ALASKA WORKERS' COMPENSATION BOARD

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

DAREL M. WILLIAMS,	)	
	)	
Employee,	)	
Claimant,	)	
	)	INTERLOCUTORY
v.	)	DECISION AND ORDER
	)	
FLOWLINE ALASKA, INC.,	)	AWCB Case No. 201410923
	)	
Employer,	)	AWCB Decision No. 16-0039
and	)	
	)	Filed with AWCB Fairbanks, Alaska
LIBERTY NORTHWEST INSURANCE CORP.,	)	On May 20, 2016
	)	
Insurer,	)	
Defendants.	)	
	)	

At hearing on February 4, 2016, on Darel Williams' (Employee) January 12, 2016 petition for a continuance, Flowline Alaska, Inc., and Liberty Northwest Insurance Corp. (Employer) requested this case's record and evidence be maintained in the "status quo" as of February 4, 2016. On March 2, 2016, *Williams v. Flowline Alaska, Inc.,* AWCB Case No. 16-0016 (March 2, 2016) (*Williams I*), Darel Williams' (Employee) petition to continue the February 4, 2016 hearing was granted. Employer's request was neither granted nor denied. Parties were directed to brief the issue. On March 25, 2016, Employer's petition for reconsideration of *Williams I* was granted in part and denied in part. *Williams v. Flowline Alaska, Inc.,* AWCB Case No. 16-0025 (March 2, 2016) (*Williams II*). On April 21, 2016, Employer's request to maintain evidence in the "status quo" as of February 4, 2016, was heard in Fairbanks, Alaska on the written record. Attorney Jason Weiner represented Employee and attorney Martha Tansik represented Employer. The hearing proceeded with a two-member panel, a quorum under AS 23.30.005(f). There were no witnesses. The record closed on April 21, 2016.

ISSUE

Employer contends Employee should not be permitted to produce additional evidence after February 4, 2016, the date scheduled for hearing on Employee's claim's compensability. Employer wants evidence maintained in the "status quo" as of February 4, 2016, to prevent Employer from being unduly prejudiced by Employee's last-minute request for a continuance. Employer contends its initial and post-claim controversions both asserted a notice defense in addition to a medical defense. Employer contends because the continuance was granted for reasons unrelated to the record's sufficiency, placing a status quo order on the record will prevent either party from gaining an unfair advantage. Employer contends Employee was advised in November 2014 he needed a favorable medical opinion from his physician and despite the absence of such opinion, filed his affidavit of readiness for hearing (ARH) in September 2015. Employer contends a continuance used to develop evidence is an impermissible last minute attempt to rectify Employee's failure to obtain evidence after Employer had "shown their hand."

Employee contends his original claim was filed because Employer's controversion was for his alleged failure to provide timely notice of injury to Employer. Employee contends Employer did not contest Employee's work for Employer was the substantial cause of his need for medical treatment until November 27, 2016. Employee contends the nature of his claim has changed dramatically since his ARH was filed, and that he has had little time to address the medical evidence proffered by Employer or to get opinions from his own medical providers, or seek an SIME. Employee contends Employer is using Employee's original ARH to prevent him from developing evidence to prove his case by a preponderance of the evidence.

Shall evidence be maintained in the "status quo" as of February 4, 2016?

FINDINGS OF FACT

Evaluation of the hearing record as a whole establishes the following facts and factual conclusions relevant to the status quo issue by a preponderance of the evidence:

1) The *Williams I* and *Williams II* factual findings are adopted by reference here. (*Williams I*; *Williams II.*) The following factual findings may repeat those *Williams I* and *Williams II* factual findings relevant to maintaining evidence in the status quo.

