ALASKA WORKERS' COMPENSATION BOARD

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

RICHARD QUATTLEBAUM,	)	
Employee,	)	
Claimant,	)	FINAL DECISION AND ORDER
	)	
v.	)	AWCB Case No. 200916335
	)	
	)	AWCB Decision No. 18-0053
STATE OF ALASKA,	)	
DEPARTMENT OF TRANSPORTATION,	)	Filed with AWCB Anchorage, Alaska
	)	on June 15, 2018
Employer,	)	
(Self-insured),	)	
Defendant	)	

Richard Quattlebaum's (Employee) February 20, 2015 claim was heard on April 24, 2018 in Anchorage, Alaska. The hearing date was selected on February 27, 2018. Employee appeared and testified. Attorney Christopher Beltzer appeared and represented Employee. Assistant Attorney General Patricia Shake appeared and represented the State of Alaska (Employer). Kyle Young appeared and testified for Employer. The record remained open at the conclusion of the hearing for Employee to file an affidavit of attorney's fees and costs, and for Employer to file a response. The record closed on May 15, 2018.

ISSUES

As a preliminary issue, Employee filed a petition to strike Employer's October 31, 2017 questions and materials sent to the second independent medical examiner (SIME) and the SIME physician's responses. Employee contended the questions were suggestive and leading, which rendered the SIME physician's responses prejudicial. Employee contended Employer's supplemental questions and the SIME physician's responses should be stricken from the record.

Employer contended Employee's objection to the October 31, 2017 questions was not timely filed. Employer additionally contended it acted within its rights in posing questions or interrogatories to the SIME physician. Employer contended no legal basis exists to exclude either the questions or the responses. An oral order issued denying Employee's petition to exclude Employer's SIME questions and the SIME physician's responses.

1) **Was the oral order denying Employee's petition to strike Employer's SIME interrogatories and the SIME physician's responses correct?**

Employee contends he is entitled to medical benefits associated with a work-related fusion surgery performed on February 15, 2011. Employee contends equitable principles bar Employer from asserting the February 15, 2011 surgery and its effects are not compensable, since Employee relied on prior authorizations from Employer in obtaining treatment.

Employer contends Employee is not entitled to medical or related transportation benefits after August 22, 2009. Employer contends the weight of the evidence shows the February 15, 2011 fusion surgery and its effects are not related to work for Employer. Employer contends Employee misled medical providers and examiners, as well as its own adjusters, concerning his entitlement to benefits.

2) **Is Employee entitled to medical and related transportation costs?**

Employee contends Employer resisted paying benefits, and his claim was controverted or denied throughout litigation. Employee contends he is entitled to attorney's fees and costs.

Employer contends all benefits owed have been timely paid or remain open, and there is no basis for an award of attorney's fees and costs.

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

FINDINGS OF FACT

The following is established by a preponderance of the evidence:

1) On February 20, 2015, Employee filed a claim for temporary total disability (TTD) from September 17, 2014 ongoing, medical and related transportation costs, penalty, interest, and unfair or frivolous controversion. The claim states that sometime in May 2009, Employee was cutting

grass while working for Employer when the riding lawnmower he was using flipped over, causing injury to his low back. (Workers' Compensation Claim, February 20, 2015).

2) Previously, on May 24, 1988, Employee was seen by neurosurgeon Peter Holliday, M.D., in Macon, Georgia. Employee reported that on June 16, 1987, he was driving a tow truck when the truck flipped over and rolled. While Employee was able to continue working after this accident, he began experiencing severe pain in his left shoulder, buttock, and leg. Dr. Holliday recommended injections for pain. (Holliday, May 24, 1988).

3) On July 14, 1988, Dr. Holliday performed a bilateral lumbar laminectomy and discectomy with interlaminar fusion with no complications. The pre-operative diagnosis was herniated disc at L5-S1. (Holliday, July 16, 1988). Many of the medical records during this period are handwritten, poorly scanned, and illegible. (Observations).

4) On October 18, 1993, Employee was seen by Marjorie Strickland, M.D., for persistent neck and arm pain. Dr. Strickland noted Employee fully recovered from the July 14, 1988 back surgery within 18 months and was being seen after being involved in an auto accident on June 18, 1993. Dr. Strickland diagnosed radiculopathy involving the left C5 root and recommended physical therapy. (Strickland, October 18, 1993).

5) On December 1, 1993, Employee was seen by Michael James, M.D., for upper extremity and neck pain. Dr. James noted impairment of mobility of the neck with mild weakness and difficulty in rotation of the left shoulder and recommended continued physical therapy. (James, December 1, 1993). Employee would sporadically see Dr. James for upper extremity and neck pain for several more months. (Record).

6) On August 9, 1994, orthopedic surgeon David McGuire, M.D., performed lateral retinacular release surgery on Employee's knee with no complications. The post-operative diagnosis was chondromalacia of the trochlea and patella with subluxing and dislocating patella. (McGuire, August 9, 1994). Dr. McGuire noted Employee returned to work as a truck driver approximately nine weeks after knee surgery. (McGuire, October 11, 1994).

7) On January 7, 2001, Employee presented at Providence Alaska Medical Center (PAMC) in Anchorage, where he was seen by Erick Maurer, M.D., after being involved in a rollover accident while driving his pickup truck. Employee recalled seeing a moose in the road, but could not recall what happened next. Employee reported pain primarily on the left side of his back, which did not radiate into the legs. He denied neck pain. Dr. Maurer noted:

> Findings: Post-surgical changes of an L5-S1 fusion are present with cerclage wire from spinous process of L5 to the sacrum. The lumbar spine otherwise has normal alignment and there are no fractures or dislocations seen.

Dr. Maurer diagnosed neck sprain and closed head injury. Employee was provided Vicodin for pain and discharged the same day. (Maurer, January 7, 2001).

8) On March 8, 2008, Employee was seen by chiropractor Christian Langford, D.C., for complaints of low back and leg pain at an 8/10 intensity. Dr. Langford diagnosed lumbar neuritis. (Langford, March 8, 2008).

9) On December 8, 2008, Employee began working for Employer as an equipment operator with the Department of Transportation. (Employer's Hearing Exhibit 2).

10) On February 28, 2009, Employee was seen Dr. Langford, who noted:

> Mr. Quattlebaum relates during his visit today that his main complaints are as follows: The patient is having a severe grade of pain in both sides of his lower back, right hip, and left hip. He has in his head on the right side a moderate level of pain. On a visual analog scale of 0 to 10 with 0 being no pain and 10 being the worst pain possible, the patient notes his overall pain is an 8. He says that he has not had any new provocative incident. (Langford, February 28, 2009).

11) On May 19, 2009, Employee hand wrote and signed a letter informing Employer he is providing two weeks' notice of his intent to leave his position as an equipment operator. (*Id.*).

12) On May 28, 2009, Employee was seen by sports medicine specialist John C. Cates, D.O., who noted:

> He was involved in a Workers' Compensation injury, he was riding on a lawnmower, it slid down a hill and almost tipped over when it stopped on a big rock. He jerked it pretty good and in his back started to notice the onset of low back pain with bilateral lower extremity pain. It is very tight. He is having some difficulty walking and is very stiff. He has had maybe a little tingling down his thighs bilaterally. . .

Dr. Cates prescribed a Medrol Dosepak and Flexeril medication, ordered imaging studies, and recommended a follow-up the next week. He ordered Employee taken off work for one week. (Cates, May 28, 2009).

13) Also on May 28, 2009, an x-ray was taken of Employee's spine and interpreted by radiologist John McCormick, M.D., who noted:

> There is moderate disc space narrowing at L5-S1. Early anterior marginal osteophytes are also noted. Note is also made of a posterior laminectomy and fusion at the L5-S1 level. An encircling wire is noted posteriorly at this level. No acute changes are seen. There are no paravertebral soft tissue abnormalities. No changes suggesting malignancy, recent trauma, nor infection are identified. Impression: Degenerative and postoperative changes are noted, especially at L5-S1. (McCormick, May 28, 2009).

14) On July 14, 2009, Employee completed a commercial driver's license (CDL) medical examination form, stating he had no history of spinal injury or disease or chronic back pain. On the same form, Dr. Cates noted a history of lumbar laminectomy and fusion at L5-S1. (CDL form, July 14, 2009).

15) On October 8, 2009, an MRI of the lower spine was ordered by Dr. Cates and interpreted by Dr. McCormick to show moderate to severe central spinal stenosis at L4-5, no protrusions or disc fragments, a history of bilateral laminectomy with fusion at L5-S1, no compromise of intracanalicular nerves, and marked disc space narrowing at L5-S1. Dr. Cates noted no post-traumatic abnormalities were present. (Cates, October 8, 2009).

16) On November 4, 2009, Employee was seen by Dr. Cates for persistent low back pain with radiation along the left hip. Dr. Cates noted, "He has recently had an epidural shot at L4-5 where he had some severe spinal stenosis. There was a lot of pain with the injection. He has a short pedicle there with a diffuse annular bulge." Dr. Cates diagnosed congenital short pedicles with severe spinal stenosis at L4-5 and facet arthritis and recommended Employee be seen by a neurosurgeon. (Cates, November 4, 2009).

