ALASKA WORKERS' COMPENSATION BOARD

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

REBECCA E. HORTON, Employee, Claimant, v. TESORO, Employer, and ACE AMERICAN INSURANCE COMPANY, Insurer, Defendants.	)	FINAL DECISION AND ORDER AWCB Case No. 200524128 AWCB Decision No.18-0052 Filed with AWCB Anchorage, Alaska on June 1, 2018

Rebecca E. Horton's February 21, 2008 claim was heard on May 9, 2018 in Anchorage, Alaska. This hearing date was selected on December 8, 2017. Attorney Michael Flanigan appeared and represented Ms. Horton (Employee), who appeared and testified. Attorney Krista Schwarting appeared and represented Tesoro and Ace American Insurance Company (Employer). Witnesses included Brenda Bowlin, Howard Woodford, and Mimi Tolva. The record closed at the hearing's conclusion on May 9, 2018.

ISSUES

Employee contends her exposure to a variety of substances while working for Employer is a substantial factor in causing or accelerating her asthma and reactive airway disease. Employer contends Employee's asthma was preexisting and was not aggravated or accelerated by her employment. Employer further contends Employee's claim is barred because she failed to request a hearing within the time required by law.

1. Is Employee's claim barred due to failure to timely request a hearing?

2. Is Employee's work for Employer a substantial factor in causing or aggravating or accelerating her asthma or reactive airway disease?

FINDINGS OF FACT

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

Employee began working for Employer at its Nikiski refinery in 1999. She began working as a safety records technician, later trained to work on Employer's fire brigade. At some point, she became a training staff assistant. (Employee; Report of Injury, February 12, 2018).

For a significant portion of the time she worked for Employer, Employee worked in an office in a fire house, where she was exposed to diesel exhaust from the fire engines. (Employee).

Employee treated for lung or breathing problems occasionally before beginning to work for Employer. On June 13, 1990, she was diagnosed with bronchospastic airway disease. (See, e.g. Central Peninsula Hospital, Chart Notes, June 10, 1990, June 13, 1990, and March 4, 1997).

On June 12, 2001, ANP Catherine Liddelow-Thompson noted Employee had a history of asthma. (Liddelow-Thompson, Chart Note, June 12, 2001).

On July 6, 2001, Employee reported to ANP Liddelow-Thompson that she was experiencing an asthma exacerbation and her medications were not working. (Liddelow-Thompson, Chart Note, July 6, 2001). In 2004, ANP Liddelow stated that toxins and fumes at work were increasing Employee's asthma symptoms, but she could not identify a specific allergen. She was unaware Employee had any lung infections or breathing problems before 2001. (Liddelow-Thompson Deposition).

In August 2005, ANP Liddelow-Thompson told Employee to stop working at the refinery because her work was aggravating her asthma, and in mid-August 2005 she quit. (Employee; Statement of Becky Horton-Employment at Tesoro, July 21, 2008).

On September 30, 2005, Todd Boling, D.O., diagnosed Employee with gastroesophageal reflux disease (GERD), which may have been exacerbating her asthma. (Dr. Boling, Office Note, September 30, 2005).

On January 30, 2007, Employee filed a report of injury stating she had developed chronic respiratory problems as a result of environmental exposures while working for Employer.

Employee incorrectly dated the report as January 30, 2006. (Report of Injury, January 30, 2007; Employee Memo to Workers' Compensation Officer, April 29, 2008).

On February 7, 2008, Employee filed an undated affidavit of readiness for hearing requesting a hearing (ARH) on her "1/30/2006" claim. The affidavit did not include either the date of the injury or the AWCB case number. The instructions as the top of the form state:

> Before you complete and submit this form, read carefully. Use only to request a hearing after an answer has been filed or at least 20 days after a Workers' Compensation Claim or petition was served, whichever comes first. Do not submit this form unless you are fully prepared for a hearing.

(Affidavit of Readiness for Hearing, February 7, 2008).

On February 12, 2008, the Division returned the ARH to Employee with a letter noting the form was incomplete and asking Employee to read the instructions before resubmitting it. The letter explained an ARH could not be filed until 20 days after a written claim had been served or after an answer to the claim had been filed, whichever occurred first. The letter noted the Board had not received a claim. When the ARH was returned to Employee, the Division did not retain a copy; it was not part of the record until filed as an exhibit to Employee's brief on April 19, 2018. (Division Letter to Employee, February 12, 2008; Record; Observation).

