ALASKA WORKERS' COMPENSATION BOARD

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

KIERSTON REUER, Employee, Claimant, v. FIRSTGROUP AMERICA, INC., Employer, and NEW HAMPSHIRE INSURANCE CO., LT, Insurer, Defendants.	)	INTERLOCUTORY DECISION AND ORDER AWCB Case No. 201017877 AWCB Decision No. 16-0033 Filed with AWCB Anchorage, Alaska on April 22, 2016

A hearing was held on April 5, 2016 in Anchorage, Alaska, to address Kierston Reuer's (Employee) February 5, 2016 Petition to Strike and Employer's March 18, 2016 Petition for a Second Independent Medical Evaluation (SIME). This hearing date was selected on March 2, 2016. Attorney Michael Jensen appeared and represented Employee. Attorney Krista Schwarting appeared and represented FirstGroup America, Inc. and its insurer (Employer). There were no witnesses. The record closed at the hearing's conclusion on April 5, 2016.

ISSUES

Employee contends a conflict exists between facts asserted by Employer's medical evaluator (EME) Scot Youngblood, M.D., and facts agreed to in a compromise and release agreement (C&R) approved on March 4, 2015. Employee contends that since an approved C&R has the

authority of an order, this conflict taints Dr. Youngblood's evaluation and requires his report to be stricken from the record.

Employer contends that Employee's arguments mainly concern the weight to be given to the EME report, and do not support its exclusion from evidence. Employer argues the report's relevance is sufficient to deny Employee's petition, and even if Dr. Youngblood's conclusions are prejudicial to Employee, any harm was cured by Dr. Youngblood's availability and answers at deposition.

1) **Should Employee's petition to strike be granted?**

Employer contends significant medical disputes exist between the opinions of Employee's attending physicians and the EME doctors. Employer contends an SIME will assist the fact-finders in understanding the medical disputes over causation, compensability, and treatment.

Employee contends an SIME is not proper because Dr. Youngblood's EME report is not sufficiently credible to support the medical dispute. Employee also contends that if an SIME is ordered, causation should be excluded as an SIME issue and an orthopedic physician should perform the examination.

2) **Should an SIME be ordered?**

Employee contends his attorney provided valuable services and should be awarded attorney's fees and costs.

Employer requested that only fees related to the current proceedings be considered, and stated it was unclear that all the fees listed were related to this procedural hearing.

3) **Is Employee entitled to an attorney's fee and cost award?**

FINDINGS OF FACT

1) On October 26, 2010, Employee was injured in a motor vehicle accident while working as a school bus driver for Employer. Employee reported injury to the neck, back, shoulders, and arms. (Mat-Su Regional Medical Center report, October 28, 2010).

2) On March 4, 2015, an approved C&R resolved various claims and benefits in this case. The C&R discusses the extensive medical history of symptoms, treatments, and examinations with numerous medical professionals for Employee's spine and knee complaints. (C&R, March 4, 2015).

3) Under the March 4, 2015 C&R, Employer paid Employee $76,400.00 in exchange for release of liability for various benefits under the Workers' Compensation Act (the Act), including all disability benefits, permanent partial impairment, compensation rate adjustment, medical transportation, interest, penalties, vocation rehabilitation, reemployment, stipend benefits under AS 23.30.041(k), massage treatment, acupuncture treatment, chiropractic treatment, prolotherapy treatment, spinal cord stimulator treatment, and out-of-pocket medical expenses "to which the employee might be presently owed or to which the employee might become entitled" under the Act. (*Id*. at 9).

4) Under the March 4, 2015 C&R, the parties agreed Employer would be responsible for reasonable and necessary medical benefits and related travel attributable to the condition described, excepting some specific treatments as listed above. The C&R states:

> a. It is also agreed that the right of the employer and carrier/adjuster to contest liability for future medical benefits is not waived under the terms of this settlement agreement. . . .
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> b. Both parties specifically retain the right to request an SIME should disputes arise in the future over medical treatment. In addition, the employee and carrier/adjuster specifically reserve the right to schedule an updated IME(s). The employer and carrier/adjuster agree that the employee's current right knee and spine conditions are related to the October 26, 2010 work injury but reserve the right to dispute compensability in the future. (*Id*. 9-10).

5) On June 1, 2015, Employer filed a notice of intent to rely on a June 10, 2013 letter from Patti Claxton of Objective Medical Assessments Corporation. The letter stated the prior "IME" physician had left the region, and Dr. Youngblood, a board-certified orthopedic surgeon, would be available to conduct IMEs. (Notice of Intent to Rely, June 1, 2015).

