ALASKA WORKERS' COMPENSATION BOARD

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

EDWIN MEIER,	)	
Employee,	)	INTERLOCUTORY
Claimant,	)	DECISION AND ORDER
	)	
v.	)	AWCB Case No. 200710761
	)	
THREE BEARS ALASKA, INC.,	)	AWCB Decision No. 16-0073
Employer,	)	
	)	Filed with AWCB Anchorage, Alaska
and	)	on August 23,2016
	)	
WAUSAU UNDERWRITERS	)	
INSURANCE COMPANY,	)	
Insurer,	)	
Defendants.	)	

Edwin Meier's (Employee) June 11, 2015 and May 19, 2016 petitions to strike medical records were heard on July 28, 2016 in Anchorage, Alaska. This hearing date was selected on June 2, 2016. Attorney Michael Jensen appeared and represented Employee. Attorney Martha Tansik appeared and represented Three Bears Alaska, Inc. and Wausau Underwriters Insurance Company (Employer). No witnesses testified. The record closed at the hearing's conclusion on July 28, 2016.

ISSUES

Employee contends Employer has excessively changed physicians, and all medical evaluations subsequent to the second medical evaluation on October 7, 2008 should be excluded. Employee contends that since Employer has unlawfully changed physicians, Employer may not "switch

back" to the last valid choice of physician, and therefore has no valid EME physician. Employee argues that Employer's EME referrals are invalid because they were requested by Employer.

Employer agrees that some of the medical examinations after October 7, 2008 were excessive changes of physician and should be stricken, but contends the third EME and the most recent EME are valid because they were supported by proper referrals. Employer contends it may continue conducting EMEs with the last valid physician as the Employer's choice of physician. Employer contends its EME referrals are valid.

> **Should some of Employer's medical examination records be stricken because of an excessive change of physician? If so, which records should be stricken, and who is Employer's current choice of physician?**

FINDINGS OF FACT

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

1. On July 25, 2007, Employee was injured while lifting and throwing boxes of meat while working for Employer. (Record).

2. On October 31, 2007, Employee attended an Employer's Medical Examination (EME) with a panel consisting of William Smith, M.D. and David Waldram, M.D, a neurosurgeon and an orthopedic surgeon, respectively. The report was dictated by Dr. Smith and signed by both doctors. (Medical Report, November 6, 2007).

3. On September 29, 2008, Employee attended a second EME with a panel consisting of Dr. Smith and Franklin Wong, M.D. (a physiatrist). The report was dictated by Dr. Smith and signed by both doctors. The report states: "We recommend a complete psychological evaluation at this point including an MMPI-2," and indicated that a psychological evaluation was necessary to answer questions regarding causation, treatment, medical stability, and work release. (Medical Report, October 7, 2008).

4. On November 3 and 4, 2009, Employee attended a third EME with a panel consisting of Dr. Smith and Ronald Turco, M.D. (a psychiatrist). The two doctors issued separate medical reports. (Medical Report, November 12, 2009; Medical Report, January 14, 2010).

5. On February 8, 2010, Dr. Smith issued an addendum to his January 14, 2010 report, after reviewing additional medical records that had been recently provided. (Addendum, February 8, 2010).

6. On November 1, 2010, a second independent medical evaluation (SIME) was performed by Sidney Levine, M.D. to assist the board in clarifying conflicting medical information. Dr. Levine reviewed numerous medical records, including all prior EMEs. (Medical Report, November 12, 2010).

7. On March 9, 2011, the parties filed a stipulation to various facts regarding Employee's claim. Employer agreed that Employee's claim was compensable, and agreed to pay various expenses associated with Employee's injury. The stipulation to these facts and to attorney's fees was approved by the Alaska Workers' Compensation Board (board) on March 17, 2011. (Stipulation, March 17, 2011).

8. On May 9, 2011, a records review EME was performed by Dr. Daniela Samoil, a cardiologist. (Medical Report, May 9, 2011).

9. On March 21, 2013, Employee attended an EME conducted by Edmund Frank, M.D. (a neurosurgeon) and Leo Kroonen, M.D. (an orthopedic surgeon). (Medical Report, March 21, 2013).

