ALASKA WORKERS' COMPENSATION BOARD

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

GLENN A. GRACIK, Employee, Claimant, v. INTERIOR TOWING & SALVAGE, INC., Employer, and AMERICAN INTERSTATE INSURANCE COMPANY, Insurer, Defendants.	)	FINAL DECISION AND ORDER AWCB Case No. 201506873 AWCB Decision No. 16-0120 Filed with AWCB Fairbanks, Alaska on December 5, 2016.

Glenn Gracik's (Employee) September 21, 2016 Petition for Review of the Reemployment Benefits Administrator's Designee's (RBA Designee) determination finding him ineligible for reemployment benefits, was heard on November 3, 2016, in Fairbanks, Alaska. The hearing was selected on October 13, 2016. Attorney Robert Groseclose appeared and represented Employee. Attorney Michael Budzinski appeared and represented Interior Towing & Salvage, Inc. and American Interstate Insurance Company (Employer). Employee appeared and testified. The record closed at the hearing's conclusion on November 3, 2016.

ISSUES

Employee contends he should be found eligible for reemployment benefits based on Richard Cobden's, MD, September 16, 2016 letter confirming he reviewed the job description for tow truck driver and concluded that Employee would not have the physical capacity to perform that job. Employee also requested attorney's fees.

Employer contends the RBA Designee relied upon treating physician, Mark Wade's, MD, confirmation that Employee would have the physical capacity to perform the jobs in his ten year history before his injury. Employer contends that Dr. Wade's opinion constitutes substantial evidence to support the decision. Employer contends the RBA Designee did not abuse her discretion and that her decision should be upheld.

1) ***Did the RBA Designee abuse her discretion by finding Employee ineligible for reemployment benefits under AS 23.30.041?***

Employee contends he is entitled to an award of actual fees for his attorney's efforts in obtaining reemployment benefits on his behalf. Employer contends Employee is not entitled to the benefits he seeks and is therefore not entitled to a fee award.

2) ***Is Employee entitled to an attorney fee award?***

FINDINGS OF FACT

All findings of fact in *Gracik v. Interior Towing and Salvage*, AWCB Dec. No. 16-0065 (July 30, 2016)(*Gracik I*) are incorporated herein. The following facts and factual conclusions are reiterated from *Gracik I* or are established by a preponderance of the evidence:

1) On January 30, 2015, Employee injured his left shoulder and right knee when he slipped and fell from his tow truck while working as a tow truck driver for Employer. (Report of Occupational Illness or Injury, May 5, 2015).
2) Employer accepted compensability of the injury and began paying time loss and medical benefits. (Record).
3) On June 12, 2015, Dr. Wade performed left shoulder surgery on Employee. (Hearing Testimony, July 30, 2016).
4) On January 14, 2016, Dr. Wade opined Employee could not be released to work:

> Glenn Gracik is here today for evaluation of his left shoulder. He wants to have a full release for a truck driver. Unfortunately, I feel that given the fact he had a large massive rotator cuff repair and allograft, I do not think that he is in the position to do any heavy labor or any repetitive demands on the shoulder for the remainder of his life. Clearly, a low sedentary-style job that requires more of a clerical-type environment as opposed to picking up heavy chains and cables is not in his best interest. I explained to Mr. Gracik that given the significant amount of degeneration and what was required to repair his left shoulder that I believe that possibly vocational rehab would be in his best interest. He had a massive rotator cuff repair that required allograft material simply to achieve humeral head coverage, and given

> these findings, I do not think heavy labor and exertional demands on his left shoulder are in his best interest. (Dr. Wade Opinion, January 14, 2016).