On February 25, 2008, the Division received an undated claim from Employee, who was unrepresented at the time. Employee alleged she had chronic lung problems as a result of her employment with Employer. She sought permanent total disability (PTD) benefits, medical and transportation costs, interest, attorney fees and costs, and a finding of unfair or frivolous controversion. (Claim, February 25, 2008).

Employee's March 5, 2008 claim was deemed to be dated February 25, 2008. Employee was informed that Employer had 20 days to answer the claim and Employee could not file an affidavit of readiness for hearing until that time expired. (Division Letter to Employee, March 5, 2008

On March 27, 2008, Employer filed an answer to Employee's claim and a controversion notice denying all benefits on the basis of the EME with Drs. Bardana and Burton. The controversion included the following information for Employee:

TO EMPLOYEE (OR OTHER CLAIMANTS IN CASE OF DEATH): READ CAREFULLY

> This notice means the insurer/employer has denied payment of the benefits listed on the front of this form for the reasons given. **If you disagree with the denial, you must file a timely written claim (see time limits below). The Alaska Workers' Compensation (AWC) Board provides the "Application for Adjustment of Claim" form for this purpose. You must also request a timely hearing before the AWC Board (see time limits below). The AWC Board provides the "Affidavit of Readiness For Hearing" form for this purpose. Get forms from the nearest AWC Board Office listed below.**
>
> TIME LIMITS
>
> . . . .
>
> 2. When must you request a hearing?
> Within two years after the date the insurer/employer filed this controversion notice, you must request a hearing before the AWC Board. You will lose your right to the benefits denied on the front of this form if you do not request a hearing within the two years. Before requesting a hearing, you should file a written claim.
> (Answer, Controversion Notice, March 27, 2008; emphasis original).

At the April 18, 2008 prehearing conference, the Board designee reviewed Employee's claim, explaining the various benefits. The prehearing conference summary included the following:

> The EE is reminded that, if a Controversion Notice is served and filed, after the date of her workers' compensation claim, she must serve and file an affidavit, in accordance with 8 AAC 45.070, requesting a hearing within the time limits set by AS 23.30.110(c) to avoid possible dismissal of her claim. AS 23.30.110(c) provides: "If the employer controverts a claim on a board-prescribed Controversion Notice and the employee does not request a hearing within two years following the filing of the Controversion Notice, the claim is denied.
> (Prehearing Conference Summary, April 18, 2008).

Another prehearing conference was held on April 14, 2009. Employer's attorney stated she was having difficulty obtaining medical records from Employee's doctor. The Board designee advised Employee that if she wanted to proceed to a second independent medical evaluation (SIME) and Employer's attorney did not agree, Employee would have to file a petition requesting one. (Prehearing Conference Summary, April 14, 2009).

At the February 19, 2010 prehearing conference, attorney Sonja Redmond appeared and stated she would be filing an entry of appearance on Employee's behalf. (Prehearing Conference Summary, February 19, 2010).

Ms. Redmond's entry of appearance for Employee was filed on February 19, 2010. (Entry of Appearance, February 19, 2010).

At the April 19, 2010 prehearing conference, Ms. Redmond appeared with Employee. The parties discussed discovery issues and asked for another prehearing in about 60 days. (Prehearing Conference Summary, April 19, 2010).

At the June 17, 2010 prehearing conference, the parties discussed an SIME, noting that while an SIME may be beneficial, Employee's travel restrictions could pose difficulties. (Prehearing Conference Summary, June 17, 2010).

At the November 3, 2011 prehearing conference, Employer amended its answer to Employee's claim to assert a defense that the claim should be dismissed for failure to request a hearing within the time allowed by AS 23.30.110(c). (Prehearing Conference Summary, November 3, 2011).

On November 14, 2011, Ms. Redmond filed an affidavit of readiness for hearing on Employee's February 21, 2008 claim. (Affidavit of Readiness for Hearing, November 11, 2011).

Lynn Carlson, M.D. began treating Employee in the early 2000s, and witnessed her problems get worse during the time she was working for Employer. Although she originally trained in emergency medicine, Dr. Carlson later certified in functional medicine. She diagnosed Employee with reactive airway disease, reflux, and rheumatoid arthritis, all of which she considered autoimmune/environmental problems, and depression, which she considered to be partly an autoimmune condition. She explained that autoimmune conditions affect genetically susceptible individuals exposed to environmental factors. Dr. Carlson stated that Employee breathing problems were worse on days she worked and better on days she did not. She stated Employee's breathing problems were a significant cause of her leaving work. (Dr. Carlson, Deposition).