10. On September 12, 2013, Employee attended an EME conducted by Dr. Frank. (Medical Report, September 12, 2013).

11. On June 11, 2015, Employee filed a petition to strike three physicians who were scheduled to perform an EME, Dr. Olbrich (an addiction specialist), Dr. Toal (an orthopedic surgeon), and Dr. Samoil, from acting as Employer's physicians. Employee argued that these physicians were barred as excessive changes to Employer's physician. Employee also petitioned to strike the evaluations of Dr. Turco and Dr. Frank as excessive changes, and requested a board determination to cancel the scheduled EME and bar the opinions of the selected physicians. (Petition, June 15, 2015).

12. On July 6, 2015, Employer answered Employee's June 11, 2015 petition, indicating that the scheduled EME panel had been canceled. Employer also argued that the first three EMEs (Dr. Smith/Dr. Waldram, Dr. Smith/Dr. Wong, and Dr. Smith/Dr. Turco) were proper and should not be stricken, and agreed that the EME panels that had occurred after the November 1, 2010 SIME were invalid due to excessive changes of physician. Employer asserted that the panel EME by

Dr. Smith and Dr. Turco was the result of a referral from the Dr. Smith/Dr. Wong panel. (Answer, July 6, 2015).

13. On March 22, 2016, Dr. Smith issued two referrals for examination by Dr. Borman and Dr. Semler. The referrals both stated, in relevant part: "As per your request I am referring Edwin Meier for a change of physician to see [the specialist] as per the Alaska Labor and Workers' Compensation Laws and Regulations, section 23.30.095(e)," followed by the text of AS 23.30.095(e). (Notice of Filing, June 7, 2016; Medical Summary, June 7, 2016).

14. On April 12, 2016, the parties attended a prehearing and stipulated that the Protective Order requested by the June 11, 2015 petition was moot. The parties requested a hearing on the remaining Petition to Strike portion of that petition, and Employer requested that the hearing address who the appropriate EME physician would be if the Petition to Strike were granted. The parties agreed to a hearing on July 28, 2016. (Prehearing Conference Summary, April 12, 2016).

15. On May 19, 2016, Employee filed a petition to strike additional EMEs conducted by Dr. Borman, Dr. Semler, and Dr. Smith. (Petition to Strike Additional Defense Medical Evaluations, May 19, 2016).

16. On June 2, 2016, the parties attended a prehearing conference and set the June 11, 2015 and May 19, 2016 petitions to strike as issues for the July 28, 2016 hearing. (Prehearing Conference Summary, June 2, 2016).

17. On June 7, 2016, Employer filed an answer to Employee's May 19, 2016 Petition to Strike, arguing again that the first three EME panels (Dr. Smith/Dr. Waldram, Dr. Smith/Dr. Wong, and Dr. Smith/Dr. Turco) were valid and should not be stricken. In response to the petitions to strike all later EMEs, Employer argued that Employer returned to the original physician, Dr. Smith, and obtained referrals to Dr. Borman and Dr. Semler prior to scheduling the new panel EME to ensure its validity. (Opposition to Employee's Petition to Strike, June 7, 2016).

18. On July 27, 2016, Employee filed discovery recently received from Employer, containing emails concerning Employer's process for scheduling EMEs and obtaining referrals. Employer did not object to introduction of these documents as evidence. (Affidavit of Service, July 27, 2016; Employer).

PRINCIPLES OF LAW

> **AS 23.30.001. Intent of the legislature and construction of chapter.** It is the intent of the legislature that
> 1) this chapter be interpreted so as to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of this chapter;
> 2) workers' compensation cases shall be decided on their merits except where otherwise provided by statute.
> 3) this chapter may not be construed by the courts in favor of a party;
> 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.

> **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, 533-534 (Alaska 1987). An adjudicative body must base its decision on the law, whether cited by a party or not. *Barlow v. Thompson*, 221 P.3d 998 (2009).

