ALASKA WORKERS' COMPENSATION BOARD

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

DEBRA M. ZASTROW-YANAGIDA, Employee, Claimant, v. MIDNIGHT SUN SMILES, LLC, Employer, and CONTINENTAL CASUALTY COMPANY, Insurer, Defendants.	)	FINAL DECISION AND ORDER AWCB Case No. 201616664 AWCB Decision No. 18-0041 Filed with AWCB Anchorage, Alaska on April 20, 2018

Midnight Sun Smiles, LLC's (Employer) August 25, 2017 petition for review of the reemployment benefits administrator's designee's (RBA designee) finding Debra Zastrow-Yanagida (Employee) eligible for reemployment benefits was heard on the written record in Anchorage, Alaska, on April 12, 2018, a date selected on March 7, 2018. Employee represented herself but did not submit a brief. Attorney Jeffrey Holloway appeared and represented Employer. The record closed when the panel deliberated on April 16, 2018.

ISSUE

Employer appeals the RBA designee's August 16, 2017 eligibility determination. Employer contends Employee reached medical stability without a ratable permanent partial impairment (PPI) despite a previous prediction she would have a ratable PPI and she is, therefore, ineligible for reemployment benefits. Employer contends the RBA designee's determination should be modified with an order Employee is not eligible for reemployment benefits.

Employee did not submit a hearing brief and her position is unknown; however, it is presumed she opposes a determination she is not eligible for reemployment benefits based upon her contention she is having additional symptoms affecting her left and right arms.

Shall the RBA designee's August 16, 2017 eligibility determination be modified and Employee's entitlement to reemployment benefits be terminated?

FINDINGS OF FACT

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

1) On October 11, 2016, Employee reported carpel tunnel syndrome was caused by repetitive motion while performing dental hygienist duties for Employer. The "Accident Description" states, "EE has carpel tunnel, to both L/R side. Fingers, hands, wrists & elbows. EE has numbness, swelling & nerve pain." (Report of Occupational Illness or Injury, November 12, 2016.)

2) On October 11, 2016, Marc Kornmesser, M.D., diagnosed Employee's left elbow and wrist pain with constant numbness in her left small finger as left elbow cubital tunnel syndrome. He ordered custom nighttime elbow extension splints, EMG studies, and a few occupational therapy visits. (Chart Note, Dr. Kornmesser, October 11, 2016.)

3) On November 2, 2016, left median and ulnar motor nerve conduction studies were normal, without evidence of ulnar nerve entrapment at Employee's left elbow. (EMG Report, Sean Taylor, M.D., November 2, 2016.)

4) On November 8, 2016, numbness in Employee's hands had not improved; however, she had not worn her elbow splints "religiously." Dr. Kornmesser encouraged her to wear the splints at nighttime for four months with conservative management of her pain. (Chart Note, Dr. Kornmesser, November 8, 2016.)

5) On January 24, 2017, Employee continued to have pain in her medial elbows and numbness and tingling in her fingers. On exam, she had tenderness over the cubital tunnel but not anterior in the flexor pronator mass origin on either side. Although Employee had positive Tinel's bilaterally, she had no ulnar nerve subluxation. Her strength was good, but subjectively her light touch sensation was decreased in her left small finger. Dr. Kornmesser's impression was

bilateral elbow pain, pain in left elbow, and bilateral cubital tunnel syndrome. (Chart Note, Dr. Kornmesser, January 24, 2017.)