17) On December 3, 2009, Employee was seen by neurosurgeon Estrada Bernard, M.D., for "evaluation of degenerative spine disease." Employee reported no significant pain issues prior to the May 22, 2009 lawnmower incident, but experienced an immediate onset of pain after the collision. Dr. Bernard noted:

> This patient presents with left sciatica that has been intractable to conservative management. He is at his wits end and wishes resolution. I think his symptoms may well be explained by the findings at L4-5. I think he would benefit from a unilateral decompression at that level, although I could not guarantee the results. . .
>
> He understands [the risks] and would like to proceed with surgery. He will be scheduled for a left L4-5 laminoforaminotomy with possible microdiscectomy. . . . (Bernard, December 3, 2009).

18) On December 15, 2009, Dr. Bernard performed a left L4-5 laminotomy and medial facetectomy with no complications. (Bernard, December 15, 2009).

19) On February 22, 2010, Dr. Bernard ordered Employee released from work driving a truck until April 12, 2010 due to muscle pain and discomfort in the hip after surgery. (Bernard, February 22, 2010).

20) On April 12, 2010, Dr. Bernard noted Employee had improved since the last visit, but ordered him released from work until June 7, 2010. (Bernard, April 12, 2010).

21) On June 7, 2010, Dr. Bernard noted:

> Mr. Quattlebaum has had some residual back and right lower extremity symptoms. I think he would best be treated with continued reconditioning. I do not see a clear role for proceeding with additional surgery at this time. I have given him clearance to increase his physical activity, including going on a trial of driving a delivery truck. We will have him scheduled for follow-up in four to six weeks, and we will keep him off of work until [July 19, 2010]. (Bernard, June 7, 2010).

22) On July 7, 2010, Dr. Bernard noted Employee continued to have low back pain which was significantly exacerbated while driving. Dr. Bernard recommended continued conservative treatment, including massage therapy, and ordered Employee released from work until September 1, 2010. (Bernard, July 7, 2010).

23) On September 1, 2010, Dr. Bernard noted Employee returned to work driving a truck about four hours a day, but was still having back pain which was aggravated by lifting or prolonged sitting. Dr. Bernard opined the cause of ongoing pain could be "discogenic or facet joints" and recommended imaging studies. (Bernard, September 1, 2010).

24) On September 30, 2010, a CT scan of the lower spine was interpreted by radiologist Leonard Sisk, M.D., as showing facet and disc degenerative changes and mild disc bulging at L4-5 with mild canal and bilateral recess stenosis. (Sisk, September 30, 2010). An x-ray of the lower spine and pelvis the same day was interpreted by radiologist Bryan Winn, M.D., as showing advanced disc degeneration at L5-S1. (Winn, September 30, 2010).

25) On November 19, 2010, Employee was seen by neurosurgeon Inad Atassi, M.D., for an employer's medical evaluation (EME), who diagnosed lower back strain and status post left sided laminectomy at left L4-5 level and lateral disc protrusion at the L4-5 level of "questionable clinical significance." Dr. Atassi opined:

> The symptoms that the examinee described, initially, after the work injury were consistent with a lumbar strain injury. However, the current symptoms of right lumbar and upper hip pain are not consistent with the initial injury. . .

Dr. Atassi stated he believes the May 22, 2009 lawnmower incident was the substantial cause for the present condition and need for treatment and that the right lumbar and upper hip pain were not present at the time of injury, but appeared two weeks after the lumbar laminectomy performed by Dr. Bernard. Dr. Atassi could explain the current symptoms by the presence of a right lateral disc protrusion at the L4-5 level. The May 22, 2009 work injury caused a permanent change in Employee's pre-existing condition at the L4-5 level. Employee was medically stable as of that date, and assigned a 5 percent whole person permanent impairment rating under the 6th edition of the AMA *Guides*. (Atassi, November 19, 2010).

26) On February 10, 2011, Dr. Bernard performed a bilateral L4-5 laminectomy, facetectomy, and transforaminal interbody fusion with no complications. (Bernard, February 10, 2011). Employer accepted compensability of this procedure. (Record).

27) On August 22, 2011, Employee was seen by neurosurgeon Paul Williams, M.D., for an EME. Dr. Williams' primary diagnoses were lumbar and left lower extremity pain, lumbar strain secondary to the May 22, 2009 work injury, and lumbar and canal central stenosis secondary to degenerative changes and unrelated to the May 22, 2009 work injury. The substantial cause of the need for the December 15, 2009 surgery performed by Dr. Bernard was congenital and degenerative changes. Dr. Williams opined Employee's current disability or need for treatment was unrelated to the May 22, 2009 lawnmower incident, the substantial cause instead being post-operative and degenerative changes and natural aging of the spine. Dr. Williams stated he believes the May 22, 2009 lawnmower incident resulted in a lumbar strain, which resolved and was medically stable after 90 days. Regarding permanent impairment, Dr. Williams states:

> Mr. Quattlebaum receives 8 percent whole person impairment for his December 2009 surgery. His February 10, 2011, surgery is not medically stable yet and needs to have imaging studies documenting a solid fusion.
>
> Mr. Quattlebaum has previously been given a 5 percent whole person impairment for the lumbar strain he sustained on May 22, 2009.
>
> I am in agreement with the 5 percent whole person impairment rating for the May 2009 lumbar strain. I do not find any additional permanent impairment rating above

> and beyond the prior whole person impairment of 5 percent, given in November 2010, so no apportion is needed. (Williams, August 22, 2011).

28) On March 25, 2015, Employer denied all benefits based on Dr. Williams' August 22, 2011 EME report. The notice of controversion contended Employer was not the last injurious exposure, stating, "The employee last worked for the State of Alaska in June 2009. The employee was employed by PRL Logistics, not the State of Alaska when the current condition and need for treatment arose." The notice asserted Employer has overpaid $26,649.00 in TTD benefits and $14,160.00 in permanent partial impairment (PPI) benefits. (Notice of Controversion, March 25, 2015).

29) On February 11, 2016, Employer obtained surveillance video of Employee working out at a boxing gym. Employee is filmed shadowboxing and hitting a punching bag. Employee's motions and physical effort during this video are light to moderate, and he is not exerting himself. (Experience, judgment, observations).

30) On September 9, 2016, Employer took Employee's deposition. The deposition transcript reads:

> Q. Do you recall having any work injuries while working for ABC Towing?
>
> A. (Witness shakes head.)
>
> Q. We were able to pull the work comp file for that, and it looked like you suffered a right ankle injury on January 26th, 1987, after a slip-and-fall on the ice. Do you recall that?
>
> A. I don't recall it. I don't recall it.
>
> Q. You don't recall getting medical treatment or any time loss or anything like that?
>
> A. I'm sorry. . . (Quattlebaum Depo. at 24-25).
>
> Q. The next employer we have is DJ's Towing. . . Do you recall the reason why you left?
>
> A. I hurt myself. . .
>
> Q. Can you describe that injury?
>
> A. I hurt my back in a rollover accident. . . I eventually ended up with back surgery in Georgia where I had moved to. . . (*Id.* at 26-27).

Q. So between the time that you left the State of Alaska in 2009, do you recall where you went after that?

A. It would be Alaskan Expedition.

Q. So you didn't work between 2009 to 2011?

A. I had surgery in 2010. . . Then I had the surgery in 2011. Then, yeah, then didn't -

Q. Basically you were off work for two years?

A. Yeah.

Q. Following your work injury with the state?

A. Yeah. . . (*Id.* at 52-53).

Q. Mr. Quattlebaum, from the time that you stopped working for PRL Logistics, and your next job then would have been with the Anchorage School District?

A. Yes ma'am.

Q. And how long have you worked at the Anchorage School District?

A. Since February of 2016. February 25th 2016. (*Id.* at 66).

Q. Okay. So you didn't - so in the time that you left PRL Logistics, and that would have been - do you remember the last day that you worked at PRL Logistics?

A. My last day I was done officially was November 29th 2014. . .

Q. So you didn't work between the time you left PRL until you started working for the Anchorage School District?

A. Yes, ma'am.

Q. And the reason for that was?

A. My back, doctors. . . (*Id.* at 67-68).

Q. One of the questions I have on work history, I noted at the time of the response, the discovery response that you sent, there's - it says Alpine General Construction. Have you worked for them, by chance?

> A. Yes. . .
>
> Q. Do you know when that was?
>
> A. Actually, I kind of - in the meantime, from - not September, but from 2015, I worked like an hour here, an hour there, just because I had no money coming in at all, and the doctor said it was okay. . . (*Id.*).

