ALASKA WORKERS' COMPENSATION BOARD

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

BRANDON W. MOEN, Employee, Claimant,	)	FINAL DECISION AND ORDER
v.	)	AWCB Case No. 201305709
McKENNA BROTHERS PAVING, INC., Employer,	)	AWCB Decision No.15-0142
and	)	Filed with AWCB Anchorage, Alaska on October 28, 2015
LIBERTY NORTHWEST INSURANCE CORP., Insurer, Defendants.	)	

Brandon W. Moen's May 10, 2013, May 24, 2013, and July 2, 2013 claims were heard October 1, 2015 in Anchorage, Alaska. This hearing date was selected on September 3, 2015. Mr. Moen (Employee) did not appear for the hearing. Attorney Rebecca Holdiman Miller appeared and represented McKenna Brothers Paving, Inc. and Liberty Northwest Insurance Corp. (collectively, Employer). The record closed at the hearing's conclusion on October 1, 2015.

ISSUES

Employee did not appear for the hearing, and an attempt to contact him at his telephone number of record was unsuccessful. The designated chair orally ruled that the hearing proceed in Employee's absence.

1. Was the oral ruling to proceed with the hearing in Employee's absence correct?

In his claims, Employee contended he is entitled to further benefits because the work injury remains the substantial cause of his disability and need for medical treatment. Employer states it has paid all benefits due Employee as a result of the work injury, and it contends the injury is no longer the substantial cause of his disability or need for medical treatment.

2. Is the work injury the substantial cause of Employee's continued disability and need for medical treatment?

FINDINGS OF FACT

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

1. On April 24, 2013, Employee fell 15 to 20 feet from a tire rack, bouncing off some stacked tires and landing on the concrete floor. (Report of Occupational Injury or Illness, May 9, 2013; Heart of Eagle River Clinic, Chart Note, April 24, 2013).
2. Employee was seen at Urgent Care about 20 minutes after the fall. He reported he did not lose consciousness and did not have a headache, although he had a lump on the right side of his forehead. He was examined for neurological problems and diagnosed with a contusion to the right forehead and an abrasion to his right ear. He was instructed to report to the emergency room if he had any decrease in consciousness. (Heart of Eagle River Clinic, Chart Note, April 24, 2013).
3. Later on April 24, 2013, Employee went to the emergency department at Providence Alaska Medical Center (PAMC) when a friend became concerned Employee had a "brain bleed." Employee reported he had fallen about 15 feet striking his head when he landed on concrete, but he did not lose consciousness. The abrasion and bruising were noted, but Employee denied any changes in vision, headache, nausea, vomiting or neurological deficits. A CT scan revealed chronic sinus disease, but no acute abnormalities. Employee was diagnosed with a closed head injury and discharged. (PAMC, Emergency Department Notes, April 24, 2015).
4. On May 9, 2013, Employee returned to the PAMC emergency department reporting continued pain, headaches, and increased irritability since his injury. X-rays of his cervical and lumbar spine were normal, and a CT scan of his head again revealed sinus disease, but no acute injury. He was diagnosed with a headache and lumbar strain, prescribed pain medication and discharged. (PAMC, Emergency Department Notes, May 9, 2015).