> **AS 23.30.095. Medical treatments, services, and examinations . . . .**
> . . . .
> (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 ....
> . . . .

Miller v. NANA Regional Corporation, AWCB Decision No. 13-0169 (December 26, 2013), held that once a change in physician is made by either party, if a party returns to a previous physician, the party has made a change in its choice of physician. *Miller* explained, "The word 'change' has a plain, simple meaning, and includes "to put or take (a thing) in place of something else; substitute for, replace with, or transfer to another of a similar kind." (citation omitted). Because the statute expressly prohibits a party from making more than one "change" in physician, parties "cannot go back and forth" between their physician choices. *Id.* at 22. While one change is permissible without the written consent of the other party, a return to a former physician without the written consent of the opposing party is an unauthorized change of physician. *Id.*

Kollman v. ASRC Energy Services, Inc., AWCB Decision No. 15-0004 (January 7, 2015), held that an EME physician's referral to a specialist without naming a particular physician did not constitute a violation of AS 23.30.095(e). *Kessler v. Federal Express Corporation*, AWCB Decision No. 15-0159 (December 11, 2015), similarly held "Nothing in the Act or controlling law precludes a non-specific referral; [the physician's] referral to a medical specialty, without naming a particular physician, is not a violation of AS 23.30.095(e)." (citing *Kollman*).

> **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 44.62.240. Limitation on retroactive action.** If a regulation adopted by an agency under this chapter is primarily legislative, the regulation has prospective effect only. A regulation adopted under this chapter that is primarily an "interpretative regulation" has retroactive effect only if the agency adopting it has adopted no earlier inconsistent regulation and has followed no earlier course of conduct inconsistent with the regulation. Silence or failure to follow any course of conduct is considered earlier inconsistent conduct.

The retroactivity of the board's regulations is governed by AS 44.62.240. Under this statute, an "interpretative regulation," such as 8 AAC 45.082, may be retroactive only if the agency "has adopted no earlier inconsistent regulation and has followed no earlier course of conduct

inconsistent with the regulation." Additionally, AS 44.62.240 is concerned with the issues of fairness and notice, and does not impose on parties a burden outside the scope of risk they assumed. *See, e.g., Suh v. Pingo Corp.*, 736 P.2d 342, 345 (Alaska 1987); *Atlantic Richfield Co. v. State*, 705 P.2d 418, 424 n. 17 (Alaska 1985).

> **8 AAC 45.082, Medical treatment.** . . .
> . . . .
> (b) Physicians may be changed as follows:
> . . . .
> (2) Except as otherwise provided in this subsection, an employee injured on or after July 1, 1988, designates an attending physician by getting treatment, advice, an opinion, or any type of service from a physician for the injury. If an employee gets service from a physician at a clinic, all the physicians in the same clinic who provide service to the employee are considered the employee's attending physician. An employee does not designate a physician as an attending physician if the employee gets service
> (A) at a hospital or an emergency care facility;
> (B) from a physician
> (i) whose name was given to the employee by the employer and the employee does not designate that physician as the attending physician;
> (ii) whom the employer directed the employee to see and the employee does not designate that physician as the attending physician; or
> (iii) whose appointment was set, scheduled, or arranged by the employer, and the employee does not designate that physician as the attending physician.
> (3) For an employee injured on or after July 1, 1988, an employer's choice of physician is made by having a physician or panel of physicians selected by the employer give an oral or written opinion and advice after examining the employee, the employee's medical records, or an oral or written summary of the employee's medical records. To constitute a panel, for purposes of this paragraph, the panel must complete its examination, but not necessarily the report, within five days after the first physician sees the employee. If more than five days pass between the time the first and last physicians see the employee, the physicians do not constitute a panel, but rather a change of physicians.
> (4) Regardless of an employee's date of injury, the following is not a change of an attending physician:
> (A) the employee moves a distance of 50 miles or more from the attending physician and the employee does not get services from the attending physician after moving; the first physician providing services to the employee after the employee moves is a substitution of physicians and not a change of attending physicians;
> (B) the attending physician dies, moves the physician's practice 50 miles or more from the employee, or refuses to provide services to the