Discussing the work injury for Employer, the deposition transcript reads:

> Q. How did the accident occur?
>
> A. You know, I really don't - it was just - like, it happened so fast. I remember riding the lawn mower, cutting grass. Everything is going fine. Then the next thing I know, the lawn mower is on me and -
>
> Q. It flipped over?
>
> A. It flipped over. . . (*Id.* at 79).
>
> Q. Can you describe the type of pain that you experienced?
>
> A. Like a shooting, just an immediate tightness. . . In my lower back and side. . . (*Id.* at 81).
>
> Q. So you've been working full-time since February of this year, correct?
>
> A. Yes.
>
> Q. And you've worked sporadically for Alpine Services in 2015?
>
> A. Just I'm - not much. I mean, I needed something. I had no money. I had to feed my kids, and I was going through that divorce. . . (*Id.* at 107).

31) On December 9, 2016, neurosurgeon Paul Williams, M.D., performed an EME, and noted Employee's history of fusion at L5-S1 on July 14, 1988, a left L4-5 laminectomy and medial facetectomy on December 5, 2009, and a bilateral L4-5 laminectomy, facetectomy, and interbody fusion at L4-5 on February 10, 2011. Dr. Williams opined:

> The surgery in 2009 and 2011 are unrelated to the work related lumbar strain, May 22, 2009. Mr. Quattlebaum has a chronic pain syndrome consisting of chronic low back pain and pain bilaterally in his lower extremities and reports of decreased sensation in both lower extremities. The objective findings that support these

> diagnosis are imaging studies and an operative report in 1988 documenting a L5-S1 fusion. Objective findings that support a lumbar strain diagnosis is Dr. Cates examination shortly after the May 22, 2009 work injury, documented lumbar muscle spasm compatible with a lumbar strain. There are operative notes and imaging studies documenting the operation of December 5, 2009, and February 10, 2011. The findings to support the chronic low back and bilateral lower extremity pain and numbness are Mr. Quattlebaum's statement of subjective pain.

Dr. Williams opined the work injury of May 22, 2009, was not the substantial cause of the need for the December 5, 2009 and February 10, 2011 surgeries. In response to the issue of permanent impairment under the combined values table of the AMA *Guides*, Dr. Williams responds:

> Impairment rating for 1988, 15 percent, May 22, 2009, 5 percent, December 2009, 8 percent, 2011 event, 9 percent. Using the combined values chart page 2004, 15 percent combined with 5 percent equals 19 percent whole person impairment +8 percent equals 25 percent and 25 percent +9 percent equals 32 percent whole person impairment combining all four impairment ratings concerning his spine. (Williams, December 9, 2016).

32) On October 2, 2017, neurosurgeon Bruce McCormack, M.D., performed an SIME. Considering "all causes" of Employee's disability or need for medical treatment, Dr. McCormack opines the May 22, 2009 work injury was a "permanent aggravator of the L4-5 level," which led to the 2009 decompression and 2011 fusion surgeries. On the question of whether Employee is engaging in symptom magnification for secondary gain, Dr. McCormack stated, "It is possible and I cannot rule it out. There is financial duress. I suspect embellishment of a real problem. . . His fusion surgery was complicated by screws going in the nerve channel that had to be repositioned." When asked as to the relative contribution of causes leading to Employee's disability or need for treatment, Dr. McCormack stated work was 70% of the cause, with "30% to a pre-existing condition - stenosis at L4-5 that developed due to L5-S1 fusion 1987 [sic] transferring stress to the L4-5 motion segment over 25 years." Employee reached medical stability one year after the lumbar fusion surgery, in February 2012. Dr. McCormack rated total permanent impairment using the combined values chart at 16 percent. (McCormack, October 2, 2017).

33) On October 9, 2017, Dr. McCormack issued an addendum SIME report after reviewing additional imaging, records, and surveillance materials. Dr. McCormack's opinions are unchanged, and he concludes only, "All opinions outlined in my report." (McCormack, October 9, 2017).

34) On October 31, 2017, Employer sent Dr. McCormack a letter attaching additional medical and employment records. The letter states:

> The purpose of this letter is to obtain clarification of opinions expressed in your SIME and addendum reports. It appears that you were not provided with all the medical records submitted by the parties, including Dr. Williams' addendum report, dated 6/11/17. These records are enclosed. I have also enclosed Mr. Quattlebaum's employment records from the State of Alaska, Alaska Premier Tours, the Anchorage School District (ASD) and PRL logistics. These records were not included in the record binders submitted to you by the Board. . . .

The letter asked Dr. McCormack the following 14 additional questions and whether any of Dr. McCormack's opinions have changed:

> 1. Did you rely upon Mr. Quattlebaum's oral history and deposition testimony regarding the May 22, 2009, work incident and effects of that incident in formulating the opinions in your SIME report?
>
> 2. Based upon the employment records provided, do you agree that contrary to Mr. Quattlebaum's statements to you and in his deposition, he worked following the May 22, 2009, work injury?
>
> 3. In responding to Question No.1 on page 26 of your report, you opined that the May 22, 2009, work injury resulted in a permanent aggravation of Mr. Quattlebaum's preexisting lumbar spine condition. Does the additional information provided change or affect your opinion? Please explain.
>
> 4. In responding to Question No. 1 on page 26 of your report, you opined that the May 22, 2009, work injury was the substantial cause of Mr. Quattlebaum's need for the laminectomy in 2009 and fusion in 2011. Does the additional information provided change or affect your opinion? Please explain.
>
> 5. In responding to Question No.4 on page 27 of your report, you attributed 70% of Mr. Quattlebaum's disability and need for medical treatment to the May 22, 2009, work incident and 30% to preexisting degenerative conditions. In attributing only 30% to the preexisting degenerative changes, you opined that Mr. Quattlebaum's low back condition was not symptomatic in the six months prior to the May 22, 2009, work injury. However, the medical records show that Mr. Quattlebaum complained of severe low back and hip pain less than three months prior to the May 22, 2009, work incident. Does this additional information change or affect your opinion that 70% of Mr. Quattlebaum's disability and need for treatment is due to the May 22, 2009, work injury? Please explain.

6. In responding to Question No. 5 on page 27 of your SIME report, you opined that the escalation of pain from the May 22, 2009, work injury was the substantial cause in the need for the laminectomy in December 2009 and fusion in 2011. However, on July 17, 2009, Mr. Quattlebaum told Dr. Cates that his "low back was better." Does this additional information change or affect your opinion that the May 22, 2009, work incident was the substantial cause in Mr. Quattlebaum's need for the laminectomy in December 2009 and fusion in 2011? Please explain.

7. In responding to Questions Nos. 6 and 7 on page 28 of your report, you opined that Mr. Quattlebaum has a continuing partial disability as a result of the May 22, 2009, work injury. Under Alaska's Workers' Compensation Act, "disability" is defined as "the incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment." Alaska Statute 23.30.395(16). Does the additional information change or affect your opinion that Mr. Quattlebaum has a continuing partial disability as a result of the May 22, 2009, work incident? Please explain what you mean by an "ongoing partial disability."

8. In responding to Question No.8 on page 28 of your report, you opined that the May 22, 2009 work injury reached medical stability by February 2013. Does the additional information change or affect your opinion that the May 22, 2009, work injury reached medical stability by February 2013? Please explain.

9. In responding to Question No.9, you opined that Mr. Quattlebaum suffers from neuropathic pain and numbness in his legs due to the February 2011, TLIF fusion. Does the additional information change or affect your opinion that the May 22, 2009 work injury is the substantial cause of Mr. Quattlebaum's lower extremity neuropathic pain and numbness? Please explain.

10. On March 25, 2015, the State of Alaska denied liability for payment of additional disability and medical treatment for the May 22, 2009, work injury. Please identify what medical treatment, if any, provided after March 25, 2015, was reasonable and necessary for the process of recovering from the May 22, 2009, work injury.

11. In responding to Question No. 10 on page 29 of your report, you opined that additional physical therapy, chiropractic care, acupuncture is not anticipated to alleviate chronic debilitating pain. In addition, you opined that a spinal cord stimulator is an option but not one you would recommend. Do you agree with Dr. Gevaert's opinion that only Advil and Tylenol are needed for Mr. Quattlebaum's low back condition?

12. On pages 30 and 35 of your report, you assessed a 16% PPI rating for the May 22, 2009 work injury. In reviewing the methodology used to arrive at the 16% PPI rating, it does not appear that you apportioned this rating to account for Mr.

> Quattlebaum's preexisting low back condition and surgery. Please apportion your rating to account for preexisting conditions using available information in the medical records pursuant to the AMA Guides to the Evaluation of Permanent Impairment, 6th Edition 2.5c "Apportionment," p. 25-26.
>
> 13. As noted above, Mr. Quattlebaum has received three prior PPI ratings for his low back, left knee and left ankle. Please use the Combined Values Table to reach a whole person rating under the AMA Guides.
>
> 14. In his September 29, 2016, deposition, Mr. Quattlebaum testified that he has been unable to engage in any sporting activities due to his neuropathic pain in his legs. He also testified that he was only able to stand for 2-3 minutes before it became uncomfortable and had difficulty walking. The video surveillance of Mr. Quattlebaum shadow boxing was taken on February 8, 2016. Does this information affect or change your response to the Employee's Question No. 1 on pages 30-31 of your report regarding the relevance of the surveillance videotape to your exam and analysis? (Shake, October 31, 2017).