6) On April 5, 2017, Employee reported she had returned to work part-time and complained of "fairly debilitating" bilateral medial elbow pain, left greater than right. Dr. Kornmesser found no muscle wasting, no left to right asymmetry, full range of motion, intact neurovascularity, no areas with marked tenderness to palpation, and Employee's ulnar nerves did not subluxate. She did have a positive Tinel's on the right, negative on the left, with mild irritation with palpation around the origin of the flexor pronator mass. Dr. Kornmesser diagnosed bilateral elbow joint pain and pain in left elbow related to Employee's work as a dental hygienist. He stated,

> Things improve when she works less and work seems to exacerbate this problem and may be the substantial cause of her discomfort. In any case, she has been diligently trying to get back to work and she has been unable to do so because of the pain so I think she is someone who would benefit from vocational rehabilitation and I strongly support that concept. I think she needs to move away from the more physically demanding career field. She understands this and has come to a similar conclusion. We will follow her up on an as-needed basis. I do not see any surgical targets here.

(Chart Note, Dr. Kornmesser, April 5, 2017.)

7) On June 9, 2017, Employee reported to Amit Sahasrabudhe, M.D., employer's medical evaluator (EME), she worked as a dental hygienist for 29 years, the last four years with Employer. Dr. Sahasrabudhe's report states on "October 27, 2014," Employee began having pain in the left greater than right elbow and thought she should report it given prior issues with her wrists and that the symptoms "really increased" by October 28, 2016. Employee said there was no specific incident, event, or injury, at home or at work, but she was having increased elbow pain as well as left small finger numbness and tingling while working as a dental hygienist. When Employee noticed right hand swelling and a constant pins and needles sensation in her fourth and fifth left hand fingers, she sought medical attention from Dr. Kornmesser. Dr. Sahasrabudhe diagnosed bilateral elbow pain, with probable ulnar neuritis. He stated, "She does not have a frank diagnosis of cubital tunnel syndrome given the lack of a positive Tinel's or positive nerve conduction velocity studies. Clinically, her left is worse than the right, given the numbness in the small finger on the left side." He stated all causes of the diagnoses and Employee's need for medical treatment include her age, gender, increased

carrying angle, and her employment and the typical position and repetitive activities associated with a dental hygienist "probably" substantially contribute to the development of Employee's ulnar nerve related complaints superimposed on her predisposition. Dr. Sahasrabudhe concluded Employee's work as a dental hygienist with Employer is the substantial cause of Employee's elbow related disability and need for medical treatment. However, he indicated no surgery or further medical treatment was recommended given the negative nerve conduction study. Given the lack of "any significant objective abnormal findings," Dr. Sahasrabudhe opined Employee can return to her job as a dental hygienist without restrictions. He stated, "If, however, she feels that she is unable to do her usual and customary job, full-time, and if she feels this is secondary to her ulnar nerve related complaints, then Debra should find a new job." Dr. Sahasrabudhe found Employee had no ratable permanent partial impairment. (EME Report, Dr. Sahasrabudhe, June 9, 2017.)

8) On July 18, 2017, Dr. Kornmesser predicted Employee would have a PPI rating greater than zero because of her work injury and that she would not have the permanent physical capacities to perform the physical demands of a dental hygienist. (Responses to Rehabilitation Specialist Pete Vargas' July 18, 2017 Inquiries, Dr. Kornmesser, July 18, 2017.)

9) On July 29, 2017, Mr. Vargas recommended Employee be found eligible for reemployment benefits. (Eligibility Evaluation Report, Mr. Vargas, July 9, 2017.)

10) On August 16, 2017, RBA designee Torgerson determined Employee is eligible for reemployment benefits. The RBA designee did not abuse her discretion when she choose to rely on Dr. Kornmesser's opinions. The eligibility determination considered Mr. Vargas' report and the following:

> (1) On July 18, 2017, Dr. Marc Kornmesser reviewed the DOT/SCODRDOT job description for Dental Hygienist and predicted that you will not have the permanent physical capacities to perform the physical demands of your job at tie of injury, which is also the only job you have performed during the ten-year period prior to your injury. (2) Dr. Kornmesser also predicted that at the time of your medical stability, a permanent impairment is expected. (3) Your employer, Midnight Sun Smiles, cannot offer you physically appropriate alternative work. (4) You have never been rehabilitated in a prior workers' compensation claim. (5) You have never declined the development of a reemployment benefits plan, received job dislocation benefits, and then returned to work in the same or similar occupation in terms of physical demands. (6) You have not waived reemployment benefits under AS 23.30.041(q), AS 23.30012, or a substantially

> similar law in another jurisdiction and then returned to work in the same or similar occupation in terms of physical demands required of you at the time of the previous injury.

