ALASKA WORKERS' COMPENSATION BOARD

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

JUSTINA MILLER, Employee, NORTHERN CHIROPRACTIC, Provider, Claimant, v. FIRST NATIONAL BANK OF ALASKA, Employer, and ATLANTIC SPECIALTY INSURANCE CO., Insurer, Defendants.	INTERLOCUTORY DECISION AND ORDER AWCB Case No. 201510386 AWCB Decision No. 16-0067 Filed with AWCB Anchorage, Alaska on August 4, 2016

First National Bank of Alaska's March 7, 2016 Petition to Dismiss Northern Chiropractic's (Claimant) claim was heard in Anchorage, Alaska on July 20, 2016, a hearing date selected on June 7, 2016. Attorney Vicki Paddock appeared and represented First National Bank Alaska and Atlantic Specialty Insurance Co. (Employer). Justina "Tina" Miller (Employee) appeared *pro se* and testified. Julia Jette and Darla Budde appeared and testified on behalf of Claimant. The record closed at the hearing's conclusion on July 20, 2016.

ISSUE

Employer contends Claimant's claim should be dismissed because Employee has not filed a claim and Claimant has not filed a petition to join Employee as a party to Claimant's claim. Employer contends dismissal should be ordered because Claimant did not petition for joinder of Employee and failed to comply with 8 AAC 45.040(a).

Claimant contended it merely wants its claim to be decided. It contended it is not an attorney or formerly trained to pursue workers' compensation claims; has relied upon Alaska Workers' Compensation Division (division) staff to proceed with the claim and if it failed to follow an appropriate procedure, its failure should be excused.

Should Claimant's claim be dismissed?

FINDINGS OF FACT

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

1) On June 15, 2016, Employee reported pain in her hand, left-sided lower back, neck, upper back, and right upper extremity caused by repetitive motion while working for Employer. (Report of Injury, June 15, 2016.)

2) Employee has worked for Employer as a bank teller since 1996. (Miller.)

3) Employee reported her injury because the "lady in charge of her work" told her to make a workers' compensation injury report. (Miller.)

4) Employee received chiropractic treatment from Gregory M. Culbert, D.C., DABCO, of Northern Chiropractic. Between June 15, 2016 and October 22, 2016, Dr. Culbert treated Employee on 35 occasions. (Physician's Reports, July 8, 2015, July 21, 2015, July 23, 2015, September 4, 2015, September 16, 2015, October 2, 2015, October 14, 2015, November 3, 2015.)

5) On September 18, 2016, John Ballard, M.D., upon Employer's request, evaluated Employee (EME). Dr. Ballard reported Employee's work injury history as follows:

> This is a 55??-year-old female who has been working as a bank teller for some time. Five years ago, she noticed symptoms on and off from the right side of her neck going down her right arm, achy, and at the end of the day it would feel tight.

> On June 15th of this year, she felt more pain from the neck going to both shoulders and also going down her lower back on the left side.
>
> She has had x-rays taken. She has been to the chiropractor three times a week for the first month, the second month was two times a week, and the third month was once a week. It has helped

Dr. Ballard diagnosed C5-6 cervical spine mild degenerative disc disease, lumbar spine degenerative disc disease, L4-5 facet arthrosis and lumbar spondylosis. He stated, "There is no other objective diagnosis. She has an entirely normal examination for cervical and for her lower back." In his opinion, the causes of her "condition" are age, genetics, posture, and the degenerative changes in both her cervical and lumbar spine. He indicated Employee's work is not the substantial cause of any of Employee's "conditions"; Employee's work "is not the type of work that is going to cause any structural injury to the neck or lower back." Dr. Ballard found Employee has myofascial pain "with no objective findings." He recommended no further diagnostic studies and determined, "All conditions are medically stationary." He determined Employee has no permanent partial impairment caused by work, that no further treatment is needed except a home exercise and strengthening program, and Employee is able to perform her job duties without restrictions. (EME Report, Dr. Ballard, September 18, 2015.)

6) On September 25, 2015, Employer controverted medical benefits after September 18, 2015, temporary partial disability benefits, temporary total disability benefits, permanent partial impairment benefits, and AS 23.30.041(k) benefits. Employer relied upon Dr. Ballard's September 18, 2015 report. (Controversion Notice, September 25, 2016.)