> employee; the first physician providing services to the employee thereafter is a substitution of physicians and not a change of attending physicians ...
> (C) the employer suggest, directs, or schedules an appointment with a physician other than the attending physician, the other physician provides services to the employee, and the employee does not designate in writing that physician as the attending physician;
> (D) the employee request in writing that the employer consent to a change of attending physician, the employer does not give written consent or denial to the employee within 14 days after receiving the request, and thereafter the employee gets services from another physician.
>
> (c) If, after a hearing, the board finds a party made an unlawful change of physician in violation of AS 23.30.095(a) or (e) or this section, the board will not consider the reports, opinions, or testimony of the physician in any form, in any proceeding, or for any purpose. If, after a hearing, the board finds an employee made an unlawful change of physician, the board may refuse to order payment by the employer.
> . . . .

Prior to 1988, the Act and regulations did not restrict the parties' ability to change doctors. As a result parties often engaged in “doctor shopping,” the practice of changing doctors until they found one who would support their position. The 1988 amendment to AS 23.30.095(a) and (e) provided that the parties could make only one change in doctors without the written consent of the other party. §§ 13, 15 Chapter 79 SLA 1988. However, the amendments did not include sanctions if a party made an excessive change. After the 1988 amendments to the Act, 8 AAC 45.082 was also revised to provide that the board could order that an employer did not have to pay for services resulting from an employee’s excessive change in doctors.

The excessive change of physician issue continued to arise, and several board decisions held that medical records and opinions resulting from an unauthorized change would not be considered as evidence. The extent of the exclusion varied, however. *Sherrill v. Tri-Star Cutting*, AWCB Decision No. 95-0118 (May 1, 1995), decided prior to the current regulatory language of 8 AAC 45.082(c), held that if the rule limiting change of physicians were to have any meaning, there must be some sanction imposed by its violation, and further found that the proper sanction was exclusion of the unlawfully obtained reports and opinions from consideration at hearing. This holding was based on the perceived insufficiency of other remedies to prevent doctor-shopping by employers and the need for some consequence in the enforcement of AS 23.30.095(e). *Id.* at 7-8. *Miller v. Houston NANA, LLC*, AWCB Decision No. 03-0287 (December 5, 2003) held that

the records resulting from an unauthorized change in physicians must be excluded for all purposes. In *Clette v. Arctic Lights Electric, Inc.*, AWCB Decision No. 05-0160 (June 10, 2005) (Decision on Reconsideration), the board held that while the medical records from an unauthorized physician must be excluded, reports of other doctors who relied on or referenced the excluded reports were not excluded. And *Lopez v. Q1 Corporation*, AWCB Decision No. 05-0259 (October. 6, 2005) (footnote 40), stated: "To the extent these records have been legally rehabilitated by other physicians, the records will be considered."

In 2007, the Alaska Workers' Compensation Appeals Commission overruled these previous decisions and found the exclusion rule unsupported by the language and intent of the Act and regulations. *Guys With Tools Ltd. v. Thurston*, AWCAC Decision No. 062 (November 8, 2007). The Commission held all otherwise admissible relevant evidence should be considered regardless of whether it was obtained in violation of AS 23.30.095(e). *Id.* The Commission stated: "If the board wishes to adopt a rule excluding evidence improperly obtained, the board should . . . develop and adopt such a rule by regulation. Until then, we cannot support the blanket exclusion of medical reports solely because the reports were written by physicians chosen in excess of an allowable change." *Id.* (footnote omitted). The Commission did not prohibit the use of exclusion as a sanction, but stated it was not supported when the sole reason was excessive change and should not be the first choice for enforcement of AS 23.30.095(e). *Id.* The Commission referred to the existing statutory remedy (enacted after *Sherrill*), which was for the employee to refuse the examination and seek a protective order under AS 23.30.108(c). *Id.*

Effective July 9, 2011, the current version of regulation 8 AAC 45.082(c) overturns *Guys With Tools* and by prohibiting, "in any form, in any proceeding, or for any purpose," the board's consideration of reports or opinions obtained through an unlawful change of physician.

