

ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

RYAN STRAIGHT,)	
Employee,)	INTERLOCUTORY
Claimant,)	DECISION AND ORDER
)	
v.)	AWCB Case No. 201514431
)	
JOHNSTON CONSTRUCTION &)	AWCB Decision No. 16-0026
ROOFING, LLC,)	
Employer,)	Filed with AWCB Anchorage, Alaska
)	on March 31, 2016
and)	
)	
AMERICAN INTERSTATE INSURANCE)	
COMPANY -,)	
Insurer,)	
Defendants.)	

Ryan Straight's October 15, 2015 claim was heard on March 22, 2016 in Anchorage, Alaska. This hearing date was selected on February 17, 2016. Attorney Joseph Kalamarides appeared and represented Ryan Straight (Employee). Attorney Michael Budzinski appeared and represented Johnston Construction & Roofing, LLC and American Interstate Insurance Company (Employer). Employee appeared and testified; there were no other witnesses. The record remained open until March 25, 2016, to allow Employee to file a supplemental affidavit of attorney fees.

ISSUES

Employee contends his compensation rate should be adjusted because of the significant disparity between his hourly wage when injured and his "spendable weekly wage at the time of injury" calculated under AS 23.30.220(a)(4). Employer contends AS 23.30.220(a)(4) provides the

proper means for determining Employee's spendable weekly wage, and his compensation rate is correct.

1. Was Employee's spendable weekly wage properly calculated?

Employee contends that if his spendable weekly wage was properly calculated under AS 233.30.220, then the statute is unconstitutional. However, both parties acknowledged that the board does not have jurisdiction to determine the constitutionality of a statute.

2. Is AS 23.30.220 constitutional?

Employee contends his attorney provided valuable services and he should be awarded attorney fees and costs. Employer contends that because Employee should not be awarded further benefits, he is not entitled to attorney fees.

3. Should Employee be awarded attorney fees and costs?

FINDINGS OF FACT

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

1. Employee has worked as a roofer since 1973. From 1973 to 2009 he worked through the Roofers' Union. In 2009, after the Roofers' Union left Alaska, he went to work for Employer. (Employee).
2. When working for Employer, Employee was paid hourly. The hourly rate varied, because some work fell under the Davis Bacon Act, and some did not. Employee worked on a contract-by-contract basis, and the work was year-round, but not continuous. Employee estimated that in total he worked about nine months of each year. (Employee).
3. Employee took most of 2013 and 2014 off to build his own home. He did virtually all of the work himself, including the concrete, framing, sheetrock, and electrical work. (Employee).
4. Employee returned to work for Employer in 2015, and on September 9, 2015 was injured while working. A gust of wind caught a ladder that Employee was moving; he experienced pain in his right shoulder as he tried to keep the ladder from falling. (Employee; First Report of Injury, September 14, 2015).

5. At the time of the injury, Employee was being paid \$41.45 per hour. (Employee; Payroll Advice, September 4, 2015). His reported weekly wage was \$2,108.80. (First Report of Injury, September 14, 2015; Payroll Advice, September 4, 2015).

6. For the years preceding the injury, Employee reported the following wages:

2010	\$66,909
2011	\$56,086
2012	\$66,010
2013	\$7,810
2014	\$18,657

(Social Security Earnings Record).

7. Employer paid TTD at \$255.00 per week based on Employee's 2014 earnings. (Compensation Report, October 12, 2015; Observation).

8. Employee's 2014 gross weekly earnings are one-fiftieth of his annual earnings, or \$373.14 ($\$18,657 \div 50$). (AS 23.30.220(a)(4); Observation). With gross weekly earnings of \$373.14, Employee's spendable weekly wage is \$315.66, and his compensation rate is \$255.00, which is the minimum compensation rate for 2015. (Online Benefit Calculator, <http://www.labor.state.ak.us/wc/benefitcalculator.htm>; Bulletin No. 14-06, December 17, 2014).

9. Employee's weekly wages at the time of injury, \$2,108.80, result in a spendable weekly wage of \$1,524.11, and a compensation rate of \$1,159.00, which is the maximum compensation rate for 2015. (Online Benefit Calculator, <http://www.labor.state.ak.us/wc/benefitcalculator.htm>; Bulletin No. 14-06, December 17, 2014).

10. Employee's average yearly wage for 2010, 2011, and 2012 is \$63,001.67 ($(\$66,909 + \$56,808 + \$66,010) \div 3$). (Observation). His gross weekly earnings for that period would be one-fiftieth of that amount, or \$1,260.03 ($\$63,001.67 \div 50$). (AS 23.30.220(a)(4); Observation). With gross weekly earnings of \$1,260.03, Employee's spendable weekly wage would be \$959.76, and his compensation rate would be \$767.80. (Online Benefit Calculator, <http://www.labor.state.ak.us/wc/benefitcalculator.htm>).