On December 16, 2011, Employee was seen by occupational disease specialist Jeremy Biggs, M.D., for an employer's medical evaluation (EME). Dr. Biggs found no evidence Employee had been exposed to toxic substances at work, but any temporary aggravation due to work would have resolved within four weeks of leaving her employment. (Dr. Biggs, EME Report, December 16, 2011).

Dr. Biggs referred Employee to Phillip Harber, M.D., a pulmonary specialist, who reviewed Employee's records. Dr. Harber explained asthma is diagnosed based on three physiologic

abnormalities: airflow obstruction, variability or reversibility of the airflow abnormality, and airway inflammation. After reviewing the results of several lung function tests he concluded Employee did not have asthma, because not one of the lung function tests showed airflow obstruction. Dr. Harber also review the results of an October 15, 2006 methacholine challenge test. Dr. Harber explained that in the test a placebo, salt water, is administered to establish a base line, and then low doses of methacholine are administered to prompt a narrowing of the airways. Individuals with hyper reactive airways, such as asthmatics, are more sensitive than normal people to low doses of methacholine. Dr. Harber pointed out that Employee had a greater reaction to the placebo than to the methacholine. Dr. Harber conceded diesel exhaust could have caused a temporary irritation, but it would have resolved within a couple of days. Dr. Harber noted Employee had been diagnosed with GERD and concluded that was contributing to her symptoms. He explained that with GERD the reflux of acid from the stomach leads to some of it entering the respiratory system causing irritation. Because Employee did not have asthma, he concluded she could not have work-induced asthma. (Dr. Harber, EME Report, January 12, 2012).

On September 6, 2018, Employee was seen by Daniel Raybin, M.D. for a second independent medical evaluation (SIME). Dr. Raybin, a pulmonary specialist, reviewed Employee's medical records and performed pulmonary function and methacholine challenge tests. Dr. Raybin noted that while Employee had positive responses to some pulmonary function tests, others had been normal, indicating her condition was fully reversible. Dr. Raybin concluded that was more likely than not that Employee had pre-existing bronchial hyperresponsiveness prior to working for Employer. Her hyperresponsiveness would have been acutely worsened by exposure to diesel exhaust, but the effect would have been temporary and resolved within four weeks of leaving her employment. She would have been medically stable three months after leaving the job. Dr. Raybin concluded Employee had not been exposed to any substances known to cause permanent occupational asthma or to cause a permanent worsening of her existing asthma, but asked that he be provided with the material safety data sheets (MSDS) for any chemicals she was exposed to that might have caused asthma. Dr. Raybin also stated Employee's GERD could be contributing to her breathing problems. (Dr. Raybin, SIME Report, October 16, 2018).

Employee identified 100 compounds she might have been exposed to, and the MSDS for 87 were sent to Dr. Raybin in June 2014. Employer did not have the MSDS for the remaining 13 compounds. Dr. Raybin reviewed the MSDS, and noted any respiratory effects that might be caused by exposure. Two of the compounds contained diisocyanates, which are a recognized cause of occupational asthma, if Employee had significant repeated exposure to those compounds, it could have aggravated her bronchial hyperresponsiveness, but lacking information about her exposure, Dr. Raybin did not change the opinions expressed in his October 16, 2012 report. (Dr. Raybin, Supplemental SIME Report, June 23, 2014).

PRINCIPLES OF LAW

> **AS 23.30.001. Intent of the legislature and construction of chapter.** It is the intent of the legislature that
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> (1) this chapter be interpreted 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;
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> (2) workers' compensation cases shall be decided on their merits except where otherwise provided by statute;
> . . . .
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> (4) hearings in workers' compensation cases shall be impartial and fair to all parties and that all parties shall be afforded due process and an opportunity to be heard and for their arguments and evidence to be fairly considered.

The board may base its decision not only on direct testimony, medical findings, and other tangible evidence, but also on the board's "experience, judgment, observations, unique or peculiar facts of the case, and inferences drawn from all of the above." *Fairbanks North Star Borough v. Rogers & Babler*, 747 P.2d 528, 533-34 (Alaska 1987).

