ALASKA WORKERS' COMPENSATION BOARD

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

CHARLES G. MANLEY, Employee, Claimant,	)	INTERLOCUTORY DECISION AND ORDER
v.	)	AWCB Case No. 201200402
MUNICIPALITY OF ANCHORAGE, Self-Insured Employer, Defendant.	)	AWCB Decision No. 15-0145 Filed with AWCB Anchorage, Alaska on November 6, 2015

The Municipality of Anchorage's (Employer) August 4, 2015 Petition to Strike second independent medical evaluation (SIME) reports and testimony was heard on October 27, 2015 in Anchorage, Alaska, a date selected on October 1, 2015. Attorney Eric Croft appeared and represented Charles G. Manley (Employee). Attorney Shelby Nuenke-Davison appeared and represented Employer. There were no witnesses. The record closed at the hearing's conclusion on October 27, 2015.

ISSUES

Employer contends Dr. Walter Ling's SIME reports and testimony should be excluded from the record because, as a quasi-official of the board, he engaged in an inappropriate, four-hour ex parte communication with Employee and/or he engendered a reasonable suspicion of bias by giving Employee the benefit of the doubt and by not fairly and impartially evaluating all evidence provided for SIME review.

Employee contends Dr. Ling conducted a proper SIME evaluation, consistent with the Alaska Workers' Compensation Act (Act), regulations and controlling law. Employee contends

Employer's ex parte communication argument is frivolous and lacks legal authority. Employee further contends Employer's other allegations regarding the SIME are unripe prior to a hearing on the merits of Employee's claim, at which point all evidence may be weighed and considered. Employee therefore contends no evidence should be stricken.

1) Should Dr. Ling's SIME reports and testimony be stricken from the record?

Employee contends Employer should be sanctioned because its ex parte communication argument was frivolous, lacking a factual or legal basis. Employer contends this hearing should not address a sanction, because it was not set as a hearing issue in the controlling prehearing conference summary. In the alternative, Employer opposes a sanction, contending it was unwarranted and there is no legal authority to impose one.

2) Should Employer be sanctioned for filing a pleading that lacks a factual or legal basis?

FINDINGS OF FACT

A review of the entire record establishes the following relevant facts and factual conclusions by a preponderance of the evidence:

1) Employee injured his back during the course and scope of employment on January 10, 2012. Employer accepted compensability of Employee's injury. (Undisputed.)

2) On January 15, 2015, *Manley v. Municipality of Anchorage*, AWCB Dec. No. 15-0009 (*Manley I*), denied the bulk of Employer's November 25, 2014 Petition to Compel, granting only the portion of the request to which Employee agreed. (*Manley I.*)

3) On February 6, 2015, *Manley v. Municipality of Anchorage*, AWCB Dec. No. 15-0018 (*Manley II*), found "significant differences of opinion clearly exist between the attending and EME physicians." Moreover, *Manley II* noted that neurosurgeon Bruce McCormack, M.D., who had conducted an SIME on November 17, 2014,

> did not cast a decisive 'tie-breaking' opinion' on two medical questions: (1) whether Employee suffers from addiction and/or substance abuse; and (2) whether Employee suffers from somatic symptom disorder. Both disputes need to be resolved before an accurate determination can be made as to what is causing Employee's chronic pain, what medical treatment is appropriate, what functional capacities he has now and could expect to have without narcotics, and whether he has a compensable injury.

Manley II therefore ordered an SIME "to assist in resolving these significant medical disputes."

> The most appropriate SIME physician is Dr. Walter Ling because his expertise is broader than Dr. McCormack's; in addition to being a neurologist, Dr. Ling also specializes in psychiatry and substance abuse. While Employer's desire to minimize its defense costs is understandable, its request for a records-review only SIME will be denied. Because this is a complex case, involving intertwining physiological and psychiatric components, an in-person evaluation is necessary to ensure a comprehensive report that will best advance understanding of the medical evidence, and assist in properly ascertaining and protecting both parties' rights.

(*Manley II*, pp. 12-14.)

