ALASKA WORKERS' COMPENSATION BOARD

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

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ANGELEE J. WOOD, Employee, Claimant, v. STATE OF ALASKA, Self- Insured Employer, Defendant.	)	INTERLOCUTORY DECISION AND ORDER AWCB Case No. 201509544 AWCB Decision No. 18-0014 Filed with AWCB Anchorage, Alaska on February 14, 2018

Angelee Wood's (Employee) September 21, 2017 petition for a protective order from attending a neuropsychological examination with neuropsychological testing was heard in Anchorage, Alaska, on January 24, 2018, a date selected on November 1, 2018. Attorney John Franich appeared and represented Employee. Attorney Daniel Cadra appeared and represented State of Alaska Department of Corrections (Employer). Paul Craig, Ph.D., the only witness testified on Employer's behalf. The record closed at the hearing's conclusion on January 24, 2018.

ISSUES

Employee requests a protective order precluding Employer from obtaining an Employer's medical evaluation (EME), to include neuropsychological testing and examination. She contends to maintain previous neuropsychological testing's validity, the testing cannot be repeated within a year. Employee further contends the neuropsychological evaluation scheduled by Employer with Dr. Craig will draw on her limited cognitive and emotional reserves and will severely affect her emotional, cognitive and psychiatric well-being.

Employer contends an EME, with a medical provider of its choosing, is a right conferred by statute and is an integral part of discovery. It contends Employee has failed to show "good cause" for the requested protective order; and that Aryeh Levenson, M.D.'s concern regarding neuropsychological testing's validity when retesting occurs within one year, is unsupported by either science or professional policy in the neuropsychology field. Employer also contends Dr. Levenson's statement an independent neuropsychological examination will severely impact Employee's emotional, cognitive, and psychiatric well-being is speculation. Employer contends an independent medical evaluation with a neuropsychologist is necessary for Employer to understand and assess Employee's condition, disability and medical treatment needs.

Is Employee entitled to a protective order?

FINDINGS OF FACT

A preponderance of the evidence establishes the following facts and factual conclusions:

1) The parties stipulated as follows: An inmate at Highland Mountain Correctional Facility assaulted Employee on June 16, 2015, during the course of her employment as a correctional officer. The inmate was wearing a cast and broke Employee's nose. This is an extremely complex medical case. Employer commenced workers' compensation benefits and those benefits have continuously been paid since the injury date. Employer originally scheduled a psychiatric and neuropsychological panel EME in August 2017, rescheduled it at Employee's request, accommodated Employee's numerous scheduling conflicts and rescheduled the EME for October 3 and 4, 2017, with Dr. Craig. Employee is eligible for reemployment benefits and the Rehabilitation Benefits Administrator suspended development of a reemployment plan. Employee is currently receiving treatment from a naturopath, chiropractor and psychiatrist. (Hearing Stipulation, January 25, 2018.)

2) On October 10, 2015, Michael Fraser, Jr., M.D., orthopedic surgeon, and Eugene Wong, M.D., neurologist conducted a panel EME. Dr. Wong recommended Employee undergo a neuropsychological evaluation to address her cognitive impairment claims. Dr. Wong deferred a permanent partial impairment rating for Employee's closed head injury awaiting neuropsychological evaluation results. (EME Report, Dr. Wong, October 10, 2015.)

3) On November 25, 2015, Dr. Wong, after reviewing Dr. Fraser's EME report, noted Employee still had headaches and complaints of cognitive problems for months after the work injury.

Dr. Wong again recommended Employee undergo a neuropsychological evaluation. He stated, "At this time, pending further headache treatment and outcome of her neuropsychological test, it is not possible to predict when she will reach a medically fixed and stable state relative to the head injury." (EME Report, Dr. Wong, November 25, 2015.)