35) On November 7, 2017, Dr. McCormack issued an addendum SIME after reviewing the additional records and questions sent by Employer on October 31, 2017. The report states:

> [M]y opinions changed. He is not a reliable historian and had treatment for same complaints within 3 months of the subject accident. Mr. Quattlebaum was seen for low back and neck hip 2/28/09. These are the same complaints claimed due to the 5/22/09 incident. He had a symptomatic preexisting condition. . .
>
> I agree with Dr. Williams there was a strain and temporary aggravation of an underlying condition on 5/2/09. There were no objective findings of injury. These new records indicate he was symptomatic in the three months prior to the accident and that, in fact, he continued to work despite what he told doctors. He is not credible. . .
>
> My opinions have changed. I agree with Dr. Williams that the work incident was a temporary aggravating factor for 90 days and resulted in a strain superimposed, on chronic degenerative musculoskeletal changes. Need for surgery was due to the preexisting condition. . .
>
> Mr. Quattlebaum told me he did not work after this incident. The information provided indicates he drove a bus and worked at a school. There is no residual disability from the 5/22/09 work incident. All disability and need for medical treatment including laminectomy and fusion is all due to a preexisting condition.
>
> I believe he reached medical stability after the 5/22/09 work injury within 90 days. I agree with the report of Dr. Williams.

> I agree with Dr. Gevaert's opinion, as outlined in his report. . . I have changed my opinion regarding his 16% whole person impairment attributed to the 5/22/09 work injury. The current 16% impairment is due to his pre-existing condition. He had same symptoms three months of the incident. He continued to work after the 5/22/09 incident and left employment at the airport for reasons other than the 5/22/09 incident. I don't find him credible. I don't believe there is any current impairment due to this incident.

Dr. McCormack opined the 2009 laminectomy and 2011 fusion surgeries Employee underwent were unrelated to the May 22, 2009 work incident, and that none of the treatment provided after March 25, 2015 was reasonable and necessary for recovery from the work injury. (McCormack, November 7, 2017).

36) On January 4, 2018, the parties attended a prehearing conference during which they agreed the only issues for the February 14, 2018 hearing were medical costs, transportation costs, and attorney's fees and costs. (Prehearing Conference Summary, January 4, 2018).

37) On February 13, 2018, Employee filed an affidavit of attorney's fees and costs incurred through February 12, 2018 totaling $38,959.00. (Affidavit of Attorney's Fees and Costs, February 13, 2018).

38) In the afternoon of February 13, 2018, Employee filed a petition to continue the February 14, 2018 hearing. The petition attached a letter, dated February 12, 2018, from Marius Maxwell, M.D., concerning recent treatment. Employee testified the examination resulting in the February 12, 2018 letter from Dr. Maxwell occurred on a Monday, two days prior to the February 14, 2018 hearing, with another examination the previous week. (Employee's Hearing Argument).

39) On February 14, 2018, an oral order issued continuing the hearing for 45 days and ordering a freeze of the record, with the exception of the opinions and testimony of Dr. Maxwell. (*Quattlebaum v. State of Alaska*, AWCB Decision No. 18-0015 (February 16, 2018) (*Quattlebaum I*)). Employee did not mention Employer's October 31, 2017 letter to Dr. McCormack and Dr. McCormack's November 7, 2017 response during the *Quattlebaum I* hearing. Employee did not seek reconsideration or modification of *Quattlebaum I*. (Record).

40) On April 11, 2018, Employee took the deposition of Dr. Maxwell. Dr. Maxwell testified he has been in private practice as a neurosurgeon since 1998. (Maxwell Depo. at 4). Employee's first visit was on January 25, 2018. (*Id*. at 5). The deposition transcript reads:

> Q. [B]ased on your review of the records that you had available to you and the imaging that you had available and your exam of Mr. Quattlebaum, will you, again, just describe what his symptoms were and what your diagnosis was based on all of that information?
>
> A. Prior to my surgery - this is a man you obviously both well know who had an initial surgery, I think, in 2010. He had a work injury in 2009 and an initial surgery to left L4-5 laminotomy in 2010, had a subsequent fusion at L4-5 in 2011. Interestingly - intraoperatively the surgeon felt that the screws were immediately placed, and he claimed to have moved them. And since that surgery, Richard, I believe, has complained of seven years' history of bilateral leg pain and groin pain, numbness as well. . .
>
> When I got the CAT scan, which was done on January 30th - I may have seen him in the clinic with his scan after this letter - I then very rapidly determined that all four screws, in fact, had been misplaced. So my recommendation to him was to remove all the hardware. Interestingly, despite these screws being misplaced, the fusion took. But it's in my opinion that. . . the malpositioned screws in that 2011 surgery would have accounted for his seven years' history of bilateral leg pain, numbness, weakness, and groin pain. (*Id*. at 7-8).

Dr. Maxwell removed the malpositioned pedicle screws on March 23, 2018. While Employee will probably have long-term damage from the malpositioned screws, he has had marked improvement after removal. (*Id*. at 10). Employee will likely have some permanent impairment related to the malpositioned screws, although the degree of damage is currently difficult to assess. (*Id*. at 16-17). Dr. Maxwell agrees and would defer to the opinions contained in Dr. McCormack's October 2, 2017 SIME report. (*Id*. at 20). On the issue of the cause of Employee's condition or need for medical treatment related to the May 22, 2009 work incident, the transcript reads:

> Q. I just want clarification. My - in reviewing your - the records that you provided and your testimony today, it appears that you're giving an opinion only diagnosing what is - what caused Mr. Quattlebaum's complaints of low back and lower extremity numbness and pain, correct?
>
> A. Yes. (*Id*. at 21).
>
> . . . .
>
> Q. You're not giving an opinion whether or not the 2009 work injury is responsible for the malpositioned screws or the fusion in 2011, correct?
>
> A. I've read the - I mean, being reasonably familiar with workman's camp claims. . . and having read Dr. McCormick's report, I conferred, [sic] perhaps

wrongly, that there was a correlation between the work injury and the subsequent surgeries. (*Id*. at 22).

41) Also on April 11, 2018, Employee filed a petition to strike Employer's October 31, 2017 letter to Dr. McCormack and also Dr. McCormack's November 7, 2017 response. The petition states the material is not within the letter or spirit of the Act regarding discovery and interrogatories, or the rules of civil procedure. The petition contends Employee is prejudiced by the material, and seeks to have it excluded from consideration at a hearing on the merits of his claim. (Petition, April 11, 2018).

42) A letter from the payroll coordinator for the Anchorage School District (ASD) states Employee was hired as a "noon duty" assistant on August 29, 2008. (Delmendo, January 6, 2017; Employer's Hearing Exhibit 5). Payroll records show Employee worked part time as a noon duty for ASD from August 19, 2009 through December 14, 2009, typically approximately two hours per shift. On February 25, 2016, Employee switched positions to that of mobile cafeteria manager for ASD. (*Id*.). Employer contends Employee worked 168 days as a noon duty for ASD between November 4, 2009 and December 7, 2011, despite his claims he was unable to work due to the injury from the May 22, 2009 lawnmower incident with Employer. (Employer's Hearing Argument).

43) A payroll register from Alaska Premier Tours shows Employee worked as a tour bus operator the following hours: 42 hours from May 16-31, 2009; 29.5 hours from June 1-15, 2009; 52 hours from June 15-30, 2009; 74.50 hours from July 11-15, 2009; 87.50 hours from July 15-30, 2009; 34 hours from August 1-15, 2009; 23.50 hours from August 16-31, 2009; 33 hours from September 1-11, 2009; and 30.00 hours from September 15-25, 2009. (Employer's Hearing Exhibit 3).

44) A hiring offer letter from PRL Logistics, Inc. shows Employee was hired as an equipment/environmental inspector on November 26, 2012. (Employer's Hearing Exhibit 4).

45) Employee took the noon duty job for ASD primarily because his kids were attending the same school, and it was an opportunity to help out at the school, as well as eat lunch with his kids every day. He initially tried to donate his time as a noon duty, but ASD eventually told him he had to become an employee, which included a background check. A typical day as a noon duty would be to come in around 11:15 AM, help the kids open and unpack their lunches, and supervise the eating area. The typical work day was one to two-and-a-half hours. After the work injury of May 22, 2009, Employee does not recall being restricted from work due to physical limitations. Employee described his work for Alaska Premier Tours as a "glorified babysitter," essentially supervising

teenagers during summer employment while they wash and clean tour buses with little to no physical exertion himself. Employee has had a CDL since 1985, and has renewed every year since. On his recent CDL renewal form, he checked the "no" box asking whether he had any spinal injury or disease, because he believed he has no spinal cord problems that would prevent him from driving a truck. He was not trying to hide the fact he had previously had back surgery. He considers himself a truck driver by trade, and whenever discussing his injuries and physical capacities with providers, adjusters, or medical personnel, views his ability to work in general in light of whether he can drive a truck. Employee spoke with Employer's adjuster concerning his workers' compensation benefits on multiple occasions, frequently asking whether his work as a noon duty was allowed, and was told it was, so long as he is not doing anything contrary to doctors' orders. After the 2011 fusion surgery, his condition seriously deteriorated and "all hell broke loose." He was in constant pain and his physical activities were severely limited, although he has never considered himself completely disabled. Employee started boxing training in order to spend time with his kids and get some physical activity. Employee informed his boxing instructor he had back problems. His boxing activities were adjusted accordingly, consisting of shadow boxing and training, but no fighting. Employee concedes his memory is bad and he does not recollect many details of his work and medical history. (Employee).