5. On May 10, 2013, Employee filed a claim seeking temporary total disability (TTD), medical and transportation costs, penalty, interest, attorney fees and costs, and alleging an unfair or frivolous controversion. (Claim, May 9, 2013).
6. On May 14, 2013, Employee returned to Heart of Eagle River Clinic and was seen by PA-C Frederick May. Employee reported he was unchanged since his May 9, 2105 emergency room visit, but Employee's wife felt Employee was getting worse, including anger management issues. PA-C May diagnosed a closed head injury, sent Employee to the emergency room for reevaluation and another CT scan, and referred him to a neurologist. (Heart of Eagle River Clinic, Chart Note, May 14, 2013).
7. Employee returned to PAMC emergency room on May 14, 2013, reporting increased memory loss and pressure/pain in the top of his head as well as ringing ears, and an inability to eat or sleep. MRIs showed severe sinus disease, but no acute abnormalities. Employee was diagnosed with an "injury resulting from a fall," referred to a neurologist and discharged. (PAMC, Emergency Department Notes, May 14, 2013).
8. On May 24, 2013, Employee amended his May 10, 2013 claim to include a closed head injury. No change was made to the requested benefits. (Amended Claim, May 24, 2013).
9. On June 11, 2013, Employee went to the Deer Park Family Care Clinic (DPFCC) in Deer Park, Washington where he was seen by Edgar Figueroa, M.D. Employee reported headache, sleeplessness, irritability, back pain, and ringing ears which he attributed to the work injury. Dr. Figueroa diagnosed post-concussion syndrome and referred Employee to a neurologist. (DPFCC, Chart Note, June 11, 2013).
10. On June 18, Employee returned to DPFCC for a lumbar spine and shoulder x-rays. The x-rays showed no abnormalities. (DPFCC, Radiology Reports, June 18, 2013).
11. Employee returned to DPFCC on June 25, 2013 for follow up. His symptoms continued, and his mood was described as angry and anxious. He was again referred to a neurologist, as well as for MRIs of his shoulder, neck, and low back. (DPFCC, Chart Note, June 25, 2013).
12. On July 2, 2013, Employee began physical therapy. (Acceleration Therapy Services, Initial Evaluation, July 2, 2013).
13. Employee filed an amended claim on July 2, 2013, again seeking TTD, medical and transportation costs, interest, attorney fees and costs, penalties on late-paid benefits, and alleging unfair or frivolous controversion. (Amended Claim, July 1, 2013).

14. On July 3, 2013, Employee was again seen by Dr. Figueroa. Employee continued to report joint pain, forgetfulness, and personality changes. Dr. Figueroa noted that Employee did not get any imaging after the accident. Employee was again referred to a neurologist and for an MRI of his right shoulder. (DPFCC, Chart Note, July 3, 2013).
15. On July 18, 2013, Employee received the MRIs. The low back MRI showed a mild disc bulges at L5-S1 and L4-5 that did not cause nerve root compression or displacement. The cervical MRI showed some foraminal narrowing at C3-4, C4-5, and C6-7 as well as a mild disc bulge at C5-6, none of which were due to the work injury. The shoulder MRI revealed no acute abnormalities. (Inland Imaging, MRI Reports, July 18, 2013).
16. Employee returned to Dr. Figueroa on July 19, 2013. Dr. Figueroa diagnosed post-concussion syndrome and referred Employee to a neurologist. (DPFCC, Chart Note, July 19, 2013).
17. On July 24, 2013, Employee was seen by Katrina Lewis, M.D., at the The Pain Center. In reciting the history of the work injury, Employee told Dr. Lewis he had lost consciousness for an unknown time, likely five to ten minutes. Dr. Lewis noted that opioids were contraindicated given Employee's conditions and prescribed sacroiliac and shoulder steroid injections. (The Pain Center, Chart Note, July 24, 2013).
18. On August 6, 2013, Employee received the sacroiliac joint injections. (The Pain Center, Chart Note, August 6, 2013).
19. On August 22, 2013, Employee was seen by David Henzler, M.D., a neurologist. Employee reported to Dr. Henzler that he had lost consciousness for less than a minute after the fall. Employee reported continued short-term memory problems, headaches, mood changes, tinnitus, and low back and neck pain. Dr. Henzler was concerned Employee was experiencing medication overuse headaches, and referred him for neuropsychological testing and an ear, nose, and throat evaluation. (Dr. Henzler, Chart Note, August 22, 2013).
20. On August 22, 2013, Employee received a cervical epidural steroid injection. (The Pain Center, Chart Note, August 22, 2013).
21. On September 4, 2013, Employee began chiropractic treatment for his spine and sacroiliac pain. (Spokane Chiropractic, Chart Note, September 4, 2013).