11. On October 15, 2015, Employee filed a claim seeking temporary total disability (TTD) benefits. (Claim, October 7, 2015). At the November 19, 2015 prehearing conference,

Employee's claim was amended to include a compensation rate adjustment and attorney fees and costs. (Prehearing Conference Summary, November 19, 2015).

12. On March 23, 2016, Employee filed an affidavit of attorney fees itemizing \$3,591.25 in attorney fees and \$4.87 in costs. (Fee Affidavit, March 23, 2016).

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;

(2) workers' compensation cases shall be decided on their merits except where otherwise provided by statute;

...

(4) hearings in workers' compensation cases shall be impartial and fair to all parties and that all parties shall be afforded due process and an opportunity to be heard and for their arguments and evidence to be fairly considered.

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

The board derives its authority and jurisdiction from the Alaska Workers' Compensation Act at AS 23.30.001, et seq., and the Alaska Administrative Procedure Act AS 44.62.540. An administrative agency can only adjudicate a dispute if it has been given explicit adjudicatory authority by statute. *Far North Sanitation, Inc. v. Alaska Public Utilities Commission*, 825 P.2d 867, 870 (Alaska 1992). The Alaska Supreme Court has recognized the board's equitable powers, but only as necessarily incident to exercise statutory adjudicative responsibilities. *Blanas v. The Brower Co.*, 938 P.2d 1056, 1062 (Alaska 1997). Applying equitable or common law principles in a specific case is permitted, but the board can only adjudicate in the context of a workers' compensation case, and lacks jurisdiction to decide constitutional claims. *Alaska Public Interest Group v. State*, 167 P.3d 27, 36-37 (Alaska 2007).

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. To establish a presumption under AS 23.30.120(a)(1) that the disability or death or the need for medical treatment arose out of and in the course of the employment, the employee must establish a causal link between the employment and the disability or death or the need for medical treatment. A presumption may be rebutted by a demonstration of substantial evidence that the death or disability or the need for medical treatment did not arise 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 23.30.120. 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 of compensability is applicable to any claim for compensation under the workers' compensation statute, including medical benefits. *Municipality of Anchorage v. Carter*, 818 P.2d at 665; *Meek*, 914 P.2d at 1279; *Moretz v. O'Neill Investigations*, 783 P.2d 764, 766 (Alaska 1989); *Olson v. AIC/Martin J.V.*, 818 P.2d 669, 675 (Alaska 1991).

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). However, an employee "need not present substantial evidence that his or her employment was a substantial

cause of his disability.” *Fox v. Alascom, Inc.*, 718 P.2d 977, 984 (Alaska 1986) “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 demonstrating 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); *Ashwater Burns Inc. v. Huit*, AWCAC Decision No. 191 (March 18, 2014). Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Fireman's Fund Am. Ins. Companies v. Gomes*, 544 P.2d 1013, 1015 (Alaska 1976). The determination of whether evidence rises to the level of substantial is a legal question. *Id.* 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 claimant need produce no further evidence and prevails solely on the raised but un-rebutted presumption. *Williams v. State*, 938 P.2d 1065 (Alaska 1997). “If the employer rebuts the presumption, it drops out, and the employee must prove, by a preponderance of the evidence, that in relation to other causes, employment was the substantial cause of the disability, need for medical treatment, etc. Should the employee meet this burden, compensation or benefits are payable.” *Runstrom* at 8.

AS 23.30.145. Attorney fees.

(a) Fees for legal services rendered in respect to a claim are not valid unless approved by the board, and the fees may not be less than 25 percent on the first \$1,000 of compensation or part of the first \$1,000 of compensation, and 10 percent of all sums in excess of \$1,000 of compensation. When the board advises that a claim has been controverted, in whole or in part, the board may direct that the fees for legal services be paid by the employer or carrier in addition to compensation awarded; the fees may be allowed only on the amount of compensation controverted and awarded. When the board advises that a claim has not been controverted, but further advises that bona fide legal services have been rendered in respect to the claim, then the board shall direct the payment of the fees out of the compensation awarded. In determining the amount of fees the

board shall take into consideration the nature, length, and complexity of the services performed, transportation charges, and the benefits resulting from the services to the compensation beneficiaries.