5) On January 26, 2016, Employee was referred for an eligibility evaluation for reemployment benefits with rehabilitation specialist Tommie Hutto. Mr. Hutto prepared an occupation description for the jobs Employee held in the ten years prior to his injury. These jobs included: tow-truck operator; instructor, vocational training; stock clerk; and teacher, adventure education. (RBA Referral Letter, January 26, 2016; Hutto Consulting Report, February 13, 2016).
6) On February 9, 2016, Dr. Wade opined that Employee would have the permanent physical capacities to perform the following jobs: tow truck operator; instructor, vocational training; stock clerk; and teacher, adventure education. Dr. Wade checked the "yes" line next to each job description. Dr. Wade had not seen the Employee since January 14, 2016, the day he opined that that Employee could not be released to work and that vocational rehabilitation might be in his best interests. Dr. Wade then referred Employee to Dr. Cobden for a permanent partial impairment rating. (Hutto Consulting Report, February 13, 2016; Hearing Testimony, November 3, 2016).
7) Neither party contacted Dr. Wade regarding the differences in his January 14, 2016 opinion and February 9, 2016 opinion. (Observations; Record).
8) On March 9, 2016, the RBA Designee issued a decision finding Employee ineligible for reemployment benefits based on Dr. Wade's February 9, 2016 opinion that he could perform the jobs in his ten-year work history. (RBA Determination, March 9, 2016).
9) On March 22, 2016, Employee filed a Workers' Compensation Claim (WCC) requesting review of the RBA's finding of ineligibility for rehabilitation and reemployment benefits. (WCC, March 22, 2016).
10) On April 28, 2016, Dr. Cobden assigned Employee a 6% permanent partial impairment (PPI) rating. Dr. Cobden also opined that Employee would not be able to return to work as a tow truck driver. Dr. Cobden's report stated:

> [Employee] apparently has been turned down for vocational rehabilitation based upon Dr. Wade's suggestion that he can return to driving a tow truck. After reviewing Dr. Wade's notes, his physical findings, and his prior training and work experience, I do not think that he could perform this job adequately. Therefore I would suggest that vocational rehabilitation be reconsidered. (Dr. Cobden Report, April 28, 2016).

11) On June 17, 2016, Dr. Cobden responded to questions following up on his April 28, 2016 report. Dr. Cobden checked the boxes indicating that Employee would have less than the physical demands of his former tow-truck driver position and the other jobs that exist in the labor market that Employee had held or received training for within 10 years before the injury. (Supplement to Notice of Intent to Rely, June 27, 2016).
12) On July 30, 2016, *Gracik I* issued, which vacated the RBA Designee's March 9, 2016 determination and remanded the matter to the RBA Designee for reevaluation and consideration of Dr. Cobden's April 28, 2016 opinion. (*Gracik I*, July 30, 2016).
13) On August 22, 2016, the RBA designee contacted Mr. Hutto and directed him to contact Dr. Wade, provide him with his January 14, 2016 report appearing to recommend vocational rehabilitation, and inquire if he wished to amend his previous return-to-work predictions. (RBA Letter Denying Eligibility, September 19, 2016).
14) On August 26, 2016, Dr. Wade's office simply wrote back "no change" on the fax cover sheet and faxed it back to Mr. Hutto. (Mr. Hutto's Evaluation Update, August 27, 2016).
15) Despite Mr. Hutto's attempt to obtain clarification from Dr. Wade, it remains unclear whether Dr. Wade realizes that he recommended vocational rehabilitation on January 14, 2016 and also found that Employee would have the physical capabilities to perform previous jobs on February 9, 2016. Since this discrepancy was not specifically pointed out to Dr. Wade, it is unclear whether Dr. Wade meant that that there was "no change" in his January 14, 2016 opinion or his February 9, 2016 opinion. (Observations; Record).
16) On September 16, 2016, the RBA issued a decision finding Employee not eligible for reemployment benefits based on Dr. Wade's prediction that Employee would have the physical capability to perform the physical demands of his job at the time of injury as a tow truck driver. The RBA considered Dr. Cobden's April 28, 2016 opinion, but also noted that that is no evidence that Dr. Cobden reviewed the "Selected Characteristics of Occupations Defined in the Revised Dictionary of Occupational Titles" (SCODRDOT) job description for Tow-Truck Operator prior to rendering his opinion that Employee cannot return to work in his position. (RBA Eligibility Letter, September 16, 2016).
17) On September 16, 2016, Dr. Cobden wrote an addendum opinion clarifying that he had reviewed the SCODRDOT job description for tow-truck operator (DOT #919.663-026)

when he concluded that Employee was unable to fulfill the physical requirements for the job description. (Dr. Cobden's Addendum, September 16, 2016).