6) On July 10, 2015, Employee was examined by EME physician Dr. Youngblood. Dr. Youngblood's diagnoses were:

> 1. Cervicothoracic sprain/strain, without evidence of fracture, dislocation, radiculopathy or myelopathy, substantially caused by the industrial injury of October 26, 2010, long ago resolved and medically stable.

> 2. Lumbar sprain/strain, without evidence of fracture, dislocation, radiculopathy, or myelopathy, substantially caused by the industrial injury of October 26, 2010, long ago resolved and medically stable.
> 3. Cervical multilevel degenerative disc disease, without evidence of radiculopathy or myelopathy, pre-existing, age and genetics related, and not substantially caused or aggravated by the industrial injury of October 26, 2010, medically stable.
> 4. Right knee anterior cruciate ligament tear, status post remote surgical reconstruction in 2004, pre-existing and not substantially caused or aggravated by the industrial injury of October 26, 2010, now status post revision reconstruction with lateral augmentation in January 2011, ligamentously stable on today's examination, medically stable.
> 5. Right knee osteoarthritis, pre-existing and substantially caused by the examinee's prior anterior cruciate ligament injury and long-standing instability, not substantially caused or aggravated by the industrial injury of October 26, 2010, medically stable.
> 6. Right distal femur fracture, status post operative fixation, substantially caused by a fall down a flight of stairs at her home on December 19, 2011, and wholly unrelated to the industrial injury of October 26, 2010, healed and medically stable. . . .

7) Dr. Youngblood opined the work injury "substantially caused strains/sprains of the lumbar and cervical spines, which assuredly resolved within three months of the subject injury." Dr. Youngblood further opined Employee's current conditions were "deemed medically stable, without need for any additional treatment, regardless of causation." In response to a question about whether the work injury was still the substantial cause of Employee's current "condition," Dr. Youngblood stated it was not, the work-related conditions resolved within three months of the injury, and the remaining conditions "were never substantially caused or aggravated by the industrial injury of October 26, 2010." Dr. Youngblood additionally stated "[n]o additional treatment [was] recommended, indicated, reasonable or necessary, regardless of causation." (Youngblood EME Report, July 10, 2015).

8) On July 23, 2015, Employee was examined by Brian Miller, D.O. Dr. Miller stated Employee would likely require "an L4-L5 instrumental fusion and decompression and an ACDF of C4-C5 and C5-C6 to treat both of her areas of pain and neurologic dysfunction. . . ." (Dr. Miller report, July 23, 2015).

9) On July 28, 2015, Employee was examined by Curtis Mina, M.D. Dr. Mina recommended surgical intervention and stated Employee's symptoms were "related to her advanced degenerative disc disease at L4-5." Dr. Mina said Employee had substantial vertebral

body edema, likely causing the symptoms. Dr. Mina opined if Employee wished to proceed with surgery, "the most reliable option would be an L4-5 anterior discectomy through a retroperitoneal approach." (Dr. Mina report, July 28, 2015).

10) On July 31, 2015, Employer filed a controversion notice controverting all indemnity and medical benefits. Employer cited the C&R between the parties and Dr. Youngblood's EME report as the basis for the controversion. (Controversion Notice, July 31, 2015).

11) On August 5, 2015, Employee submitted a request for cross-examination of Dr. Youngblood based on his EME report. (Request for Cross-Examination, August 5, 2015).

12) On September 18, 2015, Employee filed a medical summary, which included reports from Andrea Trescot, M.D., Dr. Mina, Shawn Johnston, M.D, and Dr. Miller. (Employee's Medical Summary, September 18, 2015).

13) On September 23, 2015, Employer filed a Request for Cross-Examination of Dr. Trescot, Dr. Mina and Dr. Johnston. (Request for Cross-Examination, September 23, 2015).

14) On October 1, 2015, Employer filed a Request for Cross-Examination of Dr. Miller. (Request for Cross-Examination, October 1, 2015).

15) On October 17, 2015, Employee was examined by Dr. Mina. Dr. Mina stated Employee's magnetic resonance imaging (MRI) scan suggested advanced degenerative disc disease at L4-L5, and this "likely stemmed from her accident as the remainder of her disc heights are very well preserved." Dr. Mina recommended an "L4-5 anterior lumbar interbody fusion" and "unilateral pedicle instrumentation." (Dr. Mina report, October 17, 2015).