46) Employer's adjusters' notes show a conversation with Employee on November 23, 2009 containing the following:

> Rec pc from EE - wanted to make sure that HAS and I were aware that he occasionally helps out at his kids school and he's asked them not to pay him but they do pay him $10 an hour. EE wanted to make sure this wasn't going to affect his claim at all. (Employee's Hearing Exhibit 1).

47) Although Employee is a poor historian and is not credible, he did not knowingly make false or misleading statements or representations for the purpose of obtaining benefits under the Act. (Experience, judgment, observations, and inferences from all of the above).

48) Employee's claim for medical benefits seeks reimbursement at this time for only the following treatments and services: a 1) $3,200.00 to Creekside Imaging for a lumbar MRI on March 16, 2015; 2) $3,400.00 to Creekside Imaging for a thoracic MRI on March 16, 2015; 3) $170.00 to Dr. Bernard for examination on March 18, 2015; 4) $200.00 to Dr. Bernard for examination on March 18, 2015; 5) $81.00 to Alaska Imaging Associates for services on March 18, 2015; and 6) bills for

massage therapy from Ann Neavill dated March 24, and March 28, 2015. (Parties' Hearing Stipulation).

49) Employee has not submitted a written request for reimbursement of medical transportation costs. (Quattlebaum Depo. at 109; Record).

50) On May 1, 2018, Employee filed a supplemental affidavit of attorney's fees and costs incurred from April 20, 2018 through April 24, 2018 totaling $7,120.00. (Affidavit of Attorney's Fees and Costs, May 1, 2018).

51) On May 10, 2018, Employer filed an objection to Employee's attorney's fees and costs. (Objection, May 10, 2018).

PRINCIPLES OF LAW

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

> **AS 23.30.010. Coverage.** (a) Except as provided in (b) of this section, compensation or benefits are payable under this chapter for disability or death or the need for medical treatment of an employee if the disability or death of the employee or the employee's need for medical treatment arose out of and in the course of the employment. To establish a presumption under AS 23.30.120(a)(1) that the disability or death or the need for medical treatment arose out of and in the course of the employment, the employee must establish a causal link between the employment and the disability or death or the need for medical treatment. A presumption may be rebutted by a demonstration of substantial evidence that the death or disability or the need for medical treatment did not arise out of and in the course of the employment. When determining whether or not the death or disability or need for medical treatment arose

> out of and in the course of the employment, the board must evaluate the relative contribution of different causes of the disability or death or the need for medical treatment. Compensation or benefits under this chapter are payable for the disability or death or the need for medical treatment if, in relation to other causes, the employment is the substantial cause of the disability or death or need for medical treatment. . . .
>
> **AS 23.30.095. Medical treatments, services, and examinations.**
> . . . .
>
> (k) In the event of a medical dispute regarding determinations of causation, medical stability, ability to enter a reemployment plan, degree of impairment, functional capacity, the amount and efficacy of the continuance of or necessity of treatment, or compensability between the employee's attending physician and the employer's independent medical evaluation, the board may require that a second independent medical evaluation be conducted by a physician or physicians selected by the board from a list established and maintained by the board. The cost of an examination and medical report shall be paid by the employer. The report of an independent medical examiner shall be furnished to the board and to the parties within 14 days after the examination is concluded. A person may not seek damages from an independent medical examiner caused by the rendering of an opinion or providing testimony under this subsection, except in the event of fraud or gross incompetence.

An employer shall furnish an employee injured at work any medical treatment which the nature of the injury or process of recovery requires within the first two years of the injury. *Phillip Weidner & Associates, Inc. v. Hibdon*, 989 P.2d 727, 731 (Alaska 1999). The medical treatment must be reasonable and necessitated by the work-related injury. When the Board reviews a claim for medical treatment made within two years of an injury which is undisputedly work-related, its review is limited to whether the treatment sought is reasonable and necessary. *Id*.

The Supreme Court has held the Board possesses authority to invoke equitable principles to prevent an employer from asserting statutory rights. *Schmidt v. Beeson Plumbing & Heating*, Inc., 869 P.2d 1170, 1175 (Alaska 1994); *Wausau Ins. Co. v. Van Biene*, 847 P.2d 584, 588 (Alaska 1993). However, application of such principles must be supported by findings establishing that the party asserting the relief presented substantial evidence to support all elements of the desired form of equitable relief. *Schmidt* at 1175; *S&W Radiator Shop v. Flynn*, AWCAC Decision No. 016 at 15 (August 4, 2006).

Equitable estoppel requires proof of three basic elements: 1) assertion of a position by conduct or word, 2) reasonable reliance thereon, and 3) resulting prejudice. *Beecher v. City of Cordova*, 408 P.3d 1208, 1214 (Alaska 2018). In addition, equitable estoppel "will be enforced only to the extent that justice so requires." *Municipality of Anchorage v. Schneider*, 685 P.2d 94, 97 (Alaska 1984). "[E]ven where reliance has been foreseeable, reasonable, and substantial, the interest of justice may not be served by the application of estoppel because the public interest would be significantly prejudiced." *Id*. at 97.

The Supreme Court has rejected the view that principles of equitable estoppel automatically prevent an employer from denying future liability after paying benefits under the Act. In *Childs v. Copper Valley Elec. Assn.*, 860 P.2d 1184 (Alaska 1993), the employee argued that because the employer paid some of his initial medical bills and also TTD benefits, principles of equitable estoppel prevented it from denying further liability. The Superior Court rejected this argument on public policy grounds, concluding that to do otherwise "would encourage every employer to dispute an employee's claim to the fullest extent possible, since any payment of benefits might be seen as a concession of liability." The Court in *Childs* agreed with this analysis and quoted the Superior Court on this issue. *Id.* at 1190.

> **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 . . . .

Under AS 23.30.120(a), benefits sought by an injured worker are presumed to be compensable, and the burden of producing evidence is placed on the employer. *Sokolowski v. Best Western Golden Lion Hotel*, 813 P.2d 286, 292 (Alaska 1991). The Alaska Supreme Court held the presumption of compensability applies to any claim for compensation under the Act. *Meek v. Unocal Corp*., 914 P.2d 1276, 1279 (Alaska 1996). An employee is entitled to the presumption of compensability as to each evidentiary question. *Sokolowski* at 292.

A three-step analysis is used to determine the compensability of a claim. At the first step, the claimant need only adduce some minimal relevant evidence establishing a "preliminary link" between the injury claimed and employment. *McGahuey v. Whitestone Logging, Inc.*, 262 P.3d 613, 620 (Alaska

2011); *Smith v. Univ. of Alaska, Fairbanks*, 172 P.3d 782, 788 (Alaska 2007); *Cheeks v. Wismer & Becker/G.S. Atkinson, J.V.*, 742 P.2d 239, 244 (Alaska 1987). The evidence necessary to attach the presumption of compensability varies, depending on the claim. In claims based on highly technical medical considerations, medical evidence is often necessary to make that connection. *Burgess Construction Co. v. Smallwood*, 623 P.2d 312, 316 (Alaska 1981). In less complex cases, lay evidence may be sufficiently probative to establish causation. *VECO, Inc. v. Wolfer*, 693 P.2d 865, 871 (Alaska 1985). Witness credibility is not weighed at this step in the analysis. *Resler v. Universal Services Inc.*, 778 P.2d 1146, 1148-49 (Alaska 1989).

At the second step, once the preliminary link is established, the employer has the burden to overcome the presumption with substantial evidence. *Wien Air Alaska v. Kramer*, 807 P.2d 471, 473-74 (Alaska 1991) (*quoting Smallwood* at 316. To rebut the presumption, an employer must present substantial evidence that either 1) something other than work was the substantial cause of the disability or need for medical treatment or 2) that work could not have caused the disability or need for medical treatment. *Huit v. Ashwater Burns, Inc.*, 372 P.3d 904 (Alaska 2016). "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). At the second step of the analysis, the employer's evidence is viewed in isolation, without regard to the claimant's evidence. 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. *Norcon, Inc. v. Alaska Workers' Comp. Bd.*, 880 P.2d 1051, 1054 (Alaska 1994); *Wolfer* at 869-870.

If the presumption is raised but not rebutted, the claimant prevails and need not produce further evidence. *Williams v. State*, 938 P.2d 1065, 1075 (Alaska 1997). 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, 1381 (Alaska 1991). At this last step of the analysis, evidence is weighed and credibility considered. 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). The presumption does not apply if there is no factual dispute. *Rockney v. Boslough Construction Co.*, 115 P.3d 1240 (Alaska 2005).

