

# ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

JOHNNIE LEE, )  
Employee, )  
Claimant, ) FINAL DECISION AND ORDER  
v. )  
CORRAL NW, LLC, ) AWCB Case No. 201409071  
Employer, ) AWCB Decision No. 16-0056  
and ) Filed with AWCB Anchorage, Alaska  
TOWER INSURANCE COMPANY OF )  
NEW YORK, )  
Insurer, )  
Defendants. )

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Johnnie Ray Lee's (Employee) May 28, 2016 workers' compensation claim was heard on June 8, 2016 in Anchorage, Alaska. The hearing date was scheduled on March 8, 2016. Attorney Elliott Dennis appeared and represented Employee. Attorney Vicki Paddock appeared and represented Corral NW, LLC and York Risk Services, Inc. (Employer). Douglas Bald, M.D. appeared as a witness. As a preliminary matter, Employee withdrew his May 31, 2016 Objection to Employer's Evidence. The record remained open to receive Employee's supplemental affidavit of attorney's fees. The record closed when the panel next met and deliberated on June 15, 2015.

## ISSUES

Employee contends he was injured while working for Employer and his work injury is the substantial cause of his need for medical treatment. Employer contends the work injury is not the substantial cause of Employee's need for medical treatment.

**1) Was the February 15, 2014 work injury the substantial cause of Employee's need for medical treatment?**

Employee contends he will be entitled to temporary total disability (TTD) benefits following the surgery recommended by Mark Flanum, M.D. Employer contends Employee is not entitled to any additional medical treatment, and therefore not entitled to future TTD benefits.

**2) Is Employee entitled to future TTD benefits?**

Employee contends he is entitled to a permanent partial impairment (PPI) rating after he reaches medical stability following the surgery recommended by Dr. Flanum. Employer contends Employee currently has no ratable impairment related to the work injury and, as he is not entitled to additional medical treatment, will not be entitled to PPI in the future.

**3) Is Employee entitled to PPI benefits?**

Employee contends he is entitled to a reasonable attorney's fee and costs award. Employer contends Employee is not entitled to any benefits he seeks, and therefore no attorney's fee award should be made.

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

FINDINGS OF FACT

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

1) On February 15, 2014, Employee injured his back while employed as an assistant cook with Employer. While carrying a pan of chip beef in the kitchen, Employee slipped and hit his back and his neck on a table and the floor. (Report of Occupational Injury or Illness, February 27, 2014).

2) On February 15, 2014 Employee visited the Alaska Regional Hospital Emergency Department. A cervical x-ray showed advanced degenerative changes from C3 through C6. Employee was diagnosed with a cervical sprain, prescribed hydrocodone/APAP, instructed to apply ice and released. He was instructed not to work for two days. (X-ray report, February 15, 2014; Michael Levy, M.D. Chart Note, February 15, 2014).

3) On February 18, 2014 Employee returned to Alaska Regional Hospital Emergency Department. A CT scan showed cervical spondylosis, but no acute injury. Employee was prescribed Ultram and physical therapy and directed to follow up at the Anchorage Neighborhood Health Center. (CT Report, February 14, 2014; Dr. Levy Chart Note, February 18, 2014).

4) On February 24, 2014, Employee was examined by Michael Dyches, PA-C. Employee reported his left lateral thigh had been feeling “tingly” and he felt a little unsteady on his feet. Employee was diagnosed with multilevel degenerative disk disease of the cervical spine and “findings worrisome for spinal stenosis.” PA-C Dyches noted Employee had palpable muscle spasms. Employee was prescribed Norco, Valium, and Motrin. PA-C Dyches ordered a cervical spine MRI and referred Employee to physical therapy. (Dyches Chart Note, February 24, 2014).

5) On February 26, 2014, Employee underwent an MRI which showed multilevel disc osteophyte complexes at C3-C4, C4-C5, and C5-C6, diffuse uncinated spurring at these levels causing neural foraminal stenosis, and multilevel facet arthropathy and anterior osteophytes. A lipoma was noted in the posterior subcutaneous fat at the level of the lower cervical spine. (MRI Report, February 26, 2014).

6) On March 3, 2014 Employee saw PA-C Dyches and reported his current pain level as 8 out of 10 and reported he was unable to work due to pain. Employee was placed on work restriction until March 19, 2014 and encouraged to keep his physical therapy appointment. (Dyches Chart Notes, March 3, 2014).