7) On December 21, 2015, Claimant filed its claim for medical costs of $1,201.00, penalty and interest. (Workers' Compensation Claim, December 17, 2016.)

8) On January 11, 2016, Employer disputed and denied Claimant's claim. (Answer, January 11, 2016.)

9) On January 13, 2016, Employer controverted medical benefits after September 18, 2015, penalties, and interest. Employer relied upon Dr. Ballard's September 18, 2015 opinions. (Controversion Notice, January 11, 2016.)

10) On January 28, 2016, a prehearing was held. Employer "declared that it is unusual for a medical provider to file a claim on behalf of the employee and at some point the injured worker will need to participate." The prehearing conference provided notice to Claimant the deadline to

file an affidavit of readiness for hearing was within two years following Employer's controversion. The prehearing conference summary states:

> Board designee explained the discovery process and the adjudication process in general and acknowledged parties' position and recommended that enough time be given for discovery, possibly 30 days out. Ms. Jette stated that they'll be submitting documents to support their claim and designee reminded that it needs to be served on the other party as well and a copy to the board. Ms. Paddock stated that the reports need to be attached to a medical summary form. Ms. Jette acknowledged and stated that they have the form on hand.
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> There are no other prehearings set and designee explained that once discovery and/or exchange of information are complete and the matter has not been resolved either party may file an ARH to notify the Alaska Workers' Compensation Board that a Hearing is necessary.

The board designee did not explain to Claimant 8 AAC 45.040's requirement Employee be joined as a party. The prehearing conference summary did not quote 8 AAC 45.040. (Prehearing Conference Summary, January 28, 2016.)

11) On January 28, 2016, the January 28, 2016 prehearing conference summary was served on Employee, Claimant, Vicki Paddock, and Wilton Adjustment Service, Inc. (Prehearing Conference Summary, January 28, 2016.)

12) On February 3, 2016, Kimberly Jennings from Northern Chiropractic contacted a workers' compensation technician with "some questions and complaints" regarding how the January 28, 2016 prehearing "was handled." Ms. Jennings' "information" was "passed along" to workers' compensation officer Teresa Nelson, who was to contact Ms. Jennings. This is no record Ms. Nelson contacted Ms. Jennings. (ICERS Database, Communications, Phone Call, February 3, 2016; Record.)

13) On March 7, 2016, Employer requested dismissal of Claimant's claim because Claimant failed petition to join Employee as a party. (Petition, March 4, 2016.)

14) On March 7, 2016, Darla Budde from Northern Chiropractic contacted a workers' compensation technician in Juneau with questions and concerns regarding Claimant's claim. Specifically, she had questions regarding the petition to dismiss filed by Employer. The technician reviewed the case and Ms. Budde's questions with a Juneau workers' compensation officer and noted, "We were told by the ANC [Anchorage] office they will be reaching out to Darla. Teresa said she will be having Brian call Darla." During this call there is no record the

technician advised or instructed Claimant to file a petition to join Employee. (ICERS Database, Communications, Phone Call, March 7, 2016; Record.)

15) The board did not advise, instruct, or inform Claimant how to pursue or preserve its claim for benefits pursuant to the Alaska Workers' Compensation Act (Act). (Record.)

16) Employer acknowledged the board designee can exercise his discretion under 8 AAC 45.040(f) and serve notice on Employee joining her to Claimant's claim. (Memorandum in Support of Employer's Petition to Dismiss, March 4, 2016.)

17) On April 12, 2016, Employer filed its affidavit of readiness for hearing on its March 4, 2016 petition to dismiss. (Affidavit of Readiness for Hearing, March 24, 2016.)

18) On April 14, 2016, Claimant amended its claim. Claimant claimed medical costs totaling $2,182.00 for the following unpaid dates of service: June 30, 2015, July 1 and 29, 2015, August 3, 25 and 27, 2015, September 3, 8 and 10 2015. Claimant also claimed penalty and interest. (Workers' Compensation Claim, April 13, 2016.)

