

ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

THOMAS W. CARMICHAEL,)	
Employee,)	
Claimant,)	FINAL DECISION AND ORDER
)	
v.)	AWCB Case No. 201405778
)	
LOWE'S HIW, INC.,)	AWCB Decision No. 16-0109
Employer,)	
)	Filed with AWCB Fairbanks, Alaska
and)	on November 9, 2016
)	
NEW HAMPSHIRE INS. CO.,)	
Insurer,)	
Defendants.)	
)	

Thomas Carmichael's (Employee) June 23, 2015 and October 19, 2015 claims were heard in Fairbanks, Alaska on September 22, 2016, a date selected on May 16, 2016. Attorney John Franich appeared and represented Employee. Attorney Krista Schwarting appeared and represented Lowe's HIW, Inc. and New Hampshire Insurance Company (Employer). There were no witnesses. At the hearing's commencement, the parties reported they had resolved numerous disputes involving unpaid and late medical bills, which Employer agreed to pay with penalties; Employee's out-of-pocket medical costs, which Employer agreed to pay with penalty; and Employee's reemployment benefits, which Employer agreed would continue along with stipend. The only remaining issues were Employee's attorney's fees and costs. The record closed upon receipt of Employer's post-hearing objection to Employee's attorney's fees on September 27, 2016.

ISSUES

Employee contends he is entitled to full, actual attorneys' fees and costs, some of which should be further "enhanced." Employer does not dispute attorney's fees are owed, but makes numerous objections to Employee's fees and costs.

Is Employee entitled to attorney's fees and costs?

Employer objects to the hourly rate billed for attorney Heather Brown's time on the basis it is excessive for an attorney "in training."

Employee contends clients are "lined up outside the door" to seek attorney Heather Brown's legal services at her normal, non-contingency rate of \$275 per hour, and an additional \$50 per hour should be added to reflect a "contingency factor." He contends both Ms. Brown's normal rate, and the \$50 per hour contingency factor, are reasonable.

A. What is a reasonable hourly billing rate for attorney Brown?

Employee contends attorney Heather Brown's time should be awarded at an enhanced rate of 200 percent to encourage new lawyers to represent injured workers. He also cites numerous board decisions, which he contends, supports the proposition of "doubling" the hourly rate for an employee's lawyer to account for the contingent nature of workers' compensation fee awards.¹

Employer contends Ms. Brown's billed rates are already excessive and it opposes any enhancement or doubling of fees.

B. Should Ms. Brown's hourly billing rate be doubled?

Employer objects to the hourly rate for paralegal Heidi Wilson time, which it contends is excessive and as much as much as some insurance defense attorneys are paid.

¹ *Kelsch v. Hotfoot International, Inc.*, AWCB No. 8724668 (February 15, 1991); *Schmitz v. International Superior Services*, AWCB No. 8612348 (January 29, 1991); *Reese v. Northland Hub*, AWCB No. 8709367 (May 10, 1990); *Taylor v. Walmart Stores, Inc.*, AWCB Decision No. 09-0021 (February 3, 2009); *Stowell v. State of Alaska, D.O.T.*, AWCB Decision No. 09-0137 (August 9, 2009).

Employee contends the billed hourly rate was previously approved by a Juneau panel in a case where Employer's attorney participated. He contends, unlike many who perform paralegal services, Ms. Wilson has a four-year paralegal degree and many years' experience, so the rate billed is reasonable.

C. What is a reasonable hourly billing rate for paralegal Wilson?

Employer contends Employee's attorney's fees should be reduced to account for issues that resolved before hearing. It specifically objects to time Employee spent briefing the reemployment benefits and PPI issues.

Employee contends reemployment benefits remained an issue throughout the case, necessitating a deposition and a separate hearing by the Reemployment Benefits Administrator (RBA), after which Employer withdrew its controversion. He contends, although the RBA found "two or three periods of non-cooperation under the reemployment plan, he was receiving PPI at those points in time, and not .041(k) stipend. Employee contends one of the issues for hearing today was going to be a periodic PPI payment for a single day, which he contends evidences Employer's resistance to paying reemployment benefits. Instead, Employee contends his remaining PPI balance should have been paid in one lump sum at the time of Employer's controversion.