16) On November 3, 2015, Employee underwent surgery on L4-L5 with Dr. Mina at Mat-Su Regional Medical Center. Procedures included anterior lumbar interbody fusion, anterior instrumentation, placement of an intervertebral cage, posterior segmental instrumentation, posterolateral fusion, allograft, and autograft. (Dr. Mina operative report, November 3, 2015).

17) On February 5, 2016, Employee filed a petition to strike Dr. Youngblood's EME report. Employee contended the report should be stricken because Dr. Youngblood's opinion regarding causation was "contrary to the terms of the March 4, 2015 Board approved Compromise and Release Agreement." Employee further stated the report was not a legally sufficient basis for Employer's controversion. (Petition to Strike, February 5, 2016).

18) On February 23, 2016, the parties attended Dr. Youngblood's deposition. Dr. Youngblood explained his diagnoses, interpretations of the medical record, background and

qualifications, and his disagreements with Employee's attending physicians. Dr. Youngblood opined any spine and knee conditions present when he examined Employee would likely have been present when the C&R was approved. Dr. Youngblood opined his report's conclusions regarding proper treatment would not change, even assuming the right knee and spine conditions were related to the work injury, as stated in the C&R. (Dr. Youngblood Deposition, February 23, 2016).

19) On March 2, 2016, the parties attended a prehearing conference. Over Employer's objection, an oral hearing was scheduled for April 4, 2016, on Employee's February 5, 2016 Petition to Strike and whether the board should order an SIME. (Prehearing Conference Summary, March 2, 2016)

20) On March 18, 2016, Employer filed a petition for an SIME asserting disputes exist between Employee's attending physicians and Employer's EME physician on causation, compensability, and treatment. (Employer's Petition, March 18, 2016).

PRINCIPLES OF LAW

> **AS 23.30.001. Intent of the legislature and construction of chapter.** It is the intent of the legislature that
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> > (1) this chapter be interpreted so as to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of this chapter;

The board may base its decisions not only on direct testimony 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). 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 23.30.005. Alaska Workers' Compensation Board.** . . .
> . . . .
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> (h) . . . Process and procedure under this chapter shall be as summary and simple as possible. . . .
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> **AS 23.30.010. Coverage.** . . . 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. . . 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. . . . .
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> **AS 23.30.095. Medical treatments, services, and examinations**. . . .
> . . . .
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> (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 (Alaska 2008). An SIME is intended to assist the board. 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 in original).

An SIME under AS 23.30.095(k) may be ordered when a medical dispute exists between an employee's and an employer's physicians, the "dispute is significant or relevant to a pending claim or petition and . . . an SIME would help the board resolve the dispute. . . . In the absence of opposing medical opinions between employer and employee physicians, there cannot be a medical dispute." *Bah* at 4; *Smith v. Anchorage School District*, AWCAC Decision No. 050 (January 25, 2007) at 8. Under AS 23.30.110(g), the board has discretion to order an SIME when there is a significant gap in the medical evidence or a lack of understanding of the medical or scientific evidence, preventing the board from ascertaining the parties' rights, and an SIME opinion would help the factfinders. *Bah* at 5. "Ordering an SIME is not proper if it serves no purpose to the board by advancing its understanding of the medical evidence or by filling in gaps in the medical evidence, where that gap in the evidence, or lack of understanding of the medical evidence, prevents the board from ascertaining the rights of the parties in the dispute before the board." *Id.*

The following criteria are typically considered when deciding whether to order an SIME:

1) Is there a medical dispute between Employee's physician and an EME physician?
2) Is the dispute significant?
3) Will an SIME physician's opinion assist the board in resolving the dispute?

DiGangi v. Northwest Airlines, AWCB Decision No. 10-0028 (February 9, 2010).

Sections 095(k) and 110(g) are procedural, not substantive, for the reasons outlined in *Deal.* Wide discretion exists under §095(k) and §110(g) to consider any evidence available when deciding whether to order an SIME to assist in investigating and deciding medical issues in contested claims, to best "protect the rights of the parties." *Hanson v. Municipality of Anchorage,* AWCB Decision No. 10-0175 (October 29, 20 l 0) at 18; AS 23.30.135(a); AS 23.30.155(h).

> **AS 23.30.110. Procedure on claims**. . . .
> . . . .
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> (g) An injured employee claiming or entitled to compensation shall submit to the physical examination by a duly qualified physician which the board may require. . . .