19) On May 9, 2016, Employer admitted necessary, reasonable medical costs related to Employee's June 15, 2015 work injury and penalties or statutory interest compensable under AS 23.30.155 and only for amounts paid per the Alaska fee schedule. Employer denied medical costs which are not reasonable or necessary, or are unrelated to Employee's work injury. It also denied penalty and interest in excess of the statutory rates. Its affirmative defenses included the bills listed on Claimant's claim "were initially denied as duplicates for those dates of service. The bills have subsequently been resubmitted for payment."

20) On June 7, 2016, Employee did not attend a properly noticed prehearing conference. Employer requested a hearing on its petition to dismiss. The board designee allowed Claimant to orally petition for Employee's joinder and ordered:

> Ms. Miller will be joined as a party unless, on or before July 1, 2016, Ms. Miller or a party objects, and files with the Board and serves said objection on all parties. Given the fact that the Board designee ruled that Ms. Miller be joined to the proceedings, ER or Ms. Miller may raise the additional issue that the Board designee abused its discretion in making this ruling.

(Prehearing Conference Summary, June 7, 2016.)

21) On June 8, 2016, the June 7, 2016 prehearing conference summary was served on Employee, Claimant, Ms. Paddock, and Wilton Adjustment Service, Inc. (Prehearing Conference Summary, June 7, 2016.)

22) On June 23, 2016, Employee contacted the division and inquired if she needed to attend the July 20, 2016 hearing for which hearing notice had been served. A workers' compensation officer read the prehearing conference summary to the Employee and mailed her another copy. Employee was notified of her right to object to joinder and the July 1, 2016 deadline to file her objection. It was explained to Employee a petition to dismiss her provider's claim had been filed by Employer. She was told "if the D&O ruling is in the ER's favor she may be responsible for the charges." Employee stated she would attend the hearing. (ICERS Database, Communications, Phone Call, June 23, 2016.)

23) On July 5, 2016, Employer objected to Employee's joinder. Employer asserted the board designee advised and cured for Claimant's failures to follow the Act's regulations. (Objection to Joinder of Employee in 06/08/16 Prehearing Conference Summary, July 1, 2016.)

24) On July 20, 2016, it was explained to the parties the only issue to be decided was Employer's petition to dismiss, not compensability of Claimant's claim for which an affidavit of readiness for hearing has not yet been filed. (Record.)

25) Employee attended the July 20, 2016 hearing. She does not object to being joined as a party to Claimant's claim. She does not object to actively participating in discovery or attending a second independent medical evaluation (SIME). She does not object to signing releases. She has been a bank teller for Employer since 1996. Her supervisor told her to file a report of injury. Dr. Culbert treated her and she felt better. (Miller.)

26) Employee is credible. (*Id.*; Record.)

27) Julia Jette is Northern Chiropractic's office manager. She is not formerly trained to pursue workers' compensation claims. She relied on the division's staff to advise her how to proceed with the claim. She and others from Claimant's staff contacted the division for step-by-step instruction on how to pursue the claim and it was not explained a petition to join Employee had to be filed. (Jette.)

28) Claimant's claim is for $1,201.00 in outstanding medical costs, plus interest and penalty. (*Id*.)

29) Julia Jette is credible (*Id.*; Record.)

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 . . . to ensure . . . quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers. . . .

In *Richard v. Fireman's Fund Insurance Co.*, 384 P.2d 445, 449 (Alaska 1963), the Alaska Supreme Court instructed the board of its duty with respect to an unrepresented claimant:

> We hold to the view that a workmen's compensation board or commission owes to every applicant for compensation that duty of fully advising him as to all the real facts which bear upon his condition and his right to compensation, so far as it may know them, and of instructing him on how to pursue that right under the law.