(b) If an employer fails to file timely notice of controversy or fails to pay compensation or medical and related benefits within 15 days after it becomes due or otherwise resists the payment of compensation or medical and related benefits and if the claimant has employed an attorney in the successful prosecution of the claim, the board shall make an award to reimburse the claimant for the costs in the proceedings, including reasonable attorney fees. The award is in addition to the compensation or medical and related benefits ordered.

In *Harnish Group, Inc. v. Moore*, 160 P.3d 146 (Alaska 2007), the Alaska Supreme Court discussed how and under which statute attorney's fees may be awarded in workers' compensation cases. A controversion (actual or in fact) is required for the board to award fees under AS 23.30.145(a). "In order for an employer to be liable for attorney's fees under AS 23.30.145(a), it must take some action in opposition to the employee's claim after the claim is filed." *Id.* at 152. Fees may be awarded under AS 23.30.145(b) when an employer "resists" payment of compensation and an attorney is successful in the prosecution of the employee's claims. *Id.* In this latter scenario, reasonable fees may be awarded. *Id.* at 152-153.

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.

Since 1983, compensation for TTD has remained at 80 percent of spendable weekly wages. AS 23.30.185; §5 Ch. 70 SLA 1983. However, the calculation of an employee's spendable weekly wage under AS 23.30.220 has changed several times during the intervening years.

AS 23.30.220 Determination of Spendable Weekly Wage (1983)

(a) The spendable weekly wage of an injured employee at the time of an injury is the basis for computing compensation. It is the employee's gross weekly earnings minus payroll tax deductions. The gross weekly earnings shall be calculated as follows:

(1) The gross weekly earnings are computed by dividing by 100 the gross earnings of the employee in the two calendar years immediately preceding the injury.

(2) If the board determines that the gross weekly earnings at the time of injury cannot be fairly calculated under (1) of this subsection, the board may determine the employee's gross weekly earnings for calculating compensation by considering the nature of the employee's work and work history.

....

(b) The commissioner shall annually prepare formulas that shall be used to calculate an employee's spendable weekly wage on the basis of gross weekly earnings, number of dependents, marital status, and payroll tax deductions.

Effective July 1, 1988, AS 23.30.220 was amended as follows:

AS 23.30.220 Determination of Spendable Weekly Wage (1988)

(a) The spendable weekly wage of an injured employee at the time of an injury is the basis for computing compensation. It is the employee's gross weekly earnings minus payroll tax deductions. The gross weekly earnings shall be calculated as follows:

(1) the gross weekly earnings are computed by dividing by 100 the gross earnings of the employee in the two calendar years immediately preceding the injury;

(2) if the employee was absent from the labor market for 18 months or more of the two calendar years preceding the injury, the board shall determine the employee's gross weekly earnings for calculating compensation by considering the nature of the employee's work and work history, but compensation may not exceed the employee's gross weekly earnings at the time of injury;

....

(b) The commissioner shall annually prepare formulas that shall be used to calculate an employee's spendable weekly wage on the basis of gross weekly earnings, number of dependents, marital status, and payroll tax deductions.

In *Gilmore v Alaska Workers' Compensation Board*, 882 P.2d 922 (Alaska 1994), the Supreme Court found the 1988 version of AS 23.30.220(a) unconstitutional. Mr. Gilmore started work for his employer in June 1989, and was earning a spendable weekly wage of about \$850.00. In September 1989, he was injured. He had worked a total of 39 weeks (about 9 months) in 1987 and 1988. *Id.* at 924. Because Mr. Gilmore had not been absent from the labor market for 18

months or more during 1987 and 1988, the board determined his spendable weekly wage should be determined under AS 23.30.220(a)(1). The Supreme Court stated the purpose of AS 23.30.220(a) was “to formulate a fair approximation of a claimant’s probable future earning capacity during the period in which compensation benefits are to be paid.” *Id.* at 927, *quoting Johnson v. RCA-OMS*, 681 P.2d 905, 907 (Alaska 1984). Noting that basing compensation on prior work history could result in substantially different benefits for similarly situated employees, the court held AS 23.220 (a)(1) violated the equal protection clause of the Alaska Constitution.