4) On August 16, 2017, Employee underwent a neuropsychological assessment with Thomas Bergquist, Ph.D., LP. The Wisconsin Card Sort Test evaluated her planning, reasoning and problem solving. Rey-Osterrieth Complex Figure Test, Benton Visual Form Discrimination and Judgment of Line Orientation tested her visuospatial functioning. Dr. Bergquist administered a Heaton sensorimotor evaluation. Other tests included the Wechsler Memory Scale Fourth Edition, Wechsler Adult Intelligence Scale Fourth Edition and Test of Memory Malingering (TOMM). In addition, the evaluation included a review of medical records and an interview with Employee. Dr. Bergquist made the following behavioral observations:

> She had a clear stutter throughout the evaluation. She did understand the majority of the directions when she heard them. She warned the examiner that she has a hard time controlling her temper and is easily frustrated which she reported was mainly due to 'how high functioning' she used to be compared to how much difficulty she has now. Despite this warning, the patient was very calm and pleasant throughout testing and handled even the difficult tests well. She did seem to put forth good effort but, at the same time, performed quite poorly -- in fact, well below the chance level on a measure of performance validity testing and also in certain other instances also seems to give effort that was much less than optimal. She did seem unable to concentrate for extended periods of time. She did display good attitude and established and maintained good rapport throughout the evaluation. She seemed adequately and appropriately motivated with limited reactions to successes and failures during testing. She did need directions repeatedly clarified occasionally. She displayed normal approach to the task at hand. She waited patiently for directions to be read. She did become tearful, though, when telling the examiner how she feels she would have done much better on these tests prior to her brain injury.
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> Of particular note is the fact that the patient refused to guess on items of the TOMM, a forced choice measure of performance validity testing, and gave a 'don't know' response despite significant prompting from the examiner on the majority of items on that particular measure. On those items which she did give response, she was correct in all but one instance.

> The results of this evaluation are of questionable validity, and the integrity of the data is brought into question as a result, but results will be interpreted with this factor in mind in coming to overall conclusions, as will be seen in the impression section of the report below.

Employee performed poorly on the vast majority of the evaluation's measures, including her basic measured intelligence, on which her overall performance was in the first percentile, a "clearly impaired range." Dr. Bergquist's impressions were:

> The results of neurological testing are positive, but interpretation of the results is complicated by much less than expected, in fact less than chance, level of performance on performance validity testing measures. As a consequence, I am unable to confidently interpret the true significance of these results in terms of their representation of level of underlying cognitive dysfunction and even more so to the degree to which they represent underlying brain injury. They do represent that Mrs. Wood is having difficulties with functioning at this time. She essentially shows poor and impaired performances in the vast majority of measures given as part of this evaluation, with her performances varying from at, or even in some cases, above the average range to in other cases being clearly, even markedly, impaired. This includes her performance of measured intelligence which are markedly below expectation and are at the 1st percentile.
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> Also elevated are scores on measures of both anxiety and depression which are significantly elevated in both instances. In fact, her score in both measures are at or near the ceiling level including endorsement of suicidal ideation, though she denies any specific plan or intent. She also performs markedly poorly and well within the impaired range on measures of both motor speed and motor functioning bilaterally in both hands.
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> Thus in summary, these results, while not useful for determining the actual degree and nature and pattern of neurocognitive impairment, do represent a means to degree to which Mrs. Wood feels she is having difficulty and essentially can be considered almost a 'cry for help.' The fact that her performance is not only poor, but well below the chance level, on performance validity testing suggests some degree of an attempt to present to the examiner in such a way that she is trying to show how much difficulty she is having and the degree to which she is impaired.
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> She likely can benefit from the brain rehabilitation services including among other things cognitive rehabilitation, but these are really secondary to the need to address emotional, psychological factors and perhaps, most importantly, her own perception of her current situation. Also, related to this are the circumstances surrounding her injury and her job history in which she was involved in regular levels of stress on the job as a corrections officer.

> Mrs. Wood is in need of comprehensive services including, in particular, counseling which could be attentive to these various issues. I strongly recommend she continue to meet with the counselor that has apparently served her well locally in Alaska, however she may require more intensive intervention, such as part of a day treatment or even residential treatment program.
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> My concern is that the fact that these results, which as I have already commented lack validity and cannot be interpreted to indicate underlying brain dysfunction, may because of this be used to inappropriately be used to support the conclusion that the patient is without any need for appropriate treatment. I need to state unequivocally here that this is not at all the case, that Mrs. Wood is clearly in need of services such as I have outlined above and that the approach of this treatment should be one well-informed by her history up to the point of her injury and circumstances surrounding her injury as well as close attention to her psychiatric presentation and perception of her current situation and symptomology.