The board owes a duty to inform an unrepresented claimant how to preserve his claim for benefits. *Bohlmann v. Alaska Construction & Engineering, Inc.*, 205 P.3d 316 (Alaska 2009). In *Bohlmann*, the court addressed the board's duty to inform *pro se* injured workers and said:

> A central issue [in] Bohlmann's appeal is the extent to which the board must inform a *pro se* claimant of the steps he must follow to preserve his claim. . . . (*Id.* at 319).
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> In *Richard v. Fireman's Fund Insurance Co.* we held that the board must assist claimants by advising them of the important facts of their case and instructing them how to pursue their right to compensation [footnote omitted]. We have not considered the extent of the board's duty to advise claimants. The appeals commission emphasized that division staff have a duty to be impartial and stated that '[a]cting on behalf of one party against another or pursuing a claim on behalf of one party in a matter before the board would violate the duty of the adjudicators.' The appeals commission determined that the prehearing conference officer fulfilled the requirements of *Richard* by informing Bohlmann in general terms of the two-year time bar. . . . (*Id.*).
> . . .
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> But we do not need to consider the full extent of the duty here. The board designee or the board should have corrected the erroneous assertion made by AC&E at the July 20, 2005 prehearing conference . . . but did not do so. . . . (*Id.* at 319-20).
> . . .

> Given AC&E's incorrect statement . . . the prehearing officer should have told Bohlmann in more than general terms how he might still preserve the claim, or at least specifically how Bohlmann could determine whether AC & E was correct in contending that the claim was already barred. This requirement is similar to our holdings about the duty a court owes to a *pro se* litigant [footnote omitted] (*Id*. at 320).
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> We have held that a trial court has a duty to inform a *pro se* litigant of the 'necessity of opposing a summary judgment motion with affidavits or by amending the complaint' [footnote omitted]. We likewise have held that a trial court must tell a *pro se* litigant that he needs an expert affidavit in a medical malpractice case [footnote omitted] and must inform him of deficiencies in his appellate paperwork, giving him an opportunity to correct them [footnote omitted]. When a *pro se* litigant alerted a trial court that the opposing party had not complied with her discovery requests, we held that the court should have informed her of the basic steps she could take, including the option of filing a motion to compel discovery [footnote omitted]. In evaluating the accuracy of notice of procedural rights by an opposing party, we have noted that *pro se* litigants are not always able to distinguish between 'what is indeed correct and what is merely wishful advocacy dressed in robes of certitude' [footnote omitted]. The board, as an adjudicative body with a duty to assist claimants, has a duty similar to that of courts to assist unrepresented litigants (*Id*.).
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> Here, the board at a minimum should have informed Bohlmann how to preserve his claim. . . . Its failure to recognize that it had to do so in this case was an abuse of discretion [footnote omitted]. Its failure to do so is inconsistent with the appeals commission's conclusion that division staff did all that *Richard* required (*Id*. at 320-21).
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> . . .
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> Correcting AC&E's misstatement or telling Bohlmann the actual date by which he needed to file an affidavit of readiness for hearing to preserve his claim would not have been advocacy for one party or the other [footnote omitted]. . . . Because there is no indication in the appellate record that the board or its designee informed Bohlmann of the correct deadline or at least how to determine what the correct deadline was, the board should deem his affidavit of readiness for hearing timely filed [footnote omitted]. This is the appropriate remedy because the board's finding that Bohlmann 'had proved himself capable of filing claims and petitions even absent having counsel' [footnote omitted] is consistent with a presumption that Bohlmann would have filed a timely affidavit of readiness had the board or staff satisfied its duty to him (*Id*. at 321).

> **AS 23.30.005. Alaska Workers' Compensation Board**
> . . . .
> (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, 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 23.30.110. Procedure on claims.** (a) Subject to the provisions of a AS 23.30.105, a claim for compensation may be filed with the board in accordance with its regulations at any time after the first seven days of disability following an injury . . . and the board may hear and determine all questions in respect to the claim.
> . . . .
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> (c) Before a hearing is scheduled, a party seeking a hearing shall file a request for hearing together with an affidavit stating that the party has completed necessary discovery, obtained necessary evidence, and is prepared for the hearing. An opposing party shall have 10 days after the hearing request is filed to file a response. If a party opposes the hearing request, the board or a board designee shall within 30 days of the filing of the opposition conduct a pre-hearing conference and set a hearing date. . . . If the employer controverts a claim on a board-prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied.
> . . . .