D. Should Employee's billed hours be reduced to account for issues resolved prior to hearing?

FINDINGS OF FACT

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

- 1) On January 14, 2014, Employee slipped and fell on ice, injuring his lower back, while employed as a customer service representative. Employee's injury later necessitated spinal surgery, which was performed by Paul Jensen, M.D. (First Report of Injury, March 27, 2014; Emergency Department Record, January 14, 2014; Operative report, August 22, 2014).
- 2) On February 24, 2015, Employee was found eligible for reemployment benefits. (Torgerson letter, February 24, 2015).

- 3) On May 26, 2015, the parties filed a reemployment plan to train Employee as a bookkeeper. (Charles letter, May 27, 2016).
- 4) On June 23, 2015, Attorney Heather Brown filed a claim on Employee's behalf, seeking medical costs, penalty, interest, a finding of unfair or frivolous controversion and attorney's fees and costs. His reason for filing the claim was Employer's resistance to paying medical costs to Fairbanks Memorial Hospital. His claim also stated he was seeking "enhanced" attorney fees. (Claim, January 23, 2015).
- 5) On October 2, 2015, Employer controverted reemployment benefits alleging Employee's noncooperation with the plan. (Controversion Notice, October 2, 2015).
- 6) On October 9, 2015, Employee requested a hearing before the RBA on the alleged non-cooperation issue. (Franich letter, October 9, 2015).
- 7) On October 19, 2015, Attorney John Franich filed a claim on Employee's behalf seeking penalties, interests a finding of unfair or frivolous controversion and attorney's fees and costs. Employee stated his reasons for filing the claim were Employer's October 2, 2015 controversion of reemployment benefits and its termination of periodic PPI payments on October 2, 2015. (Claim, October 19, 2015).
- 8) On November 6, 2015, Employer answered Employee's October 19, 2015 claim, contending, "The employee's claim assumes that PPI benefits were discontinued with other reemployment benefits. The employer and adjuster have not denied biweekly PPI benefits and continue to pay them. Opposing counsel was advised of such on October 23, 2015." (Employer's Answer, November 6, 2015).
- 9) On November 30, 2015, the RBA held a hearing on Employee's alleged noncooperation with his reemployment plan in Fairbanks, Alaska. (RBA Memorandum Decision, 16-0002 (June 27, 2016)).
- 10) On March 2, 2016, Employer withdrew its October 2, 2015 controversion. (Withdrawal of Controversion, March 2, 2016).
- 11) At a May 16, 2016 prehearing conference, Employee's claims were scheduled for hearing on September 22, 2016. (Prehearing Conference Summary, May 16, 2016).
- 12) On June 27, 2016, the RBA issued his decision finding Employee was non-cooperative with his reemployment plan during three time periods. (RBA Memorandum Decision, 16-0002 (June 27, 2016)).

13) On September 19, 2016, Employee filed an attorney's fees and costs affidavits setting forth 4.1 hours attorney time by Heather Brown, billed at \$325 per hour, with 3.2 hours being "No Charge," for a total of \$292.50 (0.9 x \$325). The affidavit included 34.7 hours attorney time by John Franich, billed at \$400 per hour, for total fees of \$13,940; and 20.2 hours by paralegal Wilson, billed at \$210 per hour, for total paralegal costs of \$4,242. The affidavit lists \$177.50 in deposition costs, for a grand total of \$18,652 in attorney's fees and costs. (Employee's affidavits, September 19, 2016).

14) Employee's September 19, 2016 fee affidavits contain billing entries for John Franich on June 23, 2015 and July 7, 2015, where his rate is listed as \$420 per hour. It is thought these entries are the result of typographical errors. (*Id.*; experience, judgment, observations, unique or peculiar facts of the case, and inferences drawn therefrom).

15) On September 20, 2016, Employee filed his hearing brief, which he divided into four sections, including a one sentence introduction and a one sentence argument addressing attorney's fees. The two other sections contain substantial arguments on medical costs and reemployment benefits, including arguments concerning a one-day periodic PPI payment. (Employee's Hearing Brief, September 20, 2016).

16) Employee acknowledges Employer notified him on October 23, 2015, that his periodic PPI payments would continue. (*Id.*).

17) On September 22, 2016, Employee filed supplemental attorney's fees and costs affidavits, setting forth an additional 7.7 hours by John Franich, billed at \$400 per hour, for a total of \$3,080 in fees; and 1.1 additional hours by paralegal Wilson, billed at \$210 per hour, for a total of \$231 in paralegal costs. One 2.0 hour line item entry for John Franich on September 19, 2016 is described as: "Reviewed file and began draft of hearing memorandum." Another 4.0 hour line item entry for John Franich on September 20, 2016 is described as: "Completed research and drafted final hearing memorandum." (Employee's supplemental affidavits, September 22, 2016).