(Mayo Clinic Neuropsychological Assessment, Dr. Bergquist, August 16, 2017.)

5) On September 6, 2017, Penser North America, Inc., became the claims administrator for Employer. (ICERS Database, Parties Screen.)

6) On September 21, 2017, Employee filed a petition for a protective order against attending a neuropsychological evaluation, which included neuropsychological testing. Employee's detailed reason for petitioning states:

> Ms. Wood's treating psychiatrist, Dr. Aryeh Levenson, has reservations about the EME scheduled for October 3rd and 4th with Dr. Paul Craig in Anchorage, Alaska. In a letter to Ms. Wood's adjustor Dr. Levenson states that in order to maintain validity, neuropsych testing cannot be repeated within the same year. Dr. Levenson's letter is attached as Exhibit A.

Dr. Levenson's "letter" is an email to "angief@penserna.com." Dr. Levenson was aware Employer scheduled a psychological evaluation with Dr. Craig to occur within the "next couple of weeks" and was writing the claims administrator because he understood "time is of the essence." Dr. Levenson stated to maintain validity of neuropsychological testing the tests cannot be repeated within the same year; otherwise, recognition of the test invalidates the test scoring. It was unclear to Dr. Levenson what further information a retest would provide when the Mayo Clinic, one of the nation's foremost institutions with expertise in head injuries performed the initial test. Finally, Dr. Levenson asserted, "Ms. Wood's brain injury and juxtaposed PTSD have left sufficiently limited cognitive and emotional reserve that such frequent evaluations and

reevaluation severely impact her emotional, cognitive, and psychiatric well-being." Dr. Levenson opined Employee's extensive evaluation history and treatment records document her strengths, limitations, and disabilities and further evaluations were unnecessary. (Petition, September 21, 2017.)

7) On October 3, 2017, in a letter to Mr. Franich, Dr. Levenson stated Employee's work injury caused permanent damage to her neuro-circuitry and caused debilitating PTSD symptoms. Dr. Levenson said, "Less experienced providers may misdiagnose such symptoms as due to psychiatric reasons when in fact many are primarily due to the TBI itself."

> Main functional impairments include difficulties with managing family responsibilities, meals, self-care etc. and though she excelled in rehab; she hasn't been able to translate such gains into her home environment. Secondarily, metacognitive deficits impact ability to function well regarding the overall administrative/technical aspects of her case and care; complicating matters greatly and adding to significant stress. Such matters make it impossible for her to work in any practical vocation as her ability to pace herself and persist in task activities will quickly not meet the necessary standards for gainful employment.
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> I'm very concerned that with workman's comp; there is considerable focus on assessments, needing to prove her limitations; when her limitations and stressors are very clear, well documented and sustained. This adds considerable stress to her and each new evaluation in many ways reinforces the trauma component which impacts her ability to make new gains return to as normal a level of functioning as possible. Energy needs to be diverted to treatment and psychological rehab; not ongoing evaluations. Otherwise, I do not see her making sufficient gains or maximizing her potential.

(Dr. Levenson Letter to Mr. Franich, October 3, 2017.)

8) Employee did not file a witness list or call Dr. Levenson to testify. (Record.)

9) Dr. Craig was board certified by the American Board of Clinical Neuropsychology in 1992, and has continuously maintained his board certification. He practices as both a clinical neuropsychologist and an independent medical examiner. He conducts both independent medical evaluations and second independent medical evaluations. When Dr. Craig performs neuropsychological evaluations, he meets with the examinee, goes through disclosures, and acknowledges it is a stressful experience. He treats the examinee respectfully and makes them feel comfortable. According to Dr. Craig, neuropsychological evaluations are not emotionally or physically unpleasant; there are no physical exams or invasive procedures. He admitted it may