7) On March 6, 2014 Employee began physical therapy. The notes for the physical therapy session state that after the slip and fall, Employee was “able to get himself up and continued to work” and “about 25 minutes later he noticed he could not move his neck.” The physical therapist noted Employee stated his left leg was beginning to feel weak and intermittently giving way and Employee has cervical and lumbar pain, range of motion limitations and muscle spasms. (Chugach PT Physical Examination & History, March 6, 2014.)

8) On March 19, 2014, Employee returned to PA-C Dyches and reported the Norco, Motrin and Valium were not alleviating his pain. PA-C Dyches recommended an epidural steroid injection at C4-5 which Employee declined as Employee reported a fear of needles. Employee was prescribed Tramadol, Zanaflex, and Naproxen. Employee was released to part-time work on March 24, 2014, restricted to lifting 10 pounds occasionally. PA-C Dyches noted if Employee

continued to complain of substantial pain and yet still declined the epidural steroid injection, he would need to consider referring him elsewhere for pain control. (Dyches Chart Notes, March 19, 2014).

9) On April 7, 2014 Employee filed a workers' compensation claim seeking TTD and transportation costs. (Workers' Compensation Claim, April 7, 2014).

10) On April 7, 2014 Employee saw Philip A. Hess M.D. for vertigo, as he reported dizziness while standing. Dr. Hess recommended continuing hypertension medication noting elevated blood pressure may cause dizziness. (Dr. Hess Report, dated April 7, 2014).

11) On April 9, 2014, Employee saw PA-C Dyches for a follow-up visit. Employee stated his "left leg gave out the other day." Employee was offered an epidural steroid injection for his neck pain, which he declined. PA-C Dyches referred Employee to neurology for apparent balance issues and for a potential closed head injury and possible associated traumatic brain injury. PA-C Dyches also referred Employee to the Alaska Spine Institute (ASI) for a second opinion regarding the cervical pain. He also referred Employee to a primary care provider for hypertension. (PA-C Dyches Report, April 9, 2014).

12) On April 28, 2014 Employee saw John O. Riley, PA-C for dizziness. PA-C Riley provided Employee with a prescription for hypertension and noted elevated blood pressure may cause dizziness and other symptoms. (PA-C Riley Report, April 28, 2014).

13) On May 9, 2014 Employer made a payment to Employee representing TTD beginning February 14, 2014, plus penalty and interest. (Employer; Compensation Report, January 9, 2015).

14) On May 20, 2014 Employee was discharged from physical therapy for canceling and missing six appointments total and for no longer have a working telephone to accept phone messages. (Chugach PT Notes, May 20, 2014).

15) On May 21, 2014 PA-C Dyches saw Employee for right posterior neck and shoulder pain. He noted Employee pointed to a "knot" on his neck as the greatest source of pain. He also noted Employee had a muscle spasm in the medial aspect of the right trapezius. Employee was provided a trial of naproxen and valium for pain control and muscle relaxation. Dyches also referred Employee to "Dr. Down." (PA-C Dyches Report May 21, 2014; PA-C Dyches Referral, May 22, 2014).

16) On May 22, 2014 Employee saw Larry Levine, M.D. at ASI upon referral by PA-C Dyches. Dr. Levine noted EE has “significant pre-existing degenerative changes.” Dr. Levine recommended an epidural steroid injection and a work hardening program. Dr. Levine declined to treat Employee, as Employee refused a toxicology screen. He stated there were “red-flags going up in relation to the care” of Employee including Employee had been on the worksite less than one month before his injury, he was “off work for several months,” he had “significant pre-existing degenerative changes,” and “his examination at this time is difficult to assess due to pain behavior.” (Dr. Levine Report, May 22, 2014; Levine Narrative Report, August 21, 2014).

17) Employer paid bi-weekly TTD benefits until June 10, 2014, when Employee returned to work. (Employer; Compensation Report, January 12, 2015).

18) On June 11, 2014, Employee was hired for a full time position as a fish cleaner with another employer. (Employee).