18) This is the only workers' compensation case in which Ms. Brown appeared as an attorney. (Incident Claims Expense Reporting System (ICERS) party search, October 27, 2016).

19) The Juneau case approving Ms. Wilson's paralegal rate, to which Employee referred at hearing, could not be located in ICERS or Westlaw. (Experience).

PRINCIPLES OF LAW

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 23.30.145. 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 a reasonable attorney fee. The award is in addition to the compensation or medical and related benefits ordered.

In *Harnish Group, Inc. v. Moore*, 160 P.3d 146 (Alaska 2007), the Alaska Supreme Court discussed how and under which statute attorney's fees may be awarded in workers' compensation cases. A controversion, actual or in-fact, is generally required for the board to award fees under AS 23.30.145(a). "In order for an employer to be liable for attorney's fees under AS 23.30.145(a), it must take some action in opposition to the employee's claim after the claim is filed." *Id.* at 152. Fees may be awarded under AS 23.30.145(b) when an employer "resists" payment of compensation and an attorney is successful in the prosecution of the employee's claims. *Id.* In this latter scenario, reasonable fees may be awarded. *Id.* at 152-53.

Although the supreme court has held that fees under subsections (a) and (b) are distinct, the court has noted that the subsections are not mutually exclusive (citation omitted). Subsection (a) fees may be awarded only when claims are controverted in actuality or fact (citation omitted). Subsection (b) may apply to fee awards in controverted claims (citation omitted), in cases which the employer does not controvert but otherwise resists (citation omitted), and in other circumstances (citation omitted).

Uresco Construction Materials, Inc. v. Porteleki, AWCAC Decision No. 09-0179 (May 11, 2011). In a controverted case, an attorney may seek fees under either AS 23.30.145(a) or (b). *Id.*

Wise Mechanical Contractors v. Bignell, 718 P.2d 971, 974 n. 7 (Alaska 1986), a controverted case, addressed fees in light of AS 23.30.145(c) and applied factors from the Alaska Code of Professional Responsibility in determining a "reasonable fee" as follows:

The factors are:

- (1) The time and labor required, the novelty and difficulty of the questions involved, and the skills requisite to perform the legal service properly.
- (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.
- (3) The fee customarily charged in the locality for similar legal services.
- (4) The amount involved and the results obtained.
- (5) The time limitations imposed by the client or by the circumstances.
- (6) The nature and length of the professional relationship with the client.
- (7) The experience, reputation, and ability of the lawyer or lawyers performing the services.
- (8) Whether the fee is fixed or contingent.

Recognizing attorneys only receive fee awards when they prevail on the merits of a claim, the contingent nature of workers' compensation cases should be considered to ensure competent counsel is available to represent injured workers. *Id.* at 974-75; *see also Cortay v. Silver Bay Logging*, 787 P.2d 103 (Alaska 1990) (attorney's fees in workers' compensation cases should be fully compensatory and reasonable so injured workers can have competent counsel available).

“We see no reason to exclude that factor [contingent fee] from the reasonableness determination to be made in worker’s compensation cases.” *Id.* The nature, length, and complexity of services performed, the resistance of the employer, and the benefits resulting from the services obtained, are also considerations when determining reasonable attorney’s fees for the successful prosecution of a claim. *Id.* at 973, 975.

Filing a controversion exposes an insurer to an attorney’s fee award. *Bouse v. Fireman’s Fund Ins. Co.*, 932 P.2d 222, 242 (Alaska 1997). An injured worker is entitled to reasonable attorney fees on issues prevailed upon. *Id.* at 241. Where an insurer resists payment, thus creating the need for legal assistance, the insurer is required to pay the attorney’s fees relating to the unsuccessfully controverted portion of the claim. *Id.* Although attorney’s fees should be fully compensatory so injured workers have competent counsel available to them, this does not mean an attorney automatically gets full, actual fees. *Williams v. Abood*, 53 P.3d 134, 147 (Alaska 2002). It is reasonable to award an employee half his attorney’s fees when he does not prevail on all the issues raised by his claim. *Id.* at 147-148; *Bouse* at 242.