be an unpleasant experience for the examinee because he or she must engage in an activity the examinee has not personally chosen; however, it is not an untoward or negative experience. Every neuropsychological evaluation involves three components. First, a review of any available medical or other records regarding the examinee. Second, Dr. Craig conducts a clinical interview and listens to the examinee's version of the story, injury, or current circumstances. During the interview, the examinee's history is taken, including the examinee's marriage or marriages, children, work, education and military duty. Understanding the examinee's perspective and taking accurate history is important to analyze the testing results. The third component of neuropsychological assessment is the actual testing. Neuropsychological testing is not invalid if repeated within one year of previous neuropsychological testing. Dr. Craig disagrees with Dr. Levenson's opinion neuropsychological testing repeated within the same year is not valid and states science and professional policy in the neuropsychology field does not support Dr. Levenson's contrary opinion. It is the standard and accepted practice within the neuropsychology profession to administer more than one neuropsychological test battery within a year so that improvement, deterioration, or stability can be determined and used to improve diagnostic accuracy and treatment planning. After repeat testing, determinations regarding improvement, deterioration, or stability are made only after considering the research on repetitive neuropsychological testing's "practice effects." Dr. Craig will interpret Employee's repeated neuropsychological testing measures, if any, consistent with psychological research and science, generally and clinical neuropsychology in particular. Dr. Craig said, irrespective of validity, the question is, "Does Employee need a neuropsychological evaluation at this time?" He stressed that a comprehensive neuropsychological assessment is necessary to determine if Employee has a traumatic brain injury a comprehensive neuropsychological assessment is necessary. Because she performed below chance on the previous neuropsychological assessment, Dr. Craig believes Employee needs an opportunity to do her best to determine if she has brain dysfunction as a component of her injury. Retesting is a common practice and is often done very soon, a few days, a few weeks, or a few months, after initial neuropsychological testing. Repeat testing is valid because it is objective. Dr. Craig said the neuropsychological field publishes validity data for retesting, which is well known. In fact, repeat testing may show an individual's cognitive improvement and ability to learn. In Employee's case, the question is does Employee have a

brain injury and neurocognitive dysfunction. If neuropsychological testing reveals she has a brain injury, her providers must develop an appropriate treatment plan. If the testing reveals she does not have a brain injury, her providers must make an appropriate treatment plan considering her psychiatric disorders. Dr. Craig stated the neuropsychological assessment conducted at the Mayo Clinic was not an accurate reflection of Employee's cognitive skills. If she was truly at the first percentile, he stated she would be in a facility. Dr. Craig, as did Dr. Bergquist, believes Employee needs help; however, without a valid neuropsychological assessment it is impossible to determine if the help she needs is for a traumatic brain injury, a psychiatric disorder or both. Dr. Craig indicated to the extent Employee performed "below chance" on the TOMM is not a basis to diagnose malingering. Neuropsychological assessment has never impaired someone's cognitive functioning; nor has it ever caused it to get worse. Dr. Craig stated he would take all necessary measures to assure Employee is comfortable, respected and has sufficient breaks. He does not have the raw data from tests conducted by the Mayo Clinic, which places limitations upon any assessment he could conduct using the Mayo Clinic report, and from the limited data summary, he could not reach a conclusion about whether Employee suffered brain dysfunction from a work related traumatic brain injury. Because the Mayo Clinic's report has questionable validity,

Dr. Craig disagrees with Dr. Levenson's statement that Employee comes with an extensive history of evaluations. Dr. Craig said no one doubts Employee needs to treat with a psychiatrist. (Craig.)

10) "The Official Position of the American Academy of Clinical Neuropsychology on Serial Neuropsychological Assessments" states:

> There are no empirical data allowing the development of clinical guidelines regarding minimum test-retest intervals in clinical or forensic settings. . . . In a forensic context, if confronted by an opposing expert who advocates for fixed retesting intervals, the neuropsychologist should be prepared to educate the court (or referral source) on the state of the art and science. Measurement of practice effects represents valuable data bearing on a person's capacity for learning and adaptation. Making clinical sense out of practice effects requires interpretation just as much as any single score. Neuropsychologists are qualified to interpret the significance of test-retest differences, and are especially equipped by virtue of their knowledge of test operating characteristics to understand the many variables contributing to test-retest change over time.

The Clinical Neuropsychologist (2010)

11) Employee contends the dispute is whether Employee needs a neuropsychological evaluation. Dr. Wong recommended one in 2016; however, neither Dr. Bergquist, Dr. Levenson, nor any other treating physician has determined she needs neuropsychological testing repeated. Employee argues a neuropsychological evaluation is a diagnostic tool, not treatment. Employee seeks a protective order or an order for an SIME on the dispute between Dr. Wong and Dr. Levenson under AS 23.30.110(g).