19) On July 8, 2014 Employee saw Wayne Downs, M.D. at Neurological Consultants of Alaska, LLC, per the referral from PA-C Dyches, for balance problems after a closed head injury. Dr. Downs noted somewhat variable and inconsistent history reported by Employee. He stated, “really on examination what I have to hang my hat on is decreased vibratory sensation in his feet suggesting peripheral neuropathy, decreased vibratory sensation in the great right toe suggesting a possible L-5, and a positive Romberg suggesting sensory problems of some sort between the feet and the brain.” He recommended looking first at the lumbar spine even though Employee denied lumbar pain. (Dr. Downs Report, July 8, 2014).

20) On July 9, 2014 Employer took Employee’s deposition. Employee stated he moved to Emmonak, Alaska on May 5, 2014. He also stated 20 minutes after the fall on February 15, 2014 he stopped working because he could not move his neck. Employee stated the physical therapy at Chugach directed him on a home exercise plan. (Employee Deposition, July 27, 2014, at pp. 5 and 52).

21) On July 10, 2014 Employee had an MRI of his lumbar spine for right lower extremity numbness. (Fischer MRI Report, July 10, 2014).

22) On July 14, 2014, Employee attended an Employer’s Medical Evaluation (EME) with Dr. Bald. Dr. Bald diagnosed a cervical strain as a result of the work injury superimposed on preexisting severe multilevel degenerative disc disease of the cervical spine. Dr. Bald found Employee was medically stable as of May 22, 2014 and had no permanent partial impairment.

He stated no further medical treatment was necessary for the work injury but recommended Employee complete a self-directed home exercise program to treat his preexisting degenerative disc disease. (Dr. Bald EME Report, July 14, 2014).

23) On July 29, 2014, Employer controverted all benefits based on Dr. Bald's opinion. (Controversion, July 29, 2014).

24) On August 14, 2014, Employee sought treatment at the Emmonak Medical Clinic for an ankle injury. He was diagnosed with an ankle sprain and restricted from work. (Gary Haynes, PA-C Chart Notes, August 15, 2014).

25) On August 15, 2014 Employee followed up with PA-C Haynes for right ankle sprain. PA-C Haynes reported "no neck pain, no muscle pain, no decreased range of motion, no trauma" for the musculoskeletal review of symptoms and "no abnormal balance, no numbness, no tingling" under the neurologic review of symptoms. (PA-C Haynes Chart Notes, August 15, 2014).

26) On August 18, 2014 Employee again visited PA-C Haynes for his right ankle sprain. The report states "no neck pain, no muscle pain, no decreased range of motion, no trauma" for the musculoskeletal review of symptoms and "no abnormal balance, no numbness, no tingling" under the neurologic review of symptoms. Employee was released to light duty. (PA-C Haynes Chart Notes, August 18, 2014).

27) On August 20, 2014 Employee returned to PA-C Haynes. The chart notes state "no back pain, no neck pain, no muscle pain." (PA-C Haynes Chart Notes, August 20, 2014).

28) On April 30, 2015 Employee's treating physician for his ankle injury reviewed and approved his return to work as a fish cleaner and for other prior jobs Employee held in the ten years prior to the work injury. (Dr. Richard Garner Narrative Report, April 30, 2015).

29) On May 18, 2015 Employee sought treatment with Dr. Flanum. He noted Employee was able to work but has pain in the neck and trapezial region and Employee reported some numbness and tingling in his legs. Dr. Flanum diagnosed Employee with "a post work place injury with cervical spondylosis and cervical disc displacement causing neck and radicular symptoms" and recommended a C4-C5 anterior cervical decompression and fusion. The MRI noted the lipoma on Employee's had increased in size since the prior study. (Flanum chart notes, May 18, 2015, Beck MRI report May 18, 2015; Observations).

30) On March 21, 2016 Employee began working as a night watchman (Employee).

31) Employee credibly testified about his work injury, his lack of symptoms prior to the injury and his continued pain since the injury. Employee testified he currently has neck pain, stiffness and popping he attributes to the work injury. He stated that before the fall he did not have a problem with his neck. He testified he takes 800 milligrams of ibuprofen four times per day for pain and also uses massage, hot steam, chaga tea, and marijuana to address his neck pain. He also testified he began smoking marijuana when he was 19 years old and has not been prescribed to use marijuana for his neck pain. Employee indicated he does not exercise and has not returned to the physical activities he did prior to the work injury due to his neck pain. Employee testified the reason he missed the physical therapy appointments was because of the travel time from Emmonak to Anchorage. (Employee).