AS 23.30.145(a) establishes a minimum fee, but not a maximum fee. *Lewis-Walunga v. Municipality of Anchorage*, AWCAC Decision No. 123 (December 28, 2009) at 5, *see also Circle De Lumber v. Humphrey*, 130 P.3d 941 (Alaska 2006) (affirming award of attorney’s fees based on 35 percent of award). A fee award under AS 23.30.145(a), if in excess of the statutory minimum fee, requires the board to consider the “nature, length, and complexity of the services performed, transportation charges, and the benefits resulting from the services to the compensation beneficiaries.” *Id.* Attorney’s fees awarded under subsection (a) have been based on a percentage of actual fees claimed, taking into account issues on which a claimant did not prevail. *Soyoung Turner v. Aloha BBQ Grill*, AWCBC Decision No. 16-0031 (April 19, 2016).

When an employee files a claim to recover controverted benefits, subsequent payments, though voluntary, are the equivalent of a board award, and attorney’s fees may be awarded where the efforts of counsel were instrumental in inducing the payments. *Childs v. Copper Valley Electric Assoc.*, 860 P.2d 1184, 1190 (Alaska 1993). To recover fees under AS 23.30.145(b), an employee must succeed on the claim itself, not a collateral issue. *Childs* at 1193. “Prevailing

party status [for civil Rule 82] does not automatically follow if the party receives an affirmative recovery but rather is based on which party prevails on the main issues.” *Adamson v. University of Alaska*, 819 P.2d 886 (Alaska 1991). Attorney’s fees and costs will be awarded for work expended on the issue decided. *McKinney v. Cordova*, AWCB Decision No. 05-0129 (May 13, 2005); *McCain v. Nana Regional Corp.*, AWCB Decision No. 11-0025 (March 4, 2011).

In *Williams v. Arctic Terra, Inc.*, AWCB Decision No. 16-0095 (October 26, 2016) the employer objected to the \$400 per hour rate billed by the employee’s attorney, Keenan Powell, and contended she should be awarded fees based on a rate no more than \$325 per hour based on decisions surveying hourly attorney fee rates for experienced workers’ compensation attorneys. The panel in *Williams* conducted its own independent research and found attorney Powell had previously presented 19 cases at hearing before the board in the 11 years she has practiced in this field. Her cases in which attorney’s fees and paralegal costs were awarded, with or without objection from the employer, and the hourly rates awarded included:

Table I

Claimant’s Name	Decision Number	Hourly Rate Awarded (attorney/paralegal)
<i>Hubbard</i>	08-0245	\$300
<i>Torres-Soria</i>	11-0008	\$295/\$95
<i>Guinard</i>	13-0017	\$325/\$150
<i>Carter</i>	13-0050	\$325
<i>King</i>	13-0110	\$325/\$160

Attorney Powell had also represented other injured workers before the board and resolved numerous cases through settlements.

According to Westlaw, the board’s ICERS electronic filing record and the division’s legal research database, at least \$400 per hour attorney’s fees (or in attorney Constantino’s case, a comparable \$395 per hour) have been awarded, after hearing, to attorneys with varying experience handling workers’ compensation cases. These attorneys’ approximate board

caseloads, based on appearances entered in a case may be compared visually to attorney Powell’s approximate board caseload based on her appearances as follows:

Table II

Attorney’s Name	Clients Represented	Years’ WC Experience
Chancy Croft	2,168	40+
Joseph Kalamarides	1,491	40+
Robert Rehbock	1,341	30+
Michael Patterson	973	30+
Michael Jensen	316	30+
John Franich	300	30+
Robert Beconovich	148	16+
Steve Constantino	153	18+
Keenan Powell	121	11+
Eric Croft	93	6+

In *Baker v. Prowest Contractors, L.L.C.*, AWCB Decision No. 15-0069, (July 16, 2015), attorney Keenan Powell was awarded fees at \$180 per hour for performing her own paralegal work.

8 AAC 45.180. Costs and attorney’s fees.

....

(f) The board will award an applicant the necessary and reasonable costs relating to the preparation and presentation of the issues upon which the applicant prevailed at the hearing on the claim. . . . The following costs will, in the board’s discretion, be awarded to an applicant:

....

(14) fees for the services of a paralegal or law clerk, but only if the paralegal or law clerk

- (A) is employed by an attorney licensed in this or another state;
- (B) performed the work under the supervision of a licensed attorney;
- (C) performed work that is not clerical in nature;

- (D) files an affidavit itemizing the services performed and the time spent in performing each service; and
- (E) does not duplicate work for which an attorney's fee was awarded;

ANALYSIS

Is Employee entitled to attorney's fees and costs?