2) On November 17, 2014, Employer controverted all benefits. The asserted reasons for denying all benefits were:

> Benefits controverted due to the employee's failure to report injury to the employer within 30 days as required under AS 23.30.100.
>
> The employee has not attached the presumption of compensability as the medical evidence does not support that his current condition or need for treatment is due to an injury within the course and scope of his employment with the employer. Due to the highly complex medical issues involved in this claim, the employee must produce medical evidence supporting the contention that the condition and need for treatment is work-related in order to attach the presumption of compensability. See Burgess Construction v. Smallwood, 623 P.2d 312 (Alaska 1981) and AS 23.30.120.

(Controversion Notice, November 14, 2014.)

3) On November 21, 2014, Employee contacted the Alaska Division of Worker's Compensation (division) with questions regarding the controversion notice. The following information regarding the division contact with Employee was entered:

> Reviewed Contro with EE and explained that he would need to get a letter or chart note from his doctor stating that his hernia was work related. Once he had that medical evidence, he would then need to send a copy to the adjuster and could file a copy with our office/fill out a claim if he wanted to. EE said he would contact his doctor and call back if he had any more questions. nzh

(ICERS Database Employee Phone Call Record, November 21, 2016.)

4) On April 23, 2015, Employee filed a workers' compensation claim for temporary total and temporary partial disability benefits, permanent partial impairment (PPI), medical and transportation costs, a finding of unfair or frivolous controversion, and attorney fees and costs. (Workers' Compensation Claim, April 22, 2015.)

5) On May 13, 2015, in addition to controverting all benefits, Employer controverted specific

benefits, which included unspecified temporary total disability (TTD) and temporary partial disability (TPD), PPI, medical costs, transportation costs, unfair or frivolous controversion, and attorney fees and costs. Employer's reason for controverting all benefits was:

> Employee failed to provide timely written notice of injury to the Employer within 30 days as required by AS 23.30.l00(a).
>
> Employer/Insurer deny benefits are due or owed as the need for treatment of a left sided hernia is a complex medical issue. In complex medical cases, medical evidence must be produced prior to attaching the presumption of compensability. Burgess Const. Co. v. Smallwood, 623 P.2d 312 (Alaska 1981). No medical records have been received stating that the alleged work related injury is the substantial cause of Employee's hernia and need for treatment thereof.

Employer's reasons for controverting specific benefits were:

- Employee has not produced any medical evidence of time loss during the period for which he seeks benefits.
- Employee has not produced a transportation mileage log or receipts; therefore no transportation costs are due or owed.
- Past and future claims for medical benefits may be barred by AS 23.30.095(c) for failure to provide notice of treatment within 14 days and AS 23.30.097(h) requiring provision of bills for services within 180 days.
- Employee has never been given a PPI rating, nor has any alleged impairment been causally related to the alleged work injury.
- Employer's previous controversion is validly based on the facts in the record and information available to Employer at the time of the controversion. It is neither unfair nor frivolous.
- Employer denies that attorney's fees and costs are due as Employee's attorney has not obtained any benefit for attorney for which these costs are warranted under AS 23.30.145(a) and 8 AAC 45.180.

(Controversion, May 13, 2015.)

On May 13, 2015, Employer filed an answer to Employee's claim. Employer denied time loss benefits, asserting Employee failed to produce medical evidence of time loss and did not specify the period for which he sought time loss benefits. Employer denied responsibility for medical treatment costs that are not reasonable and necessary to treat a work injury or that exceed the frequency standards. Employer asserted timely, proper and complete notice of treatment, medical records, and bills had not been furnished. Employer denied responsibility for transportation costs asserting it had complete defenses to Employee's claim and he had not filed a mileage log. It denied liability for PPI benefits. Employer contended its controversion was

valid based on the record and information available to Employer when it controverted, and was neither unfair nor frivolous. Employer denied attorney fees and costs. (Answer, May 13, 2015.)

6) On September 11, 2015, Employee filed an ARH. (Affidavit of Readiness for Hearing, September 11, 2015.)