12) Employer contends it is entitled to an EME every 60 days by statute and current, meaningful neuropsychological raw testing data does not exist. Employer wants an independent assessment regarding treatment Employee needs, including whether treatment other than with a naturopath, chiropractor, or psychiatric counselor is reasonable and necessary. Employer contends Dr. Craig's sworn testimony should be given greater weight than Dr. Levenson's e-mail and letter to Mr. Franich, neither of which are medical records.

PRINCIPLES OF LAW

> **AS 23.30.001. Intent of the legislature and construction of chapter.** It is the intent of the legislature that
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> > (1) this chapter be interpreted . . . to ensure . . . quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to . . . employers . . . subject to . . . this chapter;

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 23.30.005. Alaska Workers' Compensation Board**. . . .
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> (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 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).

> **AS 23.30.095. Medical treatments, services, and examinations**. (a) The employer shall furnish medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus for the period which the nature of the injury or the process of recovery requires, not exceeding two years from and after the date of injury to the employee. However, if the condition requiring the treatment, apparatus, or medicine is a latent one, the two-year period runs from the time the employee has knowledge of the nature of the employee's disability and its relationship to the employment and after disablement. It shall be additionally provided that, if continued treatment or care or both beyond the two-year period is indicated, the injured employee has the right of review by the board. The board may authorize continued treatment or care or both as the process of recovery may require. When medical care is required, the injured employee may designate a licensed physician to provide all medical and related benefits. The employee may not make more than one change in the employee's choice of attending physician without the written consent of the employer. Referral to a specialist by the employee's attending physician is not considered a change in physicians. Upon procuring the services of a physician, the injured employee shall give proper notification of the selection to the employer within a reasonable time after first being treated. Notice of a change in the attending physician shall be given before the change.
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> (e) The employee shall, after an injury, at reasonable times during the continuance of the disability, if requested by the employer or 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. Unless medically appropriate, the physician shall use existing diagnostic data to complete the examination. . . . If an employee refuses to submit to an examination provided for in this section, the employee's rights to compensation shall be suspended until the obstruction or refusal ceases, and the employee's compensation during the period of suspension may, in the discretion of the board or the court determining an action brought for the recovery of damages under this chapter, be forfeited. . . .

In *Schwab v. Hooper Electric*, AWCB Decision No. 87-0322 (December 11, 1987), the Alaska Supreme Court encouraged "liberal and wide-ranging discovery under the Rules of Civil

Procedure." Medical evaluations are part of the discovery process. AS 23.30.095(e) gives employers an explicit right to medical examinations of injured workers by physicians of the employer's choosing. The limit of Employer's right is the "reasonable" standard, which includes reasonable times, frequency, location, and qualifications. *Thoeni v. Consumer Electronic Services*, 151 P.3d 1249, 1254-55 (Alaska 2007). The reasonableness standard also applies to the evaluation's method, means, manner, and to its degree of invasiveness. *Ammi v. Eagle Hardware,* AWCAC Decision No. 05-004 (February 21, 2006). AS 23.30.095(e) requires employers' evaluators to use existing diagnostic data to the degree medically possible. Unless an EME is unreasonable in some specific respect, an injured worker does not have a right to refuse to submit to an EME, nor is there a legal basis to grant a petition for a protective order from attending an EME. *Travers v. Take Out Taxi*, AWCB Decision No. 96-0306 (July 29, 1996).

> **AS 23.30.122. Credibility of Witnesses.** The board has the sole power to determine the credibility of a witness. A finding by the board concerning the weight to be accorded a witness's testimony, including medical testimony and reports, is conclusive even if the evidence is conflicting or susceptible to contrary conclusions. The findings of the board are subject to the same standard of review as a jury's findings in a civil action.

The board's credibility findings and weight accorded evidence are "binding for any review of the Board's factual findings." *Smith v. CSK Auto, Inc.*, 204 P.3d 1001, 1008 (Alaska 2009).

ANALYSIS

Shall Employee's petition for a protective order be granted?

Employee seeks a protective order excusing her from submitting to an examination by a neuropsychologist chosen by Employer. A protective order can issue if the EME's scheduled time, frequency, or location are unreasonable. *Thoeni*. A protection order can also issue if the EME's method, means, manner, or its degree of invasiveness are unreasonable. *Ammi*.