> **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.

Even where there is conflicting evidence, the Board's decision will be upheld if it is supported by substantial evidence. *DeYonge v. NANA/Marriott*, 1 P.3d 90, 94 (Alaska 2000).

If the Board is faced with two or more conflicting medical opinions, each of which constitutes substantial evidence, and elects to rely upon one opinion rather than the other, the Supreme Court will affirm the Board's decision. *Sosa de Rosario v. Chenega Lodging*, 297 P.3d 139 (Alaska 2013). The Supreme Court cautioned against considering the workers' compensation process "a game of 'say the magic word,' in which the rights of injured workers should depend on whether a witness happens to choose a form of words prescribed by a court or legislature." *Id*. at 194.

The Supreme Court has upheld a Board decision to give less weight to a treating physician's testimony because he was not an expert in toxicology, where substantial evidence supported finding the employee did not establish a compensable claim. *Apone v. Fred Meyer, Inc.*, 226 P.3d 1021 (Alaska 2010).

> **AS 23.30.135. Procedure before the board.** In making an investigation or inquiry or conducting a hearing, the board is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this chapter. The board may make its investigation or inquiry or conduct its hearing in the manner by which it may best ascertain the rights of the parties. . . .

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

Claimants are entitled to full attorney fees only for issues on which they succeed. *Bouse v. Fireman's Fund Ins. Co.*, 932 P.2d 222, 241 (Alaska 1997).

> **AS 23.30.250. Penalties for fraudulent or misleading acts; damages in civil actions**. (a) A person who (1) knowingly makes a false or misleading statement, representation, or submission related to a benefit under this chapter; (2) knowingly assists, abets, solicits, or conspires in making a false or misleading submission affecting the payment, coverage, or other benefit under this chapter; (3) knowingly misclassifies employees or engages in deceptive leasing practices for the purpose of evading full payment of workers' compensation insurance premiums; or (4) employs or contracts with a person or firm to coerce or encourage an individual to file a fraudulent compensation claim is civilly liable to a person adversely affected by the conduct, is guilty of theft by deception as defined in AS 11.46.180 , and may be punished as provided by AS 11.46.120 - 11.46.150.
>
> (b) If the board, after a hearing, finds that a person has obtained compensation, medical treatment, or another benefit provided under this chapter, or that a provider has received a payment, by knowingly making a false or misleading statement or representation for the purpose of obtaining that benefit, the board shall order that person to make full reimbursement of the cost of all benefits obtained. . . .

Proof of fraud by a preponderance of the evidence is standard for employer to recover reimbursement of workers' compensation if claimant obtained benefits by knowingly making a false or misleading statement or representation. *Shehata v. Salvation Army*, 225 P.3d 1106, 1114 (Alaska 2010). "Knowingly," for purposes of a claim for reimbursement asserting, under fraud provision of workers' compensation statute, that a person has obtained a benefit by knowingly making a false or misleading statement or representation for the purpose of obtaining that benefit, requires the subjective intent to defraud. *ARCTEC Services v. Cummings*, 295 P.3d 916, 923 (Alaska 2013).

8 AAC 45.092. Selection of an independent medical examiner.

. . . .

(g) If there exists a medical dispute under in AS 23.30.095(k),

. . . .

(3) the board will, in its discretion, order an evaluation under AS 23.30.095(k) even if no party timely requested an evaluation under (2) of this subsection if

(A) the parties stipulate, in accordance with (1) of this subsection, to the contrary and the board determines the evaluation is necessary; or

(B) the board on its own motion determines an evaluation is necessary. . . .

(h) If the board requires an evaluation under AS 23.30.095(k), the board may direct

. . . .

(5) that, not later than 10 days after a party's filing of verification that the binders are complete, each party may submit to the board designee up to three questions per medical issue in dispute under AS 23.30.095(k), as identified by the parties, the board designee, or the board, as follows:

(A) if all parties are represented by counsel, the board designee shall submit to the physician all questions submitted by the parties in addition to and at the same time as the questions developed by the board designee;

. . . .

(C) if any party objects to any questions submitted to the physician, that party shall file a petition with the board and serve all other parties not later than 10 days after receipt of the questions; the objection must be preserved in the record for consideration by the board at a hearing on the merits of the claim, or, upon the petition of any party objecting to the questions, at the next available procedural hearing day; failure by a party to file and serve an objection does not result in waiver of that party's right to later argue the questions were improper, inadequate, or otherwise ineffective. . . .

(j) After a party receives an examiner's report, communication with the examiner is limited as follows and must be in accord with this subsection. If a party wants the opportunity to

(1) submit interrogatories or depose the examiner, the party must

(A) file with the board and serve upon the examiner and all parties, within 30 days after receiving the examiner's report, a notice of scheduling a deposition or copies of the interrogatories; if notice or the interrogatories are not served in accordance with this paragraph, the party waives the right

> to question the examiner unless the opposing party gives timely notice of scheduling a deposition or serves interrogatories; and
>
> (B) initially pay the examiner's charges to respond to the interrogatories or for being deposed; after a hearing and in accordance with AS 23.30.145 or AS 23.30.155(d), the charges may be awarded as costs to the prevailing party;
>
> (2) communicate with the examiner regarding the evaluation or report, the party must communicate in writing, serve the other parties with a copy of the written communication at the same time the communication is sent or personally delivered to the examiner, and file a copy of the written communication with the board; or
>
> (3) question the examiner at a hearing, the party must initially pay the examiner's fee for testifying; after a hearing and in accordance with AS 23.30.145 or AS 23.30.155(d), the board will, in its discretion, award the examiner's fee as costs to the prevailing party.
>
> (k) If a party's communication with an examiner is not in accordance with (j) of this section, the board may not admit the evidence obtained by the communication at a hearing and may not consider it in connection with an agreed settlement.

The purpose of an SIME is to have an independent expert provide an opinion to the Board about a contested issue. *Seybert v. Cominco Alaska Exploration*, 182 P.3d 1079, 1097 (Alaska 2008). It is well-established the SIME physician is the Board's expert, not the employee's or employer's expert. *Bah v. Trident Seafoods Corp.*, AWCAC Decision No. 073 at 5 (February 27, 2008). An SIME is not intended to give the parties an additional medical opinion or bolster their position. *Id*. at 4-5.

Several Board decisions have considered the issue of striking SIME questions submitted by parties, either before or after the SIME report issues. In *Richardson v. Interior Alaska Roofing*, AWCB Decision No. 12-0057 (March 19, 2012), the Board ordered an employer's SIME questions pertaining to causation stricken, as causation was not an issue listed as disputed on the parties' SIME form. One of the employer's SIME questions also included the definition of "medical stability," as listed in the "definitions" section of AS 23.30.395. The employee contended this definition was incomplete as it omitted the legal explanation that the need for further medical treatment is established by clear and convincing evidence that a medical condition has not reached

medical stability, as held by the Supreme Court in *Alyeska Pipeline Service Co. v. DeShong*, 77 P.3d 1227 (Alaska 2003) and related cases. The Board in *Richardson* held while the employer's definition of medical stability did not expand on the definition or include case law interpretation of the statute, it was nonetheless an accurate description of medical stability, and ordered it sent to the SIME physician.

In *McKenna v. Arco Alaska, Inc.*, AWCB Decision No. 12-0070 (April 9, 2012), the Board struck an employer's SIME questions, holding that to include the employer's questionable interpretation of the applicable legal standard would cause confusion, and result in an uncertain, muddled and useless response to the Board's questions, and causing a wasteful expenditure of resources.

In *Estes v. Sears Roebuck & Co.*, AWCB Decision No. 12-0141 (August 17, 2012), the Board ordered employee's SIME questions stricken, finding the questions were compound in nature [(a) was the motor vehicle accident, on its own, the substantial cause of Employee's disability or need for medical treatment and (b) did the motor vehicle accident accelerate, aggravate or combine with any preexisting conditions to cause Employee's disability or need for medical treatment?]. The Board also found the questions contained a legal definition of "the substantial cause" [was the injury the substantial cause in combining with any preexisting symptoms or the preexisting shoulder condition thereby resulting in the need for treatment? The substantial cause is defined as less than a major contributing factor but more than a substantial factor].

In *Freelong v. Chugach Alaska Services, Inc.*, AWCB Decision No. 13-0005 (January 14, 2013), the Board struck the employer's SIME questions, finding they were subjective characterizations of its own positions. The Board found the employer's three-sentence final question was editorial in nature and not designed to objectively elicit information useful for determining the rights of the parties.

In *Hofmeister v. Ice Services, Inc.*, AWCB Decision No. 13-0100 (August 23, 2013), the employer contended a two-page explanation of legal tests and principles accompanying the employee's proposed SIME questions was confusing and inappropriate. The Board noted that in all cases in which an SIME occurs, regardless of the disputed issues, the Board designee sends a letter to the

SIME physician containing boilerplate language on causation, preexisting conditions, and the legal definitions of disability, medical stability and palliative care. With this in mind, to include the employee's explanation of the legal standard would be redundant and confusing and not likely to elicit useful information from the SIME physician. The Board in *Hofmeister* also ordered stricken certain other employee's questions as redundant, not likely to elicit useful information, or compound.