7) On September 16, 2015, at a prehearing conference it was discussed the parties had attended a prehearing on May 19, 2015, at which Employer's attorney stated she would send releases to Employee. Employer's attorney provided notice she had no medical records indicating Employee was disabled from work due to his reported injury. At a prehearing conference on July 15, 2015, Employer's attorney had reported she had just received Employee's signed release and was collecting medical records. The parties requested a follow-up prehearing, which was held on September 16, 2015. At the September 16, 2015 prehearing conference Employee withdrew his claim for time loss benefits and filed an ARH. Employer opposed the ARH. Employer asserted a hearing should be held in abeyance until discovery was complete. The parties agreed to schedule a follow-up prehearing conference before setting a hearing date. (September 16, 2015 Prehearing Conference Summary, January 20, 2016.)

8) On September 21, 2015, Employer filed an affidavit opposing Employee's ARH. Employer asserted a hearing on the merits was "extremely" premature based on the current case status and because discovery was still in its early stages, incomplete, and still progressing. Employer stated Employee's deposition was scheduled for October 22, 2015, which was likely to lead to additional relevant evidence Employer would need to pursue. Employer was still collecting medical records and, once collected, anticipated scheduling Employee for an Employer's medical evaluation (EME). Additionally, Employer acknowledged a dispute may arise between Employee's and Employer's physicians and a second independent medical evaluation (SIME) may be required. (Affidavit of Opposition to Employee's Affidavit of Readiness for Hearing, September 21, 2015.)

9) On October 16, 2015, the parties agreed to set a February 4, 2016 hearing on Employee's claim. The parties were ordered to file all evidence by January 15, 2016. (October 16, 2015 Prehearing Conference Summary, January 20, 2016.)

10) On November 18, 2015, at Employer's request, Employee was evaluated by Jack Blumberg, M.D., general surgeon. Dr. Blumberg opined Employee's hernia repair was medically reasonable and necessary, but not related to his described February 21, 2014 work activities. Dr. Blumberg recommended no further treatment and stated Employee did not have a permanent

partial impairment. (EME Report, Dr. Blumberg, November 18, 2015.)

11) On November 27, 2015, nine days after Dr. Blumberg evaluated Employee, the November 18, 2015 EME report was filed and mailed to Employee's attorney. (Medical Summary, November 24, 2015.)

12) On January 12, 2016, Employee filed a petition to continue the February 4, 2016 hearing. Employee asserted for reasons the hearing should be continued: 1) the ARH was filed in September, before Employee had been sent for an EME; 2) Dr. Blumberg's deposition was scheduled for January 21, 2016; 3) Employee awaited a response from his treating physician and for further medical records regarding his hernia; and 4) Employee's attorney would be outside the country on February 4, 2016, and not expected back before February 6, 2016. (Petition, January 12, 2016.)

13) On January 18, 2016, in response to Employee's December 1, 2015 request for cross-examination of Dr. Blumberg, Employer provided Dr. Blumberg for deposition and the deposition transcript was filed on January 21, 2016. (Request for Cross-Examination, December 1, 2015; Videotaped Deposition of Jack Blumberg, M.D., January 18, 2016.)

14) On January 21, 2016, Employer filed its notice of filing evidence for hearing. Employer's hearing evidence included: 1) January 18, 2016 videotaped deposition of Dr. Blumberg; 2) October 28, 2015 deposition of Darel Williams; 3) medical payments spreadsheet; and 4) Alaska Workers' Compensation Board files in case numbers 200022861, 200411701, 200705370, 200714511, 200900141, 200900593, 201101419, 201410923, 201509567, 200015261, 200018185. (Employer's Notice of Filing Evidence, January 20, 2016.)

15) On January 25, 2016, Employee filed notice of filing evidence for hearing. Employee's hearing evidence included: 1) July 29, 2015 medical summary with attached records; 2) August 10, 2015 statement of account from Mark Kowal, M.D.; 3) August 24, 2015 medical summary with attached records; 4) January 18, 2016 letter from PA-C Sylvia McCormick; and 5) January 22, 2016 statement of account from Surgery Center of Fairbanks. Employee filed all documents listed in his notice of filing evidence for hearing. (Notice of Filing Evidence for Hearing, January 22, 2016.)