The question of how to deal with medical records resulting from an unauthorized change in doctors still continues to arise. *Freeman v. ASRC Energy Services, et al.*, AWCB Decision No. 15-0073 (June 26, 2015) held that interference in the employee's medical care by the employer's nurse case manager excused an unauthorized change in physicians, but medical records resulting from another unauthorized change were excluded. In *Janousek v. North Slope Borough School*

District, AWCB Decision No. 15-0090 (July 27, 2015), the board panel deferred ruling on the unauthorized change in physician issue, but held that even if there had been an unauthorized change, the medical records should be sent to the SIME doctor. *Janousek* noted that striking the reports would "decimate" the medical records in the case and that it would be virtually impossible for an SIME doctor to opine on whether surgery was due to the work injury when records related to the surgery were excluded. In *Hudak v. Pirate Airworks, Inc.*, AWCB Decision No. 16-0045 (June 20, 2016), the board similarly found that medical records excluded due to excessive change of physician should nonetheless be sent to the physician conducting the SIME to avoid procuring a medical opinion based on incomplete medical information.

ANALYSIS

Should some of Employer's medical examination records be stricken because of an excessive change of physician? If so, which records should be stricken, and who is Employer's current choice of physician?

Employer accepts that the EMEs of May 9, 2011 (Dr. Samoil), March 21, 2013 (Drs. Frank and Kroonen), and September 12, 2014 (Dr. Frank) were excessive changes of physician. Under the current regulations effective July 9, 2011, the medical reports and opinions resulting from Dr. Frank and Dr. Kroonen's examinations will be excluded. Dr. Samoil's EME will be evaluated under *Guys with Tools*. The parties agree that the first two EME panels did not involve excessive change of physician, and dispute the third EME panel, consisting of Dr. Smith and Dr. Turco. The parties also dispute the validity of the most recent EME panel of Dr. Smith, Dr. Semler, and Dr. Borman.

Under AS 23.30.095(e) and 8 AAC 45.082(b)(3), referral to a specialist by the chosen physician is not considered a change of physician, an employer may only change its physician once without employee consent, and a choice of physician is made by having a physician or a panel give an oral or written opinion and advice after examining the employee, the employee's medical records, or an oral or written summary of the medical records. Accordingly, a change in the panel must be considered a change in physician unless supported by a referral. Employer admits that the second EME constituted a change in physician from the first, so the second panel of Dr.

Smith and Dr. Wong remains Employer's chosen "physician." Employee has not argued that a chosen physician panel must always act as a panel in the future, nor that a valid physician may not join a panel with referred physicians for an EME. However, in light of the confusion in the medical record and changing law during the treatment of Employee's injury, there is no need to create rules to restrict those actions. A referral from either of Dr. Smith or Dr. Wong would support the third EME by Dr. Smith and Dr. Turco or the most recent examination by Dr. Smith, Dr. Semler, and Dr. Borman. The disputed referrals are addressed below.

Employee argues that Employer's unlawful changes of physician were nonetheless changes of physician, and that returning to the second EME panel would itself be another change. Employee's support for this contention derives from *Miller*, indicating that once a valid change of physician has been made, a return to the prior physician is an additional and excessive change. However, *Miller* does not illustrate the case here, since Employer does not seek a return to its first EME panel, but the second. All EMEs after the second are claimed to be either unlawful changes or referrals, and Employee cites no law or precedent for the idea that an unlawful change means the employer is prevented from conducting any further EMEs. Common practice and the most reasonable reading of the Act and regulations require nothing further than the exclusion of the unlawful EMEs. 8 AAC 45.082(c); *Miller*, at 13 (". . . nothing would prevent Dr. Dietrich, as Employer's second selected physician, from referring Employee to other physicians. . .); *Freeman*, at 46 (setting the last legitimate attending physician as the current physician, despite later unlawful changes). A bar against further EMEs would deprive employers of significant ability to investigate the claims against them, and if it is to be followed as a rule it should be clearly supported by statute or regulation. No such rule currently exists, and Employee's request to formulate one is denied.