Employer litigated its liability for claimed medical costs from January 23, 2015, when Employee filed his initial claim, until the eve of hearing. It also controverted and litigated its liability for reemployment benefits from October 2, 2015, until it formally withdrew its controversion on March 2, 2016. Thus, Employee's attorneys successfully obtained additional medical payments on his behalf, secured his reemployment benefits; and may, or may not, have been instrumental in preserving his periodic PPI payments. Under this scenario, attorney's fees may be awarded under either AS 23.30.145(a) or (b). *Porteleki*.

A. What is a reasonable hourly billing rate for attorney Brown?

Most attorney's fee awards in workers' compensation cases involve experienced attorneys with historically established hourly billing rates. *Rogers & Babler*. Although the Alaska Supreme Court has provided general guidance on what constitutes a reasonable attorney fee award in cases such as *Bignell*, *Williams*, *Lewis-Walunga*, *Humphrey* and *Adamson*, precisely determining an appropriate "starter" rate for an inexperienced attorney is difficult. A recent decision conducted research on an attorney who, over eight years, had presented 19 cases at hearings, and found in those cases she had been awarded hourly rates ranging from \$295 per hour to \$325 per hour. *Williams*. The decision also noted the attorney had represented injured workers in numerous other cases resolved through settlement. *Id.* Then, after comparing the experience of this attorney to the experience of other attorneys who had been awarded fees at higher hourly billing rates in their respective cases, decided to approve a fee award for the *Williams* attorney based on a higher hourly rate than she had previously received. *Id.*

This was Ms. Brown's first appearance as an attorney in a workers' compensation case. *Bignell*. Employee's fee affidavit shows Brown's work involved reviewing Employee's file at the beginning of his case, participating in a "co-meeting" with Mr. Franich and Employee, and reviewing correspondence from Employee. She also reviewed Employer's answer to

Employee's initial claim. These tasks were not novel, difficult, complex or time consuming. Neither did they require any special legal skill or experience. *Id.* Although Employee was ultimately successful in obtaining additional medical payments from Employer, Employee's fee affidavit shows both Ms. Wilson and Mr. Franich continued to work on Employee's medical bills for well over a year after Ms. Brown's last billing entry. Therefore, it would be inappropriate to attribute Employee's ultimate success on this issue solely, if at all, to Ms. Brown's limited efforts early in the case. *Id.* Additionally, Employee contends Ms. Brown has clients "lined up outside the door" seeking legal services at her "normal, non-contingency" \$275 per hour billing rate. If so, then Ms. Brown's limited engagement working for Employee did not preclude her other employment. *Id.* Ms. Brown's time commitment on this case was minimal, as was her professional relationship with Employee. *Id.*

Using the example of the attorney in *Williams* as guidance, to award Ms. Brown fees based on an hourly rate equal to, or greater than, the *Williams* attorney would be inappropriate based on her inexperience alone. Considering the factors set forth in *Bignell* and discussed above, a reasonable rate for Ms. Brown's time is \$275 per hour. Meanwhile, a contingent fee award is only one of eight factors set forth in *Bignell*, and any "enhancements" for the contingent nature of workers' compensation fee awards are already reflected in the lofty hourly billing rates for Mr. Franich and Ms. Wilson.

B. Should Ms. Brown's hourly billing rate be doubled?

Two of the five decisions Employee cited to support Ms. Brown's 200 percent enhanced hourly rate rejected double fees. *Reese; Taylor*. Additionally, four of the five cited decisions were authored by the same hearing officer and are based on the premise *Bignell* stands for the proposition that hourly billing rates should be doubled to account for a contingency factor when litigating claims for medical benefits. These decisions rely on a strained interpretation of *Bignell*, which expressly stated: "While the superior court did *not* specifically use a multiplication factor, it did say that it was relying on the contingency of *Bignell's* counsel's compensation *and* the likelihood of success after being denied compensation at the superior court level as factors justifying the award." *Id.* at 973 (emphasis added). Thus, *Bignell's* contingency was explicitly linked to a previous loss at an intermediate level of appellate review. Meanwhile,

the contingency in this case, which is only now undergoing an initial review, is not comparable, even if a multiplication factor had been used in *Bignell*.