In *Kollman v. ASRC*, AWCB Decision No. 15-004 (January 7, 2015), the employee contended the employer filed its SIME questions 52 days late. Finding several intervening procedural events had taken place while the parties prepared for an SIME, the Board permitted the employer's late-filed SIME questions to be submitted to the SIME physician.

In *Weaver v. Arctec Alaska, Inc.*, AWCB Decision No. 15-0050 (April 30, 2015), both parties contended the opposing party's SIME questions were compound, misleading, or misstated the legal standard. While the Board did not explain the basis for its conclusion, it found both parties' questions were compound and confusing, and so neither the employee's nor employer's questions would be submitted to the SIME physician. Only the Board's SIME questions were ordered sent to the SIME physician.

In *Guillet v. Conoco Phillips CO.*, AWCB Decision No. 15-0150 (November 24, 2015), the Board found an employer's SIME questions set forth an incorrect legal standard for causation. Under AS 23.20.010, employment must be the substantial cause of the disability or need for medical treatment. By phrasing the questions in terms of the cause of "the condition and/or need for treatment" and the cause of "injury, complaint, or impairment," the Board held the employer misstated the standard, and ordered certain questions stricken.

In *Johnson v. Blazy Construction, Inc.*, AWCB Decision No. 18-0040 (April 20, 2018) the Board looked at prior Board decisions concerning a party's objections to questions sent to the SIME physician by another party. *Blazy* held there is no basis for striking questions or requiring a party to revise questions submitted to the SIME physician with the Board's referral letter when the physician would be required to answer the same question in a deposition. Barring factual error or

gross misstatement of the applicable legal standard such that would render the SIME physician's response useless, there is no reason to strike or re-write parties' SIME questions.

In *Traugott v. Arctec Alaska*, AWCB Decision No. 16-0063 (July 29, 2016), the Board held limiting a party's ability to present their arguments and evidence to the SIME physician, who is the Board's expert, may deny them opportunity to be heard and for their arguments and evidence to be fairly considered under AS 23.30.001(4). Parties are permitted to submit written interrogatories to the SIME physician or seek a deposition under the civil rules after the SIME report issues. In such a deposition, unless a party's objection relates to an evidentiary privilege or limitation imposed by the court, the witness is required to answer. *Traugott* reasoned there is no basis for striking SIME questions, or requiring a party to revise questions, submitted to an SIME physician with the Board's referral letter when the physician would be required to answer the same question in a deposition.

In *Arctec Alaska v. Traugott*, AWCAC Decision No. 249 (June 6, 2018), the Commission considered whether the Board's finding work for the employer was, in relation to other causes, the substantial cause of the employee's need for treatment as asked by the Board's own questions to the SIME physician. The Commission in *Traugott* held the Board may not mislead its SIME physician with misstatements of the law causing the SIME physician's opinion to be less than helpful. *Traugott* concluded the Board gave the SIME physician misleading questions about the significance of weighing or evaluating all of the different causes of an injured worker's need for medical treatment. The Board's decision that work was the substantial cause of the injured worker's need for medical treatment was reversed and his claim was decided not compensable.

ANALYSIS

1) Was the oral order denying Employee's petition to strike Employer's SIME interrogatories and the SIME physician's responses correct?

Employee's April 11, 2018 petition to strike objected to the October 31, 2017 letter, questions, and accompanying materials Employer sent to the SIME physician, Dr. McCormack, after he issued his October 2, 2017 and October 9, 2017 reports. Employee's petition also objected to Dr. McCormack's November 7, 2017 responses to those materials. Employer contends Employee's

petition was not timely, and there is no basis in law for striking its letter to Dr. McCormack or his response.

Parties are permitted to submit written interrogatories to the SIME physician or seek a deposition under the civil rules after the SIME report issues. 8 AAC 45.092(j). Neither the Act nor regulations specify the form these questions should take, or impose limits on a party's ability to question the SIME physician after the report issues. There is generally no basis for striking or requiring a party to revise interrogatories when the physician would be required to answer the same question in a deposition, unless the questions misstate the law, mislead the SIME physician, or otherwise cause the SIME physician's opinion to be less than helpful in deciding the merits of the case. *Traugott*; *Blazy*.

Employer's contention that Employee's April 11, 2018 petition to strike its October 31, 2017 letter to Dr. McCormack and also Dr. McCormack's November 7, 2017 response was not timely has merit. At hearing on February 14, 2018, an oral order issued, memorialized in *Quattlebaum I*, granting Employee's February 13, 2018 petition to continue the merits hearing, and continuing the hearing for 45 days. The panel ordered a freeze of the record in *status quo*, with the exception of the opinions and testimony of Dr. Maxwell, which were the basis of Employee's request to continue. Employee did not seek reconsideration or modification of *Quattlebaum I*. Employee did not mention Employer's October 31, 2017 letter to Dr. McCormack and Dr. McCormack's November 7, 2017 response during the *Quattlebaum I* hearing. Employee waited five months and four days before filing his April 11, 2018 objection to Dr. McCormack's November 7, 2017 responses to Employer's supplemental questions and has not articulated sufficient justification for the delay.

Barring factual error or gross misstatement of the applicable legal standard such that would render the SIME physician's response useless, there is no reason to strike or re-write parties' SIME questions. Additionally, *Quattlebaum I* ordered the record frozen in *status quo* as of February 14, 2018. Employee has not provided compelling justification for why he waited over five months to object to Dr. McCormack's responses to Employer's questions, nor why compliance with the oral order memorialized by *Quattlebaum I* should be excused. Employee has not established the 14

questions Employer sent to Dr. McCormack misstate the law, mislead the SIME physician, or otherwise cause the SIME physician's opinion to be less than helpful to the Board in deciding the merits of the case. AS 23.30.095(k); *Traugott*. The oral order denying Employee's April 11, 2018 petition to strike Employer's October 31, 2017 letter to Dr. McCormack and also Dr. McCormack's November 7, 2017 response was correct.

2) Is Employee entitled to medical and related transportation costs?

Employee seeks medical and related transportation benefits associated with after-effects of the February 15, 2011 fusion surgery he contends was necessitated by the May 22, 2009 lawnmower incident working for Employer. Employee contends under equitable principles, Employer waived any right it had to contest compensability of the 2011 fusion surgery and after-effects because it authorized the surgery. Employer has accepted compensability of the initial work injury, denying benefits after the 2011 fusion surgery. While Employer authorized and paid for the 2011 fusion surgery, Employer contends this does not prevent it from contesting liability for after-effects where Employer now has grounds to dispute whether the 2011 surgery was related to work. This raises a dispute to which the presumption analysis applies. AS 23.30.010(a); AS 23.30.120(1); *Meek*; *Saxton*; *Huit*.

Employee raises the presumption with his own testimony that his back was asymptomatic prior to the May 22, 2009 lawnmower incident, which necessitated the 2009 decompression and 2011 fusion surgeries, after which he developed ongoing and debilitating back pain. *McGahuey*; *Smith*; *Cheeks*; *Wolfer*. Employee also raises the presumption with Dr. Cates' May 28, 2009 note that Employee injured his back when the riding lawn mower he was using nearly flipped, causing immediate pain and stiffness, and onset of low back and lower extremity pain. *Id.* Employee also raises the presumption with Dr. Atassi's November 19, 2010 opinion the May 22, 2009 work injury caused a permanent change in Employee's pre-existing condition at the L4-5 level. Because Employee raised the presumption the need for the 2009 and 2011 surgeries were related to work for Employer, Employer has the burden to overcome the presumption with substantial evidence to the contrary. *Kramer*; *Smallwood*.

Employer rebuts the presumption with Dr. Williams' August 22, 2011 EME report stating the primary diagnoses is lumbar and left lower extremity pain, lumbar strain secondary to the May 22, 2009 work injury, and lumbar and canal central stenosis secondary to degenerative changes and unrelated to the May 22, 2009 work injury. *Tolbert*. Dr. Williams opined the substantial cause of the need for the December 15, 2009 surgery performed by Dr. Bernard was congenital and degenerative changes and that Employee's current disability or need for treatment was unrelated to the May 22, 2009 lawnmower incident, the substantial cause instead being post-operative and degenerative changes and natural aging of the spine. Dr. Williams stated he believes the May 22, 2009 lawnmower incident resulted in a lumbar strain which resolved and was medically stable after 90 days. Because Employer rebutted the presumption, Employee must prove his entitlement to medical benefits for any after-effects from the February 15, 2011 fusion surgery by a preponderance of the evidence. *Koons*. At this step of the analysis, evidence is weighed, credibility considered, and inferences drawn. *Saxton*.