22. Employee had an audiogram and was seen by Brian Mitchell, D.O, at the Spokane Ear, Nose and Throat Clinic on September 13, 2013. Although Employee did have tinnitus, he had no hearing loss. (Spokane Ear, Nose and Throat Clinic, Chart Notes, September 13, 2013).
23. On September 23, 2013 Employee returned to The Pain Center. Employee reported no relief from the sacroiliac joint injections and a fifty- to sixty-percent reduction in pain from the cervical injection. (The Pain Center, Chart Note, September 23, 2013).
24. On October 8, 2013, Employee underwent bilateral L5 epidural steroid injections. (The Pain Center, Operative Note, October 8, 2013).
25. On October 22, 2013, the bilateral L5 epidural steroid injections were repeated. (The Pain Center, Operative Note, October 22, 2013).
26. On October 24, 2013, Dr. Figueroa referred Employee to Angelique Tindall, Ph.D., for neuropsychological testing. (DPFCC, Chart Note, October 24, 2013).
27. On November 12, 2013, Employee was seen by Linda Wray, M.D., a neurologist, and John Burns, M.D., an orthopedic surgeon, for an employer's medical evaluation (EME). Employee reported he had been injured in a thirty-foot fall. At the time of the evaluation, Employee's worst complaint was his low back, but he reported neck and shoulder pain as well as memory problems, headaches, mood changes, and tinnitus. The EME physicians reviewed Employee's medical records from the date of the injury through October 3, 2013. Drs. Wray and Burns diagnosed head and scalp contusions and abrasions as well as a possible brief concussion as a result of the fall. They opined Employee's headache, tinnitus, and memory problems would not be explained by the work injury. They also noted the delayed onset of Employee's neck, spine, and shoulder complaints. Both the neurological and orthopedic exams were normal. The doctors found no objective findings related to the April 24, 2013 injury and concluded Employee's neck and back symptoms were most likely the result of the mild age-consistent degenerative changes shown on the imaging studies. Employee was found to be medically stable, with no further treatment needed because of the work injury. They opined Employee could return to work at his job at the time of injury. (EME Report, November 12, 2013).
28. On November 25, 2013, Employer controverted further disability and medical benefits based on the EME report. (Controversion Notice, November 22, 2013).

29. On December 10, 2013, Drs. Wray and Burns clarified that Employee became medically stable eight weeks after the work injury. (EME Follow-Up, December 10, 2013).
30. On January 16, 2014, Employee saw Dr. Tindall for neuropsychological testing. The results of the testing suggested depression with low motivation, "consistent with a person who appears to have given up." Dr. Tindall noted that most people recover from a concussion within one to three months, but complications can occur with orthopedic injuries, chronic pain or ongoing irritability. Dr. Tindall diagnosed Employee with adjustment disorder with depression. (St. Luke's Outpatient Neuro, Chart Note, January 16, 2014).
31. On August 21, 2014, Employee was seen by Neil Pitzer, M.D., a physiatrist, for a board-ordered second independent medical evaluation (SIME). Dr. Pitzer examined Employee and reviewed Employee's medical records from the injury through May 28, 2014. Dr. Pitzer noted the neuropsychologist had diagnosed Employee with adjustment disorder and persistent concussion symptoms, but not traumatic brain injury. Dr. Pitzer opined the substantial cause of Employee's need for treatment was psychological distress or adjustment disorder, not the work injury. He stated Employee was medically stable in late July 2013, when multiple MRIs failed to show any acute pathology, and he was capable of returning to his job at the time of injury. (Dr. Pitzer, SIME Report, August 21, 2014).
32. On August 22, 2014, Employee was seen by Todd Levine, M.D., a neurologist, as part of the SIME. Dr. Levine concluded that Employee had suffered a mild closed head injury, some abrasions, and back strain as a result of the fall, but the disability would have lasted no more than six to eight weeks, and his current disability was due to depression and psychiatric issues. Dr. Levine stated Employee was medically stable and could return to his job at the time of injury. (Dr. Levine, SIME Report, August 22, 2014).
33. On November 19, 2014, Employer controverted TTD, permanent partial impairment benefits, medical benefits, transportation costs, and reemployment benefits. (Controversion Notice, November 18, 2014).
34. Employee did not attend the September 3, 2015 prehearing conference at which the October 1, 2015 hearing was set, but the prehearing conference summary was mailed to Employee at this address of record. The prehearing conference summary was not returned as undeliverable. (Prehearing Conference Summary, September 3, 2015; Observation).