(Reemployment Benefits Eligibility Determination, August 16, 2017; judgment, observations.)

11) On August 24, 2017, Employer petitioned for review of the RBA designee's August 17, 2017 reemployment benefits eligibility decision. Employer contended the RBA designee's determination was an abuse of discretion and based on Dr. Sahasrabudhe's opinion, Employee reached medical stability without a PPI rating and no benefits are due under AS 23.30.041. (Petition, August 24, 2017.)

12) On October 26, 2017, Sean Taylor, M.D., noted Dr. Kornmesser determined Employee was medically stable on September 20, 2017, and referred her for a PPI rating. Dr. Taylor determined Employee's impairment resulting from her work injury is zero. He said, "She has a history of a painful injury with residual symptoms without consistent objective findings." (Chart Note, Dr. Taylor, October 26, 2017.

PRINCIPLES OF LAW

AS 23.30.001. Intent of the legislature and construction of chapter. It is the intent of the legislature that

> (1) this chapter be interpreted so as to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of this chapter;
> . . . .

The board may base its decisions 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, 533-34 (Alaska 1987).

> **AS 23.30.041. Rehabilitation and reemployment of injured workers.**
> . . . .
>
> (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
>
> > (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."
>
> (f) An employee is not eligible for reemployment benefits if . . . .
>
> > (3) at the time of medical stability, no permanent impairment is identified or expected. . . .

A physician's prediction which compares the physical demands of an employee's job with the employee's physical capacities complies with AS 23.30.041(e) and constitutes substantial evidence upon which the RBA designee can rely. *Yahara v. Construction Rigging*, 851 P.2d 69 (Alaska 1993). Discretion to determine which of several competing medical opinions to give greater weight lies with the RBA when a reemployment eligibility determination is made. *Irvine v. Glacier General Construction*, 984 P.2d 1103 (Alaska 1999).

An employee must satisfy several tests to be eligible for reemployment benefits. Among these are tests which render an employee "not eligible" if not met. AS 23.30.041(f). In *Rydwell v. Anchorage School District*, 864 P.2d 526 (Alaska 1993), the Alaska Supreme Court affirmed the superior court's denial of an employee's entitlement to reemployment benefits because the employee had no ratable PPI under the AMA Guides. The court stated an employee may start vocational rehabilitation before the employee reaches medical stability, based upon a physician's prediction of physical capacities. However, "once the employee has reached medical stability, [the employee] must have a permanent impairment, calculated under AS 23.30.190(b)'s provisions for use of the *AMA* Guides," and an employee receiving a zero percent PPI rating under the AMA Guides is ineligible for reemployment benefits. *Id.* at 531.

In *Rydwell v. Anchorage School District*, 864 P.2d 526 (Alaska 1993), the Alaska Supreme Court stated:

