ALASKA WORKERS' COMPENSATION BOARD

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

DANIEL L. OLSON,	)	
	)	
Employee,	)	FINAL DECISION AND ORDER
Claimant,	)	
	)	AWCB Case No. 198101490
v.	)	
	)	AWCB Decision No. 18-0045
TYEE AIRLINES, INC.,	)	
	)	Filed with AWCB Juneau, Alaska
Employer,	)	on May 15, 2018
	)	
and	)	
	)	
LLOYDS OF LONDON,	)	
	)	
Insurer,	)	
Defendants.	)	

Daniel L. Olson's (Employee) January 7, 2014 and May 13, 2016 claims were heard on April 10, 2018 in Juneau, Alaska, a hearing date selected on December 20, 2017. Attorney Robert Rehbock appeared and represented Employee, who appeared and testified. Attorney Colby Smith appeared and represented Tyee Airlines, Inc. and Lloyds of London (Employer). Monica Olson appeared and testified on behalf of Employee. The record closed at the hearing's conclusion on April 10, 2018. On May 7, 2018, the record reopened by stipulation to allow Employee to file an itemized attorney fees and costs affidavit. The record closed again after the stipulation to allow Employee to file an itemized attorney fees and costs affidavit was approved on May 7, 2018.

ISSUES

Employee contends the 1979 work injury is a substantial factor in his need for an attendant to assist him in his home with daily living activities and housekeeping duties, and in his need for handicap accessible housing. Employee contends the last injurious exposure rule does not apply because Employee's subsequent 1994 injury occurred while employed with a different employer outside of Alaska. Employee contends the 1979 injury increased Employee's susceptibility to the 1994 injury, making the 1994 injury compensable. Employee seeks an order granting his claim for an attendant to assist him with daily living activities and housekeeping duties up to 21 hours per week, and he seeks handicap accessible housing.

Employer contends the 1979 work injury is not a substantial factor in Employee's need for an attendant to assist him in his home with daily living activities, and his need for handicap accessible housing. Employer contends Employee's need for assistance with daily living activities and housekeeping duties and handicap accessible housing was caused by the 1994 injury. Alternatively, Employer contends Employee does not require an attendant to assist him in his home with daily living activities and housekeeping duties and handicap accessible housing. Employer seeks an order denying Employee's claim.

1) **Is Employee entitled to medical benefits?**

Employee contends he is entitled to a penalty and interest on the value of the attendant Employer failed to provide from April 28, 2016 to the present because Employer failed to file a controversion in good faith. Employee contends Employer's controversion was not filed in good faith because the basis of the controversion was the employer medical evaluation (EME) report and Employer failed to provide the EME physician with the complete medical record.

Employer contends it filed the controversion in good faith. Employer contends the EME physician did not have all of the medical records because Employer did not obtain a number of them until after the evaluation. Therefore, it contends Employee is not entitled to a penalty or interest on the value of an attendant.

2) **Is Employee entitled to a penalty and interest?**

Employee contends he is entitled to attorney fees and costs associated with his claim.

Employer contends Employee is not entitled to the benefits claimed, and is therefore not entitled to attorney fees and costs.

3) Is Employee entitled to attorney's fees and costs?

FINDINGS OF FACT

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

1) On January 23, 1979, Employee sustained multiple severe injures while working for Employer as a pilot when the airplane Employee was flying crashed shortly after takeoff. (Report of Occupational Injury or Illness, January 25, 1979). Employee was admitted to Ketchikan General Hospital in critical condition. (J.A. Shields M.D., Chart Notes, January 25, 1979).

2) On February 28, 1979, Employee was discharged from Ketchikan General Hospital and transferred to Swedish Hospital. Dr. Shields diagnosed: (1) stable, closed L5 fracture; (2) stable, closed sacrum fracture; (3) L3, L4, and L5 processes fractures; (4) left patella open fracture; (5) closed severely comminuted and displaced left foot fractures of the bases of the second, third, fourth and fifth metatarsals; (6) right lateral malleolus closed fracture; (7) class II right foot sprain; (8) closed, non-displaced right calcaneus fracture; (9) right orbital and ocular contusion with retinal edema; (10) blowout fracture with multiple comminuted fractures of the zygoma and inferior orbital rim; and (11) right ear, neck and shoulder full thickness burns. Employee underwent debridement, open reduction, and internal fixation of the left patella; open reduction and internal fixation of the left forefoot; and wound debridement, split-thickness skin grafting, open reduction, and internal fixation of the right zygoma. Dr. Shields stated further progress of Employee's left foot was "hindered by continued pain of a burning nature in the left forefoot [which] seems to be related to some peripheral nerve damage." (Shields, Discharge Summary, February 28, 1979).

3) On April 8, 1981, Saint Elmo Newton III, M.D., evaluated Employee's left extremity. Employee walked with two crutches and a posterior, drop-foot molded plastic brace. Employee reported his left foot badly inverted when walking and he was unable to walk on the sole of his left foot. Upon examination, Dr. Newton noted Employee had a severe left foot drop,

diminished or absent sensation distal to the mid-calf, no left ankle reflex, inverted and in-varus left foot and loss of sensation in his left foot. He opined Employee needed a left below knee amputation. He predicted an amputation would eliminate Employee's neurogenic pain and would rehabilitate him the fastest. In the alternative, he recommended a triple arthrodesis. However, Dr. Newton noted non-union and continuation of the neurogenic pain were risks associated with a triple arthrodesis. As a last resort, Dr. Newton recommended a pantalar fusion of Employee's left ankle. He noted the pantalar fusion would allow Employee to go without a brace but Employee would still experience neurogenic foot pain. (Newton Letter, April 8, 1981).

4) On September 10, 1981, Joseph Clifford, M.D., performed a left pantalar arthrodesis for post-traumatic left foot equine varus deformity with foot drop. (Clifford, Operative Report, September 10, 1981).

5) On July 25, 1983, Employee visited Pierce Scranton, M.D., for an orthopedic consultation. Employee reported substantial lower back pain. Dr. Scranton opined Employee was permanently and totally disabled. He stated:

> [Employee] has a substantial amount of patellar crepitus and pain with early degenerative changes and it may be possible that at some time in the future he would require a patellectomy, both due to the patella injury and also again, due to the fact that his leg is short and stiff, and his knee has to take up a substantial amount of the stress associated with his injury. He will continue to have intermittent crepitus, effusions and probably at some time in the future will require a patellectomy. With respect to his foot, his pantalar athrodeses (ankle fusion, triple arthrodesis) has been successful. However he has an insensitive foot with both sensory anesthesia dorsally and plantarly as well. This will pose a substantial disability on [Employee], and will directly contribute to the aggravation of the patellar and back problems he mentioned. . . . He will continue to have chronic low back pain, patellar problems and foot pain, such that he may require either back surgery, a patellectomy, or an amputation, should the foot problems get worse. (Scanton letter, July 25, 1983).

6) On June 11, 1984, Dr. Scranton testified at deposition that Employee would benefit from a left below knee amputation as it would improve his left foot pain, eliminate some of the stress and strain on Employee's lower back, and reduce the strain on his left knee. (Scranton deposition, June 11, 1984, at 37-39).

7) On February 11, 1985, the parties filed a compromise and release settlement agreement (C & R) which settled all indemnity issues but left medical benefits open. (C&R, February 11, 1985). The C&R stated Employee is permanently and totally disabled and:

> [Employee] waives his right to assert any claim for vocational rehabilitation at the carrier's expense or to assert any other claim for compensation benefits other than those listed in this paragraph or any other related benefits for housekeeping expenses or other non-medically related expenses. Future medical benefits (including prosthetic devices and orthotic shoes) for the physical or psychological injures received by [Employee] which arise from or are necessitated by the January 23, 1979 incident will be paid by the compensation carrier for Tyee Airlines, as well as transportation expenses necessarily incurred to receive medical treatment. (*Id*. at 2).

8) On August 9, 1989, Employee saw Ivar W. Kirkeland Jr. M.D., for pain in his left foot and back. Dr. Kirkeland noted Employee's left leg is 3/4 of an inch shorter than his other leg; and he has right foot drop and occasionally uses crutches. (Kirkeland, Chart Notes, August 9, 1989).

9) On January 24, 1992, Employee had a hemangioma over the dorsal metatarsophalangeal joint of his left 4th toe. The area was purple and somewhat enlarged. Employee was referred for an evaluation. (Unknown Physician, Chart Note, January 24, 1992).

10) On January 28, 1992, Employee reported lateral epicondylar pain and resisted dorsiflexion. He walked with elbow crutches. Employee reported stiffness and multiple limitations in his left foot and ankle. He had two big painful blotches on the left side of his foot. (Unknown Physician, Chart Note, January 28, 1992).

11) On March 12, 1993, Employee saw Steven MacFarlane M.D., for ecchymosis over the top of Employee's left toe and edema over his dorsal forefoot. Dr. MacFarlane observed Employee had patchy sensation in his left foot with a lack of awareness of light touch and a pin which he attributed to nerve damage. Employee worked as a food server requiring a lot of standing. He did not remember any specific injury to his foot. Dr. MacFarlane diagnosed sprain or injury from local trauma. (MacFarlane, Chart Note, March 12, 1993).

12) On January 28, 1994, Jordan Miller, M.D., D.D.S., wrote a letter stating:

> [Employee] has two enlarging masses on his left foot. These possibly are ganglia and tend to rub against his shoe and make it difficult from him to ambulate. I believe that these lesions are related to his original [1979 injury], and I think that excisional biopsies are indicated." (Miller letter, January 28, 1994).

