

ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

TERESA L. BLAKESLEE-EDWARDS,)
) INTERLOCUTORY
Employee,) DECISION AND ORDER
Claimant,)
v.) AWCB Case No. 201119210M
)
STATE OF ALASKA,) AWCB Decision No. 16-0097
)
Employer,) Filed with AWCB Anchorage, Alaska
Defendants.) on October 27, 2016
)
_____)

A remaining issue from the parties' stipulated second independent medical examination (SIME), whether a neurologist should be added to the SIME panel, was heard on October 27, 2016, in Anchorage, Alaska, a date selected on October 4, 2016. Attorney Keenan Powell appeared and represented Teresa L. Blakeslee-Edwards (Employee). Attorney Daniel Cadra appeared and represented the State of Alaska (Employer). There were no witnesses. The record closed at the hearing's conclusion on October 27, 2016.

ISSUE

Employer contends Employee's cerebral palsy makes her prone to tripping. As cerebral palsy is a neurological disorder, Employer contends the SIME panel should include a neurologist.

Employee contends there is no medical dispute between her attending physician and any employer medical evaluator (EME) concerning cerebral palsy. Therefore, she contends there is no good reason to add a neurologist to the SIME panel.

Should a neurologist be added to Employee's SIME panel?

FINDINGS OF FACT

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

- 1) On April 28, 2008, Employee injured her knee when she “tripped on the carpet.” (Report of Occupational Injury or Illness, April 29, 2008).
- 2) On December 14, 2011, Employee hurt her lower back, left and right wrist and right forearm when the “elevator and floor” did not “meet,” she “tripped on the floor” and fell down. (Report of Occupational Injury or Illness, December 14, 2011).
- 3) On February 10, 2012, Employee injured her left wrist, lower left side and her back when she tripped on her co-worker’s desk. (Report of Occupational Injury or Illness, February 10, 2012).
- 4) On March 20, 2014, EME physicians Eugene Wong, M.D., neurologist, and Scot Youngblood, M.D., orthopedic surgeon, examined Employee in cases 201201843 for injury date February 10, 2012, and 201416218 for injury date September 23, 2014. Employee demonstrated difficulty arising from a chair, and walked with a “waddling gait.” The examiners deferred the heel-to-toe, heel and toe walking examinations. Employee had significant left-sided calf atrophy compared to the right. Diagnoses included (1) lumbar strain; and (2) left knee contusion both substantially caused by the February 10, 2012 work injury. These occurred “in a context” of “pre-existing and ongoing problems” stemming from “spastic diplegia” from cerebral palsy and prior knee surgeries culminating in bilateral total knee replacements. The EME determined Employee’s “pre-existing condition” was the substantial cause of her current disability relative to her low back and left knee. The EME said Employee had no ratable permanent impairment, no physical restrictions and needed no further medical care for her work injury. While Employee would “not develop a worsening of her cerebral palsy condition itself,” she would “develop a worsening of the effects from her cerebral palsy condition.” (EME report, March 20, 2014).
- 5) On September 23, 2014, Employee hurt her left knee when she tripped while climbing stairs and fell. (Employee Report of Occupational Injury or Illness to Employer, September 23, 2014).
- 6) On October 15, 2014, Employee hurt her back when she fell from a chair and the chair landed on her. (Employee Report of Occupational Injury or Illness to Employer, October 15, 2014).
- 7) On September 11, 2015, EME physicians Michael Fraser, M.D., orthopedic surgeon, and Dr. Wong examined Employee in case “2012068472” for injury date February 10, 2012. Dr. Fraser found a “rather spastic-type gait.” Employee could not heel, toe or tandem heel-toe walk “secondary to balance issues.” Dr. Wong noted “there is a component of spasticity” on gait

testing. Diagnoses included (1) left wrist “sprain/strain” substantially caused by the December 14, 2011 work injury with secondary aggravation from the February 10, 2012 work injury; (2) pre-existing bilateral total knee replacements with probable contusion during the December 14, 2011 and September 23, 2014 work injuries; and (3) lumbar spine “sprain/strain” substantially caused by the February 10, 2012 work injury. The EME physicians found this a “rather complex case” with multiple issues and numerous “reported falls within her primary care notes,” but “the only falls resulting in significant injury are those occurring in the workplace environment.” They noted, “Although these falls have occurred in the work environment, some due to trips over objects, there is also the pre-existing condition of diagnosed cerebral palsy with imbalance and gait abnormality which absolutely plays a role in her frequent falls.” The EME opined no further treatment was needed for workplace injuries; Employee was medically stable and could perform her Paralegal II duties without any permanent impairment. (EME report, September 11, 2015).