Employee relies on his testimony as well as the October 2017 SIME reports of Dr. McCormack in support of his claim. In his October 2, 2017 SIME report, Dr. McCormack opines the May 22, 2009 work injury was a "permanent aggravator of the L4-5 level," which led to the 2009 decompression and 2011 fusion surgeries. Dr. McCormack states opinions in his October 9, 2017 SIME report are unchanged from the October 2, 2017 report. Employee also relies on his own testimony that prior to the May 22, 2009 work incident, he considered his back asymptomatic but after the 2011 fusion surgery, his condition seriously deteriorated and continues to cause him problems and limit his physical activity.

The record shows Employee sought chiropractic treatment with Dr. Langford as early as March 2008 for low back and hip pain which Employee reported as 8/10 intensity, records of which were apparently not provided to Employer until recently. On February 28, 2009, Dr. Langford noted Employee was experiencing severe grade of pain in both sides of his lower back, right hip, and left hip. Employee did not recall treating with Dr. Langford in his deposition or hearing testimony when asked about prior back problems. Employee testified at his September 9, 2016 deposition he was off of work for two years after the May 22, 2009 lawnmower incident with Employer. Employee's testimony is contradicted by the payroll and employment records filed by Employer,

which show Employee did work for various employers during this period, even if this employment was irregular, sporadic, or just to provide some temporary income. Although Employee did not knowingly make false or misleading statements or representations for the purpose of obtaining benefits under the Act, due to his frequent lapses in memory concerning his work and medical history, he is a poor historian and is not credible. AS 23.30.001; AS 23.30.122; AS 23.30.135; AS 23.30.250; *Rogers & Babler*; *Shehata*; *Cummings*. When weighed against competing evidence, Employee's testimony is given very little weight. *Id*.

Radiologist Dr. McCormick's interpretation of the May 28, 2009 x-ray taken of Employee's low back notes no acute changes, no soft tissue abnormalities, and no changes suggesting malignancy, recent trauma, or infection. Dr. McCormick's impression was degenerative and postoperative changes, especially at L5-S1. On October 8, 2009, Dr. McCormick interpreted an MRI study to show moderate to severe spinal stenosis at L4-5, no protrusions or disc fragments, no compromise of intracanalicular nerves, and disc space narrowing at L5-S1. In reviewing the October 8, 2009 MRI, Dr. Cates noted no post-traumatic abnormalities were present. On September 30, 2010, a CT scan of the lower spine was interpreted by Dr. Sisk as showing facet and disc degenerative changes and mild disc bulging at L4-5 with mild canal and bilateral recess stenosis. An x-ray of the lower spine and pelvis the same day was interpreted by Dr. Winn as showing advanced disc degeneration at L5-S1. In other words, Drs. McCormick, Cates, and Sisk found no evidence of a trauma-related back injury in the imaging studies, but instead signs of degenerative and pre-existing conditions. Their opinions constitute strong evidence supporting a finding the May 22, 2009 lawnmower incident produced a temporary back sprain or strain superimposed on pre-existing conditions. *DeYonge*; *Saxton*.

Dr. Atassi's November 19, 2010 EME report states he believed the May 22, 2009 lawnmower incident was the substantial cause for then-present need for treatment and that the right lumbar and upper hip pain were not present at the time of injury, but appeared two weeks after the December 15, 2009 lumbar laminectomy performed by Dr. Bernard. Dr. Atassi opined the May 22, 2009 work injury caused a permanent change in Employee's pre-existing condition at the L4-5 level. Dr. Atassi's November 19, 2010 EME opinion is given some weight in support of Employee's claim. However, Dr. Williams' August 22, 2011 EME report opines the substantial cause of the

need for the December 15, 2009 surgery performed by Dr. Bernard was congenital and degenerative changes. More recently, Dr. Williams' December 9, 2016 EME report unequivocally opines Employee's 2009 and 2011 back surgeries are unrelated to the May 22, 2009 lawnmower incident, which Dr. Williams believes resulted only in a strain and temporary aggravation of pre-existing conditions. Relying on medical records before the May 22, 2009 injury, Dr. Williams' December 9, 2016 opinion states Employee has chronic pain syndrome consisting of chronic low back pain and pain bilaterally in his lower extremities. Because they are more recent, and occurring after the 2009 and 2011 surgeries, Dr. Williams' reports receive more consideration than Dr. Atassi's November 19, 2010 EME report. *Saxton*; *DeYonge*; *Sosa de Rosario*.

On February 11, 2016, Employer obtained surveillance video of Employee working out at a boxing gym. Employee testified he informed the boxing trainer of his limitations, and the workout was adjusted accordingly. Experience shows a person's condition after a musculoskeletal injury typically deteriorates as physical activity is decreased and a disability mentality sets in. *Rogers & Babler*. Reasonable physical activity and exercise is often encouraged by medical providers to aid recovery. *Id*. The video is accorded little weight as to Employee's physical condition, since Employee's motions and physical effort in the film are light to moderate, and he is not exerting himself. *Id*.; AS 23.30.135.

Dr. Maxwell's April 11, 2018 deposition testimony addresses the causes of Employee's low back and leg pain complaints, and not whether work for Employer was the substantial cause of the need for the 2011 lumbar fusion surgery. Later in the same deposition, Dr. Maxwell concedes he perhaps previously wrongly concluded there was a correlation between the work injury and the subsequent surgeries based on his reading of Dr. McCormack's SIME report. Because it is ambiguous and subject to various interpretation, Dr. Maxwell's April 11, 2018 deposition testimony is accorded minimal weight. *Rogers & Babler*; AS 23.30.122.

Employee's reliance on Dr. McCormack's October 2017 SIME reports is seriously undermined by the November 7, 2017 addendum SIME report. In that report, issued after Employer provided supplemental questions and employment records, Dr. McCormack states he changes his opinions and repeatedly finds Employee lacks credibility when discussing his history and condition. Dr.

McCormack opines the 2009 laminectomy and 2011 fusion surgeries were unrelated to the May 22, 2009 work incident, and that none of the treatment provided after March 25, 2015 was reasonable and necessary for recovery from the work injury. Dr. McCormack agrees with Dr. Williams' EME opinion that the work incident was a temporary aggravating factor which resulted in a strain superimposed on chronic degenerative and pre-existing musculoskeletal changes, which were the cause of the need for surgery. Because Dr. McCormack completely changed his opinion based on supplementary records and information, his prior October 2017 SIME reports are given very little weight. Dr. McCormack's November 7, 2017 SIME report was also issued more recently than the medical opinions relied on by Employee, and his opinions are based on a review of the most complete record. Employee has not adequately shown why Dr. McCormack's report lacks credibility or is based on an incomplete record or misunderstanding of the law. Dr. McCormack's November 7, 2017 SIME report receives the most consideration on whether the 2009 and 2011 surgeries were caused by the May 22, 2009 lawnmower incident with Employer, and the after-effects of those procedures. AS 23.30.001; AS 23.30.122; AS 23.30.135; *Rogers & Babler*. Employee has not shown, by a preponderance of the evidence, the 2011 surgery and its after-effects were caused by the May 22, 2009 lawnmower incident with Employer. AS 23.30.010; AS 23.120; *Koons*; *Saxton*. Employee's February 20, 2015 claim will be denied. *Id*.

Finally, principles of equitable estoppel do not prevent Employer from denying future liability after paying benefits under the Act. *Childs*. Although this decision may invoke equitable principles to prevent Employer from asserting statutory rights, this must be supported by findings establishing the party asserting the relief presented substantial evidence to support all elements of the desired form of equitable relief. *Beecher*; *Schmidt*; *Flynn*. Here, the weight of the evidence shows the need for the 2009 and 2011 surgeries was not caused by the May 22, 2009 lawnmower incident with Employer. Under principles of equitable estoppel, Employer is not bound to accept compensability of the after-effects of the 2011 surgery where it previously believed it had grounds to authorize the surgery but has since obtained evidence it was not related to work. *Id*.

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

Under AS 23.30.145(a), attorney's fees may be awarded based on compensation awarded. Under AS 23.30.145(b), fees may be awarded when a claimant successfully prosecutes a claim.

Employee was not awarded any compensation, and he was not successful in prosecuting his claim. There is no basis upon which attorney fees may be awarded and Employee's claim for attorney's fees and costs will be denied. *Id.*; *Bouse*.

CONCLUSIONS OF LAW

1) The oral order denying Employee's petition to strike Employer's SIME interrogatories and the SIME physician's responses was correct.

2) Employee is not entitled to medical and related transportation costs.

3) Employee is not entitled to attorney's fees and costs.

ORDER

1) Employee's April 11, 2018 petition to strike Employer's October 31, 2017 letter to Dr. McCormack and also Dr. McCormack's November 7, 2017 response is denied.

2) Employee's February 20, 2015 claim is denied.

3) Employee is not entitled to an award of attorney's fees and costs.

Dated in Anchorage, Alaska on June 15, 2018.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Matthew Slodowy, Designated Chair

/s/
Rick Traini, Member

/s/
Amy Steele, 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 RICHARD QUATTLEBAUM, employee / claimant; v. STATE OF ALASKA, employer / insurer / defendant; Case No. 200916335; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties by First-Class U.S. Mail, postage prepaid, on June 15, 2018.

/s/

Charlotte Corriveau, Office Assistant