35. On September 4, 2015, notice of the October 1, 2015 hearing was sent to Employee by both certified and regular mail. Employee received the hearing notice on September 15, 2015. (Hearing Notice, September 4, 2015; USPS Return Receipt, September 15, 2015).
36. At the beginning of the October 1, 2015 hearing, the designated chair attempted to call Employee at his telephone number of record. Employee did not answer, and a recording stated his voice messaging system had not been set up. (Record).

PRINCIPLES OF LAW

> **AS 23.30.001. Intent of the legislature and construction of chapter**. It is the intent of the legislature that
> (1) this chapter be interpreted so as to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of this chapter;
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> (2) workers' compensation cases shall be decided on their merits except where otherwise provided by statute;
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> (3) this chapter may not be construed by the courts in favor of a party;
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> (4) hearings in workers' compensation cases shall be impartial and fair to all parties and that all parties shall be afforded due process and an opportunity to be heard and for their arguments and evidence to be fairly considered.

The board may base its decision not only on direct testimony, medical findings, and other tangible evidence, but also on the board's "experience, judgment, observations, unique or peculiar facts of the case, and inferences drawn from all of the above." *Fairbanks North Star Borough v. Rogers & Babler*, 747 P.2d 528, 533-34 (Alaska 1987).

> **AS 23.30.010. Coverage.**
> (a) Except as provided in (b) of this section, compensation or benefits are payable under this chapter for disability or death or the need for medical treatment of an employee if the disability or death of the employee or the employee's need for medical treatment arose out of and in the course of the employment. . . . When determining whether or not the death or disability or need for medical treatment arose out of and in the course of the employment, the board must evaluate the relative contribution of different causes of the disability or death or the need for medical treatment. Compensation or benefits under this chapter are payable for the disability or death or the need for medical treatment if, in relation to other causes, the employment is the substantial cause of the disability or death or need for medical treatment.

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

Under AS 23.30.120(a)(1), benefits sought by an injured worker are presumed to be compensable. *Meek v. Unocal Corp*., 914 P.2d 1276, 1279 (Alaska 1996). The presumption is applicable to any claim for compensation under the workers' compensation statute, including medical benefits. *Id.*

Application of the presumption involves a three-step analysis. To attach the presumption of compensability, an employee must first establish a "preliminary link" between his or her injury and the employment. See, e.g., *Tolbert v. Alascom, Inc.*, 973 P.2d 603, 610 (Alaska 1999). Medical evidence may be needed to attach the presumption of compensability in a complex medical case. *Burgess Constr. v. Smallwood*, 623 P.2d 312, 316 (Alaska 1981). In less complex cases, lay evidence may be sufficiently probative to establish the link. *VECO, Inc. v. Wolfer*, 693 P.2d 865, 871 (Alaska 1985). The employee need only adduce "some relevant evidence establishing a "preliminary link" between the claim and the employment. *Cheeks v. Wismer & Becker/G.S. Atkinson, J.V.*, 742 P.2d 239, 244 (Alaska 1987). "In making the preliminary link determination, the Board may not concern itself with the witnesses' credibility." *Excursion Inlet Packing Co. v. Ugale*, 92 P.3d 413, 417 (Alaska 2004).