Since the panel of Dr. Smith and Dr. Wong was the first change of the EME physician, further EME examinations must be conducted by the panel physicians or supported by a referral. AS 23.30.095(e). As a practical matter, and in the interests of interpreting the Act in accordance with the policy directives expressed in AS 23.30.001, it is preferable to accept, rather than reject, examination and referral by one physician of a panel when the panel is the employer's "choice of

physician." Dr. Smith and Dr. Wong are Employer's current physicians, either of whom could therefore refer Employee to specialists or conduct an EME.

Employer asserts that Dr. Turco's participation in the third EME was by referral from Dr. Smith and the second EME. This is supported by the report from the Dr. Smith/Dr. Wong EME, in which the physicians recommend a psychological evaluation, indicating that it is necessary to the determination of causation, treatment, medical stability, and work release. Employee opposes the validity of Dr. Turco's EME, and presumably opposes considering the statements by Dr. Smith and Dr. Wong a referral. Significant hearing time was devoted to the question of what is required for a valid referral, and clarification is needed for this case to proceed. Statutes and regulations are silent on what may be considered a valid referral, except to indicate that referrals must issue from a party's chosen physician to validate examination by a medical specialist. AS 23.30.095(e). In light of the policy considerations of AS 23.30.001, it is not necessary for the board to formulate a rule to unduly scrutinize referrals. Both parties are at liberty to request referral to a specialist, and a note indicating a need for evaluation by a certain type of specialist is an acceptable referral for the purposes of the Act. *Kessler*; *Kollman*. In addition, the Dr. Smith/Dr. Turco EME was conducted when *Guys With Tools* governed excessive changes of physician, and the EME report would remain part of the record even if the referral were faulty.

The Dr. Smith/Dr. Turco EME and the Dr. Smith/Dr. Borman/Dr. Semler EME are valid and supported by sufficient referrals. These evaluations did not involve consideration of excludable records, and will not be excluded. The parties have agreed that the examinations by Dr. Samoil, Dr. Frank, and Dr. Kroonen will be excluded due to excessive change of physician under 8 AAC 45.082.

Employer requested that the board provide guidance on what options are available if a chosen physician dies or retires, or otherwise refuses to examine the employee. Because the statutes and regulations do not readily indicate an answer to that question, it is likely that the answer will be highly dependent on the particular facts and circumstances involved. The board will decline to address this question, as it is not yet ripe.

CONCLUSIONS OF LAW

The EMEs performed by Dr. Samoil, Dr. Frank, and Dr. Frank/Dr. Kroonen resulted from excessive change of physician, and should be stricken. The EMEs performed by Dr. Smith/Dr. Turco and Dr. Smith/Dr. Semler/Dr. Borman were scheduled through referrals and should not be stricken. Employer's current choice of physician should be the panel of Dr. Smith and Dr. Wong.

ORDER

1. Employee's June 11, 2015 and May 19, 2016 petitions to strike are granted as to the medical records and opinions resulting from Dr. Samoil's May 9, 2011 EME, Dr. Frank and Dr. Kroonen's March 21, 2013 EME, and Dr. Frank's September 12, 2014 EME. These records and opinions will not be considered by the board.
2. Employee's June 11, 2015 and May 19, 2016 petitions to strike are denied as to the medical records and opinions resulting from Dr. Smith and Dr. Turco's November 3 and 4, 2009 EME and Dr. Smith, Dr. Semler, and Dr. Borman's April 5, 7, and 14, 2016 EME. These records and opinions will remain a part of the medical record.
3. Employer's physician is the panel of Dr. Smith and Dr. Wong.

Dated in Anchorage, Alaska on August 23, 2016.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Henry G Tashjian, Designated Chair

/s/
David Kester, Member

/s/
Stacy Allen, 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 EDWIN MEIER, employee / claimant; v. THREE BEARS ALASKA, INC., employer; WAUSAU UNDERWRITERS INSURANCE COMPANY, insurer / defendants; Case No. 200710761; 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 23, 2016.

/s/

Nenita Farmer, Office Assistant