13) On February 9, 1994, Dr. Miller examined Employee's left foot for a recurring nodular mass on the medial aspect of Employee's dorsal foot and overlaying metatarsal joint to the third left toe. He observed three lesions and diagnosed a left foot ganglion. (Miller, Chart Note, February 9, 1994).

14) On February 11, 1994, Dr. Miller performed an excision of three lesions on Employee's left foot, located on the medial dorsal, middle-dorsal and the metatarsal phalangeal joint of the third toe. (Miller, Operative Report, February 11, 1994). A pathology report of the lesions revealed a hemorrhage associated with surrounding cellular fibrosis. (Stevens Memorial Hospital, Pathology Report, February 11, 1994).

15) On April 19, 1994, Employee visited Stanley G. Newell, D.P.M., with a primary complaint of left foot pain. Employee reported he has had left foot pain for a long time but over the last one to two months, the pain has gotten progressively worse. Dr. Newell diagnosed left foot plantar exostosis and recommended a new orthotic. (Dr. Newell, letter to Dr. Miller, April 19, 1994).

16) On July 25, 1994, Employee went to the emergency room for severe left foot pain after he twisted his left foot under a sprinkler while working for Shoreline Public School in Washington State. Employee's left foot was swollen and unable to bear weight. (Unknown Author, Occupational Injury Clinical Note, July 25, 1994).

17) On July 26, 1994, David Martin, M.D., diagnosed Employee with a left foot contusion complicated by a prior fusion. (Martin, Chart Note, July 26, 1994).

18) On August 17, 1994, Employee visited the emergency room for acute left foot pain. Employee cut his foot about a week prior on a sprinkler and has persistent pain. He was provided Demerol and Vistaril and offered two Tylox. (Stevens Memorial Hospital, Chart Note, August 17, 1994).

19) On August 18, 1994, Employee visited Thomas Wilder, M.D., orthopedic surgeon. Dr. Wilder diagnosed sprain of the left foot with possible occult fracture at the left tarsometatarsal joint or medial cuneiform. (Wilder, Medical Report, August 18, 1994).

20) On September 9, 1994, Dr. Wilder wrote a letter to Washington State Comprehensive Risk Management, Inc. He noted Employee has tenderness in the left foot medial cuneiform first metatarsal tarsal joint. He opined the July 25, 1994 injury aggravated Employee's preexisting left foot problems and Employee's permanent impairment was preexisting. Dr. Wilder felt there were "some findings of causalgia or reflex sympathetic dystrophy with tenderness exceeding the possible injury." (Wilder letter, September 9, 1994).

21) On November 29, 1994, John A. Maxwell, M.D., a neurosurgeon and Bradley I. Billington, M.D., an orthopedic surgeon performed a medical evaluation for Employee's July 25, 1994

injury. They diagnosed a left foot contusion related to the 1994 injury and status post preexisting pantalar fusion of the left foot and found the 1994 injury medically stable. (Maxwell and Billington, Medical Evaluation Report, November 29, 1994).

22) On March 14, 1995, Employee underwent left foot tomograms. These revealed narrowing of the first metatarsal and first cuneiform join, and some narrowing of the second metatarsal cuneiform joint. (Arthur O. Wirtala, M.D., Tomography Report, March 14, 1995).

23) On July 3, 1995, Richard Atwater, M.D., evaluated a cyst on the medial aspect of Employee's left foot just proximal to the metatarsophalangeal joint. Dr. Atwater opined the cyst was not related to Employee's 1994 injury but was related to his 1979 injury. He recommended surgery to remove it. (Atwater, Medical Report, July 3, 1995).

24) On August 3, 1995, Dr. Atwater surgically removed a cyst from Employee's left foot. (Atwater, Operative Report, August 3, 1995).

25) On August 30, 1995, Richard McCollough M.D., orthopedic surgeon, and Jacquelyn Weiss, M.D., Ph.D., neurologist, performed a medical evaluation for Employee's 1994 injury. They opined Employee sustained a left forefoot contusion from the 1994 injury, which was fixed and stable and for which no further treatment was necessary. Upon examination of Employee and the medical record, they concluded there was no evidence of reflex sympathetic dystrophy. Drs. McCollough and Weiss stated any work limitations were due to the 1979 injury and there was no permanent partial disability association with the 1994 injury. (McCollough and Weiss, Medical Evaluation Report, August 30, 1995).

26) On February 5, 1996, Kevin Au, M.D., performed an ultrasound study of Employee's left foot and confirmed a varix. Dr. Au injected the area with Sotradecol solution and gave Employee an instruction sheet for sclerotherapy. (Au, Medical Report, February 5, 1996).

27) On March 5, 1996, Employee underwent an x-ray of his right shoulder which revealed arthritic changes of the acromioclavicular joint. (X-Ray Report, March 5, 1996).

28) On March 12, 1996, Dr. Au noted Employee's left foot varix was treated with sclerotherapy. However, the sclerotherapy thrombosed the varix and caused increased symptoms which had not improved over the last three weeks. After discussion, Dr. Au decided to excise the thrombosed varix. (Au, Medical Report, March 12, 1996).

29) On March 18, 1996, Dr. Atwater sent a letter to the Washington Comprehensive Risk Management Inc. stating Employee continued to have symptoms attributable to the 1979 work

injury. He opined the 1994 injury did not "significantly contribute in any way medically demonstrable or objective way to his current condition." Dr. Atwater noted Employee has a small venous varicosity removed from the anteromedial aspect of his left foot and is being scheduled for surgery for removal of a similar varicosity further back on his foot, both of which relate back to the 1979 work injury. He said Employee's need for psychological care and physical well-being was attributable to Employee's 1979 work injury and not to the 1994 injury. (Dr. Atwater letter, March 18, 1996).

30) On April 18, 1996, James Green, M.D., an orthopedic surgeon, and William Stump, M.D., neurologist, performed a medical evaluation for Employee's 1994 injury. They noted Employee used two forearm crutches to ambulate with minimal weight bearing on his left leg. Drs. Green and Stump diagnosed Employee with a left foot contusion secondary to the 1994 injury. They opined the only curative treatment for Employee's current foot condition would be a left below-knee amputation directed towards the residuals of the 1979 injury. (Green and Stump, Medical Evaluation Report, April 18, 1996).

31) On May 23, 1996, Stuart DuPen., M.D., pain management specialist, became Employee's primary treating physician. Dr. DuPen opined Employee was not capable of working because of the 1994 injury. Employee reported the most severe pain is in his left ankle and foot. Dr. DuPen opined Employee suffers from complex regional pain syndrome secondary to his airplane accident. (DuPen, Chart Note, May 23, 1996).

32) On July 9, 1996, Dr. DuPen authored a letter addressed to the Washington state claims supervisor. He diagnosed Employee with reflex sympathetic dystrophy aggravated by the fall in the 1994 injury. Dr. DuPen opined, "[Employee's] prior accident did in fact compound the problem and most probably he would not have developed those symptoms by falling over a sprinkler only. Therefore, the previous injury to the foot has resulted in a compounding injury related to both incidences." (DuPen letter, July 9, 1996).

33) On July 31, 1996, Dr. DuPen opined Employee was permanently and totally disabled from both the 1979 injury and complex regional pain syndrome stimulated by the 1994 injury. (Du Pen, Medical Report, July 31, 1996).

34) On October 2, 1996, the Department of Labor and Industries for the State of Washington found Employee totally and permanently disabled and entitled to pension benefits effective October 25, 1996. The order and notice stated "a review of the evidence discloses that no

permanent disability would have existed as a result of the [1994] injury covered by this claim had there been no preexisting disability" and ordered the entire pension reserve to be charged against the Second Injury Account. (State of Washington Department of Labor and Industries, Order and Notice, October 2, 1996).

35) On December 23, 1997, Dr. DuPen noted Employee first injured his left foot in the 1979 injury and then tripped over a sprinkler and exacerbated his pain. He stated "[Employee] has a primary pain, secondary to the crash injury in the airplane accident, and he continues to have problems with the foot." Dr. Du Pen diagnosed Employee with chronic somatic pain secondary to multiple surgeries and complex regional pain syndrome. (Du Pen, Medical Report, December 23, 1997).

36) On October 18, 2004, Employee visited the emergency room complaining of left calf discomfort after recently flying back to Washington from Sweden. An ultrasound showed an isolated left mid-calf and knee thrombosis involving the soleus sinus vein. (James K. Mercer, M.D., Emergency Department Record, October 18, 2004).

37) On May 19, 2008, Agnea Anrog, social worker in Sweden, assessed Employee for home help services. She noted in fall of 1996, Employee and his family moved to Gotland, Sweden. Employee's left leg was amputated in September 2007 due to outgrowth of the bone, and he was waiting for his leg to heal to fit a prosthesis. Employee lived in a private house adopted to fit his needs. Employee had problems with his balance, an impaired ability to move, and impaired visual abilities and he could not bend over. He needed assistance with all transfers between bed and chair and to the toilet, dressing his lower body, and bathing and showering. Employee was unable to prepare meals but could feed himself but could not wash clothes. Anrog granted Employee daily home assistance with personal hygiene, using the toilet, dressing and undressing, bath, showers, meals, transportation, weekly assistance with planning and implementation of purchases, weekly assistance with laundry and cleaning assistance every third week. (Agnea Anrog, Report, May 19, 2008).