Ultimately, *Bignell* found the superior court's fee award was justified given its conviction the employee's counsel worked more than the claimed hours in his affidavit. *Id.* at 973-74. *Bignell* does not represent a Supreme Court endorsement of using a multiplication factor when awarding fees in workers' compensation cases. Accordingly, Ms. Brown's fees will not be doubled.

C. What is a reasonable hourly billing rate for paralegal Wilson?

Decisions show paralegal costs have recently been awarded at \$125, \$175 and \$180 per hour. *Diel, Kolb, Baker*. Ms. Wilson's time was awarded at \$175 per hour as recently as three months ago in *Lavallee*. These decisions show Ms. Wilson's \$175 per hour rate in *Lavallee* was already at the high end of the spectrum for paralegal services, and the proposed \$210 rate would significantly escalate the ceiling of that spectrum. Though *Turner* awarded Ms. Wilson \$210 per hour, the opposing parties were represented by non-attorneys who did not comment on attorney's fees and costs, let alone enter an objection to the rate billed for Ms. Wilson's time. Meanwhile, the \$180 per hour awarded in *Baker* was to a licensed attorney with ten years' workers' compensation experience, who was performing her own paralegal work. Though Ms. Wilson might possess a four-year paralegal degree, this would not support compensating her time at a rate substantially greater than a licensed attorney performing paralegal services. A reasonable rate for Ms. Wilson's time is \$175 per hour.

D. Should Employee's billed hours be reduced to account for issues resolved prior to hearing?

Employer contends Employee's attorney's fees should be reduced to account for issues resolved before hearing. It specifically objects to time Employee spent briefing the reemployment benefits and PPI issues. Employer correctly notes Employee should have known his periodic PPI payments were continuing by October 23, 2015, when Employer's counsel telephoned his attorney making that assurance, or a short time later upon receipt of Employer's next periodic payment. While Employee contends PPI was still a viable issue for hearing because a periodic PPI check for a single day evidenced Employer's "resistance" to providing reemployment

benefits, his argument here is not persuasive, because he also acknowledges in his hearing brief, the "defendants' agreement to resume periodic PPI benefits . . . does moot the issue of penalty and interest contained in the October 19, 2015 claim." Similarly, Employer is also correct with respect to reemployment benefits, since it had formally withdrawn its controversion over half a year earlier, and those benefits are presently continuing along with stipend.

Employee's supplemental fee affidavit shows Mr. Franich spent six hours on his hearing brief. It was divided it into four sections, which included a one sentence introduction and a one sentence argument on attorney's fees. The two other sections contained substantial arguments on medical costs and reemployment benefits, including a one-day periodic PPI payment. For the reasons stated above, Employee's attorney's fees for Mr. Franich will be reduced by three hours.

CONCLUSIONS OF LAW

- 1) A reasonable hourly billing rate for Attorney Heather Brown is \$275 per hour.
- 2) Ms. Brown's attorney's fees will not be doubled.
- 3) A reasonable hourly billing rate for Ms. Wilson is \$175 per hour.
- 4) Employee's attorney's fees for services rendered by Mr. Franich will be reduced three hours.
- 5) Employee is entitled to \$19,912.50 in reasonable attorney's fees and costs.

ORDER

- 1) Employee's claims for attorneys' fees and costs is granted.
- 2) Employer shall pay \$19,912.50 in reasonable attorney's fees and costs.

Dated in Fairbanks, Alaska on November 9, 2016.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Robert Vollmer, Designated Chair

/s/
Sarah Lefebvre, Member

If compensation is payable under terms of this decision, it is due on the date of issue. A penalty of 25 percent will accrue if not paid within 14 days of the due date, unless an interlocutory order staying payment is obtained in the Alaska Workers' Compensation Appeals Commission. If compensation awarded is not paid within 30 days of this decision, the person to whom the awarded compensation is payable may, within one year after the default of payment, request from the board a supplementary order declaring the amount of the default.

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.

THOMAS W. CARMICHAEL v. LOWE'S HIW, INC.

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Final Decision and Order in the matter of THOMAS W. CARMICHAEL, employee / claimant; v. LOWE'S HIW, INC., employer; NEW HAMPSHIRE INS. CO., insurer / defendants; Case No. 201405778; dated and filed in the Alaska Workers' Compensation Board's office in Fairbanks, Alaska, and served on the parties by First-Class U.S. Mail, postage prepaid, on November 9, 2016.

/s/

Jennifer Desrosiers, Office Assistant II