> Two provisions of AS 23.30.041 govern the type of injury necessary for an employee to be eligible for reemployment benefits. . . . Second, an employee is not eligible for benefits if 'at the time of medical stability no permanent impairment is identified or expected.' AS 23.30.041(f)(3). This second requirement is at issue here, where a measurable physical impairment exists but translates into a zero permanent impairment rating under the *AMA Guides*. . . .
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> We are . . . persuaded that the term 'permanent impairment' means the same thing in AS 23.30.041 as it does in AS 23.30.190. The term was newly introduced to the workers' compensation statutes by the 1988 legislature. . . . Section 34 of Chapter 79 became AS 23.30.190 and Section 10 became AS 23.30.041. Those are the only sections which employ the term 'permanent impairment' in the workers' compensation statutes. It is most logical that the legislature intended the term to mean the same thing in both sections in which the term is used. Indeed, if 'permanent impairment' as used in Section 10 of Chapter 79 of the 1988 session laws was not intended to mean the same thing as 'permanent impairment' in Section 34 where the term is defined, one would expect to find a separate definition in Section 10. . . .
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> The District argues that the close tie between vocational rehabilitation and PPI compensation indicates that eligibility for PPI benefits is a prerequisite for obtaining reemployment benefits. If Rydwell, who presumably is ineligible for PPI benefits under AS 23.30.190, may nonetheless receive reemployment benefits, then she will have no income during the period of her vocational rehabilitation, because she has reached medical stability and therefore can no longer receive benefits for temporary total disability. *See* AS 23.30.041(k). Reading AS 23.30.190(b) to control the evaluation of permanent impairment under AS 23.30.041(f)(3) carries out the legislature's intent that employees must have a supplemental income source during the rehabilitation process.
>
> Such a reading also meshes well with the literal language of AS 23.30.041(k), which provides a fall-back source of income if the employee's PPI benefits 'are exhausted before the completion or termination of the reemployment plan.' This language clearly presumes that the employee has been eligible for PPI compensation, and it does not contemplate a situation in which there are no PPI benefits to exhaust. This argument indicates that the legislature did not intend that one who does not qualify for PPI benefits would be eligible for vocational rehabilitation.
>
> To support its contention that AS 23.30.190(b) controls determinations under AS 23.30.041, the District also looks to broader legislative motives for the 1988 revisions:

> It is the intent of the legislature that AS 23.30 be interpreted so as to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers *at a reasonable cost to the employers* who are subject to the provisions of AS 23.30.

Ch. 79, § 1(a), SLA 1988 (emphasis in original). The District views the provisions requiring objective bases for claims, *see* AS 23.30.041(e), (p)(4), .190(b), as one means by which the legislature sought to reduce baseless claims and thus lower costs. We agree that the legislature's concerns with objective diagnoses and reducing costs to employers are instructive in this case. These concerns provide a logical explanation for a statutory scheme which sets rather stringent bright-line measures.

In this case, no impairment was found under the AMA ratings, yet the employee's doctors concluded that she could not meet the physical demands of her job. To find for the employee would create a gray area of 'permanent impairment' for purposes of AS 23.30.041(f)(3), which could be satisfied by an impairment registering zero on the *AMA Guides* scale. Such a holding would greatly reduce the predictability, objectivity, and cost-reduction which the legislature imbedded within AS 23.30.190 by incorporating the *AMA Guides* test for impairment, and thus seems counter to legislative intent.

Finally, reading AS 23.30.190(b) to control permanent impairment evaluations under AS 23.30.041(f)(3) gives full meaning to the latter provision. If, as the Board held, the permanent impairment requirement were satisfiable through a mere showing of 'some objectively measurable physical or mental impairment,' made without reference to the *AMA Guides*, then the permanent impairment analysis under AS 23.30.041(f)(3) would be essentially identical to the physical capacities analysis under AS 23.30.041(e). The only difference between the two analyses would be that one is conducted before an employee reached medical stability and the other is conducted after medical stability occurred. We recognize a presumption that the legislature intended every word, sentence, or provision of a statute to have some purpose, force, and effect, and that no words or provisions are superfluous. *Alaska Transp. Comm'n v. AIRPAC, Inc.*, 685 P.2d 1248, 1253 (Alaska 1984). Incorporating AS 23.30.190(b) into AS 23.30.041(f)(3) satisfies this basic principle of statutory interpretation by preventing redundancy.