4) Employer did not file a petition for reconsideration of *Manley II*, nor did it seek review with the Alaska Workers' Compensation Appeals Commission. However at hearing on October 27, 2015, Employer argued *Manley II*'s "statement that an SIME is meant as a 'tie breaker' is contrary to law" as set out in *Olafson v. State of Alaska, Dept. of Transportation and Public Facilities*, AWCAC Decision No. 061 (October 25, 2007). Employer further contended that, because the board "considers Dr. Ling a 'tiebreaker,' he ultimately is the decision maker" in the board's view. (ICERS computer database; Employer's hearing brief; record.)

5) On May 6, 2015, Employee attended an SIME with Dr. Ling. (SIME report, May 6, 2015.)

6) On June 25, 2015, Employer deposed Dr. Ling. (Deposition, June 25, 2015.)

7) On June 29, 2015, Dr. Ling wrote that his review of supplemental SIME records did not result in any change of opinions expressed in the May 6, 2015 SIME report. (SIME addendum, June 29, 2015.)

8) On August 4, 2015, Employer petitioned to

> strike from the record Dr. Ling's SIME reports of May 6 and June 29, 2015 and his deposition testimony or any live testimony, as Dr. Ling in performing his quasi-official duties as an SIME engaged in an inappropriate undocumented 4 hour 'ex parte' communication, did not fairly or impartially evaluate the evidence, unfairly gave the employee the benefit of the doubt and has engendered a reasonable suspicion of bias.

(Petition to Strike, August 4, 2015.)

9) On August 24, 2015, Employee opposed the August 4, 2015 Petition to Strike, denying all allegations. (Opposition to Insurance Company's Petition to Strike, August 24, 2015.)

10) At a prehearing conference on September 22, 2015, a hearing was set for October 29, 2015 on the issue of Employer's August 4, 2015 Petition to Strike Dr. Ling's SIME reports, deposition and testimony. The prehearing conference summary also noted two other issues: "Should Dr.

Ling be permitted to testify at this hearing?" and "Who should fund the cost of calling Dr. Ling as a witness?" On October 1, 2015, the hearing was rescheduled to October 27, 2015, and the parties notified the board they had agreed to proceed with the hearing on the briefing and the record, thereby rendering the latter two issues moot. (Prehearing Conference Summary, September 22, 2015; ICERS computer database; Record.)

11) On October 21, 2015, Employee filed its hearing brief, in which, for the first time, it asked the board to find Employer's August 4, 2015 pleading lacked a factual or legal basis, and to impose a penalty. (Hearing brief, October 21, 2015.)

12) At hearing on October 27, 2015, Employer contended its Petition to Strike was supported by excerpts from Dr. Ling's May 6, 2015 SIME report and June 25, 2015 deposition, including: Dr. Ling referred to the surveillance videos as "those dumb things" (deposition, p. 20); Dr. Ling did not watch Employee's depositions in entirety (deposition, pp. 22-23); Dr. Ling opined Employee deserved "the benefit of the doubt" (SIME report, p. 28 and deposition, p. 33); when asked about the length of time spent with Employee, Dr. Ling repeatedly stated he was "nosey" (deposition, pp. 5-8); Dr. Ling stated he did not retain notes from the SIME (deposition pp. 5-6); Dr. Ling allegedly rambled in response to a question (deposition, pp. 8-9); Dr. Ling testified he recorded Employee's statements, which Employer contended were not true, about his finances but left the job of determining the veracity of Employee's statements to "someone else" (SIME report, pp. 17, 22; deposition pp. 10-11, 42-43); Dr. Ling reported what Employee told him regarding pain medications and opined, "If his report of opioid-containing medication use today is accurate . . . [t]his would strongly argue against his having an addiction to prescription opioids . . .," however Dr. Ling noted he did not have access to drug screening profiles records Employee said he possessed (SIME report, pp. 17-18, 27; deposition, pp. 27-29); Dr. Ling reported Employee was adamant that surveillance videos showing him performing physical activities were taken during periods Employee was heavily medicated, but Dr. Ling didn't "really have time to cross-check about when exactly" Employee was on pain medications (SIME report, p. 27; deposition, p. 21); when asked whether there was anything contrary to what Employee had told him in the most recent medical reports reviewed, Dr. Ling responded, "Well, it was good for a good laugh, I think. None of the things that was in deposition that you took" (deposition, pp. 29-30); Dr. Ling testified, "As far as I know, he didn't have any significant psych history before," a statement Employer contended revealed Dr. Ling's failure to fairly review the evidence (deposition, p.