8) On June 2, 2016, Employee filed a claim in case 201119210 for injury date December 14, 2011, requesting permanent partial impairment (PPI); medical costs including a prescribed bed; related transportation; penalty; interest; a finding Employer made an unfair or frivolous controversion; and attorney fees and costs. (Workers’ Compensation Claim, June 2, 2016).

9) On June 2, 2016, Employee also filed a claim in case 201416218 for injury date September 23, 2014, seeking temporary total disability (TTD) from January 8, 2015 through May 28, 2015; alternately temporary partial disability (TPD) for the same dates; PPI; medical costs and related transportation; penalty; interest; a finding Employer made an unfair or frivolous controversion; and attorney fees and costs. (Workers’ Compensation Claim, June 2, 2016).

10) On June 2, 2016, Employee filed a claim in case 201201843 for injury date February 10, 2012, claiming PPI; medical costs and related transportation; penalty; interest; a finding Employer made an unfair or frivolous controversion; and attorney fees and costs. (Workers’ Compensation Claim, June 2, 2016).

11) On June 14, 2016, Employee filed an amended claim in case 201201843, requesting permanent total disability (PTD); medical costs and related transportation; penalty; interest; a finding Employer made an unfair or frivolous controversion; and attorney fees and costs. (Workers’ Compensation Claim, June 14, 2016).

12) On June 23, 2016, Employee filed a petition and form requesting an SIME. The form listed medical disputes in “causation,” “compensability,” and “treatment” and non-disputes in

PPI and the need for a particular bed. Specifically, Employee contended the SIME should address (1) causation for an “Interstim” device surgical replacement; (2) causation for a left wrist surgery and iliac harvest; (3) PPI rating for the left wrist and iliac injuries; (4) causation for the prescribed bed; (5) causation for bilateral, total knee replacements; (6) PPI rating for bilateral knees; and (7) TTD resulting from bilateral knee replacements. (Petition; SIME Form; Memorandum in Support of Petitions for SIME and for Joinder, June 22, 2016).

13) On August 17, 2016, the parties stipulated to claims in cases 201119210, 201201843, and 201416218 being administratively joined and to an SIME. However, they could not agree on the physician specialties for the SIME panel. A prehearing conference was scheduled to set a procedural hearing if the parties were unable to agree on the specialties. (Prehearing Conference Summary, August 17, 2016).

14) On October 4, 2016, the parties had still not agreed on SIME panel specialties. The parties stipulated to an oral hearing on October 27, 2016, to resolve this remaining SIME issue. Witness lists were ordered. (Prehearing Conference Summary, October 4, 2016).

15) Employee contends she did not rely on a neurologist in requesting an SIME. She contends Employer wants a neurologist simply to “bolster its argument that cerebral palsy” is the substantial cause of Employee’s falls. Employee contends neither her attending physicians nor the EME doctors have offered a causation opinion on the role cerebral palsy may play in this case. Further, she contends there is no “gap” in the medical evidence concerning neurological symptoms warranting adding a neurologist to the panel. Therefore, Employee concludes adding a neurologist to the SIME panel is not appropriate. (Employee’s Hearing Brief, October 19, 2016; Employee’s hearing arguments, October 27, 2016).

16) Employer contends Drs. Youngblood and Wong, the latter a neurologist, opined though Employee’s cerebral palsy condition will not worsen, she will develop worsening “effects from her cerebral palsy condition.” It contends Drs. Fraser and Wong concluded Employee’s cerebral palsy “absolutely plays a role in her frequent falls.” Employer intends to argue Employee’s cerebral palsy, a neurological disorder, is among the different causes of her “disability and/or need for medical treatment” and contends a neurologist on the SIME panel will assist in determining whether cerebral palsy is the substantial cause of Employee’s need for medical care or disability. Employer contends the fact-finders have broad discretion to select physician specialties on an SIME panel. Employer concludes adding a neurologist to the SIME panel is

necessary to fairly assess cerebral palsy and see what effect, if any, Employee’s altered gait or balance disorder arising from cerebral palsy has on causation and compensability. (Employer’s Hearing Brief, October 20, 2016; Employer’s hearing arguments, October 27, 2016).

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 . . . employers. . . .

AS 23.30.005. Alaska Workers’ Compensation Board. . . .