If the employee establishes the preliminary link, then the employer can rebut the presumption by presenting substantial evidence that demonstrates that a cause other than employment played a

greater role in causing the disability or need for medical treatment or by substantial evidence that employment was not the substantial cause. *Runstrom v. Alaska Native Medical Center*, AWCAC Decision No. 150 (Mar. 25, 2011) at 7; *Atwater Burns Inc. v. Huit*, AWCAC Decision No. 191 (March 18, 2014). "Substantial evidence" is the amount of relevant evidence a reasonable mind might accept as adequate to support a conclusion. *Miller v. ITT Arctic Services*, 577 P.2d 1044, 1046 (Alaska 1978). Because the employer's evidence is considered by itself and not weighed at this step, credibility is not examined at this point. *Veco, Inc. v. Wolfer*, 693 P.2d 865, 869-870 (Alaska 1985). If the presumption is raised and not rebutted, the Employee need produce no further evidence and the Employee prevails solely on the raised but un-rebutted presumption. *Williams v. State*, 938 P.2d 1065 (Alaska 1997). "If the employer rebuts the presumption, it drops out, and the employee must prove, by a preponderance of the evidence, that in relation to other causes, employment was the substantial cause of the disability, need for medical treatment, etc. Should the employee meet this burden, compensation or benefits are payable." *Runstrom* at 8. At this step, medical evidence is more persuasive than evidence that an employee's lifestyle changed after the injury. "When the key controversy centers on the medical evidence of causes of the employee's conditions, timing alone is not enough to satisfy this burden and establish causation of the disabling condition." *Abonce v. Yardarm Knot Fisheries, LLC*, AWCAC Decision No. 111 (June 17, 2009) at 13.

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.

AS 23.30.155. Payment of compensation

(a) Compensation under this chapter shall be paid periodically, promptly, and directly to the person entitled to it, without an award, except where liability to pay compensation is controverted by the employer. To controvert a claim, the employer must file a notice, on a form prescribed by the director, stating

(1) that the right of the employee to compensation is controverted;

(2) the name of the employee;

(3) the name of the employer;

(4) the date of the alleged injury or death; and

(5) the type of compensation and all grounds upon which the right to compensation is controverted.

. . . .

(e) If any installment of compensation payable without an award is not paid within seven days after it becomes due, as provided in (b) of this section, there shall be added to the unpaid installment an amount equal to 25 percent of the installment. This additional amount shall be paid at the same time as, and in addition to, the installment, unless notice is filed under (d) of this section or unless the nonpayment is excused by the board after a showing by the employer that owing to conditions over which the employer had no control the installment could not be paid within the period prescribed for the payment. The additional amount shall be paid directly to the recipient to whom the unpaid installment was to be paid.

AS 23.30.185. Compensation for temporary total disability.
In case of disability total in character but temporary in quality, 80 percent of the injured employee's spendable weekly wages shall be paid to the employee during the continuance of the disability. Temporary total disability benefits may not be paid for any period of disability occurring after the date of medical stability.

8 AAC 45.142. Interest.
(a) If compensation is not paid when due, interest must be paid at the rate established in AS 45.45.010 for an injury that occurred before July 1, 2000, and at the rate established in AS 09.30.070(a) for an injury that occurred on or after July 1, 2000. If more than one installment of compensation is past due, interest must be paid from the date each installment of compensation was due, until paid. If compensation for a past period is paid under an order issued by the board, interest on the compensation awarded must be paid from the due date of each unpaid installment of compensation.

(b) The employer shall pay the interest

(1) on late-paid time-loss compensation to the employee or, if deceased, to the employee's beneficiary or estate;

. . . .

(3) on late-paid medical benefits to

(A) the employee or, if deceased, to the employee's beneficiary or estate, if the employee has paid the provider or the medical benefits;

(B) to an insurer, trust, organization, or government agency, if the insurer, trust, organization, or government agency has paid the provider of the medical benefits; or

(C) to the provider if the medical benefits have not been paid.

AS 23.30.395. Definitions.
In this chapter,
. . . .

(16) "disability" means incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment;

AAC 45.070. Hearings
. . . .

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

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

(2) dismiss the case without prejudice; or

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

ANALYSIS

1. Was the oral ruling to proceed with the hearing in Employee’s absence correct?

When a party does not appear at hearing, but was served with notice of the hearing, the first option in order of priority under 8 AAC 45.070(f) is to proceed with the hearing in the party’s absence. Here, the September 3, 2015 prehearing conference summary stated when the hearing was scheduled; it was served on Employee at his address of record. The hearing notice was mailed to Employee on September 4, 2015 at his address of record and received on September 15, 2015. Employee was served with notice of the hearing, and the decision to proceed with the hearing in Employee’s absence was correct.