At the time of Employee's July 15, 2005 injury, the Act provided as follows:

> **AS 23.30.010. Coverage.** Compensation is payable under this chapter in respect of disability or death of an employee.

For work injuries occurring prior to the November 7, 2005 effective date of the 2005 amendments to the Alaska Workers' Compensation Act, a work injury is compensable if the employment is "a substantial factor" in bringing about the disability or need for medical care.

Ketchikan Gateway Borough v. Saling, 604 P.2d 590, 597-98 (Alaska 1979). A work injury is a substantial factor in bringing about the disability or need for medical care if the claimant would not have suffered disability at the same time, in the same way, or to the same degree but for the work injury. *Rogers & Babler* at 532-33.

> **AS 23.30.110. Procedure on claims.**
> . . . .
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> (b) Within 10 days after a claim is filed the board, in accordance with its regulations, shall notify the employer and any other person, other than the claimant, whom the board considers an interested party that a claim has been filed. The notice may be served personally upon the employer or other person, or sent by registered mail.
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> (c) . . . If the employer controverts a claim on a board-prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied.

In *Alaska Mechanical v. Harkness*, AWCAC Decision No. 176 (February 12, 2013), the Commission addressed tolling of the AS 23.30.110(c) deadline. Forty-one days after the employee filed his claim, he filed an ARH; one day later the employer filed its first controversion. At a prehearing, the parties discussed, but did not agree to an SIME. Employer later filed a petition to dismiss under AS 23.30.110(c). The Commission recognized that the purpose of an ARH is to ensure a claim is heard in a timely manner. It held an ARH may be filed before a controversion, and still be effective for purposes of AS 23.30.110(c). The Commission further held that prehearing conference discussions about an SIME are not enough to toll AS 23.30.110(c). The SIME process commences when a party files a petition for and SIME, or the parties either stipulate to an SIME or file a signed SIME form.

In *Jonathan v. Doyon Drilling, Inc.*, 890 P.2d 1121 (Alaska 1995), the Supreme Court held that the word "claim" required in AS 23.30.110(c) means a written application for benefits and a controversion in the absence of a written claim does not begin the limitation period.

In *Kim v. Alyeska Seafoods, Inc.*, 197 P.3d 193 (Alaska 2008), shortly before the AS 23.30.110(c) deadline, an employee filed a declaration that he was not yet ready for hearing and requesting more time to prepare. The Employee's attorney explained he could not truthfully sign

an affidavit stating he was ready for hearing. The court held that AS 23.30.110(c) is directory rather than mandatory. As a result, substantial compliance with the statute, by requesting a hearing without an affidavit of readiness, is sufficient to toll the statute.

> **AS 23.30.120 Presumptions.** 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
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> (1) the claim comes within the provisions of this chapter; . . . .

Under AS 23.30.120(a)(1), benefits sought by an injured worker are presumed to be compensable. *Meek v. Unocal Corp*., 914 P.2d 1276, 1279 (Alaska 1996). The presumption of compensability is applicable to any claim for compensation under the workers' compensation statute, including medical benefits. *Carter*, 818 P.2d at 665; *Meek*, 914 P.2d at 1279; *Moretz v. O'Neill Investigations*, 783 P.2d 764, 766 (Alaska 1989); *Olson v. AIC/Martin J.V.*, 818 P.2d 669, 675 (Alaska 1991).

> For work-related injuries before November 7, 2005, application of the presumption of compensability consisted of three possible steps. At the first step the employee was required to attach the presumption that the disability was work related by "establish[ing] a preliminary link between his disability and his employment." To establish the link the employee was required to offer "'some evidence' that the claim arose out of the worker's employment." If the employee attached the presumption, the burden shifted to the employer to offer substantial evidence that either (1) provided an alternative explanation excluding work-related factors as a substantial cause of the disability, or (2) "directly eliminated any reasonable possibility that employment was a factor in causing the disability." We called the two methods of rebutting the presumption "affirmative evidence" and "negative evidence." An employer could rebut the presumption by presenting a qualified expert's testimony that the claimant's work was probably not a substantial cause of the disability. The first two stages of the analysis required the Board to consider the evidence in isolation without weighing it.
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> If the employer presented enough evidence to rebut the presumption, the burden shifted back to the employee to prove the claim by a preponderance of the evidence. Only at the third stage could the Board weigh the evidence. The employee had to show by a preponderance of the evidence that work was a substantial factor in causing the disability: to prevail, the employee had to show that "(1) 'but for' the employment the disability would not have occurred, and (2) reasonable persons would regard the employment as a cause and attach responsibility to it."