38) On September 17, 2008, Bo Wahlstedt, M.D., a physician at Visby Hospital in Sweden, authored a document stating:

> [Employee] had several injuries after a plane-crash the 23rd of January 1979 in Alaska. He has since then suffered from great chronic pain above all in his left foot. The situation at the end became so intolerable that an amputation of the left lower limb was the only solution. (Wahlstedt, Document, September 17, 2008).

39) On October 15, 2008, Employee saw Keith Luther, M.D., to establish care after relocation from Sweden. Employee ambulated with crutches with wrist support and took medications for chronic pain. He noted Employee underwent a left leg below knee amputation a year prior because of chronic pain and "what may have been hypertrophic ossification." (Luther, Medical Report, October 15, 2008).

40) On February 26, 2009, Employee visited Jon Olson, M.D. Dr. Olson noted Employee had a below knee amputation of the left leg in late 2007 with revision in 2008. Employee relocated to the United States in September after living in Sweden for about 10 years. (February 26, 2009, Chart Note, February 26, 2009).

41) On October 21, 2009, the parties attended a prehearing conference where the board designee noted research has indicated that approximately seven percent of the original underwriters of the original workers' compensation insurance policy are now insolvent or no longer in business. (Prehearing Conference Summary, October 21, 2009).

42) On January 6, 2010, Employee saw Dr. Olson for pain. Employee reported he is most bothered with pain at the base of his spine but he also experiences pain in his left hip and left stump. Employee developed an ulcerated stump and a new intermediary prosthesis was being made. Employee described a period of time in the late 1980s and early 1990s when he could function without pain medication for several years but after he was reinjured, he has used pain medication consistently. (Olson, Chart Note, January 6, 2010).

43) On September 17, 2010, the parties filed a stipulation agreeing that if the solvent insurers are unable to obtain discounts of at least 7.49 percent from any provider, the solvent insurers shall not be required to pay the insolvent insurer's share of Employee's medical costs. Employee reserved his right to file a petition addressing that issue. (Stipulation, September 17, 2010).

44) On October 10, 2010, Employee visited Kirk Douglass, LPO, for a new prosthesis. Employee walked with forearm crutches to take a majority of the weight off his left lower leg prosthesis. (Douglass, Chart Notes, October 10, 2010).

45) On December 29, 2010, Employee visited with Dr. Olson. Employee reported if he walks around with no crutches, his back pain flares and if he stands without his crutches, he gets "a rapid increase" in back pain making it "absolutely necessary" for him to sit down. Employee's

most dominant pain generator remained his lumbar spine. (Olson, Chart Note, December 29, 2010).

46) On September 22, 2011, Employee was admitted to Swedish Edmonds Hospital for rapidly progressing acute left extremity cellulitis responsive to intravenous inpatient therapy. He was discharged on September 24, 2011. (John Bruce Williams, M.D., Discharge Summary, September 22, 2011).

47) On November 29, 2011, Joanna Katz, an ARNP for Dr. Olson prescribed Employee a new left prosthesis due to changes in the shape of his leg after a recent infection. Employee reported his back pain was getting worse, he experiences pain when he stands without his crutches and walking was getting to be a problem. (Katz, Chart Note, November 29, 2011).

48) On November 8, 2013, Mitchell Cahn, M.D. authored a letter to the claims administrator stating Employee needed a new prosthesis because his current prosthesis was causing ulcers on his left, below-knee amputated stump. He opined the left, below-knee amputation and, ulcers caused by the prosthesis are "in direct correlation to the January 23, 1979 plane crash. . . ." (Cahn, Letter, November 8, 2013).

49) On December 2, 2013, Employee expressed concerns about his balance after falling and tearing his right thigh muscle. Dr. Cahn opined Employee's balance issues were partially related to his not having a new leg prosthesis. (Cahn, Chart Notes, December 2, 2013).

50) On January 3, 2014, Employee told Howard Quint, M.D., his wife told him that he was talking in his sleep. (Quint, Medical Report, January 3, 2014).

51) On January 7, 2014, Employee claimed medical benefits, interest and attorney fees and costs for his January 1979 work injury. Employee sought payment of medical costs for a new prosthesis and water leg. (Claim, January 7, 2014).

52) On February 4, 2014, Employer admitted Employee's January 1979 work injury and preauthorized the cost of the prosthesis and water leg. (Answer, February 4, 2014).

53) On March 19, 2014, Employee visited Dr. Olson for follow on his pain management. Employee reported continued pain if he stands without his crutches, especially if he stands without moving. Employee mentioned in several visits if he stands for a short period of time, "he will begin to feel so fragile that if he were to stand up any longer his spine would explode into several pieces." (Olson, Medical Report, March 19, 2014).

54) On June 10, 2014, Employee stated his left leg stump pain was much less with his new prosthesis but he occasionally has a few seconds of "screaming pain" in his missing foot which rapidly fades. He reported occasionally waking from sleep screaming. (Olson, Medical Report, June 10, 2014).

55) On August 7, 2015, Employee visited Dr. Olson and reported frequent falls and episodes of lightheadedness at home. Employee described going on a whale watching trip and being unable to get up unassisted while sitting on a cushion on the curb. His daughter tried to pull him up but he was too weak to stand and collapsed. Finally a "muscular young man" raised Employee to his feet. Dr. Olson stated the frequent falls and lightheadedness "sound like orthostatic hypotension." (Olson, Medical Report, August 7, 2015).

56) On August 21, 2015, Employee saw ARNP Katz and reported his wife and daughter are concerned about him screaming in his sleep and that he is so loud his wife must sleep in another room. (Katz, Chart Notes August 21, 2015).

57) On March 14, 2016, Martin Levine, M.D. authored a letter to Employee's attorney and Employer stating:

> I am [Employee]'s physician and have been working with him since January 2016.
>
> [Employee] has several chronic health problems that stem from an airplane crash in which he was involved at the age of 27. He suffered traumatic brain injury, had multiple surgeries and now has chronic pain. As a consequence of this accident and the complex recovery process, he has suffered from generalized anxiety and major recurrent depression. He lives with his wife and daughter at his present age of 65 he basically requires routine caregiving and supervision. He will be entering into a four-day stay at a local facility to give his family members a respite from their caregiving responsibilities.
>
> His family may need such services again in the future. His medical chronic needs seem connected to his airplane accident from many years ago. (Levine, Letter, March 14, 2018).

58) On March 18, 2016, Employee informed Brendan O'Donnell, M.D., he recently went to a nursing home for four to five days at the request of his wife and daughter. (O'Donnell, Chart Note, March 18, 2016).

59) On April 28, 2016, Dr. Levine again opined Employee required routine caregiving and supervision. He stated Employee required the following care for his "behavior/mental health":

(1) psychiatry services for anxiety (including post-traumatic stress disorder) and depression; (2) pain management services; (3) long term residential living in a community that supports his needs (dementia or adult family home); (4) respite care as needed until Employee was living in a residential community; and (5) private home care. (Levine letter, April 28, 2016).

60) On May 11, 2016, Debbie Yoro, LICSW a social worker, stated Employee would be moving into his own apartment in the next one to two months and would require routine caregiving and supervision from a private home care agency as a consequence of the 1979 injury. Ms. Yoro opined Employee required assistance with the following tasks:

- Putting his pills in the boxes on a weekly basis
- Checking to ensure Employee's prescriptions are up to date
- Housework/Cleaning
- Shopping for groceries
- Meal preparation
- Showers twice per week
- Laundry
- Case management for medical issues and correspondence
- Transportation to all appointments
- Check with Employee on a daily basis by phone or in person

She estimated Employee would need 20 hours of assistance per week at a cost of approximately $26-$30 per hour. (Yoro, Letter, May 11, 2016).

61) On May 13, 2016, Employee claimed medical costs, penalty, interest, and attorney's fees and costs for his January 1979 work injury. He sought unpaid medical costs including reimbursement for eyeglasses, medication and unpaid medical costs secondary to an infection and authorization for assisted living care. (Workers' Compensation Claim, May 13, 2016).

62) On June 15, 2016, Dr. Levine responded to a letter from Employer's attorney with questions about Employee's needs. Among other needs, Dr. Levine stated hiring a home-care aid assistance would be reasonable should Employee remain living with his wife and daughter. He felt four to twenty hours a week might be reasonable. His recommendation for long-term residential care and respite care was related to dementia. (Levine letter, June 15, 2016).

63) On July 20, 2016 Dr. Levine addressed a letter to Employee's attorney which stated:

> I am [Employee]'s physician and have been caring for him since January 2016. [Employee] long ago has his lower leg amputated and he gets around using crutches and a prosthetic leg. He is currently living in an apartment that is not accessible for someone with his mobility problems.

> He and his family have found an alternative apartment in Edmonds that is disability accessible. I think it is reasonable to support [Employee] in seeking out accessible housing and to have his pre-hearing and hearing sooner so he [sic] be able to move into a more suitable housing situation. (Levine, Letter, July 20, 2016).

64) On September 16, 2016, Employer sent a letter to Dennis Chong, M.D., regarding a scheduled EME of Employee. The letter stated:

> Under separate cover, you have been provided with medical records that we have regarding this claim. These records are not complete. As more fully set forth below, [Employee] resided for a significant period of time after his accident in Sweden, where he obtained medical treatment. Attempts to acquire these records have been unsuccessful. I believe you have sufficient recent records to address the single issue presented in this claim. . . . [T]he central question in this claim is whether [Employee]'s recommendation from his treating physicians that he currently requires long term residential living in a facility that supports his needs is related to his 1979 work related accident, or whether they relate to the natural aging process." (Employer's Letter to Dr. Chong, September 16, 2016).