. . . .

(h) . . . 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 23.30.095. Medical treatments, services, and examinations. . . .

. . . .

(k) In the event of a medical dispute . . . between the employee’s attending physician and the employer’s independent medical evaluation, the board may require that a second independent medical evaluation be conducted by a physician or physicians selected by the board from a list established and maintained by the board. . . .

The Alaska Workers’ Compensation Appeals Commission in *Bah v. Trident Seafoods Corp.*, AWCAC Decision No. 073 (February 27, 2008), said an SIME under AS 23.30.095(k) is to assist the board, and not to give employees an additional medical opinion at the employer’s when employees disagree with their physician’s opinion. AS 23.30.095(k) is procedural, not substantive, for the reasons outlined in *Deal v. Municipality of Anchorage*, AWCAC Decision No. 97-0165 (July 23, 1997).

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 in 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. . . .

8 AAC 45.092. Selection of an independent medical examiner. (a) The board will maintain a list of physicians' names for second independent medical evaluations. The names will be listed in categories based on the physician's designation of his or her specialty or particular type of practice and the geographic location of the physician's practice. . . .

"The composition of an SIME panel is a matter of sound discretion." *Thompson v. Fred Meyer Stores, Inc.*, AWCB Decision No. 10-0167 (October 4, 2010) at 7.

ANALYSIS

Should a neurologist be added to Employee's SIME panel?

The parties stipulated to a two-member SIME panel including an orthopedic surgeon and urologist. The only issue decided here is whether to add a neurologist to the SIME panel. This is a procedural issue. *Deal*. The law gives significant discretion to order the SIME specialty and to empanel one or several doctors for an SIME if necessary to ensure "the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost" to Employer. AS 23.30.001(1); *Thompson*. "Process and procedure under this chapter shall be as summary and simple as possible." AS 23.30.005(h). Determining causation or compensability may require an SIME "by a physician or physicians" selected from a list established and maintained for such purposes. AS 23.30.095(k); 8 AAC 45.092(a). An "investigation or inquiry" in a manner to "best ascertain the rights of the parties" may be ordered. AS 23.30.135(a). SIMEs are intended to assist the fact-finders in deciding the case. *Bah*.

It is undisputed Employee has long-standing, pre-existing cerebral palsy. At least two EME physicians have opined this comorbid condition "absolutely" plays a role in her trips and falls, including those occurring on the job. Employer may defend against Employee's claims on grounds cerebral palsy is the substantial cause of her disability and need for medical care. Employer seeks an order adding a neurologist to the existing SIME panel, which already

includes an orthopedic surgeon and urologist. Employee has at least one medically complex, comorbid medical condition not frequently seen in workers' compensation cases -- cerebral palsy. *Rogers & Babler*. It is undisputed cerebral palsy is primarily a neurological condition.

Without an independent neurologist's opinion, the evidence will be limited to Dr. Wong's opinion on neurological issues. If Employee's attending physician offers an opinion contrary to Dr. Wong's after an SIME is completed, a new medical dispute may arise and another SIME may be required at additional time and expense. AS 23.30.095(k). Therefore, to "ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits" to Employee if she is entitled to them, with a "reasonable cost" to Employer, to make this process as "summary and simple as possible," and to "best ascertain" the parties' respective rights, Employer's request will be granted and a neurologist will be added to the SIME panel. AS 23.30.001(1); AS 23.30.005(h); AS 23.30.135(a). The designee will be directed to select a neurologist, orthopedic surgeon and urologist from the authorized SIME list, in accordance with the statutes, regulations and the division's policies, to comprise the panel for Employee's examination.

CONCLUSION OF LAW

A neurologist will be added to Employee's SIME panel.

ORDER

- 1) Employer's request to add a neurologist to the stipulated SIME panel in this case is granted.
- 2) Employee's SIME panel will include a neurologist, orthopedic surgeon and urologist selected from the authorized SIME list.
- 3) The designee is directed to select three physicians with these specialties from the authorized list in accordance with the statutes, regulations and the division's internal policies.

Dated in Anchorage, Alaska on October 27, 2016.

ALASKA WORKERS' COMPENSATION BOARD

_____/s/_____
William Soule, Designated Chair

_____/s/_____
Amy Steele, 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 Teresa L. Blakeslee-Edwards, employee / claimant v. State of Alaska, employer and insurer / defendants; Case No. 201119210; 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 October 27, 2016.

_____/s/_____
Pamela Hardy, Office Assistant