19.); Statements Dr. Ling made that allegedly demonstrated his advocacy on behalf of Employee, including "Dr. McCormack's report consists mainly of medical record review, with no specific present complaints or physical examination indicated" and "The diagnostic considerations mounted to discredit [Employee's] claim are not sufficiently supported by the available medical evidence" (SIME report, pp. 13, 28); Dr. Ling opined that "certain medical reports" offered alternative explanations of Employee's situation that were "very flimsy and quite unsupported by the medical record," while Employer contended Dr. Ling's report was the flimsy one (deposition, p. 33); and Dr. Ling testified that after six or eight hours of records review, he spent four hours with Employee, "trying to put a story together" (deposition, pp. 6-7). (Employer's hearing brief; 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;
> . . .

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, 533-534 (Alaska 1987). An adjudicative body must base its decision on the law, whether cited by a party or not. *Barlow v. Thompson*, 221 P.3d 998 (Alaska 2009).

> **AS 23.30.095. Medical treatments, services, and examinations.**
> . . .
> (k) In the event of a medical dispute regarding determinations of causation . . . 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 purpose of an SIME is to have an independent expert provide an opinion to the board about a contested issue. *Seybert v. Cominco Alaska Exploration*, 182 P.3d 1079, 1097 (Alaska 2008). The Commission described an SIME as "an investigative tool exercised by the board to assist the board by providing disinterested information." *Olafson v. State of Alaska, Dept. of Transportation and Public Facilities*, AWCAC Decision No. 061 (October 25, 2007) at 15. The SIME physician is the *board's expert*, not the employee's or employer's expert. *Bah v. Trident Seafoods Corp.*, AWCAC Decision No. 073 (February 27, 2008) at 5, emphasis original, citing *Olafson* at 23. "The board is not a party to the dispute and an SIME is not a discovery process like a deposition." *Olafson* at 23, n.93.

"The SIME physician is not a 'public official' as defined by AS 39.52, but the SIME physician serves the interests of the board in the performance of quasi-official SIME duties." *Olafson* at 16.

> Once appointed to a specific case, the physician serves the board by examining the medical records and the claimant and producing a report responding to the board's questions. . . . The SIME physician takes no part in deciding the claim; he or she does not vote on the board panel or participate in deliberations, or approve, or disapprove a claim for compensation. The SIME physician's report is not given special status as a 'recommendation;' it may be disregarded by the board that requested it (footnote omitted.) The SIME physician makes *no decision* about the claim; the SIME report simply offers an expert *opinion* on the medical issues in dispute. We conclude that an SIME physician is not a 'public officer' as defined by AS 39.52.960(20). *Id.* at 18; emphases original.

An SIME physician is "obligated to provide, to the best of his or her ability and knowledge, a thorough, professional, informed and impartial evaluation of the examinee and a similarly thorough, professional, impartial, informed and timely report to the board (footnote omitted.) *Id.* at 19.

Olafson further described the SIME physicians' unique role in the adjudicatory process:

> Unlike special masters, they do not 'take evidence,' weigh evidence, or make recommended findings on the adjudicatory facts. They do not act as investigators or auditors who then bring charges or testify on behalf of charging agencies before regulatory bodies. They do not mediate or conciliate parties' disputes. They have no fact-finding duties. They are not charged with developing proposed actions. Their duties are limited to giving an informed, impartial opinion on identified medical disputes based on the medical records and their examination of

> the injured worker, if selected. They may not express opinions regarding the legal outcome of the claim, although, unlike non-expert witnesses, they are permitted to give an opinion, or testify to an inference, that embraces the ultimate issue to be decided by the board. *Id.* at 19-20.