65) On September 29, 2016, Dr. Chong, a physical medicine and rehabilitation specialist, evaluated Employee for an EME. He diagnosed Employee with the following conditions as a result of the 1979 injury: (1) multilevel lumbar spine fractures, non-displaced and non-surgically managed with chronic low back pain "as sequelae"; (2) left patellar comminuted fractures; (3) left foot fracture, culminating in pan arthrodesis at the left ankle and foot; and (4) right ankle fracture, non-surgically managed, but with residual right foot drop. Dr. Chong diagnosed Employee with the following conditions "unrelated to the industrial event of 1979":

> New industrial event of left foot cut on sprinkler, July 25, 1994, 15 years subsequent to the industrial event in Alaska, with then development of chronic left foot pain, progressing to left leg pain, with diagnosis of complex regional pain syndrome in 1997, and commencement of chronic opioid therapy. Further complication of left calf deep venous thrombosis in 2004 with culmination of left below-knee amputation, September 2007, for notation of unremitting pain
>
> Left below-knee amputation with chronic right phantom pain, as sequelae, performed in Sweden in 2007, with surgical approach that is absolute, resulting in permanent difficulty in proper fit of below-knee amputation prosthesis, complications of repeated skin ulceration in bony prominences of tibial turbercle, distal tibial bone stump, and fibular head, and multiple revision of new below-knee amputation prosthesis.

> Chronic dependence on ambulatory device of forearm crutches, or axillary crutches, with resultant likely ulnar neuropathy at the wrist, from long-term weight-bearing on bilateral hands. Additional sequelae of progressive stiffness of bilateral hands.

When asked to provide his opinion on the future medical treatment Employee may require, including "psychiatric issues if necessary, pain management issues if necessary, long term residential care, and private home duty care," Dr. Chong stated:

> As it relates to the industrial injury of 1979, [Employee] will require chronic pain management for his low back. The remaining treatment that he requires, which would include optimal physiatric management of his poor result left below-knee amputation, proper psychiatric diagnosis and management, addressing the constellation of issues that are the risk factors for cognitive decline, is related to the cascading series of events subsequent to left foot injury in 1994. (Chong, EME Report, September 29, 2016).

66) Dr. Chong's chart review in the EME report does not contain Dr. Scranton's July 25, 1983 letter and June 11, 1984 deposition discussing and recommending a left foot amputation. (*Id*.; experience, judgment, observations).

67) On October 25, 2016, Employer denied that Employee was entitled to any assisted living care relying on Dr. Chong's EME report. (Answer, October 25, 2016).

68) On November 4, 2016, Employer denied long-term residential care and private home duty care based on Dr. Chong's EME report. (Controversion Notice, November 4, 2016).

69) On August 23, 2017, Marvin B. Zwerin, D.O., physical and rehabilitation medicine specialist, evaluated Employee for a Second Independent Medical Evaluation (SIME). Dr. Zwerin opined the 1979 injury was the only factor which brought about the need for Employee's left below knee amputation and the 1979 injury resulted in a greater susceptibility to the 1994 injury due to the multiple fractures, screws, pins and resultant accelerated degenerative arthritis along with the compromise of the peripheral vascular system below the left knee. He stated "[a]bsent the [1979] crash, [Employee] would not have burns, a fractured orbit, multiple spinal injuries, an amputation of the [lower left extremity] below the knee, [and] the need to have assistance with many [activities of daily living] . . ." In response to questions about Employee's current need for medical benefits, Dr. Zwerin said:

> Q: Do the injuries and the consequences of prior treatment to eye, face, back and leg, and head cumulatively leave [Employee] in need of assistance in activities of

daily life? If so, what assistance is needed to assure the greatest reasonable degree of independent living[?]

A: [Employee] tells me that he can't do most household chores and that is certainly consistent with a need to ambulate with two Lofstrand crutches. His wife does most everything around the house. He can drive somewhat with supervision. He is impaired enough to require supervisory assistance in bathing and dressing. He can feed himself. He bathes himself with his wife making sure he doesn't fall getting in and out of the tub/shower. He is living independently at home with his wife and although he has problems, he does not require a visiting home nurse or anything like that, and certainly not for the foreseeable future.

Q: Assuming family is unavailable or cannot fill these needs, what are [Employee's] care needs for which the [1979] injury remains a substantial [factor], including assistive devices and needs for assistance with daily living including personal attendants, assisted living or residential care?

A: This is a difficult question in a man now in his 60s and deteriorating from natural aging. With a loss of [cervical range of motion] and [left shoulder range of motion], [a left leg below knee prosthetic], and need for two Lofstrand crutches to ambulate (secondary overloading of the right shoulder and elbow causing increasing pain and dysfunction in both), inability to perform any meaningful household chores and difficulty with safely getting into and egressing from a shower, if [Employee's] wife were unavailable, he would require a [visiting heath nurse] or attendant to assist with:

(a) grocery shopping;
(b) meal [preparation];
(c) [transportation] to appointments;
(d) cleaning house and clothes;
(e) bathing and/or showering;
(f) he requires two Lofstrand crutches which fit to get around;
(g) he will sooner rather than later be unable to use them due to rapid deterioration of the right shoulder/rotator cuff from overloading and he will have to resort to a motorized scooter and/or power wheelchair to get around. He will be unable to propel a manual wheelchair given his shoulder and elbow pain related to overuse;
(h) he will need periodic replacement of his prosthesis. . . .

Q: Please provide your opinion on future treatment that [Employee] may require. Please address . . . long term residential care if necessary, and private home duty care, if necessary.

A: Unless Mrs. Olson is completely unable to assist [Employee] in the future, long-term residential care seems a bit farfetched. [A visiting health nurse] or aids coming daily for [two to three hours] is likely to be appropriate for another [five to ten years]. Beyond that it's all a crapshoot/conjecture with aging becoming

> more and more of a factor. Obviously if Mrs. Olson can't assist, [Employee] will need outside help. . . .

When asked whether Employee's aging was a substantial factor in his need for medical care, Dr. Zwerin said:

> [Employee's] age is an inescapable contributor and will gradually reduce his ability to use his arms and shoulders for ambulating with Lofstrand crutches. But the need for those crutches and eventually for a power scooter or wheelchair is the long-term result of his 1979 injuries. Age will also diminish his ability to employ a swing-through gait pattern which will diminish his ability to get around [without] a wheelchair. In any case, at this point, age is not a substantial factor. It will be in 7-8 years however.

Dr. Zwerin stated it is impossible to completely separate the effect of the 1979 injury from aging. He further stated:

> If forced to break it down, [Dr. Zwerin] would say that aside from any progressive cognitive deterioration, all of [Employee's] ongoing treatment needs will be on the basis of the [1979 injury] and its long-term aftereffects. Aging is not a significant component of his need for care at home or eventually with an aide/[visiting home nurse] and/or the deterioration of his spine and shoulders leading to a wheelchair or eventually being so profoundly debilitated by the end stage effects of the spine and joint deterioration from his [1979] injuries that he becomes a nursing home patient.

After reviewing Dr. Levine's April 28, 2016 letter, Dr. Zwerin stated, "I am truly at a loss to see how all of the services are necessary now or earlier than I have stated in my prior comments." He opined Employee does not presently require long-term residential living or private-duty home care but that Employee's wife may benefit from respite care and "that is a different issue." He opined, "getting [Employee's wife] some relief from 24/7 assistance of [Employee]'s needs is a reasonable thing, once a week for four hours." He opined Employee does not meet the definition of dementia. (Zwerin, SIME, August 23, 2017).

70) On December 20, 2017, the parties agreed to schedule an oral hearing on April 10, 2018 in Juneau, Alaska to hear the following issues: medical costs, penalty, interest, and attorney fees and costs. (Prehearing Conference Summary, December 20, 2017).

71) On January 15, 2018, Dr. Olson said he is a physician specializing in pain management. (Olson Deposition, January 15, 2018, at 4-5). Dr. Olson attributed Employee's difficulties with falling to Employee's 1979 injuries. (*Id.* at 10-11). Dr. Olson began treating Employee in 2009

and he never received Employee's past medical records, including records from Sweden. (*Id*. at 12-13). He was not aware Employee injured his left foot in 1994. (*Id*. at 12). Dr. Olson did not obtain or review Dr. Chong's EME report or Dr. Zwerin's SIME report. (*Id*. at 13-14). Employee informed him he depends on his wife to monitor his medications and set them out for him; she cooks for Employee and keeps the house tidy; and she helps Employee get up when he falls. (*Id*. at 10). Employee talked about difficulties stepping up a curb and falling to the ground and needing help to get up. (*Id*.) Employee frequently talked to Dr. Olson about how difficult it is to get around with his crutches and his prosthesis and his back and shoulder pain. (*Id*. at 21). Dr. Olson opined Employee probably needs additional help at home right now but he does not know what he specifically needs. (*Id*. at 21).

