visit is unknown, so that testimony will also not be considered, as well. AS 23.30.135(a); 8 AAC 45.120(e). The remaining portions of Employee's hearing testimony will be considered. *Id*.

2) Should *McAlpine III* be modified or reconsidered?

Employee contends several mistakes were made at the hearing in *McAlpine III*, such as relying on Dr. Jensen's March 1, 2012 written opinion, which Employee contends was not personally signed by Dr. Jensen. He also contends *McAlpine III* erred because "out of four physicians, only Dr. Joosse opined [he] was medically stable." Finally, Employee contends *McAlpine III* should not have relied on Dr. Jensen's opinion because Dr. Jensen has a conflict of interest by virtue of his employment with Employer.

The appropriate recourse for allegations of legal error is either a direct appeal or a petition to the board for reconsideration, while a petition for modification is the appropriate pleading to address alleged factual errors. *Lindekugel*. Employee potentially alleges a mixture of both legal and factual mistakes. First, whether or not Dr. Jensen was the actual signatory to the "Jensen" letter is a question of fact. Employee raises a potential legal error with respect to his contention three out of four physicians had opined he was not medically stable, since he is essentially contending *McAlpine III* was not supported by a preponderance of the evidence. Finally, Employee's contention Dr. Jensen had a conflict of interest by virtue of his employment with Employer presents issues of fact involving the existence of an employment relationship and the weight Dr. Jensen's opinions should be afforded. However, regardless of how Employee's alleged mistakes are characterized, the conclusions reached will all be identical, if for no other reasons, than his statutory limitation periods to seek reviews of both factual and legal determinations have long since expired.

The power of the board to grant a rehearing or to set aside or modify its decisions is limited to the authority expressly provided by statute. *Suryan*. The statutes impose limitations periods in which review may occur. AS 23.30.130(a); AS 44.62.540(a). Thus, the board acts within its jurisdiction when it decides whether the limitations period has run. *Suryan*; *Witbeck*. Contrary to legal opinions Employee may have received from other attorneys, *McAlpine III* accurately

advised Employee of the statutory and regulatory timelines for reconsideration, modification and appellate review. Yet, for whatever reason, Employee did not take advantage of the several recourses that were available to him at the time.

Although Employee also contents he has dyslexia and attention deficit hyperactivity disorder (ADHD), which prevent him from doing things in a timely manner, his contention is at odds with Mr. Lankford's July 28, 2011 psychological evaluation, which found he had average language-based problem-solving, average visual-spatial reasoning, borderline to low average working memory skills. Only Employee's visual-motor processing speed was "poor." Meanwhile, although Employee did exhibit symptomology "consistent with" ADHD, his screening results were also in the "average range." Lastly, even if Employee did have dyslexia and ADHD, those facts would still be irrelevant, since he was represented by an attorney during all relevant statutory limitation periods and he repeatedly acknowledged at his deposition he was aware of the adjuster's February 17, 2012 letter at the time of *McAlpine III*. Therefore, Employee's December 12, 2014 petition to vacate *McAlpine III* is untimely and will be denied on that basis. *Suryan*; *Witbeck.*

Nevertheless, it is recognized Employee is a lay person who is now represented by a non-attorney representative. Therefore, this decision will also endeavor to squarely address each of Employee's concerns raised by his petition in the hope that doing so might afford him a certain degree of understanding concerning his case. Even if Employee's petition was not denied on the basis of untimeliness, it would also have been denied "on the merits" for the reasons that follow.