Following this reasoning, *Rydwell* said:

> To summarize, under the most appropriate reading of AS 23.30.041, an employee must satisfy two tests in order to be eligible for reemployment benefits. First, before the employee has reached medical stability, a physician must predict that the employee's physical capacities will not be sufficient for the physical demands of her original job. AS 23.30.041(e). This test allows an employee to start vocational rehabilitation before she reaches medical stability, and serves the

> legislature's goal of encouraging early rehabilitation intervention. Second, once the employee has reached medical stability, she must have a permanent impairment, calculated pursuant to AS 23.30.190(b)'s provisions for use of the *AMA Guides*. See AS 23.30.041(f)(3).

Rydwell concluded the claimant was not eligible for reemployment benefits because she received a zero percent PPI rating (*id.* at 531).

> **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 . . . 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 . . . .

Right to review under AS 23.30.130(a) occurs upon a party's petition when there is a change of condition, including a mistake in a factual determination. A party "may ask the board to exercise its discretion to modify the award at any time until one year" from the last compensation payment or rejection of a claim. *George Easley Co. v. Lindekugel*, 117 P.3d 734, 743 (Alaska 2005). AS 23.30.130 is applied to changes in condition affecting reemployment benefits and vocational status. *See, e.g., Griffiths v. Andy's Body & Frame, Inc.*, 165 P.3d 619 (Alaska 2007); *Imhof v. Eagle River Refuse*, AWCB Decision No. 94-0330 (December 29, 1994). This includes a change in the treating physician's opinion on which the RBA relied when making a reemployment benefits eligibility determination. *See, e.g., Griffiths; Imhof; Wickett v. Arctic Slope Consulting Group*, AWCB Decision No. 02-0057 (April 3, 2002); *Philley v. AIS, Inc*., AWCB Decision No. 03-0228 (September 19, 2003). An employee with no permanent impairment at the time of medical stability is ineligible for reemployment benefits. *Id*.

In *Allred v. Subway of Mat-Su, Inc*., AWCB Decision No. 05-0318 (December 5, 2005), the RBA relied on an employee's treating physician's PPI prediction to determine the employee was eligible for reemployment benefits. After the RBA's determination, the physician revised his opinion, stating the employee had no ratable PPI. The treating physician's opinion change was

sufficient to warrant modification of the RBA's eligibility determination under AS 23.30.130(a). *Id.* at 6.

In *Interior Towing & Salvage v. Gracik*, AWCAC Decision No. 16-0120 (September 5, 2017), the Alaska Workers' Compensation Appeals Commission (commission) addressed eligibility for reemployment benefits. Initially, Mr. Gracik was found not eligible for reemployment benefits and he appealed this determination to the board, which remanded the matter to the RBA. Inquiries were made to Mr. Gracik's treating physician who indicated there was no change in his opinion upon which the RBA designee relied to determine Mr. Gracik was not eligible for reemployment benefits. The RBA designee again found Mr. Gracik not eligible for reemployment benefits and, again, Mr. Gracik appealed based upon a discrepancy in the physician's opinions that had not been drawn to the physician's attention. Upon Mr. Gracik's second appeal he contended the RBA designee did not have an addendum opinion from the physician who performed Mr. Gracik's PPI rating. The board found the RBA designee did not abuse her discretion based upon the evidence before her but nonetheless reversed the determination Mr. Gracik was ineligible for reemployment benefits and found his eligible.

The commission stated, "Having found the RBA did not abuse her discretion, according to AS 23.30.041(d), the Board had no option but to affirm the decision or remand the matter for her to consider the new evidence." *Id.* at 8. The commission held AS 23.30.041(d), which provides,

> The board shall uphold the decision of the administrator except for abuse of discretion on the administrator's part . . . does not give the board any authority to make its own decision once it determines the RBA has not abused her discretion. The board's only recourse was to remand the decision back to the RBA to consider the new information, since the RBA was not provided with the information the Board used in reversing her decision prior to rendering her decision. The RBA was not afforded the opportunity to review all evidence and, thus, to perform her job effectively.