72) On January 16, 2018, Employee said he has been married to Monica Olson for 30 years (*Id*. at 10). He currently lives with his wife and 29 year old daughter in a three bedroom house. Employee's family bought his current house because their last house was rather large and had a lot of stairs that were dangerous for him to negotiate. (*Id*. at 12). They moved into an apartment for a year and then moved into their current house. (*Id*.) Their current house is all on one floor but has a step going down to the family room which is troublesome for him to navigate. (*Id*.) It is easy for Employee to step off and fall, which he has done. (*Id*.) Sometimes Employee can get up when falls but sometimes he cannot. (*Id*. at 13). Employee and his wife lived in different apartments about a year ago in hope of demonstrating he could not do all of the housekeeping and personal activities by himself. (*Id*. at 29). Employee has problems with screaming while sleeping, he is loud and it goes on for several hours. (*Id*. at 30). Employee believes his wife needs assistance with caring for him with cooking, cleaning, shopping, putting groceries away, laundry and running errands. (*Id*. at 37). Employee needs assistance with dressing, showering, food preparation, cleaning the house, and laundry. (*Id*. at 39). Employee needs some kind of larger shower stall he could walk into with a chair or bench and shower handrails. (*Id*. at 40).

73) On January 16, 2018, Monica Olson said she takes heart medication, has a defibrillator and pacemaker, and has only ten percent of her heart capacity. (Monica Olson Deposition, January 16, 2018, at 6). Employee sometimes interrupts her sleep because he screams in his sleep. (*Id*. at 10). She helps Employee get into the shower and leaves the bathroom door open and she stays around. (*Id*. at 15). Employee uses his wheelchair on bad days but he tries to use his crutches or his walker. (*Id*. at 15). She would like help with meal preparation, transporting Employee to

appointments, house cleaning, laundry, and bathing or showering and respite care for her to be able to get some time away. (*Id*. at 25). When Employee goes to appointments or a hospital he often uses the wheelchair because it is hard for him to walk on crutches. (*Id*. at 28).

74) On March 7, 2018, at a prehearing conference, the parties agreed the medical issue set for hearing was the compensability of home care assistance and handicap accommodations. (Prehearing Conference Summary, March 7, 2018).

75) On March 19, 2018, at a prehearing conference, the parties confirmed the medical issue set for hearing was the compensability of home care assistance and handicap accommodations. (Prehearing Conference Summary, March 19, 2018).

76) On March 19, 2018, Employee filed pictures of his current house, including his living room, bathroom, kitchen and front and back entries. (Evidence, March 19, 2018).

77) On April 3, 2018, Employee contended he is entitled to penalty and interest because Employer delayed paying for necessary attendance to assist with daily living activities and housekeeping duties from April 28, 2016, the date of Dr. Levine's letter recommending assistance. Employee contends the penalty should be 20 percent of the cost of the daily living assistance Employee should have received from April 28, 2016, to the present. He calculated the penalty based upon 20 hours per week at $32 per hour. (Employee's Hearing Brief, April 3, 2018).

78) On April 5, 2018, Employee filed an affidavit of attorney fees and costs. He requested $53,910.80 in total for fees and costs as follows:

Robert Rehbock	$36,495.00
Attorney #2	$187.50
Paralegal #1	$10,495.50
Paralegal #2	$38.91
Paralegal #3	$37.50
Costs	$6,659.39
Total	$53,910.80

The affidavit did not itemize the hours spent or the extent and character of the work performed. (Employee's Affidavit of Attorney Fees and Costs, April 4, 2018; Observation).

79) Prior to Employee's marriage to Monica Olson, Employee required assistance with daily activities and housekeeping, including cleaning, laundry and grocery shopping. Employer paid for someone to assist Employee with those activities. Employee married Mrs. Olson in 1987; and she took over those activities and outside assistance was eventually no longer necessary.

Employee returned to work in 1994 as a custodian because he needed more money to take care of his family. Employee injured his left foot in 1994 when it got caught in a sprinkler and he tripped and fell. He believes he would not have tripped on the sprinkler had he not had a stiff left foot. When he moved to Sweden, the Swedish government paid for his medical expenses including his left lower leg amputation and his first prosthesis. Employee currently lives with his wife and his autistic daughter in a home in Edmonds, Washington. In 2016, Employee moved into a separate apartment from his wife and daughter. Employee shouted and yelled at night when he was sleeping and those sleeping problems so bothered his wife and daughter they gave up and moved out. Employee and his wife sold the previous house they were living in, he moved into an apartment and his wife and daughter moved into another apartment in the same building in which he resided. Mrs. Olson still assisted Employee with daily activities and housekeeping while they lived separately. Employee stayed in a long-term care facility for a few days so Mrs. Olson and his daughter could have a vacation. Employee has used a wheelchair off and on since his 1979 injury. In the last seven to eight years, Employee has regularly used a wheelchair and walker. Employee has difficulties using his crutches, wheelchair and walker in his current home. His current home is on one level and to enter Employee's front door, he must go up an outside deck with two stairs and no railing. The front door is too narrow for Employee to use his wheelchair. His bathroom doorway is too narrow to get a wheelchair or walker thru. In order to take a bath, Employee must climb over the side of the bathtub to sit in a chair and remove his prosthesis. There are also no handrails in the bathtub. Employee's wife keeps watch in case he falls while bathing. His living room has a step because two sides of the room are elevated to a single step higher level than the middle of the living room. To enter his living room, he must step down one stair level. The walkway from the front door to the living room is one of the elevated sides of the living room and it is too narrow to use a walker or wheelchair. The kitchen doorway and kitchen is too narrow to allow Employee to use a wheelchair. The back entry is unsafe for him to use because it has three wooden deck steps down to a concrete pad in front of the garage side door, the wooden deck is narrow, and the concrete pad is one step height above the ground – it would be easy for him to fall down and get hurt. When he lived in Sweden, the Swedish government paid for home modifications. Employee would like to sell his current home and purchase another home better suited to his mobility problems. When Employee has fallen at home, his wife either helped him up or called 911 for assistance. (Employee).

80) Employee is credible. (Experience; judgment, observations, and inferences from all of the above).

81) When Monica Olson lived in Sweden with Employee, the Swedish government provided them with a nurse to call for assistance. They sold their home in 2016 because she thought they had to have separate housing. She assisted Employee with daily living activities, including grocery shopping, cleaning, and laundry when he lived in a separate apartment because he cannot do those things himself. It was more work for her to take care of two households when they were living separately. Employee's family purchased their current home in May 2017 and they currently live together. They saved the equity from the sale of their home in 2016 and put it into their current home. Now when Employee falls down, she calls 911 for help because Employee is a big man and she cannot physically help him up. Mrs. Olson has heart problems and also has a new hip and screws placed in her foot. The hardest things for Employee to do are bathing and getting into and out of the car. Mrs. Olson does most of the housekeeping activities for herself, Employee and their daughter and she still intends to provide assistance to Employee. Mrs. Olson estimates on average that Employee sees different physicians twice per week and showers twice per week. With her own health issues and her own personal activities, she is not always able or available to assist Employee. She would like a service to summon help when Employee falls and physical assistance for Employee's transportation, showering, dressing and housekeeping needs. (Monica Olson).

82) The parties agreed the past unpaid medical costs and Employee's claim for a prosthetic are no longer at issue because Employer is obtaining the medical records for those items and is processing payment of the bills. (Record).

83) Monica Olson is credible. (Experience; judgment, observations, and inferences from all of the above).

84) Employee contended he is not requesting residential long-term care. Employee seeks an order granting his claim for an attendant to assist with daily living activities and housekeeping duties and handicap accessible housing. Employee seeks on order awarding him full and actual attorney fees and costs. (Employee's hearing arguments).

85) Employer contends Dr. Zwerin's report opined Employee does not currently need an attendant. Employer contends home modifications are not included as a medical benefit under the Alaska Workers' Compensation Act. In the alternative, Employer contends Employee would

only be entitled to the increased costs associated for the necessary handicap modifications. Employer took issue with Employee purchasing his current home when Employee knew his mobility issues would make navigating it difficult. Employer contends Employee's attorney fees must be reduced proportionally for any benefits claimed but not awarded, specifically long-term residential care, as Employee is no longer requesting it. (Employer's hearing arguments).

86) Employer did not object to the insufficiencies in Employee's affidavit of attorney's fees and costs and did not argue the fees and costs were excessive. (Record; observations).

87) The parties agreed 7.49 percent from insolvent insurers is not at issue as the September 17, 2010 stipulation is still in effect. (Record; Observations).

88) On May 4, 2018, the parties stipulated to reopen the record to admit Employee's itemized attorney fees and costs. (Stipulation, May 4, 2018). Employee filed an itemized attorney fees and costs affidavit totaling $53,909.39. (Affidavit of Attorney Fees and Costs and Invoice, May 4, 2018).

89) On May 7, 2018, the board approved the parties' May 4, 2019 stipulation. (Stipulation, May 7, 2018).

90) Rehbock's hourly rates are $450.00 per hour; he bills $150 per hour for paralegal time. (Affidavit of Attorney Fees and Costs and Invoice, May 4, 2018).

91) Rehbock has entered an appearance in over 1,300 workers' compensation cases and has over thirty years' experience in Alaska workers' compensation cases. (ICERS).

92) Employee's attorney and paralegal time hourly rates are reasonable, considering their experience and years practicing in this specialized field of law, and the nature and complexity of the services provided. (Experience; judgment, observations, and inferences from all of the above).

PRINCIPLES OF LAW

The board may base its decisions on not only 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 23.30.010 Coverage.** Compensation is payable under this chapter in respect of disability or death of an employee.
>
> **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.