32) Dr. Bald credibly testified about his experience as an orthopedic surgeon and his evaluation of Employee. Dr. Bald does not believe the surgery recommended by Dr. Flanum is indicated, as Employee does not have severe intractable pain and has not been diagnosed with radiculopathy or myelopathy. Dr. Bald opined Employee had a cervical muscular strain based on Employee's report of a delay in onset of symptoms in his neck which Dr. Bald testified is common in muscle injuries. Dr. Bald testified structural injuries to ligaments or tendons normally cause acute and immediate symptoms, which he stated was not consistent with Employee's injury. Dr. Bald stated Employee's severe multilevel degenerative disc disease was not caused by the work injury but it can prolong recovery time for muscular injuries. Dr. Bald also stated there is medical evidence the muscular strain injury improved by May 22, 2015, as muscle spasms were no longer noted in the medical reports beginning with Dr. Levine's. In addition, Dr. Bald testified the surgery recommended by Dr. Flanum is intended to address the multilevel degenerative disc disease where it is the most severe, and not the work injury. Dr. Bald recommended Employee begin exercising, particularly swimming, and stretching to address the stiffness in his neck due to the multilevel degenerative disc disease. He also stated the cervical strain did not aggravate the multilevel degenerative disc disease, as Employee experienced a delay in onset of pain and the MRI scan did not show any indications of a structural injury. He opined Employee would have begun to experience pain at some point from the multilevel degenerative disc disease regardless of whether he fell at work in February 2014. Dr. Bald opined pain associated with multilevel degenerative disc disease is subjective and variable between individuals, but he would be surprised if Employee did not report some pain at

this time due to the severity of the disease. He testified the lipoma is a benign tumor of the fatty tissue between the skin and the muscle and it was not caused by the work injury. (Dr. Bald).

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 provision of this chapter;....

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

**AS 23.30.010. Coverage.**

(a) Except as provided in (b) of this section, compensation or benefits are payable under this chapter for disability or death or the need for medical treatment of an employee if the disability or death of the employee or the employee’s need for medical treatment arose out of and in the course of the employment. 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 23.30.095. Medical treatments, services, and examinations.**

(a) The employer shall furnish medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus for the period which the nature of the injury or the process of recovery requires, not exceeding two years from and after the date of injury to the employee. . . . It



shall be additionally provided that, if continued treatment or care or both beyond the two-year period is indicated, the injured employee has the right of review by the board. The board may authorize continued treatment or care or both as the process of recovery may require. . . .

**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. *Id.* (emphasis omitted).

The presumption application 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. *Tolbert v. Alascom, Inc.*, 973 P.2d 603, 610 (Alaska 1999). The evidence necessary to raise the presumption of compensability varies depending on the claim. In claims based on highly technical medical considerations, medical evidence is often necessary to make that connection. *Burgess Construction Co. v. Smallwood*, 623 P.2d 312, 316 (Alaska 1981). In less complex cases, lay evidence may be sufficiently probative to establish causation. *Id.*

If the employee establishes the link, the presumption may be overcome at the second stage when the employer presents substantial evidence that shows the employment could not have caused the disability or need for treatment or that something other than work caused the disability or need for treatment. *Huit v. Ashwater Burns, Inc.*, Supreme Court Opinion No. 7111 (June 17, 2016). "Substantial evidence" is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Tolbert* at 611-612. Because the board considers the employer's evidence by itself and does not weigh the employee's evidence against the employer's rebuttal evidence, credibility of the parties and witnesses is not examined at the second stage. *Veco, Inc. v. Wolfer*, 693 P.2d 865, 869-70 (Alaska 1985).

If the board finds the employer's evidence is sufficient, in the third step the presumption of compensability drops out, the employee must prove his case by a preponderance of the evidence. *Veco* at 870. This means the employee must "induce a belief" in the minds of the fact finders the facts being asserted are probably true. *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964). In the third step, the evidence is weighed, inferences are drawn from the evidence, and credibility is considered.