18) On September 21, 2016, Employee filed a Petition for Review of the RBA Designee's determination finding him ineligible for reemployment benefits, contending the RBA designee did not have Dr. Cobden's supplemental information at the time of her decision. (Employee's Petition for Reconsideration or Modification, September 21, 2016).

19) Employee credibly testified that he believes that he does not have the physical capacities to return to work as a tow truck driver or any of the jobs in his ten year work history. (Employee).

20) On June 27, 2016, August 12, 2016, October 27, 2016, and November 3, 2016, Employee filed four affidavits regarding attorney fees. The total claimed fee amount is $12,094.50. This represents 34.6 hours, with Employee's attorney charging $375 per hour and paralegals charging $175 per hour. (Employee Attorney Fee Affidavits, June 27, 2016, August 12, 2016, October 27, 2016, November 3, 2016).

21) On August 19, 2016 and September 23, 2016, Employer filed oppositions to Employee's affidavits regarding attorney fees. Employer argued that actual attorney's fees should not be awarded because Employee did not receive any additional compensation. Employer does not dispute Employee's attorney's claimed hours or rate. (Employer's Opposition to Employee's Attorney Fee Affidavits, August 19, 2016; September 23, 2016).

PRINCIPLES OF LAW

AS 23.30.041. Rehabilitation and reemployment of injured workers.

. . .

(c) An employee and an employer may stipulate to the employee's eligibility for reemployment benefits at any time. If an employee suffers a compensable injury and, as a result of the injury, the employee is totally unable, for 45 consecutive days, to return to the employee's employment at the time of injury, the administrator shall notify the employee of the employee's rights under this section within 14 days after the 45th day. If the employee is totally unable to return to the employee's employment for 60 consecutive days as a result of the injury, the employee or employer may request an eligibility evaluation. The administrator may approve the request if the employee's injury may permanently preclude the employee's return to the employee's occupation at the time of the injury. If the employee is totally unable to return to the employee's employment at the time of the injury for 90 consecutive

> days as a result of the injury, the administrator shall, without a request, order an eligibility evaluation unless a stipulation of eligibility was submitted. If the administrator approves a request or orders an evaluation, the administrator shall, on a rotating and geographic basis, select a rehabilitation specialist from the list maintained under (b)(6) of this section to perform the eligibility evaluation. If the person that employs a rehabilitation specialist selected by the administrator to perform an eligibility evaluation under this subsection is performing any other work on the same workers' compensation claim involving the injured employee, the administrator shall select a different rehabilitation specialist.
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> (d) Within 30 days after the referral by the administrator, the rehabilitation specialist shall perform the eligibility evaluation and issue a report of findings. The administrator may grant up to an additional 30 days for performance of the eligibility evaluation upon notification of unusual and extenuating circumstances and the rehabilitation specialist's request. Within 14 days after receipt of the report from the rehabilitation specialist, the administrator shall notify the parties of the employee's eligibility for reemployment preparation benefits. Within 10 days after the decision, either party may seek review of the decision by requesting a hearing under AS 23.30.110. The hearing shall be held within 30 days after it is requested. The board shall uphold the decision of the administrator except for abuse of discretion on the administrator's part.
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> (e) An employee shall be eligible for benefits under this section upon the employee's written request and by having a physician predict that the employee will have permanent physical capacities that are less than the physical demands of the employee's job as described in the 1993 edition of the United States Department of Labor's 'Selected Characteristics of Occupations Defined in the Revised Dictionary of Occupational Titles' for
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> > (1) the employee's job at the time of injury; or
> > (2) other jobs that exist in the labor market that the employee has held or received training for within 10 years before the injury or that the employee has held following the injury for a period long enough to obtain the skills to compete in the labor market, according to specific vocational preparation codes as described in the 1993 edition of the United States Department of Labor's 'Selected Characteristics of Occupations Defined in the Revised Dictionary of Occupational Titles.'