In response to the *Gilmore* decision, the legislature amended AS 23.30.220 in 1995:

AS 23.30.220 Determination of spendable weekly wage. (1995)

(a) Computation of compensation under this chapter shall be on the basis of an employee’s spendable weekly wage at the time of an injury. An employee’s spendable weekly wage is the employee’s gross weekly earnings minus payroll tax deductions. An employee’s gross weekly earnings shall be calculated as follows:

(1) if at the time of injury the employee’s earnings are calculated by the week, the weekly amount is the employee’s gross weekly earnings;

(2) if at the time of injury the employee’s earnings are calculated by the month, the employee’s gross weekly earnings are the monthly earnings multiplied by 12 and divided by 52;

(3) if at the time of injury the employee’s earnings are calculated by the year, the employee’s gross weekly earnings are the yearly earnings divided by 52;

(4) if at the time of injury the

(A) employee earnings are calculated by the day, hour, or by the output of the employee, the employee’s gross weekly earnings are the employee’s earnings most favorable to the employee computed by dividing by 13 the employee’s earnings , not including overtime or premium pay, earned during any period of 13 consecutive calendar weeks within the 52 weeks immediately preceding the injury;

(B) employee has been employed for less than 13 calendar weeks immediately preceding the injury, then, notwithstanding (1) – (3) of this subsection and (A) of this paragraph, the employee’s gross weekly earnings are computed by determining the amount that the employee would have earned, not including overtime or premium pay, had the

employee been employed by the employer for 13 calendar weeks immediately preceding the injury and dividing this sum by 13;

(5) if at the time of injury the employees earnings have not been fixed or cannot be ascertained, the employee's earnings for the purposes of calculating compensation are the usual wage for similar services when the services are rendered by paid employees;

. . . .

(b) The commissioner shall annually prepare formulas that shall be used to calculated an employee's spendable weekly wage on the basis of gross weekly earnings, number of dependents, marital status, and payroll tax deductions.

The Supreme Court addressed the 1995 version of AS 23.30.220 in *Dugan v. Aurora Electric, Inc.*, 50 P.3d 789 (Alaska 2002). The Court found the 1995 version of AS 23.30.220 constitutional, explaining:

The holding in *Gilmore* is largely based on the fact that wage determinations under the prior version of the statute based compensation rates exclusively on the average wage earned during a period of over a year without providing an alternate approach if the result was unfair. *Id.* at 797.

In 2005, the legislature made numerous changes to the Act. One of those changes, a change to AS 23.30.220, was proposed late in the legislative session. The change, at the request of the Alaska Labor Management *ad hoc* Committee on Workers' Compensation, was introduced at the House Labor and Commerce Committee hearing on the bill on May 4, 2005. (Testimony of Richard Cattnach to the House Labor and Commerce Committee, May 4, 2005). The entirety of the discussion on the change to §220 lasted about 3 minutes, and consisted primarily of the testimony of Paul Lisankie, director of the Workers' Compensation Division at the time. Director Lisankie explained that there had been a version of the law on how compensation rates would be calculated for certain employees that was overturned by the supreme court in 1994. In 1995, the legislature amended the section by adopting what was essentially the section as it existed in 2005. Director Lisankie explained the supreme court had recently reviewed the 1995 changes to the section and held that the legislature "got it right." He stated the proposed language was "a departure from something the supreme court said was all right." (Testimony of Paul Lisankie to the House Labor and Commerce Committee, May 4, 2005).

AS 23.30.220. Determination of spendable weekly wage. (Current)

(a) Computation of compensation under this chapter shall be on the basis of an employee's spendable weekly wage at the time of injury. An employee's spendable weekly wage is the employee's gross weekly earnings minus payroll tax deductions. An employee's gross weekly earnings shall be calculated as follows:

(1) if at the time of injury the employee's earnings are calculated by the week, the weekly amount is the employee's gross weekly earnings;

(2) if at the time of injury the employee's earnings are calculated by the month, the employee's gross weekly earnings are the monthly earnings multiplied by 12 and divided by 52;

(3) if at the time of injury the employee's earnings are calculated by the year, the employee's gross weekly earnings are the yearly earnings divided by 52;

(4) if at the time of injury the employee's earnings are calculated by the day, by the hour, or by the output of the employee, then the employee's gross weekly earnings are 1/50 of the total wages that the employee earned from all occupations during either of the two calendar years immediately preceding the injury, whichever is most favorable to the employee;

(5) if at the time of injury the employee's earnings have not been fixed or cannot be ascertained, the employee's earnings for the purpose of calculating compensation are the usual wage for similar services when the services are rendered by paid employees;

(6) if at the time of injury the employee's earnings are calculated by the week under (1) of this subsection or by the month under (2) of this subsection and the employment is exclusively seasonal or temporary, then the gross weekly earnings are 1/50 of the total wages that the employee has earned from all occupations during the 12 calendar months immediately preceding the injury;

....

(b) The commissioner shall annually prepare formulas that shall be used to calculate an employee's spendable weekly wage on the basis of gross weekly earnings, number of dependents, marital status, and payroll tax deductions.

ANALYSIS

1. Was Employee's spendable weekly wage properly calculated?

The presumption of compensability need not be applied in this case. The parties agree Employee was entitled to TTD benefits, they agree he was an hourly employee, and they agree to his earnings history. The only question is how his spendable weekly wage, and thus his compensation rate, should be calculated – a legal question.