Huit v. Ashwater Burns, 372 P.3d 904, 906 (Alaska 2016) (Footnotes omitted)

ANALYSIS

1 Is Employee's claim barred due to failure to timely request a hearing?

Under AS 23.30.110(c), Employee had to request a hearing within two years of Employer's March 27, 2008 controversion, or by March 27, 2010. She did not; Employee's ARH was not filed until November 14, 2011, almost 20 months late. Employee, contends that her time to file the ARH was tolled by the SIME process. Employee also contends that, as a self-represented litigant, her February 7, 2008 ARH should be considered substantial compliance.

The Board has repeatedly held the SIME process tolls the AS 23.30.110(c) deadline, and in *Harkness*, the Commission clarified that discussions at a prehearing conference alone were not enough to begin the SIME process; either the parties must stipulate to the SIME or sign an SIME form, or the party must file a petition requesting one. Here, the only prehearing conference before March 27, 2010, when Employee's time ran under AS 23.30.110(c), was on April 14, 2009. The prehearing conference summary does not indicate the parties stipulated to an SIME. Rather, it indicates the Board designee explained to Employee what she needed to do if she wanted an SIME, including filing a petition. As Employee was unrepresented at the time, this is what *Bohlmann* required. Yet Employee did nothing until eight months later when Ms. Redmond entered her appearance, and Ms. Redmond did not file a petition for an SIME until well after after the time ran. There was no stipulation or signed SIME form, and Employee did not file a petition for an SIME before March 27, 2010. The AS 23.30.110(c) deadline was not tolled for the SIME process.

Employee contends that as an unrepresented litigant her February 7, 2008 ARH should be found to be substantially compliant with AS 23.30.110(c). Under AS 23.30.110(a), an injured worker can file a written claim for benefits any time after the first seven days of disability following an injury. Under AS 23.30.110(b), the Board must serve the claim on the employer within ten days. Under 8 AAC 45.050(c)(1), the employer then has 20 days to file an answer to the claim. At that point, the issues or disputes, if any, are established, and the parties know what proof will be

needed at a hearing. If the employer fails to file an answer, the statements in the employee's claim are deemed admitted under 8 AAC 45.050(c)(1), and hearing is appropriate to determine whether the facts support an award of the benefits the employee claimed.

In *Harkness*, the Commission held that an ARH that was filed prior to a controversion may be sufficient for purposes of AS 23.30.110(c). However the facts here are significantly different from those in *Harkness*. In *Harkness*, the employee had filed a written claim for benefits, and the employer had not filed an answer within the time allowed in 8 AAC 45.050(c)(1). The employee was entitled to file an ARH under 8 AAC 45.070(b)(2), and a hearing could have been set on his claim under 8 AAC 45.070.

In the present case, however, Employee filed the February 7, 2008 ARH prior to filing a written claim. There was no claim for which a hearing could be held. As the Supreme Court held in *Jonathan*, before the two-year time period under AS 23.30.110(c) begins to run there must be a written claim and a controversion of the claimed benefits. Without both, there is no controversy, and no need for a hearing. The result might be different if Employee had not been told that her February 7, 2008 ARH was ineffective, but the letter from the Division returning the ARH told Employee she needed to resubmit the form, Employer's March 27, 2008 controversion informed her she need to file an ARH, and the April 18, 2018 prehearing conference summary reminded her of the need to request a hearing. Employee's February 7, 2008 pre-claim ARH is not substantial compliance with AS 23.30.110(c). Moreover, while an unrepresented litigant may be entitled to some procedural leeway, Employee was represented before the AS 23.30.110(c) time period ran. Ms. Redmond entered her appearance on February 19, 2010, 31 days before the time period ran on March 27, 2010. Even if Ms. Redmond's failure to timely request a hearing rises to the level of malpractice, her failure does not excuse the requirement that Employee do so. Employee's claim will be dismissed for failure to timely request a hearing.

2. Is Employee's work for Employer a substantial factor in causing or aggravating or accelerating her asthma or reactive airway disease?