16) On January 27, 2016, Employer filed notice of filing and submitted all exhibits to Dr. Blumberg's January 18, 2016, deposition. The deposition exhibits filed included notice to Mr. Weiner that Dr. Blumberg's video deposition would be taken on January 18, 2016; a document outlining Dr. Blumberg's education, licenses, certificates, professional organizations,

and professional activities; and diagrams of the inguinal region, inguinal canal, and testis on cross-section. (Notice of Filing, January 27, 2016.)

17) On January 27, 2016, Employee petitioned for an SIME. (Petition, January 27, 2016.)

18) On January 27, 2016, Employee and Employer both filed their witness lists for the February 4, 2016 hearing. Employee's witness list includes PA-C McCormick, and Dr. Kowal. His witness list, in addition to others, also includes himself, all witnesses named on Employer's witness list, and "any lay or expert witness whose name or material testimony is first discovered during the on-going discovery process." Employer's witness list includes EME Dr. Blumberg and Employer's representatives. (Employee's Witness List, January 27, 2016; Employer's Witness List, January 27, 2016.)

19) On January 27, 2016, Employer opposed Employee's petition for a continuance. (Employer's Opposition to Employee's Petition for Continuance, January 27, 2016.)

20) On January 27, 2016, both Employee and Employer filed their hearing briefs. (Employee's Hearing Brief, January 27, 2016; Employer's Hearing Brief, January 27, 2016.)

21) At hearing on February 4, 2016, an oral order continued the February 4, 2016 hearing. The hearing was continued for grounds unrelated to the record's sufficiency. (*Williams I*.)

22) On February 4, 2016, Employer requested the evidence be preserved in the status quo to protect Employer from prejudice and not give Employee an unfair advantage. (Employer's February 4, 2016 hearing arguments.)

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;
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> (2) workers' compensation cases shall be decided on their merits except where otherwise provided by statute;
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> (3) this chapter may not be construed by the courts in favor of a party;
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> (4) hearings in workers' compensation cases shall be impartial and fair to all parties and that all parties shall be afforded due process and an opportunity to be heard and for their arguments and evidence to be fairly considered.

The general purpose of workers' compensation statutes is to provide workers with a simple, speedy remedy to be compensated for injuries arising out of their employment. *Hewing v. Peter Kiewit & Sons*, 586 P.2d 182 (Alaska 1978). "[T]he ultimate social philosophy behind compensation liability" is to resolve work-related injuries "in the most efficient, most dignified, and most certain form." *Gordon v. Burgess Construction Co.*, 425 P.2d 602, 604 (Alaska 1967).

> **AS 23.30.005. Alaska Workers' Compensation Board**. . . .
> . . . .
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> (h) The department shall adopt rules . . . and shall adopt regulations to carry out the provisions of this chapter. . . . Process and procedure under this chapter shall be as summary and simple as possible.

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

> **AS 23.30.095. Medical treatments, services, and examinations**. . . .
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> (e) The employee shall, after an injury, at reasonable times during the continuance of the disability, if requested by the employer or when ordered by the board, submit to an examination by a physician or surgeon of the employer's choice authorized to practice medicine under the laws of the jurisdiction in which the examination occurs, furnished and paid for by the employer. The employer may not make more than one change in the employer's choice of a physician or surgeon without the written consent of the employee. Referral to a specialist by the employer's physician is not considered a change in physicians. . . . An examination requested by the employer not less than 14 days after injury, and every 60 days thereafter, shall be presumed to be reasonable, and the employee shall submit to the examination without further request or order by the board. . . . If an employee refuses to submit to an examination provided for in this section, the employee's rights to compensation shall be suspended until the obstruction or refusal ceases, and the employee's compensation during the period of suspension may, in the discretion of the board . . . be forfeited. . . .
> . . . .
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> (h) Upon the filing with the division by a party in interest of a claim or other pleading, all parties to the proceeding must immediately, or in any event within five days after service of the pleading, send to the division the original signed reports of all physicians relating to the proceedings that they may have in their