Pursuant to AS 23.30.041(e)'s express language, medical evidence of eligibility must satisfy three requirements. First, the evidence must take the form of a prediction. Second, the person making the prediction must be a physician. Third, the prediction must compare the physical

demands of the employee's job, as the U.S. Department of Labor describes it, with the employee's physical capacities. *Yahara v. Construction & Rigging, Inc.*, 851 P.2d 69, 73 (Alaska 1993).

> **AS 23.30.130. Modification of awards.** (a) Upon its own initiative, or upon the application of any party in interest on the ground of a change in conditions, including, for the purposes of AS 23.30.175, a change in residence, or because of a mistake in its determination of a fact, the board may, before one year after the date of the last payment of compensation benefits under AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, whether or not a compensation order has been issued, or before one year after the rejection of a claim, review a compensation case under the procedure prescribed in respect of claims in AS 23.30.110. Under AS 23.30.110 the board may issue a new compensation order which terminates, continues, reinstates, increases or decreases the compensation, or award compensation.

The RBA-Designee's decision must be upheld absent "an abuse of discretion." Several definitions of "abuse of discretion" appear in Alaska law although none appear in the Alaska Workers' Compensation Act. The Alaska Supreme Court describes abuse of discretion as "issuing a decision which is arbitrary, capricious, manifestly unreasonable, or which stems from an improper motive." *Sheehan v. University of Alaska*, 700 P.2d 1295, 1297 (Alaska 1985). *See also Tobeluk v. Lind*, 589 P.2d 873, 878 (Alaska 1979). An agency's failure to properly apply the controlling law may also be considered an abuse of discretion. *Manthey v. Collier*, 367 P.2d 884, 889 (Alaska 1962); *Black's Law Dictionary* 8 (7th ed. 2000).

The Administrative Procedure Act (APA) provides another, similar definition used by courts in considering appeals from administrative agency decisions. It expressly includes reference to a "substantial evidence" standard:

> **AS 44.62.570. Scope of review**.
> . . .
> (b) Inquiry in an appeal extends to the following questions: (1) whether the agency has proceeded without, or in excess of jurisdiction; (2) whether there was a fair hearing; and (3) whether there was a prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence. . . .
> . . .

> (c) . . . If it is claimed that the findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by
> (1) the weight of the evidence; or
> (3) substantial evidence in the light of the whole record.

When applying a substantial evidence standard of review, a "[reviewer] may not reweigh the evidence or draw its own inferences from the evidence. If, in light of the record as a whole, there is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, then the order . . . must be upheld." *Miller v. ITT Arctic Services*, 577 P.2d 1044, 1049 (Alaska 1978).

> **8 AAC 45.150. Rehearings and modifications of board orders**. (a) The board will, in its discretion, grant a rehearing to consider modification of an award only upon the grounds stated in AS 23.30.130.
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> (b) A party may request a rehearing or modification of a board order by filing a petition for a rehearing or modification and serving the petition on all parties in accordance with 8 AAC 45.060.
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> (c) A petition for a rehearing or modification based upon change of conditions must set out specifically and in detail the history of the claim from the date of the injury to the date of filing of the petition and the nature of the change of conditions. The petition must be accompanied by all relevant medical reports, signed by the preparing physicians, and must include a summary of the effects which a finding of the alleged change of conditions would have upon the existing board order or award.
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> (d) A petition for a rehearing or modification based on an alleged mistake of fact by the board must set out specifically and in detail
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> (1) the facts upon which the original award was based;
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> (2) the facts alleged to be erroneous, the evidence in support of the allegations of mistake, and, if a party has newly discovered evidence, an affidavit from the party or the party's representative stating the reason why, with due diligence, the newly discovered evidence supporting the allegation could not have been discovered and produced at the time of the hearing; and
>
> (3) the effect that a finding of the alleged mistake would have upon the existing board order or award.
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> (e) A bare allegation of change of conditions or mistake of fact without specification of details sufficient to permit the board to identify the facts challenged will not support a request for a rehearing or a modification.