Id. at 9. The commission said the proper course of action was for the matter to be remanded to the RBA so the opinions of both Mr. Gracik's treating physician and the physician who performed the PPI rating could be properly considered by the RBA and, "ultimately, the decision as to which doctor's opinion is the better weighted and more considered is up to the RBA in her discretion." *Id.* at 10.

ANALYSIS

Shall the RBA designee's August 16, 2017 eligibility determination be modified and Employee's entitlement to reemployment benefits be terminated?

Employer appealed the RBA designee's August 16, 2017 eligibility determination pursuant to AS 23.30.041(d) and, additionally, seeks modification of the determination. Employer's appeal was timely filed. *Lindekugel*. When the RBA designee made her determination, there was a prediction from Dr. Kornmesser Employee would incur a PPI from her work injury when medically stable. Dr. Kornmesser's predication combined with his opinion Employee was unable to return to her job as a dental hygienist, the only job she held within ten years before her work injury, was sufficient for the RBA designee to conclude Employee was eligible for reemployment benefits. Therefore, despite Dr. Sahasrabudhe's determination Employee did not incur a work-related PPI rating, when the eligibility determination was made, it was supported by substantial evidence. *Yahara; Irvine*; AS 23.30.041(e).

When Dr. Kornmesser determined Employee was medically stable, he referred her to Dr. Taylor for a PPI rating. With respect to Employee's work injury, Dr. Taylor rated Employee with a zero percent PPI rating. Upon Dr. Taylor's rating, there was no longer either a prediction of a PPI rating or a PPI rating above zero percent. Employer's EME physician Dr. Sashadrabudhe also rated Employee with a zero percent PPI related to her work injury. Modification pursuant to AS 23.30.130 is applied to RBA decisions concerning eligibility, since there is no authority in the law for the RBA to modify its own decision in the event of a changed condition, or a factual mistake, after ten days following the RBA's determination. *Imhof.*

Employer filed its petition in this case within one year of the date it last paid Employee benefits under AS 23.30.041. Consequently, its petition was timely. *Id*. Given both physicians who have rated Employee's PPI have opined she has no ratable PPI caused by her work injury, the facts have changed since the RBA designee found Employee entitled to reemployment benefits and Employee is by law no longer entitled to these benefits. *Rydwell*; *Allred*; AS 23.30.041(f)(3).

The instant case is distinguishable from *Interior Towing & Salvage v. Gracik* because two competing opinions regarding Employee's PPI rating, or lack thereof, do not exist. Both opinions are that Employee incurred a zero percent permanent impairment related to her work injury. These opinions do not require the RBA to consider which opinion to give greater weight or to exercise discretion. Because this issue does not require the RBA designee's expertise, it need not be remanded to the RBA designee for further action. *Rydwell*; AS 23.30.001. Employer's petition will be granted and Employee's entitlement to reemployment benefits will be terminated.

Employee asserts she continues to have bilateral ulnar pain and continues to seek medical treatment for her work injury. Employee is advised of her right to seek modification of this decision and order terminating her reemployment benefits under AS 23.30.041, within one year of the date Employer last paid her benefits under AS 23.30.041, or one year from the date this decision rejected her entitlement to reemployment benefits, should she obtain a PPI rating for her October 11, 2016 work injury greater than zero percent.

CONCLUSION OF LAW

The August 16, 2017 RBA designee's eligibility determination will be modified and Employee's entitlement to reemployment benefits will be terminated.

ORDER

The August 16, 2017 RBA designee's eligibility determination is modified and Employee's entitlement to reemployment benefits is terminated.

Dated in Anchorage, Alaska on April 20, 2018.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Janel Wright, Designated Chair

/s/
Linda Murphy, Member

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.

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Final Decision and Order in the matter of DEBRA M. ZASTROW-YANAGIDA, employee / respondent; v. MIDNIGHT SUN SMILES, LLC, employer; CONTINENTAL CASUALTY COMPANY, insurer / petitioners; Case No. 201616664; 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 April 20, 2018.

/s/

Elizabeth Pleitez, WC Technician