AS 23.30.110(c) requires an employee to prosecute a claim in a timely manner once a claim is filed and controverted by the employer. *Jonathan v. Doyon Drilling, Inc*., 890 P.2d 1121, 1124 (Alaska 1995). The Alaska Supreme Court has compared AS 23.30.110(c) to a statute of limitations. *Suh v. Pingo Corp*., 736 P.2d 342, 346 (Alaska, 1987). Statutes of limitations defenses are "generally disfavored" and neither "the law [n]or the facts should be strained in aid of it." *Tipton v. ARCO Alaska, Inc.*, 922 P.2d 910, 912-913 (Alaska 1996).

> **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.

8 AAC 45.040. Parties. (a) Except for a deceased employee's dependent or a rehabilitation specialist appointed by the administrator or chosen by an employee in accordance with AS 23.30.041, a person other than the employee filing a claim shall join the injured employee as a party.

. . . .

(f) Proceedings to join a person are begun by

> (1) a party filing with the board a petition to join the person and serving a copy of the petition, in accordance with 8 AAC 45.060, on the person to be joined and the other parties; or
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> (2) the board or designee serving a notice to join on all parties and the person to be joined.

(g) A petition or a notice to join must state the person will be joined as a party unless, within 20 days after service of the petition or notice, the person or a party files an objection with the board and serves the objection on all parties. If the petition or notice to join does not conform to this section, the person will not be joined.

(h) If the person to be joined or a party

> (1) objects to the joinder, an objection must be filed with the board and served on the parties and the person to be joined within 20 days after service of the petition or notice to join; or
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> (2) fails to timely object in accordance with this subsection, the right to object to the joinder is waived, and the person is joined without further board action.

(i) If a claim has not been filed against the person served with a petition or notice to join, the person may object to being joined based on a defense that would bar the employee's claim, if filed.

(j) In determining whether to join a person, the board or designee will consider

> (1) whether a timely objection was filed in accordance with (h) of this section;
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> (2) whether the person's presence is necessary for complete relief and due process among the parties;

> (3) whether the person's absence may affect the person's ability to protect an interest, or subject a party to a substantial risk of incurring inconsistent obligations;
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> (4) whether a claim was filed against the person by the employee; and
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> (5) if a claim was not filed as described in (4) of this subsection, whether a defense to a claim, if filed by the employee, would bar the claim.
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> . . . .

The Alaska Supreme Court said in *Sherrod v. Municipality of Anchorage*, 803 P.2d 874, 876 (Alaska 1990): "AS 23.30.110 requires the board to provide a hearing to an 'interested party.'"

In *Barrington v. Alaska Communications Systems Group, Inc.*, 198 P.3d 1122 (Alaska 2008), the Alaska Supreme Court noted there can be more than one "real party in interest in a given law suit or claim" and recognized "the board regulations do not use the term 'real party in interest' in discussing the status of parties" and the court used the term in its decision "only because the appeals commission used the term" (*Id*. at 1128-1129). *Barrington* said:

> Unlike the Alaska Civil Rules, board regulations do not otherwise clearly distinguish between permissive and compulsory joinder (footnote omitted). 8 AAC 45.040(c) states that a person who 'may have a right to relief in respect to or arising out of the same transaction . . . should' be joined. This subsection seems to give the board some discretion in deciding whether to allow or require joinder. But the board's discretion is not absolute; in this case, Dr. Barrington was a necessary party whose absence, as we will see, violated due process (footnote omitted) (*Barrington* at 1129).

8 AAC 45.070. Hearings.

. . . .

> (b) Except as provided in this section and 8 AAC 45.074 (c), a hearing will not be scheduled unless a claim or petition has been filed, and an affidavit of readiness for hearing has been filed and that affidavit is not returned by the board or designee nor is the affidavit the basis for scheduling a hearing that is cancelled or continued under 8 AAC 45.074 (b). The board has available an Affidavit of Readiness for Hearing form that a party may complete and file. The board or its designee will return an affidavit of readiness for hearing, and a hearing will not be set if the affidavit lacks proof of service upon all other parties, or if the affiant fails to state that the party has completed all necessary discovery, has all the necessary evidence, and is fully prepared for the hearing.