2. Is the work injury the substantial cause of Employee’s continued disability and need for medical treatment?

Employer acknowledges Employee was injured at work; it accepted the claim and paid medical and disability benefits until the November 23, 2013 controversion. Consequently, the issue becomes

whether the work injury remains the substantial cause of Employee's disability or need for medical treatment after November 23, 2013.

To attach the presumption, an employee must first establish a preliminary link between his or her injury and the employment. The preliminary link requires only "some," relevant evidence. In some cases, it is within a lay person's experience whether a particular mechanism of injury might cause a specific condition. In more complex medical cases, medical evidence may be needed to establish the link. In determining whether the presumption is met, credibility is not considered nor is the evidence weighed against competing evidence.

Employee successfully raised the presumption through PA-C May's May 14, 2013 diagnosis of a closed head injury, the May 14, 2013 PAMC chart note diagnosing an injury from a fall, and Dr. Henzler's August 22, 2013 diagnosis of post-concussive syndrome after a 20-foot fall.

To rebut the presumption, an employer is required to present substantial evidence demonstrating employment was not the substantial cause or that a cause other than employment played a greater role in causing Employee's disability and need for medical treatment. Again, credibility is not considered nor is the evidence weighed against competing evidence at this step.

Employer successfully rebutted the presumption through the opinions of Drs. Wray and Burns that Employee became medically stable eight weeks after the injury, or by May 22, 2013, a date with which Dr. Pitzer agreed. Also, Dr. Levine opined Employee was medically stable by late July 2013.

Because Employer successfully rebutted the presumption, Employee needed to prove by a preponderance of the evidence that the work injury remained the substantial cause of his disability or need for medical treatment after November 23, 2013. He did not do so. PA-C May's diagnosis of a closed head injury, the PAMC chart note diagnosing an injury from a fall, and Dr. Henzler's diagnosis of post-concussive syndrome have little probative value as they were all made well before November 23, 2013. Less weight is also given to Dr. Figueroa's opinion because it was not based on all of Employee's medical records. In his July 3, 2013 chart note,

Dr. Figueroa stated that Employee did not get any imaging after the accident. In fact, Employee had a CT scan the day of the injury, another CT scan and x-rays on May 9, 2013, and MRIs on May 14, 2013. In contrast, Dr. Wray's and Dr. Burns's opinion that Employee became medically stable eight weeks after the injury was based on all of Employee's medical records since the injury, and, consequently, their opinion is given more weight. Dr. Pitzer's and Dr. Levine's opinions are given the most weight. Their opinions were also based on a review of Employee's complete medical records, and as the board's experts, there is less likelihood their opinions are biased in favor of one party or the other. The preponderance of the evidence is that, at the very latest, Employee was medically stable from the work injury by late July 2013; after that date, the work injury was no longer the substantial cause of Employee's disability or need for medical treatment. Employee's claims will be denied.

CONCLUSIONS OF LAW

1. The oral ruling to proceed with the hearing in Employee's absence was correct.

2. The work injury is no longer the substantial cause of Employee's continued disability and need for medical treatment.

ORDER

1. Employee's May 10, 2013, May 24, 2013, and July 2, 2013 claims are denied.

Dated in Anchorage, Alaska on October 28, 2015.

ALASKA WORKERS' COMPENSATION BOARD

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Ronald P. Ringel, Designated Chair

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Robert Weel, Member

APPEAL PROCEDURES

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

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

RECONSIDERATION

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

MODIFICATION

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

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Final Decision and Order in the matter of BRANDON W. MOEN, employee / claimant; v. MCKENNA BROTHERS PAVING, INC., employer; LIBERTY NORTHWEST INSURANCE CORP, insurer / defendants; Case No. 201305709; 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 October 28, 2015.

Nenita Farmer, Office Assistant