Much can be determined by a closer examination of the signatures that appear in the medical record. As Employer contends, it is "obvious" Dr. Jensen did not sign the adjuster's February 17, 2012 letter, Jan DeNapoli, PA-C did. Incidentally, it further appears from the record Dr. Jensen had a business practice of using a signature stamp to complete certain routine tasks, such as responding to adjuster inquiries. Although substantial evidence is lacking in the record to conclude who at Alaska Neuroscience Associates, other than Dr. Jensen, might have used the stamp, it could have very well been Dr. Jensen's physician's assistant, Jan DeNapoli. In fact, the adjuster's July 23, 2010 letter was clearly stamped while the stamp was in the upside down

position resulting in an inverted signature on that document. And, while many of these observations appear as curious oddities in the record, ultimately, as Employer also points out, at the time of *McAlpine III*, neither party cared. That was because Employee was represented by legal counsel, who undoubtedly realized the Alaska Workers' Compensation Act recognizes physician's assistants as "attending physician[s]." AS 23.30.395(3)(D). Furthermore, given that PA DeNapoli evaluated Employee more times than Dr. Jensen, the fact that she, rather than Dr. Jensen, signed the adjuster's February 17, 2012 letter only enhances the credibility of that evidence, not detract from it. AS 23.30.122.

Employee also contends "out of four physicians[,] only Dr. Joosse contended [Employee] was not medically stable." At hearing, Employee clarified the four physicians who opined he was not medically stable were Drs. Tewsen, Bald, Ballard and Jensen. The Alaska Worker's Compensation system is designed to quickly deliver medical care to injured workers and return them to the work force in the shortest period of time possible. *See generally*, AS 23.30.001; AS 23.30.041; AS 23.30.095; AS 23.30.097; AS 23.30.155. In most cases, it is typical for physicians to opine a given employee is not medically stable early in the process of recovery, such as Drs. Tewsen, Bald, Ballard and Jensen did in this case. Then, with medical treatment, injured workers tend to improve and achieve medical stability -- again, as happened here. As of March 1, 2012, both Employer's medical expert and Employee's attending physician both opined Employee was medically stable with no permanent partial impairment. *McAlpine III* was correctly decided. AS 23.30.041(f)(4).

Employee also contends Dr. Jensen had a conflict of interest by virtue of his employment with Employer. However, he did not produce, nor cite, any evidence establishing an employment relationship with Employer, let alone provide an explanation why such a fact could not have been argued at hearing in *McAlpine III*. 8 AAC 45.150. Furthermore, even if Dr. Jensen had been employed by Employer, Employee failed to point to any specific evidence demonstrating that relationship would have caused Dr. Jensen to act in a manner adverse to Employee's interests such that his opinions should have been afforded any less weight in *McAlpine III*. Employee merely, and vaguely, contends Dr. Jensen changed his medical decision making and made "inconsistent" treatment recommendations. However, to whatever extent Dr. Jensen might

have changed his professional opinions over time, any change can be just as easily explained by Employee's course of treatment and his process of recovery, as set forth above, rather than some malign motive on Dr. Jensen's behalf. Dr. Jensen's opinions were reliable, so Employee's contentions would fail on this point as well. AS 23.30.122.

CONCLUSIONS OF LAW

1) Portions of Employee's testimony will be disregarded on the basis of hearsay.
2) *McAlpine III* will not be modified or reconsidered.

ORDER

1) Employee's December 12, 2014 petition to vacate *McAlpine III* is denied.
2) The *McAlpine III*'s factual findings are amended and supplemented as set forth in the Findings of Fact forth above.
3) *McAlpine III* otherwise remains in full force and effect.

Dated in Fairbanks, Alaska on October 8th, 2015.

ALASKA WORKERS' COMPENSATION BOARD

/s/_____
Robert Vollmer, Designated Chair

/s/_____
Sarah Lefebvre, Member

/s/_____
Rick Traini, Member

PETITION FOR REVIEW

A party may seek review of an interlocutory 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 MARK A MCALPINE, employee / petitioner; v. DENALI CENTER, employer; SENTRY INSURANCE, A MUTUAL COMPANY, insurer / respondents; Case No. 200906835; dated and filed in the Alaska Workers' Compensation Board's office in Fairbanks, Alaska, and served on the parties by First-Class U.S. Mail, postage prepaid, on October 8, 2015.

/s/_____
Jennifer Desrosiers, Office Assistant