> possession or under their control, and copies of the reports shall be served by the party immediately on any adverse party. There is a continuing duty on all parties to file and serve all the reports during the pendency of the proceeding.
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> **AS 23.30.110. Procedure on claims**. . . .
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> (c) Before a hearing is scheduled, the party seeking a hearing shall file a request for a hearing together with an affidavit stating that the party has completed necessary discovery, obtained necessary evidence, and is prepared for the hearing.
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> **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. . . .

Simpson v. State of Alaska, AWCB Decision No. 09-0064 (April 6, 2009), granted an employer's request to keep the case's procedural posture at "status quo" when the employee's non-attorney representative sought and obtained a continuance stating he was sick and not available to assist the employee at hearing. *Simpson* granted the request because the employer successfully argued it had already presented and served all of its evidence and briefing, thus essentially "showing its hand." Granting the continuance would give the employee additional time to prepare and potentially rebut the employer's evidence following the continuance. The employee had filed no witness list or briefing.

Polya v. State of Alaska, AWCB Decision No. 11-0058 (May 10, 2011), ordered evidence be maintained in status quo when a continuance was ordered after the employee, who was participating in the hearing telephonically, inexplicably lost contact with the hearing. *Polya* granted the employer's status quo request to prevent either party from profiting unfairly from the

delay in resolving the matter caused by the employee's unexpected disconnection from the telephone line at hearing.

In *Groom v. State of Alaska,* AWCB Decision No. 13-0091 (August 2, 2013), a hearing was scheduled on the employer's petition seeking a finding the employee committed fraud. Employee's request for a continuance was granted and the employer sought an order closing the record to additional evidence. The employer's request was granted at hearing but when memorialized, the decision was modified and clarified. The decision noted, "Since hearing of the instant matter is being continued on grounds unrelated to sufficiency of the record, neither party should be afforded any advantage from the continuance in the adjudication of issues related to the alleged fraud." *Id.* at 32. In *Groom*, the record was maintained in status quo for the issues related to fraud. However, the order was not a blanket prohibition to all additional evidence because the employee received ongoing medical treatment and had pending claims for medical benefits.

> **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 in which . . . 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 45.112. Witness list.** A witness list must indicate whether the witness will testify in person, by deposition, or telephonically, the witness's address and phone number, and a brief description of the subject matter and substance of the witness's expected testimony. If a witness list is required under 8 AAC 45.065, the witness list must be filed with the board and served upon all parties at least five working days before the hearing. If a party directed at a prehearing to file a witness list fails to file a witness list as directed or files a witness list that is not in accordance with this section, the board will exclude the party's witnesses from testifying at the hearing, except that the board will admit and consider
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> (1) the testimony of a party, and
> (2) deposition testimony completed, though not necessarily transcribed, before the time for filing a witness list.
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> **8 AAC 45.120. Evidence**. (a) Witnesses at a hearing shall testify under oath or affirmation. The board will, in its discretion, examine witnesses and will allow all

parties present an opportunity to do so. Except as provided in this subsection and 8 AAC 45.112, a party who wants to present a witness's testimony by deposition must file a transcript of the deposition with the board at least two working days before the hearing. . . . If a party fails to file a transcript of a witness's deposition at least two days before the hearing . . . the witness's deposition testimony will be excluded from the hearing, except for impeachment purposes, and will not be relied upon by the board in reaching its decision. . . .

(b) The order in which evidence and argument is presented at the hearing will be in the discretion of the board, unless otherwise expressly provided by law. All proceedings must afford every party a reasonable opportunity for a fair hearing.