> (f) In reviewing a petition for a rehearing or modification the board will give due consideration to any argument and evidence presented in the petition. The board, in its discretion, will decide whether to examine previously submitted evidence.

In *Hodges v. Alaska Constructors, Inc.*, 957 P.2d 957, 960-61 (Alaska 1998), the Alaska Supreme Court held a petition for modification under AS 23.30.130(a) is timely, and the board may consider modification, if the petitioner files the request within one year of the last payment of compensation, or of the filing of the challenged decision and order. The Alaska Supreme Court discussed subsection 130(a) in *Interior Paint Company v. Rodgers*, 522 P.2d 164 (Alaska 1974): "The plain import of this amendment (adding "mistake in a determination of fact' as a ground for review) was to vest a deputy commissioner with broad discretion to correct mistakes of fact whether demonstrated by wholly new evidence, cumulative evidence, or merely further reflection on the evidence initially submitted." *Interior Paint Co.*, 522 P.2d at 168 (citations omitted). The board applies AS 23.30.130 to changes in condition, including those affecting reemployment benefits and vocational status (*see, e.g., Imhof v. Eagle River Refuse*, AWCB Decision No. 94-0330 (December 29, 1994)).

> **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.
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> (b) If an employer fails to file timely notice of controversy or fails to pay compensation or medical and related benefits within 15 days after it becomes due or otherwise resists the payment of compensation or medical and related benefits and if the claimant has employed an attorney in the successful prosecution of the claim, the board shall make an award to reimburse the claimant for the costs in the proceedings, including reasonable attorney fees. The award is in addition to the compensation or medical and related benefits ordered.

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 152-153.

In *Wise Mechanical Contractors v. Bignell*, 718 P.2d 971, 974-975 (Alaska 1986), the Court held attorney's fees awarded by the board should be reasonable and fully compensatory. 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*. 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.

ANALYSIS

1) *Did the RBA Designee abuse her discretion by finding Employee ineligible for reemployment benefits under AS 23.30.041?*

Dr. Cobden wrote an addendum opinion clarifying that he had reviewed the SCODRDOT job description for tow-truck operator (DOT #919.663-026) when he concluded that Employee was unable to fulfill the physical requirements for the job description. This addendum opinion was written on September 16, 2016, the same date the RBA Designee issued her decision finding Employee ineligible based in part on her finding there was no evidence that Dr. Cobden had reviewed the job description. Under 8 AAC 45.150(d)(2) this evidence is newly discovered and Employee could not with due diligence have produced it for the RBA Designee's consideration prior to her September 16, 2016 finding of ineligibility, as he received the addendum the same day.

8 AAC 45.150(e) requires specific facts, not just a general allegation, of a change of condition or mistake of fact to serve as a basis for modification. In this case, Employee identifies specific evidence unavailable to the RBA Designee at the time of her decision, which he argues should render him eligible for reemployment benefits under AS 23.30.041. This evidence is particularly important because the RBA based her decision, in part, on the absence of this evidence.

In addition to Dr. Cobden's addendum opinion confirming that he reviewed the job description, there is also the January 14, 2016 and February 9, 2016 differing opinions of Dr. Wade to consider. A review of the total record shows there is not sufficient evidence to support a finding that Dr. Wade intended to confirm his February 9, 2016 opinion. When Dr. Wade was asked if he wished to amend his opinion, he was not specifically directed to the discrepancy in his January 14, 2016 opinion and February 9, 2016 opinion. It is therefore still unclear which opinion Dr. Wade was confirming.