Employee contends his spendable weekly wage calculated under AS 23.30.220(a)(4) does not result in a fair approximation of a his probable future earning capacity during his disability. Because of that, he argues his spendable weekly wage should be based on wages at the time of the injury, and relies on *Gilmore*. Employer contends that as an hourly employee, Employee's spendable weekly wage must be calculated under AS 23.30.220(a)(4); while the 1983 version of the section allowed the board to deviate when the statutory result was unfair, the current version does not provide for such an alternative. Employer contends *Gilmore* does not apply because the version of the statute it held to be unconstitutional is no longer in effect.

Employee's argument that the spendable weekly wage under AS 23.30.220(a)(4) does not result in a fair approximation of a his probable future earning capacity is well taken. At the time of injury, he was being paid \$41.45 per hour, and the week prior to the injury he had earned \$2,108.80. From 2010 through 2012, Employee's average annual earnings were over \$63,000.00, and that would seem to be a better approximation of his future earning capacity than would the two years he took off to build a house. Nevertheless, the board may not disregard specific provisions of the Act to achieve a better, fairer result in a particular case.

It is undisputed that Employee was paid by the hour. Consequently, his gross weekly earnings are properly calculated under AS 23.30.220(a)(4). Under that subsection, his gross weekly are 1/50 of his total earnings in the more favorable of the two preceding calendar years. In Employee's case, that would be 2014, when he earned \$18,657, and 1/50 of that amount is \$373.14. With a gross weekly earnings of \$373.14, his spendable weekly wage is \$315.66 resulting in a compensation rate of \$255.00 per week using the board's online benefit calculator.

Employee contends the compensation rate derived using AS 23.30.220(a)(4) is unfairly low and bears no relationship to his lost earnings. As a result, Employee contends his spendable weekly wage should be calculated under AS 23.30.220(a)(5). Employee's approach suffers from two problems. First, Employee was being paid by the hour, thus falling squarely within paragraph (4). Paragraph (5) states is applicable when "at the time of injury the employee's earnings have not been fixed or cannot be ascertained." Employee's earnings at the time of injury were fixed: he was being paid \$41.45 per hour. In essence, Employee is asking us to construe AS 23.30.220 to include a "general fairness" provision. Although the 1983 version of the statute contained such a provision, the legislature removed it with the 1988 amendment. The board's jurisdiction does not extend to reinserting provisions the legislature removed from the Act.

Lastly, Employee argues that because his past earnings do not accurately reflect his future earnings, *Gilmore* requires the use of an alternate method of calculating his spendable weekly wage. There are similarities between the current version of §220 and the 1988 version that the Supreme Court held to be unconstitutional. There are also differences. For example under the 1988 version, an hourly employee's spendable weekly wage was the total wages earned in the two preceding years divided by 100; now it is the better of the preceding two years divided by 50. Had the legislature simply reenacted the 1998 version when it amended the statute in 2005, *Gilmore* might well apply, but the legislature chose a different approach.

In this case, the compensation rate resulting from AS 23.30.220(a)(4) is unusually low. But that is the section that applies, and Employee's spendable weekly wage was properly determined based on his 2014 earnings.

2. *Is AS 23.30.220 constitutional?*

As the parties acknowledged, the board lacks jurisdiction to decide constitutional claims. *Alaska Public Interest Group*.

3. *Should Employee be awarded attorney fees and costs?*

Under AS 23.30.145(a), attorney fees may be awarded based on the amount of compensation awarded. Under AS 23.30.145(b), fees may be awarded when a claimant successfully prosecutes a

claim. Here, Employee was not awarded any additional compensation nor was he successful in prosecuting his claim. There is no basis upon which attorney fees and costs may be awarded.

CONCLUSIONS OF LAW

1. Employee's spendable weekly wage was properly calculated.
2. The board lacks jurisdiction to determine whether AS 23.30.220 is constitutional.
3. Employee will not be awarded attorney fees and costs.

ORDER

1. Employee's October 15, 2015 claim is denied.

Dated in Anchorage, Alaska on March 31, 2016.

ALASKA WORKERS' COMPENSATION BOARD

Ronald P. Ringel, Designated Chair

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 RYAN STRAIGHT, employee / claimant; v. JOHNSTON CONSTRUCTION & ROOFING, LLC, employer; AMERICAN INTERSTATE INSURANCE COMPANY -, insurer / defendants; Case No. 201514431; 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 March 31, 2016.

Elizabeth Pleitez, Office Assistant