Issues of credibility and evidentiary weight are deferred until after a determination whether the employer has produced a sufficient quantum of evidence to rebut the presumption of compensability under AS 23.30.120. *Norcon, Inc. v. Alaska Workers' Comp. Bd.,* 880 P.2d 1051, 1054 (Alaska 1994).

> **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 23.30.145. Attorney fees.** (a) Fees for legal services rendered in respect to a claim are not valid unless approved by the board. . . . 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.
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> (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.
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> **AS 23.30.155. Payment of compensation**. . . .
> . . . .
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> (h) The board may upon its own initiative at any time in a case . . . where right to compensation is controverted . . . make the investigations, cause the medical examinations to be made, or hold the hearings, and take the further action which it considers will properly protect the rights of all parties.
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> **8 AAC 45.120. Evidence**. . . .
> . . . .
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> (e) Technical rules relating to evidence and witnesses do not apply in board proceedings, except as provided in this chapter. Any relevant evidence is admissible if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. . . .

Granus v. Fell, AWCB Decision No. 99-0016 (January 20, 1999), stated parties may obtain discovery regarding any matter, not privileged which is relevant to the subject matter involved in the pending action. To be admissible at hearing, evidence must be "relevant." However, a party seeking to discover information need only show the information appears reasonably calculated to lead to the discovery of evidence admissible at hearing. *Smart v. Aleutian Constructors*, AWCB Decision No. 98-0289 (November 23, 1998).

> **Alaska Civil Procedure Rule 12**. . . .
> . . . .

> (f) **Motion to Strike.** Upon motion made by a party before responding to a pleading, or, if no responsive motion by a party within 20 days after the service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

ANALYSIS

1) Should Employee's petition to strike be granted?

Employee contends Dr. Youngblood's July 2015 opinion on causation of Employee's "current condition" was at odds with the C&R's March 2015 statement on causation of Employee's "current condition," and therefore his EME report is tainted and should be stricken from the record. This decision does not address whether the elapsed time changes the "current condition" sufficiently to allow reassessed causation, nor the effect of the C&R clauses reserving the right to obtain an SIME or EME or reserving the right to challenge liability for future medical benefits or compensability. These issues need not be decided to address the pending petitions.

Employee cited no authority to support her petition to strike, nor is there support in the statutes or regulations. Workers' compensation proceedings do not apply technical rules as strictly as courts, and allow for broad discovery and introduction of evidence. 8 AAC 45.120(e); *Granus*; *Smart*. The nature of this dispute does not require resorting to the Civil Rules, and relevant evidence is generally admissible regardless of any "common law or statutory rule which might make improper the admission of such evidence over objection in civil actions." 8 AAC 45.120(e). Striking a relevant medical report from the record limits the fact-finder's ability to assess each party's rights, and should be undertaken only when required under the Act or the rules, or as circumstance may otherwise require. AS 23.30.135.

It is not accurate that, assuming a factual conflict exists despite passage of time and the reservation of rights in the C&R, the EME report is so tainted as to prejudice Employee's case or call into question the reliability of Dr. Youngblood's analysis or conclusions. Employee did not argue he would be prejudiced if Dr. Youngblood's report was considered or that the report was irrelevant. Employee instead argued the report's conclusions conflict with the C&R. Employee's many other arguments concerning Dr. Youngblood's examination also do not

support the petition to strike, but instead address the weight that should be accorded to his report. Credibility cannot support such a petition alone. At a hearing on the merits, the parties may separate the issues and argue the weight Dr. Youngblood's report should be given. Currently, it is sufficient that Dr. Youngblood's report is relevant to the issues, and Employer's controversion is based on Dr. Youngblood's statement that no further treatment is necessary, "regardless of causation." Dr. Youngblood's report will not be stricken.

2) Should an SIME be ordered?

Employer requests an order for an SIME on causation, compensability, and treatment. Employee contends the EME report should not be given sufficient weight or credibility to support requiring an SIME. Employee also argues if an SIME is ordered, the issues should be limited to treatment and compensability rather than causation, which was decided by the C&R, and the examination should be performed by an orthopedic surgeon.

Employee's argument that Dr. Youngblood's report is not credible enough to support an SIME dispute is not well taken. Dr. Youngblood's credibility need not be determined at this stage. This decision will not award or deny workers' compensation benefits, and does not undertake the presumption of compensability analysis under AS 23.30.120. Dr. Youngblood is a licensed physician, and it is sufficient for this decision's purposes that he has made a finding conflicting with those of Employee's attending physicians. *Norcon.*

The record contains reports from EME physician Dr. Youngblood (July 10, 2015) and Employee's physicians Dr. Miller (July 23, 2015) and Dr. Mina (July 28, 2015). Dr. Youngblood stated all current conditions were unrelated to the work injury, and, regardless of causation, no further treatment was needed for any condition. Dr. Miller stated Employee would likely require surgery and additional treatment on L4-L5, C4-C5 and C5-C6 to treat pain and neurologic dysfunction. Dr. Mina stated Employee had low back pain and neck pain since a motor vehicle collision, and indicated in his October 17, 2015 report that the accident was the likely cause of the spine condition.