Church v. Arctic Fire & Safety, AWCAC Decision No. 126 (December 31, 2009) reviewed an injured worker's claim the board erred by limiting his SIME to a records review only. *Church* at 25-26 stated:

> The purpose of an SIME is to assist the board in rendering its decision; the SIME doctor is the board's expert (footnote omitted). Therefore, the board is in position to assess what an SIME needs to include in order for the board to fill in any gaps or resolve any disputes in its understanding of the medical evidence. Here, the board concluded that 'an extensive record' already existed on how Church's thoracic spine condition developed (footnote omitted). Moreover, the board noted that because Church's surgery was already complete, a physical examination was unlikely to help determine causation (footnote omitted), and not requiring a physical examination made the SIME more cost-effective (footnote omitted). Lastly, the board left open the possibility of a physical examination if the SIME doctor requested one (footnote omitted).
>
> The board's decision was well-reasoned, not 'arbitrary, capricious,' or 'manifestly unreasonable' (footnote omitted), and it does not leave us 'with a definite and firm conviction . . . that a mistake has been made' (footnote omitted). Therefore, the commission affirms the board's decision limiting the SIME to a records review.

> **AS 23.30.110. Procedure on claims.**
> (a) . . . the board may hear and determine all questions in respect to the claim.
> . . .

The language "all questions" in AS 23.30.110(a) is limited to questions raised by the parties or by the agency upon notice duly given to the parties. *Simon v. Alaska Wood Products*, 633 P.2d 252, 256 (Alaska 1981).

> **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. . .

A three-step analysis is used to determine the compensability of a worker's claim. Issues of credibility and evidentiary weight are deferred until the third step, after it has been determined an

employer has rebutted a presumption of compensability raised by the employee, and the burden has shifted back to the employee to prove all elements of his case by a preponderance of the evidence. *Louisiana Pacific Corp. v. Koons*, 816 P.2d 1379, 1381 (Alaska 1991); *Norcon, Inc. v. Alaska Workers' Comp. Bd.*, 880 P.2d 1051, 1054 (Alaska 1994); *VECO, Inc. v. Wolfer*, 693 P.2d 865, 869-870 (Alaska 1985).

> **AS 23.30.135. Procedure before the board.**
> (a) In making an investigation or inquiry or conducting a hearing the board is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this chapter. The board may make its investigation or inquiry or conduct its hearing in the manner by which it may best ascertain the rights of the parties. . . .

> **AS 39.52.960 Definitions.**
> In this chapter, unless the context requires otherwise,
> . . .
> (21) 'public officer' or 'officer' means
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> (A) a public employee;
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> (B) a member of a board or commission; and
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> (C) a state officer designated by the governor to act as trustee of the trust or a person to whom the trustee has delegated trust duties; in this paragraph, "trust" has the meaning given in AS 37.14.450;
> . . .

> **AS 44.64.050. Hearing officer conduct.**
> . . .
> (b) . . . [A] code of hearing officer conduct…shall apply to . . . hearing officers of each . . . agency. The following fundamental canons of conduct shall be included in the code: in carrying out official duties, an administrative law judge or hearing officer shall
> . . .
> (3) perform the duties of the office impartially and diligently;
> . . .

Hearing officers must evaluate their ability to accord parties a fair and impartial hearing in compliance with the standards and prohibitions articulated in the Hearing Officer Code of Conduct at 2 AAC 64.030.

> **2 AAC 64.030. Canons of conduct.**
> (a) The canons of conduct in AS 44.64.050(b) are part of the code of hearing officer conduct. . . .
>
> (b) To comply with the requirement
> . . .
> (3) to perform the duties of the office or of the hearing function impartially and diligently, a hearing officer or administrative law judge
> . . .
> (F) shall refrain from initiating, permitting, or considering improper ex parte communications;
> . . .