AS 23.30.095(e) references an employee's injury, not claim, in relation to informal discovery procedures. Medical examinations constitute permissible "liberal and wide-ranging" discovery. *Schwab*. The legislative intent behind this section of the Act clearly contemplates an employer's ability to investigate an injury and arises upon an injury report. Logic requires this conclusion

because without the ability to investigate there would be limited situations where an employer could have the required grounds to controvert a claim. Such a restrictive interpretation would result in denying the employer's due process rights. Employer scheduled the EME in this case more than 14 days after Employee's injury, more than 60 days after her last EME, and is upon referral by Dr. Wong, so statutorily it is "presumed to be reasonable." AS 23.30.095(e).

The burden then shifts and Employee must rebut the presumption with substantial evidence. Employee argues the neuropsychological evaluation scheduled by Employer with Dr. Craig will draw on her limited cognitive and emotional reserves and will severely affect her emotional, cognitive and psychiatric well-being. She is able to rebut the presumption the EME is reasonable with Dr. Levenson's opinion that to maintain neuropsychological testing validity, tests cannot be repeated within the same year. Dr. Levenson stated if retested within one year, Employee's test recognition would invalidate the results and scoring. It was unclear to Dr. Levenson what further information a retest would provide since the preeminent Mayo Clinic performed the previous testing. He was concerned with the "considerable focus on assessments, needing to prove her limitations." Dr. Levenson stated Employee's "limitations and stressors are very clear, well documented and sustained" and each new evaluation reinforces the "trauma component" which influences Employee's ability to make new gains and return to a normal functioning level. He opined efforts should instead be concentrated on treatment and psychological rehabilitation; not ongoing evaluations.

The burden shifts back and Employer must prove by a preponderance of the evidence the requested EME and neuropsychological testing is reasonable. At this stage, evidence credibility and weight are determined.

Employee's injury occurred on June 16, 2015, when an inmate with a casted arm struck her in the face and head with the cast. Employer requested and Employee submitted to a panel EME on October 10, 2015, with an orthopedic surgeon, Dr. Fraser, and neurologist, Dr. Wong. Dr. Wong referred Employee for a neuropsychological evaluation, which occurred August 2017, by Dr. Bergquist at the Mayo Clinic, upon referral from one of Employee's providers. Despite the neuropsychological tests performed, Dr. Bergquist could not confidently interpret the test results'

significance. He could not determine whether Employee had an underlying cognitive dysfunction or the degree to which the results represented underlying brain injury because Employee's performance was much less than expected and "less than chance" on performance validity testing measures. Dr. Bergquist stated Employee's neuropsychological testing was of "questionable validity" and the data's integrity questionable. Dr. Bergquist conceded he could not use the test results to diagnose brain dysfunction. However, he warned others should not misinterpret the results to conclude Employee is without need for appropriate treatment. Dr. Bergquist outlined an appropriate care plan for Employee and the factors to which close attention was essential when determining reasonable and necessary medical treatment for Employee.

According to Dr. Craig, it is a standard and accepted practice within the neuropsychology profession to administer more than one neuropsychological test battery within a year. This allows for determinations regarding improvement, deterioration and stability. Repeat testing within a year improves diagnostic accuracy and treatment planning. Providers routinely take repetitive neuropsychological testing "practice effects" into account when determining if an individual has improved, deteriorated or remained stable. Dr. Craig stated he will interpret Employee's repeated neuropsychological testing measures, if any, consistently with psychological research and science, generally, and clinical neuropsychology in particular to eliminate invalid results due to "practice effect."

Dr. Craig concluded Employee needs an opportunity to do her best on a neuropsychological evaluation to determine if she truly has brain dysfunction from her work injury. Retesting is a common practice and is valid because it is objective.