Professor Larson distinguishes between nursing services and housekeeping duties, noting nursing services are clearly covered but "a line has been drawn between nursing attendance and services that are in essence housekeeping." *Larson's Workers' Compensation Law*, §94.03 (2014) at 60-62. In *Gloria L. Coulter v. Alascom, Inc.*, AWCB Decision No. 94-0118 (May 19, 1994), the employee claimed medical benefits for reimbursement for home health care and housekeeping services provided by her daughters. The employee's daughters testified they assisted their mother with dressing, putting on makeup, brushing her teeth, laundry, medications, toileting, laundry and traveling to doctor's appointments. *Id*. at 4-5. The board adopted a four-part test from *Warren Trucking Co., Inc., v. Chandler*, 227 S.E. 2d 488 (1981) and denied the employee's claim. *Chandler* requires:

> (1) the employer knows of the employee's need for medical attention at home as a result of the industrial accident;
> (2) the medical attention is performed under the direction and control of a physician, that is, a physician must state home nursing care is necessary as the result of the accident and must describe with a reasonable degree of particularity the nature and extent of duties to be performed by the family member;
> (3) the care rendered by the family member must be of the type usually rendered only by trained attendants and beyond the scope of normal household duties; and
> (4) there is a means to determine with proper certainty the reasonable value of the services performed by the family member. *Coulter* at 8.

In *Martin v. Anchorage School District*, AWCB Decision No. 98-0257 (October 7, 1998), the employee's claim for housekeeping services provided by a commercial agency while she recovered from hip surgery was granted. The employee testified she could not clean floors,

vaccum, or scrub toilets or bathtubs because she could not walk without crutches or bend over. *Id*. at 2. *Martin* reviewed the language in AS 23.30.095(a) and concluded it did not support limiting "attendance" to nursing care at the direction of a physician and declined to adopt the four part test from *Chandler*. *Id*. at 4. The housekeeping services were found to be necessitated by the nature of the employee's injury and the process of her recovery. *Id*. at 4-5.

Professor Larson noted "as to the most costly medical 'device' of all, special housing, Arkansas, Colorado, South Carolina, Iowa, Georgia, Florida, Maryland, Nebraska, New Jersey, New York, Pennsylvania, North Dakota, Oregon, North Carolina, Illinois, and South Carolina have found it possible to cover such expenditures, while Virginia has refused to go this far." *Larson's Workers' Compensation Law*, §94.03 at 43-46 (2014). The Alaska Supreme Court found a hot tub a compensable medical benefit under AS 23.30.095(a). *Municipality of Anchorage v. Carter*, 818 P.2d 661, 665-66 (Alaska 1991). In *Hodges v. Alaska Constructors, Inc*. 957 P.2d 957 (Alaska 1998), the Court held the employee's purchase and installation of an elegantly landscaped, gazebo-covered, outdoor hot tub which cost $15,000 and a king sized therapeutic bed which cost $2,950 inappropriate based on evidence that alternatives meeting the employee's medical needs were less expensive, costing $4,500 and $2,000 respectively. In *Bryce Warnke-Green v. Pro West Contractors, LLC*, AWCAC Decision No. 235 (June 26, 2017), the Alaska Workers' Compensation Appeals Commission held any increased cost associated with the purchase of a modifiable motor vehicle and any necessary modifications are encompassed in "apparatus" under AS 23.30.095(a) and are compensable medical benefits.

> **AS 23.30.120. Presumptions.**
> (a) In a proceeding for the enforcement of a claim for compensation under this chapter it is presumed, in the absence of substantial evidence to the contrary, that
>
> (1) the claim comes within the provisions of this chapter; . . . .

At the time of Employee's January 23, 1979 injury, decisional law interpreted AS 23.30.010 to require payment of benefits when employment was "a substantial factor" in causing the disability or need for medical treatment. *Ketchikan Gateway Borough v. Saling*, 604 P.2d 590 (Alaska 1979). Employment is "a substantial factor" in bringing about the disability or need for medical care where "but for" the work injury, a claimant would not have suffered disability at the time he

did, in the way he did, or to the degree he did, and reasonable people would regard it as the cause and attach responsibility to it. *Rogers & Babler* at 532-33.

Benefits sought by an injured worker are presumed to be compensable. *Meek v. Unocal Corp*., 914 P.2d 1276 (Alaska 1996). The presumption of compensability is applicable to any claim for compensation under the workers' compensation statute, including medical benefits. *Id.* To attach the presumption of compensability, an employee must establish "some preliminary link" between the disability and employment, or between a work-related injury and the existence of the disability; the claimant need only present "some evidence that the claim arose out of, or in the course of, employment before the presumption arises." *Burgess Constr. v. Smallwood*, 623 P.2d 312, 316 (Alaska 1981). The evidence necessary to raise the presumption of compensability varies. In claims based on highly technical medical considerations, medical evidence is often necessary to make that connection. *Smallwood* at 316. In less complex cases, lay evidence may be sufficiently probative to establish the link. *VECO, Inc. v. Wolfer*, 693 P.2d 865, 871 (Alaska 1985). Credibility is not weighed at this stage of the analysis. *Id.* at 869-70 (Alaska 1985).

Once the preliminary link is established, the employer has the burden to overcome the raised presumption by producing substantial evidence the injury is not work-related. *Smallwood* at 316. "Substantial evidence" is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Tolbert v. Alascom, Inc*., 973 P.2d 603, 611-12 (Alaska 1999). To rebut the presumption, the employer's evidence must either:

> (1) Provide an alternative explanation that, if accepted, would exclude work-related factors as a substantial cause of the disability; or
>
> (2) Directly eliminate any reasonable possibility that employment was a factor in causing the disability. *Grainger v. Alaska Workers' Comp. Bd*., 805 P.2d 976, 977 (Alaska 1991).

The presumption of compensability may be rebutted by presenting a qualified expert who testifies that, in his or her opinion, the claimant's work was probably not a substantial cause of the disability." *Big K Grocery v. Gibson*, 836 P.2d 941, 942 (Alaska 1992). At this second step of the analysis, the employer's evidence is viewed in isolation, without regard to any evidence

presented by the claimant. Issues of credibility and evidentiary weight are deferred until after a determination whether the employer has produced a sufficient quantum of evidence to rebut the presumption. *Wolfer* at 871.

If the employer successfully rebuts the presumption, it drops out, and the employee must prove all elements of his case by a preponderance of the evidence. *Louisiana Pacific Corp. v. Koons*, 816 P.2d 1379 (Alaska 1991). To prevail, the claimant must "induce a belief" in the minds of the fact finders the facts being asserted are probably true. *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964). At this last step of the analysis, evidence is weighed, inferences are drawn from the evidence and credibility is considered. *Steffey v. Municipality of Anchorage*, 1 P.3d 685, 691 (Alaska 2000).

In *Saling*, the Alaska Supreme Court adopted the "last injurious exposure rule," which "imposes full liability on the employer at the time of the most recent injury that bears a causal relation to the disability." *Id.* at 595 (citing 4 A. Larson, *The Law of Workmen's Compensation* § 95.12 (1979)). After reviewing the way other states handled situations where employment with successive employers contributed to an injured worker's disability or need for medical care, the Court found the last injurious exposure rule was simpler, easier to administer, and avoided the difficulties associated with apportionment. *Id*. at 507. In *Wolfer v. VECO, Inc.*, 852 P.2d 1993 (Alaska 1993), the Alaska Supreme Court held the last injurious exposure rule does not apply to employment outside the state of Alaska because to do so would add complexity in administration and make the employee's remedy more difficult to obtain.

Under Alaska law, a disability arising after a non-work-related injury is still compensable if an earlier work-related injury substantially contributed to the employee's disability. *Walt's Sheet Metal v. Debler*, 826 P.2d 333 (Alaska 1992). The fact that an employee has suffered a non-work-related injury does not, standing alone, rebut the presumption of compensability. *Alaska Pacific Assur. Co. v. Turner*, 511 P.2d 12 (Alaska 1980) (holding that where an employee suffers a work-related injury and then suffers an aggravation unrelated to his employment, the employer must show what the work-related injury was not a "substantial factor contributing to the later injury" in order to rebut the presumption of compensability). If an earlier compensable injury is a substantial factor contributing

to the later injury, then the later injury is compensable. *Cook v. Alaska Workmen's Compensation Board*, 476 P.2d 29, 35 (Alaska 1970).

> **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 finding in a civil action.
>
> **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.

Attorney fees in workers' compensation cases should be fully compensatory and reasonable so injured workers have competent counsel available to them. *Cortay v. Silver Bay Logging*, 787 P.2d 103 (Alaska 1990). Fees for time spent on minor issues will not be reduced if the employee prevails on the primary issues at hearing. *Porteleki* at 14-16.

At the time of Employee's January 23, 1979 injury, AS 23.30.155 provided:

> **AS 23.30.155. Payment of compensation.**
> (a) Compensation under this chapter shall be paid periodically, promptly, and directly to the person entitled to it, without an award, except where the liability to pay compensation is controverted by the employer.
> . . . .
>
> (e) If any installment of compensation payable without an award is not paid within 14 days after it becomes due, provided in (b) of this section, there shall be added to the unpaid installment an amount equal to 20 percent of it, which shall be paid at the same time as, and in addition to, the installment, unless notice is

> filed under (d) of this section or unless the nonpayment is excused by the board after a showing by the employer that owing to conditions over which he had no control the installment could not be paid within the period prescribed for the payment.