Vaska v. State of Alaska, 955 P.2d 943, 945 (Alaska App. 1998) concerned an investigation into whether the conduct of a trial judge's law clerk gave rise to a reasonable appearance of bias in favor of the state.

> Codes of judicial conduct have long recognized the principle that it is not enough for judicial officers to be untainted by bias; judicial officers must, in addition, conduct themselves so as to avoid engendering reasonable suspicions of bias. . . . Moreover, the conduct of members of the judge's staff can, in some circumstances, implicate the judge's duty to avoid creating the appearance of bias. Under Alaska Judicial Canon 3B(2), judges must supervise their staff so as to 'require [them] . . . to observe the standards of fidelity and diligence that apply to [the judge].'

> **8 AAC 45.065. Prehearings**.
> . . .
> (c) After a prehearing the board or designee will issue a summary of the actions taken at the prehearing, the amendments to the pleadings, and the agreements made by the parties or their representatives. The summary will limit the issues for hearing to those that are in dispute at the end of the prehearing. Unless modified, the summary governs the issues and the course of the hearing. . . .

> **8 AAC 45.070. Hearings**. . . .
> . . .
> (g) Except when the board or its designee determines that unusual and extenuating circumstances exist, the prehearing summary, if a prehearing was conducted and if applicable, governs the issues and the course of the hearing. . . .

Unless modified, or the case of unusual and extending circumstances, the prehearing conference summary governs the issues and the course of the hearing. The board's authority to hear and determine questions in respect to a claim is "limited to the questions raised by the parties or by the agency upon notice duly given to the parties." *Simon* at 256.

> **8 AAC 45.092. Selection of an independent medical examiner**.
> . . .
> (e) If the parties stipulate that a physician not on the board's list may perform an evaluation under AS 23.30.095(k), the board or its designee may select a physician in accordance with the parties' agreement. If the parties do not stipulate to a physician not on the board's list to perform the evaluation, the board or its designee will select a physician to serve as an independent medical examiner to perform the evaluation. The board or its designee will consider these factors in the following order in selecting the physician:
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> (1) the nature and extent of the employee's injuries;
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> (2) the physician's specialty and qualifications;
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> (3) whether the physician or an associate has previously examined or treated the employee;
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> (4) the physician's experience in treating injured workers in this state or another state;
>
> (5) the physician's impartiality; and
>
> (6) the proximity of the physician to the employee's geographic location.
> . . .
> (i) The report of the physician who is serving as an independent medical examiner must be done within 14 days after the evaluation ends. The evaluation ends when the physician reviews the medical records provided by the board, receives the results of all consultations and tests, and examines the injured worker, if that is necessary. . . . Until the parties receive the second independent medical examiner's written report, communications by and with the second independent medical examiner are limited, as follows:
>
> (1) a party or party's representative and the examiner may communicate as needed to schedule or change the scheduling of the examination;
>
> (2) the employee and the examiner may communicate as necessary to complete the examination;
> . . .

SIME physicians have a duty to disclose to the board any potential conflicts of interest they may regarding a particular case. Under 8 AAC 45.092(e), the board or its designee has a responsibility to consider six factors, including the physician's impartiality -- "that is, whether

the physician is predisposed against, or a partisan for, one of the parties" -- prior to appointment. *Olafson* at 22.

> **Alaska R. Civ. P. 11. Signing of Pleadings, Motions, and Other Papers; Sanctions.**
> . . . The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless expense in the cost of litigation. . . .
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> **ex parte communication.** A communication between counsel and the court when opposing counsel is not present. *Black's Law Dictionary*, Eighth Edition, 2004.
>
> **quasi.** Seemingly but not actually; in some sense; resembling; nearly. *Black's Law Dictionary*, Eighth Edition, 2004.

ANALYSIS

1) Should Dr. Ling's SIME reports and testimony be stricken from the record?