**AS 23.30.122. Credibility of witnesses.** The board has the sole power to determine the credibility of a witness. A finding by the board concerning the weight to be accorded a witness's testimony, including medical testimony and reports, is conclusive even if the evidence is conflicting or susceptible to contrary conclusions. The findings of the board are subject to the same standard of review as a jury's finding in a civil action.

The board's finding of credibility "is binding for any review of the Board's factual findings." *Smith v. CSK Auto, Inc.*, 204 P.3d 1001, 1008 (Alaska 2009). The board has the sole power to determine witness credibility, and its findings about weight are conclusive even if the evidence is conflicting. *Harnish Group, Inc. v. Moore*, 160 P.3d 146, 153 (Alaska 2007). The board has the sole discretion to determine the weight of the medical testimony and reports. When doctors' opinions disagree, the board determines which has greater credibility. *Moore v. Afognak Native Corp.*, AWCAC Decision No. 087 at 11 (Aug. 25, 2008).

**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, 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.

AS 23.30.145(b) requires an employer to pay reasonable attorney's fees when the employer delays or "otherwise resists" payment of compensation and the employee's attorney successfully prosecutes his claim. *Harnish Group, Inc.*, 160 P.3d at 150-51.

**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.

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

....

(28) "medical stability" means the date after which further objectively measurable improvement from the effects of the compensable injury is not reasonably expected to result from additional medical care or treatment, notwithstanding the possible need for additional medical care or the possibility of improvement or deterioration resulting from the passage of time; medical stability shall be presumed in the absence of objectively measurable improvement for a period of 45 days; this presumption may be rebutted by clear and convincing evidence;

....

**AS 23.30.190. Compensation for permanent partial impairment; rating guides.**

(a) In case of impairment partial in character but permanent in quality, and not resulting in permanent total disability, the compensation is \$177,000 multiplied by the employee's percentage of permanent impairment of the whole person. The percentage of permanent impairment of the whole person is the percentage of impairment to the particular body part, system, or function converted to the percentage of impairment to the whole person as provided under (b) of this section. The compensation is payable in a single lump sum, except as otherwise

provided in AS 23.30.041, but the compensation may not be discounted for any present value considerations.

(b) All determinations of the existence and degree of permanent impairment shall be made strictly and solely under the whole person determination as set out in the American Medical Association Guides to the Evaluation of Permanent Impairment, except that an impairment rating may not be rounded to the next five percent. The board shall adopt a supplementary recognized schedule for injuries that cannot be rated by use of the American Medical Association Guides.

(c) The impairment rating determined under (a) of this section shall be reduced by a permanent impairment that existed before the compensable injury. If the combination of a prior impairment rating and a rating under (a) of this section would result in the employee being considered permanently totally disabled, the prior rating does not negate a finding of permanent total disability.

....

#### ANALYSIS

#### **1) Was the February 15, 2014 work injury the substantial cause of Employee's need for medical treatment?**

Employee contends he was injured while working for Employer and his work injury is the substantial cause of his need for medical treatment for his cervical condition. This is a factual question to which the presumption of compensability applies. AS 23.30.120. Employee established a preliminary link between his work injury and his need for medical treatment for his cervical spine with his testimony. Employee testified his neck was injured at work due to a fall and after the fall he has continued to experience neck pain. Employee further raised the presumption with Dr. Flanum's statement he was treating Employee "post workplace injury" and that Employee needs cervical surgery.

Employer rebutted the presumption through Dr. Bald's written report and testimony opining Employee's multilevel degenerative cervical disc disease, not the work injury, is the substantial cause of his need for medical treatment. Because Employer rebutted the presumption, Employee must prove by a preponderance of the evidence that the work injury is the substantial cause of his need for medical treatment.

Employee attributes the need for medical treatment to the work injury, testifying he has had consistent neck pain since the fall at work. The panel finds Employee's testimony credible and

believes his description of the work injury and his report of continued neck pain after the work injury. Employee continued to seek treatment for his reported neck pain after the work injury. However, the record clearly demonstrates Employee has severe degenerative cervical disc disease which predated the work injury. Both Dr. Bald and two of Employee's treating physicians diagnosed preexisting degenerative issues in Employee's cervical spine. Dr. Bald's and PA-C Dyches diagnosed Employee with multilevel degenerative disc disease of the cervical spine. Dr. Levine, upon referral by PA-C Dyches, concluded Employee had "significant pre-existing degenerative changes."