> (1) A hearing is requested by using the following procedures:
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> . . . .
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> (C) For an appearance in-person at the hearing, except for a venue determination, a party must file an affidavit of readiness in accordance with (2) of this subsection requesting an in-person hearing.
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> (2) Except as provided in (1) of this subsection, a party may not file an affidavit of readiness for hearing until after the opposing party files an answer under 8 AAC 45.050 to a claim or petition or 20 days after the service of the claim or petition, whichever occurs first. If an affidavit is filed before the time set by this paragraph,
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> (A) action will not be taken by the board or designee on the claim or petition; and
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> (B) the party must file another affidavit after the time set by this paragraph.
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> (3) If the board or designee determines a hearing should be scheduled even though a party has not filed an affidavit of readiness for hearing, the board or designee will give notice of the hearing in accordance with AS 23.30.110 and 8 AAC 45.060(e).
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> . . . .

ANALYSIS

Should Claimant's claim be dismissed?

The board has a duty to advise unrepresented claimants of their rights, how to pursue their rights under the Act, and to inform them how to preserve their claim for benefits. *Richard; Bohlmann.* Claimant filed a claim on December 22, 2015, which Employer controverted on January 13, 2016. A prehearing was held on January 28, 2016. Employer "declared" it was unusual for a medical provider to file a claim on an employee's behalf and "at some point the employee will need to participate."

Julia Jette is Claimant's office manager. She is not an attorney and has received no workers' compensation law training. She attended the January 28, 2016 prehearing with Kimberly Penning and Darla Budde, also of Northern Chiropractic. Ms. Jette credibly testified she, Ms. Penning, and Ms. Budde relied upon the division's staff to learn how to proceed with

Claimant's claim and it was never explained they must file a petition to join Employee. AS 23.30.122. Despite Employer's prehearing remark that is was unusual for a medical provider to "file a claim on behalf of the employee and at some point the injured worker will need to participate," the January 28, 2016 prehearing conference summary did not expressly instruct nor advise Claimant it must file a petition to join Employee. Although the discovery and adjudication processes were explained "in general" to Claimant, despite Employer's declaration, the board designee did not explain 8 AAC 45.040(a), which requires "a person other than the employee filing a claim shall join the injured employee as a party." Nor did the board designee advise Claimant the procedure to join Employee as a party and preserve its claim is contained in 8 AAC 45.040(f). This regulation was not quoted in the prehearing conference summary. Because Employee did not file the claim, Claimant should have received explicit instructions at the first prehearing of 8 AAC 45.040(a)'s joinder requirement. *Richard, Bohlmann*. Two phone calls to division staff were made from Claimant's staff. One after the January 28, 2016 prehearing and another after Employer filed its petition to dismiss. Claimant made inquiries about its claim but was never advised to follow 8 AAC 45.040(a) and file a petition to join Employee.

After the January 28, 2016 prehearing, Employer filed its petition to dismiss for Claimant's failure to follow 8 AAC 45.040(a) and asserted Claimant was on notice it was required to take action to join Employee to its claim. Employer contended because Claimant did not file an answer to Employer's petition to dismiss or file a petition to join Employee it disregarded regulations and sought to move forward with its claim and pursue its own interest. Employer held concerns regarding Claimant's failure to include Employee in litigation of Claimant's claim. Specifically, Employer envisioned practical problems obtaining discovery of medical records and Employee's signature on releases if she was not joined as a party. There is a dispute between Employee's physician, Dr. Culbert, and Employer's physician, Dr. Ballard, over whether work is the substantial cause of Employee's need for medical treatment. If Employee is not a joined party and an SIME is ordered, Employer asserted she may not be able to protect her interests.

In addition to other concerns, Employer acknowledged the board designee can exercise his discretion under 8 AAC 45.040(f) and serve notice on Employee joining her to Claimant's claim, and this is what occurred. At the June 7, 2016 prehearing, which Employee did not attend, the board designee permitted Claimant to orally petition for Employee's joinder and ordered Employee be joined as a party unless she or another party objected by July 1, 2016. Employee was served with the prehearing conference summary and also received notice of her right to object to joinder on June 23, 2016, when she spoke with a workers' compensation officer. She did not object to joinder; however, Employer did on July 5, 2016. Employer contended the board designee not only advised Claimant, but also cured Claimant's failure to follow 8 AAC 45.040.