On January 14, 2016, Dr. Wade detailed why Employee could not be released to work:

> Glenn Gracik is here today for evaluation of his left shoulder. He wants to have a full release for a truck driver. Unfortunately, I feel that given the fact he had a large massive rotator cuff repair and allograft, I do not think that he is in the position to do any heavy labor or any repetitive demands on the shoulder for the remainder of his life. Clearly, a low sedentary-style job that requires more of a clerical-type environment as opposed to picking up heavy chains and cables is not in his best interest. I explained to Mr. Gracik that given the significant amount of degeneration and what was required to repair his left shoulder that I believe that possibly vocational rehab would be in his best interest. He had a massive rotator cuff repair that required allograft material simply to achieve humeral head coverage, and given these findings, I do not think heavy labor and exertional demands on his left shoulder are in his best interest. (Dr. Wade Opinion, January 14, 2016).

On February 9, 2016, Dr. Wade checked boxes indicating Employee would have the physical capacity to perform jobs he had held in the ten years prior to his injury. It is undisputed that Dr. Wade had not seen the Employee since his January 14, 2016 opinion indicating that vocational rehabilitation may be in Employee's best interest. It is therefore unclear why Dr. Wade changed his mind. Employer contends Dr. Wade may have altered his opinion after reviewing the job descriptions. However, neither the parties nor the RBA have settled this discrepancy for the panel.

Based on the record available to her at the time of her determination, substantial evidence existed to support the RBA Designee's finding of eligibility. However, on review of the present record, including the newly discovered and newly developed evidence, in light of AS 23.30.041(e)(2) there is not substantial evidence to support the RBA Designee's determination. This new evidence warrants modification, rather than another remand to the RBA.

On review of the entire medical file as it now exists, with Dr. Wade's original opinion recommending vocational rehabilitation, Dr. Cobden's opinion recommending vocational rehabilitation and confirmation that he reviewed the description of tow truck driver, and Employee's testimony that he does not have the physical capacity to perform the jobs in his ten year history; there is a basis to find Employee will have less than the physical demands of jobs he held within the ten years prior to his work injury, as required under AS 23.30.041(e)(2). Accordingly, based on the evidence in the present record, Employee is eligible for benefits under AS 23.30.041.

2) *Is Employee entitled to an attorney fee award?*

Employee seeks actual attorney's fees in the amount of $12,094.50. Employee retained counsel who ultimately successfully litigated his claim for reemployment benefits after two hearings before the board. Employer did not object to Employee's counsel's itemized bills or claimed hourly rate. Considering the nature, length, and complexity of the services performed and the benefits resulting from the services to Employee, Employee's claimed fee award is reasonable. Employee will be awarded full actual fees under AS 23.30.145(b).

CONCLUSIONS OF LAW

1) The RBA Designee did not abuse her discretion by finding Employee ineligible for reemployment benefits under AS 23.30.041(e), based on the evidence before her.
2) The RBA Designee's September 16, 2016 determination shall be modified under AS 23.30.130.
3) Employee is entitled to an attorney fee award.

ORDER

1) Employee's September 21, 2016 Workers' Compensation Claim for Review of Reemployment Eligibility is GRANTED.
2) The RBA Designee's September 16, 2016 determination is VACATED.
3) Employee is eligible for reemployment benefits under AS 23.30.041.
4) Employee is entitled to an attorney fee award in the amount of $12,094.50.

Dated in Fairbanks, Alaska this 5th day of December, 2016.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Kelly McNabb, Chair Designee

/s/
Jacob Howdeshell, Board 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 GLENN A. GRACIK, employee / claimant; v. INTERIOR TOWING & SALVAGE, INC., employer; AMERICAN INTERSTATE INSURANCE COMPANY, insurer / defendants; Case No. 201506873; 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 December 5, 2016

/s/

Jennifer Desrosiers, Office Assistant II