The law provides for an SIME when there is a relevant medical dispute between the employee's attending physician and the employer's EME. AS 23.30.095(k); *Bah*. Here there are clear medical disputes involving complex causation and treatment issues. An SIME physician's opinions will assist in resolving these issues. The request for an SIME will be granted.

Employee contends the SIME issues should be limited to treatment, due to the C&R agreement regarding causation. The C&R's language confuses this analysis by stipulating to causation of Employee's "current right knee and spine conditions." Compensation or benefits under the Act are payable when an employee's "disability or death . . . or . . . need for medical treatment arose out of and in the course of the employment," and when, "in relation to other causes, the employment is the substantial cause of the disability or death or need for medical treatment. . AS 23.30.010.

An SIME physician's role is to clarify the medical facts for the fact-finders, not the parties. *Bah*. For this reason, there is no need to limit the SIME issues regarding "causation." Causation is relevant both to Employee's disability and need for medical treatment, and is therefore closely intertwined with "compensability" and "treatment." While the parties may have settled the causation of Employee's right knee and spine "condition" as of March 4, 2015, they have not expressly settled causation of her current disability or need for medical treatment. There may be sufficient reason to distinguish Employee's current or post-controversion disability or need for treatment from Employee's March 2015 "right knee and spine conditions." This is partly a medical question that may be addressed in the future. The C&R agreement on causation provides a legal fact to be used in this case as it progresses. It does not and cannot establish the objective reality of Employee's current disability or need for medical treatment.

When seeking an SIME physician's analysis and opinions, it is not necessary to subject the physician to the "legal facts" of this case, and doing so may be counterproductive to a complete, objective, and accurate SIME. Employee's request to limit the issues in the SIME will be denied. The SIME physician will receive questions addressing causation, compensability, and treatment.

Employer seeks a panel including an orthopedic surgeon and a neurosurgeon, and notes attending physician Dr. Miller is a neurosurgeon. Employee requests an SIME without a neurosurgical specialist, since most physicians involved in this case have been orthopedic surgeons. Employee contends the SIME should be performed by an orthopedic surgeon. Employee has not suggested any harm or prejudice would come from Employee also being examined by a neurosurgeon. The symptoms at issue in this case involve complicated analyses of Employee's spine, nervous system, and symptoms. The SIME will be performed by an orthopedic surgeon with a neurosurgical background from the division's SIME list if possible. If this cannot be readily arranged, an SIME panel consisting of an orthopedic surgeon and a neurosurgeon will be appointed by the appropriate designee.

3) Is Employee entitled to an attorney's fee and cost award?

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 and his request will be denied.

CONCLUSIONS OF LAW

1) Employee's petition to strike will not be granted.
2) An SIME will be ordered.
3) Employee is not entitled to an attorney's fee and cost award.

ORDER

1) Employee's February 5, 2016 Petition to Strike is DENIED.
2) Employer's March 18, 2016 Petition for an SIME is GRANTED.
3) Employee is ordered to attend an SIME in accordance with the Act.
4) An SIME will be performed by an orthopedic surgeon with a neurosurgical specialty selected from the division's SIME list by the appropriate workers' compensation officer, in accordance with the Act, applicable regulations, and normal internal processes and procedures. If an SIME

by a physician with these specialties cannot readily be arranged, the SIME will be performed by a panel including an orthopedic surgeon and a neurosurgeon.

5) The medical disputes listed on Employer's February 2, 2015 SIME form will be those considered by the SIME physician or panel.

6) A prehearing conference will be scheduled to address deadlines and instructions for compiling the SIME binders.

Dated in Anchorage, Alaska on April 22, 2016.

ALASKA WORKERS' COMPENSATION BOARD

Henry Tashjian, Designated Chair

Ron Nalikak, 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 Kierston Reuer, employee / claimant v. Firstgroup America, Inc., employer; New Hampshire Insurance Co., Lt, insurer / defendants; Case No. 201017877; 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 April 22, 2016.

Elizabeth Pleitez, Office Assistant