Dr. Craig is a board certified neuropsychologist and Dr. Levenson is a psychiatrist. Neuropsychologists hold a Ph.D. degree and complete graduate training in psychology, and have post-doctoral training in neuropsychology. Neuropsychologists evaluate brain-behavior relationships and assess patient's cognitive functioning in the context of psychological, developmental, medical illness, and brain injury using standardized tests. The neuropsychologist integrates this information with the patient's clinical background, history and applicable school

and medical records for a complete neuropsychological assessment, which is used to guide treatment decisions and develop treatment plans. Neuropsychologists can also treat patients using psychotherapy and cognitive rehabilitation. *Rogers & Babler*. By contrast, psychiatrists complete medical school and then continue special training in the field of psychiatry. Psychiatrists prescribe medication and practice psychotherapy. Psychiatrists do not receive specialized training in administration and interpretation of neuropsychological evaluations. *Id.*

Dr. Craig's testimony is credible. AS 23.30.122; *Smith*. His opinions regarding repeat neuropsychological testing being reasonable consider Dr. Bergquist's finding Employee's first neuropsychological testing's results were not valid to determine if Employee does, in fact, have a brain injury. Dr. Craig is a neuropsychologist specially trained to conduct neuropsychological testing, assess the testing results taking into consideration any "practice effects," and determine appropriate treatment, if any, for brain injuries. Dr. Levenson is a psychiatrist, specializing in psychotherapy and appropriate prescription drug treatment. As a psychiatrist, he does not specialize in neuropsychological testing, nor is he familiar with the American Academy of Clinical Neuropsychology's official position on repeated neuropsychological assessments. He is not qualified to interpret test-retest differences' significance nor does he have specialized knowledge of "test operating characteristics" to understand all variables contributing to Employee's test-retest results. Dr. Craig's opinions are entitled to more weight than Dr. Levenson's. AS 23.30.122; *Smith.*

Finally, Dr. Bergquist and Dr. Craig agree, the neuropsychological assessment conducted at the Mayo Clinic does not accurately reflect Employee's cognitive skills. If she were truly at the first percentile, Employee would be in an institution. Dr. Craig and Dr. Bergquist believe Employee needs treatment; however, without a valid neuropsychological assessment it is impossible to determine if the help she needs is for a traumatic brain injury or a psychiatric disorder. Dr. Craig does not have the raw data from tests conducted by Dr. Bergquist, but neither Dr. Craig, nor Dr. Bergquist could reach a conclusion about whether Employee suffered brain dysfunction from a work-related traumatic brain injury utilizing the Mayo Clinic neuropsychological test results. Dr. Levenson's opinion Employee comes with an extensive history of evaluations may be true; however, his opinion is entitled to no weight in determining the instant issue. Both Dr. Craig and

Dr. Bergquist agree Employee's test results from the Mayo Clinic have questionable validity. Their similar opinions support the conclusion that repeat neuropsychological testing conducted by Dr. Craig is reasonable.

A naturopath, chiropractor and psychiatrist have all treated Employee. Due process requires Employer have an opportunity to independently investigate, understand and assess Employee's condition, disability, and medical treatment it provides Employee and whether the treatment is reasonable and necessary for the process of Employee's recovery. To deny Employer an opportunity to exercise its statutory right to an EME, would result in a denial of Employer's due process. *Travers*.

Dr. Craig will be ordered to preserve and maintain the raw data from the neuropsychological tests he administers Employee and make it available to an SIME physician if the parties stipulate to an SIME or one is ordered after Dr. Craig issues his report. This process will help ensure quick, efficient, fair, and predictable delivery of indemnity and medical benefits to Employee at a reasonable cost to Employer. AS 23.30.001; AS 23.30.005. The order will not preclude an SIME physician from ordering additional or repeat neuropsychological testing.

CONCLUSIONS OF LAW

Employee is not entitled to a protective order.

ORDER

1) Employee's petition for a protective order is denied.
2) Employee shall attend an EME with Dr. Craig and put forth her best efforts to complete the neuropsychological testing Dr. Craig administers.
3) Dr. Craig will preserve and maintain the raw data from the neuropsychological tests he administers and make it available to an SIME physician, should an SIME occur. This will not preclude an SIME physician from ordering additional or repeat neuropsychological testing.

Dated in Anchorage, Alaska on February 14, 2018.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Janel Wright, Designated Chair

/s/
Brad Evans, 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 Angelee J. Wood, employee / petitioner v. State of Alaska, self-insured employer, respondent; Case No. 201509544; 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 February 14, 2018.

/s/
Nenita Farmer, Office Assistant