It has long been recognized AS 23.30.155(e) provides penalties when employers fail to timely pay compensation. *Haile v. Pan Am. World Airways*, 505 P.2d 838 (Alaska 1973). Medical benefits become due for purposes of controversion and penalties when the employer has notice they have been prescribed by a physician. *Harris v. M-K Rivers*, 325 P.3d 510 (Alaska 2014). A penalty can be imposed for a bad faith controversion of a prescribed but not yet paid medical benefit. *Id*.

"In circumstances where there is reliance by the insurer on responsible medical opinion or conflicting medical testimony, invocation of penalty provisions is improper. However, when nonpayment results from bad faith reliance on counsel's advice, or mistake of law, the penalty is imposed." *Harp v. ARCO Alaska, Inc.*, 831 P.2d 352, 358 (Alaska 1992). "For a controversion notice to be filed in good faith, the employer must possess sufficient evidence in support of the controversion that, if the claimant does not introduce evidence in opposition to the controversion, the Board would find that the claimant is not entitled to benefits." *Id*. Evidence the employer possessed "at the time of controverison" is the relevant evidence to review. *Id*.

Interest accrues at the statutory rate as provided under AS 45.45.010 from the date a benefit should have been paid. *Land & Marine Rental v. Rawls*, 686 P.2d 1187, 1192 (Alaska 1984). Awards of prejudgment interest recognize the time value of money, and they give "a necessary incentive to employers to ... release money due." *Childs v. Copper Valley Elec. Ass'n,* 860 P.2d 1184, 1191 (Alaska 1984). Medical benefits are "compensation" for purposes of awarding prejudgment interest. *Moretz v. O'Neill Investigations,* 783 P.2d 764, 765-66 (Alaska 1989).

> **8 AAC 45.180. Costs and attorney's fees.**
> . . . .
>
> (b) A fee under AS 23.30.145(a) will only be awarded to an attorney licensed to practice law in this or another state. An attorney seeking a fee from an employer for services performed on behalf of an applicant must apply to the board for approval of the fee; the attorney may submit an application for adjustment of

> claim or a petition. An attorney requesting a fee in excess of the statutory minimum in AS 23.30.145(a) must (1) file an affidavit itemizing the hours expended, as well as the extent and character of the work performed, and (2) if a hearing is scheduled, file the affidavit at least three working days before the hearing on the claim for which the services were rendered; at the hearing, the attorney may supplement the affidavit by testifying about the hours expended and the extent and character of the work performed after the affidavit was filed. If the request and affidavit are not in accordance with this subsection, the board will deny the request for a fee in excess of the statutory minimum fee, and will award the minimum statutory fee.
>
> . . . .
>
> (f) The board will award an applicant the necessary and reasonable costs relating to the preparation and presentation of the issues upon which the applicant prevailed at the hearing on the claim. . . .

ANALYSIS

1) Is Employee entitled to medical benefits?

Nursing services and housekeeping duties are included in "attendance" under medical benefits in AS 23.30.095(a). *Larson's*; *Coulter*; *Martin*. Handicap accessible accommodations or modifications are encompassed in "apparatus" under medical benefits in AS 23.30.095(a). *Larson's*; *Carter*; *Hodges*; *Warnke-Green*. Whether Employee is entitled to an attendant to assist with daily living activities and housekeeping duties and handicap housing accommodations or modifications as a result of the 1979 work injury is a factual issue to which the presumption of compensability applies. AS 23.30.010; AS 23.30.120; *Meek*; *Saling*. Without weighing credibility, Employee raises the presumption of compensability with his own testimony and through Dr. Olson's testimony and medical reports and Dr. Levine's letters, which identifies the 1979 work injury as the cause of Employee's need for assistance with daily living activities and housekeeping duties and need for handicap accessible housing. *Smallwood*; *Wolfer*.

Because Employee raises the presumption, Employer has the burden to rebut the presumption. *Smallwood*. Employer failed to rebut the presumption. *Tolbert*; *Grainger*; *Gibson*; *Wolfer*. Dr. Chong diagnosed Employee with a "new industrial event" in 1994 "culminating" in a left below-knee amputation and diagnosed him as chronically dependent on ambulatory devices, "unrelated to the 1979 injury." He never set out which factor or factors are substantial factors in

Employee's need for assistance with daily living activities and housekeeping duties and need for handicap accessible housing. Dr. Chong's diagnoses did not exclude or directly eliminate the 1979 injury as a substantial factor in Employee's need for assistance with daily living activities and housekeeping duties and need for handicap accessible housing. *Rogers & Babler*. He also never addressed whether the 1979 injury increased Employee's susceptibility to the 1994 injury. Employer failed to rebut the presumption and Employee prevails on the raised but unrebutted presumption.

In the alternative, assuming Employer rebutted the presumption of compensability, Employee must prove his claim by a preponderance of the evidence. *Koons*; *Saxton*. Evidence must be weighed and credibility must be considered. Four physicians provided opinions regarding the medical benefits at issue, Drs. Olson, Levine, Chong and Zwerin. Dr. Zwerin's opinion is given the most weight because he is the only physician which reviewed the bulk of Employee's medical records. *Steffey*; AS 23.30.122; *Rogers & Babler*. After evaluating whether the 1979 work injury, the 1994 injury, or aging contributed to Employee's need for an attendant, Dr. Zwerin opined the 1979 work injury was the substantial factor in Employee's need for an attendant.

Dr. Zwerin further opined the 1979 injury was the only factor which brought about Employee's need for a left below knee amputation. In 1981, Dr. Newton recommended Employee undergo a left below knee amputation to address Employee's foot injury and continuing pain from the 1979 work injury. Employee decided not to proceed with the amputation and instead underwent a left foot pantalar arthrodesis. Afterwards, in 1983 and 1984, Dr. Scranton recommended a left, below-knee amputation to improve Employee's left foot pain; but Employee did not proceed with the amputation. Employee experienced continued pain and medical issues with his left foot prior to the 1994 injury, as evidenced by medical records dated August 9, 1989, January 28, 1992, March 12, 1993, January 28, 1994, February 9, 1994, February 11, 1994, and April 19, 1994.

Dr. Zwerin opined the 1979 injury increased Employee's susceptibility to the 1994 injury. Employee testified his impaired mobility caused by his fixed and stiff left ankle contributed to

his tripping on the sprinkler with his left foot. Based on the medical record, Employee's weakened vascular system in his lower left limb hindered his ability to heal from the left foot contusion caused by the 1994 injury. However, the 1979 injury severely damaged Employee's left foot and the 1994 injury was not as severe. The 1994 injury caused a contusion on Employee's left foot and Employee experienced an increase in pain in his left foot for a period of time after the 1994 injury. While the 1994 contusion may have combined with or aggravated the 1979 injury for a period of time after the 1994 injury, the combination or aggravation did not necessitate Employee's left below knee amputation in 2007. *Smith*. Drs. Martin, Maxwell, Billington, McCollough, Weis Green, and Stump opinions all support this conclusion. Employee continued to have left foot paint and medical issues which were related to the 1979 work injury after the 1994 injury as evidenced by medical reports dated July 3, 1995, August 3, 1995, February 5, 1996, and March 12, 1996. The medical record from Sweden indicates Employee's left lower limb was amputated due to left foot pain, which he had experienced since the 1979 injury. Finally, there is no argument or evidence that aging was a substantial factor in Employee's left below knee amputation. The preponderance of the evidence is that Employee underwent a left leg, below-knee amputation to relieve foot pain caused by the 1979 injury. *Koons*; *Saxton*; *Steffey*; *Smith; Debler*.

Therefore, the preponderance of the evidence is that the 1979 work injury is a substantial factor in Employee's left, below-knee amputation and need for prosthesis. *Koons*; *Saxton*; *Steffey; Debler*.

Dr. Zwerin opined Employee's need for crutches is the long-term result of Employee's 1979 injury. Employee use of two forearm crutches is not caused by aging or the 1994 injury because he used them after his 1979 work injury, prior to the 1994 injury, prior to the 2007 amputation, and continues to use them at present. Furthermore, Dr. Chong opined Employee's low back injury was caused by the 1979 injury and Dr. Olson documented in 2010 that when Employee walks or stands without crutches, his back pain increases substantially. The preponderance of the evidence is that Employee's 1979 work injury is a substantial factor in Employee's use of crutches. *Saxton*.

Dr. Zwerin opined Employee's left, below-knee amputation, prosthetic and need to use two crutches to ambulate are a substantial factor in Employee's need for an attendant. Employee requires crutches to ambulate due to his low back pain and left, below-knee amputation, both of which were caused by the 1979 injury. It is self-evident that using two crutches requires the use of both of Employee's arms and hands, limiting his ability to complete activities like laundry, preparing meals, grocery shopping and cleaning. Employee's ability to walk and stand for any length of time and to navigate stairs is impaired by his low back pain and need to use two crutches and a prosthetic to ambulate. Employee consistently testified it is difficult for him to navigate narrow doorways, stairs, and the bathtub in his home and ambulate to and from medical appointments. The preponderance of the evidence is that Employee's left below knee amputation, prosthetic and need to use two crutches to ambulate are a substantial factor in Employee's need for an attendant. *Saxton*.