(c) Each party has the following rights at hearing:

(1) to call and examine witnesses;
(2) to introduce exhibits;
(3) to cross-examine opposing witnesses on any matter relevant to the issues even though the matter was not covered in the direct examination;
(4) to impeach any witness regardless of which party first called the witness to testify; and;
(5) to rebut contrary evidence.

. . . .

(f) Any document . . . that is served upon the parties, accompanied by proof of service, and that is in the board's possession 20 or more days before hearing, will, in the board's discretion, be relied upon by the board in reaching a decision unless a written request for an opportunity to cross-examine the document's author is filed with the board and served upon all parties at least 10 days before the hearing. The right to request cross-examination specified in this subsection does not apply to medical reports filed in accordance with 8 AAC 45.052; a cross-examination request for the author of a medical report must be made in accordance with 8 AAC 45.052.

. . . .

(i) If a hearing is scheduled on less than 20 days' notice or if a document is received by the board less than 20 days before hearing, the board will rely upon that document only if the parties expressly waive the right to cross-examination or if the board determines the document is admissible under a hearsay exception of the Alaska Rules of Evidence.

(j) Subsections (f)-(i) apply only to objections based on hearsay, and do not limit the parties' right to object to the introduction of document on other grounds.

. . . .

(m) The board will not consider evidence or legal memoranda filed after the board closes the hearing record, unless the board, upon its motion, determines that the hearing was not completed and reopens the hearing record for additional

> evidence or legal memoranda. The board will give the parties written notice of reopening the hearing record, will specify what additional documents are to be filed, and the deadline for filing the documents.

ANALYSIS

Shall evidence be maintained in the "status quo" as of February 4, 2016?

Employee's attorney was unexpectedly unavailable following a complex and lengthy adoption process in Poland. Therefore, Employee's continuance request for the February 4, 2016 hearing was granted. *Williams I.* When the oral order was given, Employer requested the evidence remain in status quo to prevent Employee from gaining an unfair advantage by continuing to develop evidence. Employer asserted it would be prejudiced if the evidence did not remain in status quo because prior to the February 4, 2016 hearing it had timely filed its brief, witness list, evidence, and shown its hand.

Employee opposes Employer's request for a status quo order. Employee asserts when his claim was filed it had been controverted only for his failure to file timely injury notice and he was not aware Employer contested work as the substantial cause of his need for medical treatment until late November 2015, when Employer filed Dr. Blumberg's EME report. Employee contends the nature of his claim dramatically changed after he filed his ARH on September 11, 2015, and believes Employer is using the ARH to prevent Employee from being able to adequately respond to Dr. Blumberg's opinion. Employee asserts he should have an opportunity to address Dr. Blumberg's opinion and supplement the record with his own provider's opinions, in addition to an opportunity to seek an SIME.

Neither party should profit unfairly from the delay in this case being heard caused by Employee's attorney's unexpected unavailability at hearing. *Simpson*; AS 23.30.001(4); AS 23.30.135; AS 23.30.155(h). Under the circumstances, because continuance was granted for reasons unrelated to the record's sufficiency, Employer's arguments supporting status quo are well taken. *Groom*. On November 14, 2014, Employer controverted Employee's claim on two grounds: 1) Failure to provide timely injury notice to Employer under AS 23.30.100(a); and 2) Medical evidence did not support Employee's need for treatment was due to an injury within "the course and scope of his employment" with Employer, and due to the highly complex

medical issues involved, Employee must produce medical evidence supporting the contention the need for treatment was work-related in order to attach the presumption of compensability. After receiving Employer's controversion and when Employee was unrepresented, on November 21, 2014, the division advised Employee he needed to get an opinion from his treating physician stating his hernia was work-related. Without such an opinion, Employee filed his claim for benefits on April 23, 2015. Employer controverted the claim on May 13, 2013 and, among other things, reiterated the reason medical benefits were denied was because Employer had received no medical records stating work was the substantial cause of Employee's hernia and need for treatment. Employee was aware as early as November 21, 2014 he needed medical evidence stating work was the substantial cause of his need for medical treatment for his hernia.