A review of the record demonstrates Employee sustained a cervical sprain as a result of the work injury superimposed on pre-existing degenerative disc disease. Employee was diagnosed on the day of the injury with a cervical sprain. Dr. Bald credibly testified Employee's initial report of pain is consistent with a cervical sprain or cervical muscle injury, as Employee reported a delay in onset of symptoms and neck spasms. The record is consistent with Dr. Bald's observation of a delay in onset of Employee's pain symptoms, as the March 6, 2014 physical therapy notes reflect Employee could not move his neck 25 minutes after the fall. Further, Employee stated he stopped working 20 minutes after the fall.

Dr. Bald opined the work injury resulted in cervical sprain which resolved and became medically stable on May 22, 2015. Dr. Bald based this opinion on his review of the medical records, which demonstrate Employee no longer reported muscle spasms in his neck after May 22, 2015. Employee testified at hearing he has continued neck stiffness and popping, but not spasms.

Dr. Bald testified Employee would have begun to experience pain at some point from the degenerative disc disease regardless of whether he fell at work in February 2014 and sustained a work injury. He also testified the cervical surgery recommended by Dr. Flanum is intended to treat the pre-existing degenerative disc disease of the cervical spine, and not the cervical sprain work injury. In his surgical recommendation, Dr. Flanum opines Employee has "post work place injury with cervical spondylosis and cervical disc displacement causing neck and radicular symptoms". While Employee may indeed require cervical surgery, Dr. Flanum's report does not clearly state the cause of the need for that surgery. Dr. Flanum merely notes a work injury occurred and provides a diagnosis for Employee's current medical condition and recommends

cervical spine surgery. Dr. Flanum does not attribute the cause of the current need for treatment to the work injury. For this reason, Dr. Flanum's opinion is given less weight than Dr. Bald's.

The weight of the evidence favors finding the February 15, 2014 work injury is not the substantial cause of Employee's need for medical treatment for his cervical spine. A preponderance of the evidence demonstrates Employee sustained a cervical strain on February 15, 2014, which resolved and became medically stable no later than May 22, 2014. It is more likely than not Employee's pre-existing degenerative disc disease, not the work injury, is the cause for the need for medical treatment after that date. Employee's claim for medical treatment will be denied.

**2) Is Employee entitled to future TTD benefits?**

Employee clarified at hearing his claim for TTD benefits relates to any period of total disability following his intended future cervical spine surgery. As Employee has not prevailed on his claim for medical benefits and need for future medical treatment, Employee is not entitled to an award of TTD benefits. This claim will be denied.

**3) Is Employee entitled to PPI benefits?**

Employee made a claim for PPI benefits. Employer's EME found Employee medically stable, no further medical treatment was necessary for the work injury and provided the only PPI rating in this case, and it is zero percent. Any permanent impairment incurred after a future cervical spine surgery would not be not work-related. This claim will be denied.

**4) Is Employee entitled to attorney fees and costs?**

Employee was not awarded any additional benefits. Therefore, Employee is not entitled to any associated attorney fees and cost award. Employee's attorney fee and cost claim will be denied.

CONCLUSIONS OF LAW

- 1) The February 15, 2014 work injury is not the substantial cause of Employee's need for medical treatment for his cervical spine after July 29, 2014.
- 2) Employee is not entitled to additional TTD benefits.

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- 3) Employee is not entitled to PPI benefits.
- 4) Employee is not entitled to attorney fees and costs.

ORDER

Employee's May 28, 2016 workers' compensation claim is denied.

Dated in Anchorage, Alaska on July 11, 2016.

ALASKA WORKERS' COMPENSATION BOARD

/s/  
Amanda Eklund, Designated Chair

/s/  
Ronald Nalikak, Member

/s/  
Patricia Vollendorf, Member

APPEAL PROCEDURES

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

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

RECONSIDERATION

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

MODIFICATION

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



CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Final Decision and Order in the matter of JOHNNIE LEE, employee / claimant; v. CORRAL NW, LLC, employer; TOWER INSURANCE COMPANY OF NEW YORK, insurer / defendants; Case No. 201409071; 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 July 11, 2016.

/s/  
Elizabeth Pleitez, Office Assistant