At the October 27, 2015 hearing Employer articulated the issues as: (1) whether an ex parte, four-hour conversation between Employee and the SIME physician, who is a quasi-official of the board, was inappropriate and unnecessary to complete the examination; and (2) whether the SIME physician, rather than serving the board's goals to be fair and impartial, favored Employee by continuously giving him the benefit of the doubt, without reviewing all records to see if there was any evidence Employee was being less than truthful, and by calling Employer's surveillance videos "those dumb things." Employer's arguments that Dr. Ling's report and testimony should be stricken on one or both of these grounds are unconvincing.

By definition Employee's conversation with Dr. Ling was not an ex parte communication, since it was not a communication between counsel and decision-makers when opposing counsel was not present. *Black's.* Employee's attorney did not attend the SIME and Dr. Ling is neither an officer nor a staff member of the board. An SIME physician performs "quasi-official" duties but, as the Commission made clear in *Olafson*, he is not a public officer or a public official under

AS 39.52. The Commission's use of the adverb "quasi" is significant, for it means "seemingly but not actually; in some sense; resembling; nearly." *Black's. Olafson* stated an SIME physician serves the interests of the board, but he has no fact-finding duties, and takes no part in deciding the claim; rather he "simply offers an expert *opinion* on the medical issues in dispute." The standards of conduct for hearing officers and their staff, set out in AS 44.64.050(b)(3), 2 AAC 64.030(b)(3) and *Vaska*, therefore do not apply to Dr. Ling and are irrelevant to the instant matter.

Employer misconstrues *Manley II*'s statement that prior SIME physician Bruce McCormack did not cast a decisive "tie-breaking opinion" on two medical questions. The statement was made in the context of explaining the necessity and rationale for ordering a second SIME; there is nothing in the *Manley II* language to indicate, as Employer contends, that the board intends to convey on Dr. Ling the role of a decision maker. Even if there were such indications, the time for Employer to raise allegations of legal error has passed, since Employer neither filed a petition for reconsideration of *Manley II*, nor sought review with the Alaska Workers' Compensation Appeals Commission.

Employer contends Dr. Ling did both too much and too little: he allegedly communicated excessively with Employee, beyond what was "necessary to complete the examination" (8 AAC 45.092(i)(2)), but he also did not review all of the records and videos that might discount Employee's statements. Employer's objections to Dr. Ling's SIME procedure and opinions are unripe issues at this interlocutory, procedural stage. Evidentiary weight and credibility (including that of Dr. Ling and Employee) are substantive issues to be argued at the third step of the presumption analysis at a merits hearing. *McGahuey*; *Steffey*. Employer's Petition to Strike Dr. Ling's SIME reports and testimony is untimely and will be denied.

2) Should Employer be sanctioned for filing a pleading that lacks a factual or legal basis?

Prehearing conferences are held so parties can identify and simplify issues. 8 AAC 45.065(a)(1). Once a prehearing conference is completed, the board designee issues a prehearing conference summary. Unless modified, the summary limits the issues for hearing and controls the hearing's course. AS 23.30.110(a); 8 AAC 45.065(c); 8 AAC 45.070(g); *Simon.* This avoids "trial by

ambush" and allows parties to properly prepare for hearing. Here, Employee did not raise the sanctions issue prior to his hearing brief, and there are no unusual or extenuating circumstances to warrant deviating from the issues stated in the controlling prehearing conference summary. It would be a violation of Employer's due process rights to decide the issue at this time and Employee's request for sanctions will therefore be denied without prejudice.

CONCLUSIONS OF LAW

1) Dr. Ling's SIME reports and testimony should not be stricken from the record.

2) The sanctions issue should not be decided at this time.

ORDER

1) Employer's August 4, 2015 Petition to Strike SIME reports and testimony is denied.

2) Employee's request that Employer be sanctioned for filing a pleading that lacks a factual or legal basis is denied without prejudice.

Dated in Anchorage, Alaska on November 6, 2015.

ALASKA WORKERS' COMPENSATION BOARD

Margaret Scott, Designated Chair

Linda Hutchings, Member

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 CHARLES G. MANLEY, employee / claimant; v. MUNICIPALITY OF ANCHORAGE, self-insured employer; Case No. 201200402; 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 November 6, 2015.

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Nenita Farmer, Office Assistant