To further investigate Employee's claim, Employer sent Employee to Dr. Blumberg on November 18, 2015. AS 23.30.095(e). Dr. Blumberg's report was filed and mailed nine days after Employee was evaluated, and Employee timely filed a request for cross-examination, which Employer provided. 8 AAC 45.120(f), (g), (h).

Employee timely filed his petition for an SIME, which Employer opposed. Upon receipt of an ARH on that petition, a determination will be made if an SIME should be ordered. AS 23.30.110(c). If an SIME is ordered, it will occur before the merits hearing, and any SIME report will be admissible evidence and either party may take the SIME physician's deposition or call the physician as a witness to testify at hearing. Employee's witness list includes both Dr. Kowal, the surgeon who repaired his hernia, and PA-C McCormick. When a hearing on the merits of this case is scheduled, parties' witnesses at hearing shall be limited to those on their witness lists filed for the February 4, 2016 hearing, and any SIME physician. AS 23.30.135; 8 AAC 45.112; 8 AAC 45.120. Parties may depose and file transcripts of these witnesses if depositions are properly noticed in accordance with the Act, regulations and case law, in lieu of in-person testimony. Similarly, for the issues set for the February 4, 2016 hearing, only those pleadings or other documentary evidence timely filed by either party before the May 4, 2011 hearing will be considered in any rescheduled hearing and any SIME physician's reports. If an

SIME is ordered, the parties may file supplemental briefing limited to discussing the SIME opinions.

CONCLUSION OF LAW

Evidence shall be maintained in the "status quo" as of February 4, 2016, in conformance with this order.

ORDER

1) Employer's February 4, 2016 request for a "status quo" order is granted.

2) This case's procedural posture remains as it was on February 4, 2016, with respect to witness lists, evidence and briefing.

3) When a hearing on the merits of this case is scheduled, parties' witnesses at hearing shall be limited to those on their witness lists filed for the February 4, 2016 hearing. Parties may depose and file transcripts of these witnesses if depositions are properly noticed in accordance with the Act, regulations and case law, in lieu of in-person testimony.

4) However, if an SIME is ordered, parties may file supplemental briefing for a hearing on the claim's merits to address the SIME's opinions, the SIME report will be admissible evidence and either party may take the SIME physician's deposition or call the physician as a witness to testify at hearing.

5) Any hearing on the parties' SIME dispute shall be heard prior to a hearing on the merits.

6) Assuming both panelists are available, the same February 4, 2016 panel members, Designated Chair Janel Wright and Board Member Sarah Lefebvre, will hear the SIME dispute.

7) Assuming both panelists are available if and when this matter is rescheduled, the hearing panel for any hearing in this case on the merit issues originally scheduled to be heard on February 4, 2016, shall be the same February 4, 2016 panel members, Designated Chair Janel Wright and Board Member Sarah Lefebvre.

Dated in Fairbanks, Alaska on May 20, 2016.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Janel Wright, Designated Chair

/s/
Stacey Allen, Member

/s/
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 accord with 8 AAC 45.050. The petition requesting reconsideration must be filed with the board within 15 days after delivery or mailing of this decision.

MODIFICATION

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

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Interlocutory Decision and Order in the matter of Darel M. Williams, employee / claimant v. Flowline Alaska, Inc., employer; Liberty Northwest Insurance Corp., insurer / defendants; Case No. 201410923; dated and filed in the Alaska Workers' Compensation Board's office in Fairbanks, Alaska, and served on the parties by First-Class U.S. Mail, postage prepaid, on May 20, 2016.

/s/
Charlotte Corriveau, Office Assistant