Employer contends Dr. Zwerin's review of Dr. Levine's April 28, 2016 letter in the SIME report concludes Employee is not in need of an attendant. However, in the review of Dr. Levine's letter, Dr. Zwerin noted Mrs. Olson has been assisting Employee and getting her relief from "24/7 assistance" is reasonable. Dr. Zwerin's review of Dr. Levine's April 28, 2016 letter is consistent with Dr. Zwerin's opinion in the remainder of the SIME report that the 1979 work injury is a substantial factor in Employee's need for assistance with daily living activities and if Mrs. Olson were unavailable, Employee would require an attendant two to three hours per day. The preponderance of the evidence is that the 1979 work injury is a substantial factor in Employee's need for assistance with daily living activities and housekeeping duties. While Mrs. Olson intends to continue to assist Employee, both she and Employee testified she has medical issues which affect her ability to provide assistance, especially when Employee falls, and she is not always available to provide assistance. The preponderance of the evidence is that the 1979 work injury is a substantial factor in Employee's need for an attendant to assistance with daily living activities and housekeeping duties. *Saxton*.

Dr. Zwerin opined at this time, aging is not a substantial factor is Employee's need for an attendant. Employee has used crutches since the 1979 injury; and the natural aging process did not cause Employee's amputation, or cause his low back pain; it was the 1979 injury. Employee

has needed assistance completing the activities at issue in this case since the 1979 injury as evidence by the C&R settlement agreement documenting housekeeping expenses, which Employee's wife provided that assistance since they married. The preponderance of the evidence is that aging is not a substantial factor in Employee's need for an attendant. *Saxton*.

Dr. Levine opined Employee's mobility problems were caused by his prosthesis and crutches and recommended handicap-accessible housing. At that time Employee was living in an apartment without his wife so Dr. Levine recommended an apartment that was handicap accessible. While Dr. Zwerin did not directly address handicap-accessible housing, he opined Employee had limited mobility due to his prosthesis and crutches and Dr. Levine's letter opined that same limited mobility caused Employee's need for handicap-accessible housing. It is self-evident that Employee's use of crutches and a prosthetic to ambulate and low back pain could make navigating narrow doorways, stairs, and a normal bathtub difficult. The preponderance of the evidence is that Employee's need to use two crutches and a prosthetic to ambulate and his low back pain are a substantial factor in Employee's need for handicap housing accommodations or modifications. *Saxton*.

The preponderance of the evidence is that the 1979 work injury remains a substantial factor in Employee's need for an attendant and handicap housing accommodations or modifications. Employee seeks an order granting his claim for handicap housing accommodations or modifications. Employer is responsible for any increased cost associated with providing Employee handicap accessible housing accommodations or modifications. However, handicap accommodations or modifications must be reasonable and necessary. AS 23.30.095(a); *Hodges*. This decision reserve jurisdiction to resolve any disputes. Employee seeks an order granting his claim for an attendant to assist him with daily living activities and housekeeping duties up to 21 hours per week, and he seeks handicap accessible housing. Based on the medical record and Employee's and Mrs. Olson's testimony, a personal care attendant is reasonable for 20 hours per week. AS 23.30.095(a). Employee is entitled to an attendant to assist with daily living activities for up to 20 hours per week and housekeeping duties and handicap housing accommodations or modifications. *Martin*; *Carter*; *Hodges*; *Warnke-Green*. Employee's claim for medical benefits is granted.

2) Is Employee entitled to a penalty and interest?

Employee contends he is entitled to a penalty under AS 23.30.155(e) on a personal care attendant Employer failed to provide from April 28, 2016, the date Dr. Levine prescribed the attendant, to the present because Employer filed a controversion in bad faith. A penalty can be imposed for a bad faith controversion of a prescribed but not yet paid medical benefit. *Harris*. Employee contends Employer's controverion was filed in bad faith because the basis of the controversion was the EME report and Employer failed to provide the EME physician the complete medical record, specifically Dr. Scranton's medical reports and deposition recommending a lower left leg amputation in 1983 and 1984. Employee contends Employer made a false statement when it provided the EME the medical record and told Dr. Chong that it did not have possession of additional records.

The issue is not whether Employer made a false statement, the issue is whether Dr. Chong's EME report was a responsible medical opinion and whether it was sufficient evidence to support Employer's controversion. *Harp*. The medical record in this case is extensive as the injury occurred in 1979 and Employee sustained extensive injures that required considerable medical treatment. Dr. Chong's chart review was not so limited that it made his opinion's inadequate evidence to support a denial. *Rogers & Babler*. Employee's arguments regarding the omission of Dr. Scranton's medical reports and deposition goes to the weight of Dr. Chong's opinion, not to Employer's ability to rely upon it to controvert his right to benefits.

However, Dr. Chong's alternate explanation did not exclude or directly eliminate the 1979 injury as a substantial factor in Employee's need for assistance with daily living activities and housekeeping duties and need for handicap accessible housing. Therefore, Employer did not have sufficient evidence in support of the controversion and did not file its controversion in good faith. *Harp*; *Rogers & Babler*. Employee is entitled to penalty on the daily living assistance Employer failed to provide from April 28, 2016 to the present.

Employee seeks interest on costs for a personal care attendant at $32 per hour from April 28, 2016, the date Dr. Levine prescribed the attendant, to the present. Interest is paid to compensate

for the time value of benefits that were not paid when due and benefits accrue interest from the date they should have been paid. *Moretz*; *Rawls*. Employee was deprived of the attendant prescribed on April 28, 2016 as he could not pay for the attendant out of pocket; and Employer benefited from the use of the money it would have paid for an attendant. *Childs*. Employee is awarded a personal care attendant for 20 hours per week in this decision. Therefore, Employee is entitled to interest on the cost of the attendant Employer failed to provide from April 28, 2016 to the present.

3) Is Employee entitled to attorney's fees and costs?

Employee seeks attorney fees for but does not specify whether he is seeking fees under AS 23.30.145(a) or (b). However, Employee is seeking actual attorney's fees. Employer controverted the Employee's claim for an attendant in his home based on the grounds the 1979 injury was not a substantial factor in Employee's need for such assistance. Employee successful litigated a hearing on the merits. Employee's attorney also obtained past unpaid medical bills and Employee's prosthesis and handicap housing modifications or accommodations. Employee pursued but is not requesting long-term residential care and was awarded interest and penalty. Thus, Employee's attorney effectively prosecuted Employee's entitlement to some benefits. Therefore, Employee is entitled to reasonable fees and costs under AS 23.30.145(a); *Porteleki*.

This case involved complex factual issues and an SIME. Mr. Rehbock is an experienced attorney and has represented injured employees in workers' compensation cases for years. Considering the nature, length and complexity of the services performed and the benefits resulting from the services to Employee, Employee's claimed fee and costs award is reasonable. 8 AAC 45.180(b), (f); *Porteleki*. Employee will be awarded full actual fees and costs under AS 23.30.145(a).

CONCLUSIONS OF LAW

1) Employee is entitled to an attendant to assist with daily living activities and housekeeping duties up to 20 hours per week and handicap housing accommodations or modifications. Jurisdiction is reserved over any claims for specific handicap housing accommodations or modifications.

2) Employee is entitled to penalty and interest.

3) Employee is entitled to an award of attorney fees and costs.

ORDER

1) Employee's May 13, 2016 claim for medical benefits is granted.

2) Employee's claim for penalty is granted.

3) Employee's claim for interest is granted.

4) Employee is awarded attorney fees and costs of $53,909.39.

5) Jurisdiction is reserved to resolve any disputes over handicap housing accommodations or modifications.

Dated in Juneau, Alaska on May 15, 2018.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Kathryn Setzer, Designated Chair

/s/
Charles Collins, Member

/s/
Bradley Austin, Member

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

APPEAL PROCEDURES

This compensation order is a final decision. It becomes effective when filed in the office of the board unless proceedings to appeal it are instituted. Effective November 7, 2005 proceedings to appeal must be instituted in the Alaska Workers' Compensation Appeals Commission within 30 days of the filing of this decision and be brought by a party in interest against the boards and all other parties to the proceedings before the board. If a request for reconsideration of this final decision is timely filed with the board, any proceedings to appeal must be instituted within 30 days after the reconsideration decision is mailed to the parties or within 30 days after the date the reconsideration request is considered denied due to the absence of any action on the reconsideration request, whichever is earlier. AS 23.30.127.

An appeal may be initiated by filing with the office of the Appeals Commission: 1) a signed notice of appeal specifying the board order appealed from and 2) a statement of the grounds upon which the appeal is taken. A cross-appeal may be initiated by filing with the office of the Appeals Commission a signed notice of cross-appeal within 30 days after the board decision is filed or within 15 days after service of a notice of appeal, whichever is later. The notice of cross-appeal shall specify the board order appealed from and the ground upon which the cross-appeal is taken. AS 23.30.128.

RECONSIDERATION

A party may ask the board to reconsider this decision by filing a petition for reconsideration under AS 44.62.540 and in accord with 8 AAC 45.050. The petition requesting reconsideration must be filed with the board within 15 days after delivery or mailing of this decision.

MODIFICATION

Within one year after the rejection of a claim, or within one year after the last payment of benefits under AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, a party may ask the board to modify this decision under AS 23.30.130 by filing a petition in accord with 8 AAC 45.150 and 8 AAC 45.050.

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Final Decision and Order in the matter of DANIEL L. OLSON, employee / claimant; v. TYEE AIRLINES, INC., employer; LLOYDS OF LONDON, insurer / defendants; Case No. 198101490; dated and filed in the Alaska Workers' Compensation Board's office in Juneau, Alaska, and served on the parties on May 15, 2018.

/s/
Dani Byers, Technician