Because Employee's claim was dismissed for failure to timely request a hearing, it is unnecessary to address this issue. However, even if Employee had timely requested a hearing,

she did not show by a preponderance of the evidence that her work for Employer was a substantial factor in causing or aggravating her asthma or reactive airway disease after mid-November 2005. Because Employee's injury was prior to November 7, 2005, the version of AS 23.30.010 in effect at that time applies, and Employee need only establish the employment was a substantial factor in her disability or need for medical treatment.

This is an issue to which the AS. 23.30.120 presumption of compensability applies. The first step of the presumption analysis requires Employee to produce some evidence establishing a "preliminary link" between the claimed injury and the employment. Witness credibility is not considered at this step, nor is Employee's evidence weighed against other evidence. Employee raised the presumption through the ANP Liddelow-Thompson's opinion that work at the refinery was aggravating her asthma and Dr. Carlson's statement that Employee's breathing problems got worse while working for Employer.

Because Employee successfully raised the presumption, Employer was required to rebut it. To do so, Employer had to present substantial evidence that either (1) provided an alternative explanation excluding work-related factors as a substantial cause of the disability, or (2) directly eliminated any reasonable possibility that employment was a factor in causing the disability. Again, credibility is not considered at this step, nor is Employer's evidence weighed against other evidence. Employer rebutted the presumption as to dates after mid-August 2005. It did so through Dr. Biggs' conclusion Employee had not been exposed to toxic substances at work, through Dr. Harber's opinion she did not have asthma and GERD was contributing to her symptoms, and through Dr. Raybin's opinion that Employee suffered only a temporary aggravation of her preexisting hyperresponsiveness due to diesel exhaust that would have resolved within three months of leaving the job in mid-August 2005.

Because Employer rebutted the presumption, Employee had to show by a preponderance of the evidence that work was a substantial factor in causing the disability: to prevail, she had to show that (1) but for the employment the disability would not have occurred, and (2) reasonable persons would regard the employment as a cause and attach responsibility to it. ANP Liddelow-Thompson's opinion is given the least weight for two reasons: she was unaware of Employee's

previous breathing problems, and could only refer to "toxins and fumes" in general as the cause or employee's respiratory problems. Dr. Carlson's opinions are also given little weight; she did not identify any specific "environmental factors," that might have caused Employee's respiratory problems, only noting that Employee was worse on the days she worked. Dr. Biggs' opinion is also given little weight because he appears to have concluded Employee was not exposed to any toxic substances at work without any investigation. Dr. Harber's opinion is given more weight. His explanation of why Employee did not have asthma was thorough and clear, and his opinion that GERD was causing her problems was supported by other doctors, as was his conclusion that diesel exhaust could have caused a temporary aggravation of her condition. Dr. Raybin's opinions are given the most weight, however. He reviewed extensive medical records and examined and tested Employee. He reviewed the MSDS for 87 compounds Employee might have been exposed to while working for Employer. While two of those compounds could cause occupational asthma, there is no evidence Employee was exposed to those compounds, and if she was, there is no evidence the exposure was significant enough to cause asthma. Dr. Raybin's opinion that Employee had preexisting bronchial hyperresponsiveness that was temporarily aggravated by diesel exhaust is given the most weight. And Dr. Raybin opined Employee would have been medically stable within three months of leaving her employment, or by mid-November 2005.

Employee has shown by a preponderance of the evidence her employment with Employer was a substantial factor in her disability or need for medical treatment until mid-November 2005. Had her claim not been dismissed for failure to timely request a hearing, she would have been entitled to benefits for that period.

CONCLUSIONS OF LAW

1 Employee's claim is barred due to failure to timely request a hearing.

2. Employee's work for Employer is a substantial factor in causing or aggravating or accelerating her asthma or reactive airway disease until mid-November 2005.

ORDER

1. Employee's claim is dismissed for failure to request a hearing within the time allowed under AS 23.30.110(c).

Dated in Anchorage, Alaska on June 1, 2018.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Ronald P. Ringel, Designated Chair

/s/
Bradley Evans, Member

/s/
Bronson Frye, 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 REBECCA E. HORTON, employee / claimant; v. TESORO, employer; ACE AMERICAN INSURANCE COMPANY, insurer / defendants; Case No. 200524128; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties on June 1, 2018.

/s/

Nenita Farmer, Office Assistant