The board designee did not abuse his discretion when joinder of Employee was ordered. Notice of joinder, the right to object, and the deadline for filing an objection was provided all parties. Employer timely filed its objection before July 1, 2016. 8 AAC 45.040(g). Employee's presence is necessary for complete relief and due process among the parties. Had Employee not been joined, Employer's ability to complete discovery would have been thwarted. If Claimant's claim was found compensable and benefits were awarded; and later if a claim were filed by Employee and found not compensable, the effect of Employee's absence during Claimant's claim could be subjecting Employer to the risk of incurring inconsistent obligations. The same inconsistent results could occur if Claimant's claim was denied, but a later claim by Employee for the same medical benefits was found compensable. Employee has not filed a claim, but indicated she will fully cooperate with discovery and attend a SIME, if ordered to do so. Employer's defenses to Claimant's claim would also apply to a claim filed by Employee for unpaid medical costs she incurred for treatment Dr. Culbert provided Employee. Claimant, a party in interest, must have an opportunity to have its claim decided. *Sherrod; Barrington.* To assure Employer is not subjected to inconsistent obligations, all parties' due process rights are protected, and complete relief is determined quickly, efficiently, predictably and at a reasonable cost to Employer, joinder of Employee is appropriate. AS 23.30.001; 8 AAC 45.040. By joining Employee, the board designee permitted Claimant to preserve its claim. *Bohlman*.

Employee testified at hearing she does not object to joinder; she does not object to attending an SIME if ordered; and she does not object to signing releases or participating in discovery. Employee's credible testimony eliminates Employer's concerns. AS 23.30.122. Employer's petition for dismissal because Claimant did not petition for Employee's joinder shall be denied.

This decision will also explain the affidavit of readiness for hearing requirements to Claimant. *Richard*; *Bohlmann*. Ms. Jette stated she and Ms. Budde attended the hearing so Claimant could get paid and the outstanding bill for services rendered to Employee totals $1,201.00. Claimant filed its initial claim on December 21, 2015. Employer filed its post claim controversion on January 13, 2016. Claimant has not yet filed an affidavit of readiness for hearing for its December 21, 2015 claim. The relevant provisions of AS 23.30.110(c) and 8 AAC 45.070 are provided above in Principles of Law for Claimant's benefit. Claimant would like a hearing to be scheduled on its claim. In order for the claim to be decided, Claimant must file an affidavit of readiness for hearing. AS 23.30.110(c); 8 AAC 45.070(b). Claimant's affidavit of readiness for hearing for its December 21, 2015 claim must be filed within two years of Employer's January 13, 2016 post claim controversion. The deadline for Claimant to file its affidavit of readiness for hearing is January 12, 2018. Claimant can request an affidavit of readiness for hearing form from the division or access forms online at http://labor.alaska.gov/wc/pdf_list.htm.

CONCLUSIONS OF LAW

Claimant's claim should not be dismissed.

ORDER

1. Employer's petition to dismiss is denied.
2. Employee's joinder as a party is affirmed.
3. Claimant's deadline to file its affidavit of readiness for hearing is January 12, 2018.

Dated in Anchorage, Alaska on August 4, 2016.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Janel Wright, Designated Chair

/s/
Amy Steele, Member

/s/
Rick Traini, Member

PETITION FOR REVIEW

A party may seek review of an interlocutory other non-final Board decision and order by filing a petition for review with the Alaska Workers' Compensation Appeals Commission. Unless a petition for reconsideration of a Board decision or order is timely filed with the board under AS 44.62.540, a petition for review must be filed with the commission within 15 days after service of the board's decision and order. If a petition for reconsideration is timely filed with the board, a petition for review must be filed within 15 days after the board serves the reconsideration decision, or within 15 days from date the petition for reconsideration is considered denied absent Board action, whichever is earlier.

RECONSIDERATION

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

MODIFICATION

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

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Interlocutory Decision and Order in the matter of JUSTINA MILLER, employee, and NORTHERN CHIROPRACTIC, claimant v. FIRST NATIONAL BANK ALASKA, employer; ATLANTIC SPECIALTY INSURANCE CO., insurer / defendants; Case No. 201510386; 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 August 4, 2016.

/s/
Sertram Harris, Workers' Compensation Technician