ALASKA WORKERS' COMPENSATION BOARD

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

TRAVIS MYERS, Employee, Claimant,	)	FINAL DECISION AND ORDER
v.	)	AWCB Case No. 201215483
STATE OF ALASKA, DEPARTMENT OF CORRECTIONS	)	AWCB Decision No. 18-0075
Employer, (Self-insured), Defendant	)	Filed with AWCB Anchorage, Alaska On July 26, 2018

Travis Myers' (Employee) June 22, 2016 amended claim was heard on May 16, 2018 in Anchorage, Alaska. The hearing date was selected on February 8, 2018. Employee appeared and testified. Attorney Elliot Dennis represented Employee. Assistant Attorney General David Rhodes represented the State of Alaska (Employer). Stephen Barkow, M.D., testified telephonically for Employee. Noel Dale testified for Employee. Heather Gilmore testified telephonically for Employee. Mike Clauson testified telephonically for Employee. Tashof Bernton, M.D., testified telephonically for Employer. James Kines testified telephonically for Employer. The record closed at the conclusion of the hearing, on May 16, 2018.

ISSUES

Employer contends Employee's claims are time-barred under AS 23.30.100 since Employee did not timely give written notice of an ankle injury, need for the April 10, 2012 ankle surgery, or subsequent chronic pain conditions. Employer contends it is prejudiced by the failure to timely report an injury, since records may have been lost, and witnesses may have become unavailable or their recollections unreliable.

Employee is not claiming the April 10, 2012 ankle surgery was compensable. Rather, Employee claims after the surgery he developed complex regional pain syndrome (CRPS), itself a compensable event. Because the development of the latent condition was gradual, Employee contends his claim is not time-barred under AS 23.30.100.

1) **Is Employee's claim barred for failure to give timely written notice of a work injury?**

As a preliminary issue, the parties stipulated the only issue for hearing is compensability of Employee's disability or need for medical treatment. Employee contends work for Employer caused him to eventually develop CRPS, which began with ankle injuries while working for Employer. Employee seeks an order finding his ankle injuries and CRPS are compensable work injuries.

Employer contends in the event Employee's claim is not time-barred, the weight of the evidence does not support a finding work for Employer was the cause of Employee's chronic pain or CRPS conditions. Employer contends Employee has a long history of pre-existing ankle problems, and that any chronic pain or CRPS conditions which may have ultimately developed were not related to work for Employer.

2) **Is work for Employer the substantial cause of Employee's chronic pain or complex regional pain syndrome?**

FINDINGS OF FACT

The following findings of fact from *Myers v. State of Alaska*, AWCB Decision No. 17-0048 (May 1, 2017) (*Myers I*) and *Myers v. State of Alaska*, AWCB Decision No. 17-0062 (June 2, 2017) (*Myers II*) are incorporated or are established by a preponderance of the evidence:

1) In March of 2009, Employee began working for Employer as a corrections officer at the Wildwood Correctional Complex in Kenai, Alaska. (Employee).

2) On February 10, 2011, a physician with the Veterans Administration (VA) referred Employee for a left ankle x-ray to check for "possible lateral instability." A radiologist performed x-rays and then compared these with x-rays from November 3, 1999, for Employee's service-connected left ankle injury. The report includes no history and does not say why Employee was referred for the x-ray. (VA report, February 10, 2011).

3) On October 27, 2011, Employee reported his "left lateral ankle gives way" and recounted an ankle sprain "in the military." The physician diagnosed "pens planus [flatfoot] with lateral impingement, left ankle instability." He recommended functional orthotics for Employee's ankle instability. The report makes no mention of any non-service-connected left ankle injury. (VA report, October 27, 2011).

4) On February 27, 2012, Employee said his left ankle "gives out" and requested a left ankle MRI study. Employee reported no injury history. (VA report, February 27, 2012).

5) On March 3, 2012, Employee had a left ankle MRI. The radiologist found a "chronically ruptured anterior talofibular ligament" and a split tearing of the distal peroneus longus tendon. The only history provided is "ankle laxity." (MRI report, March 3, 2012).

6) On March 15, 2012, Employee saw Carolyn Gale, PA-C, who noted:

> Pt experiencing chronic problems with L ankle due to many injuries in the past. He is complaining of his foot flapping when he walks down the hall at work. Recent MRI ordered by VA shows chronically ruptured anterior talofibular ligament and split type tearing of the distal peroneous longus ligament.

PA-C Gale diagnosed an ankle sprain and a chronic ankle injury and referred Employee to Peter Ross, M.D., to address Employee's "many injuries in the past." (Gale, March 15, 2012).

7) On March 17, 2012, Employee asked Lynn Carlson, M.D., for pain medication while he awaited a surgical consult with Dr. Ross. Employee said he had six or seven ankle sprains historically. Employee's left ankle pain and physical limitations made him anxious and caused depression. Dr. Carlson diagnosed an unstable left ankle and depression. (Carlson, March 17, 2012).

8) On March 19, 2012, a podiatrist diagnosed left ankle laxity based on the MRI findings. He recommended an "Evans ankle stabilization," but Employee was not interested in surgery. The podiatrist provided an Arizona brace for Employee while he "contemplates surgery." (VA report, March 19, 2012).

9) On March 21, 2012, Employee changed his mind and decided to go forward with left ankle surgery. (VA report, March 21, 2012).

10) On March 23, 2012, orthopedic surgeon Peter Ross, M.D., saw Employee for left ankle pain. Dr. Ross' chart note states:

> 36 y/o male, former marine, status multiple ankle inversion injuries while in service. He currently works as a prison guard at the Wildwood facility. He presents today with chronic left ankle instability and frequent inversion injuries. . . .
>
> In addition, a recent inversion injury has resulted in increased anterolateral ankle pain which has precluded his ability to return to work.

Dr. Ross diagnosed left ankle pain, synovitis, and ankle instability and recommended Employee be taken off work for two weeks pending further evaluation. (Ross, March 23, 2012).

11) On March 29, 2012, the VA approved Employee for left ankle reconstructive surgery with orthopedic surgeon Eugene Chang, M.D. (VA report, March 29, 2012).

12) On April 5, 2012, Employee's work supervisor, George Showalter, signed Employee's request for Family Medical Leave for "Employee's serious health condition," namely, "Tendon in Ankle Needs Operation." The form Showalter signed states Employee "must be absent from work due to incapacity or episodes of incapacity or need to work on an intermittent or reduced schedule." (Leave Notification, April 5, 2012).

13) On April 9, 2012, Employee reported a "longstanding history of ankle instability." He had multiple strains in the Marines. Employee reported "his ankle keeps giving out," and he has had "many periods of convalescence from his ankle discomfort and instability." Dr. Chang diagnosed left ankle instability with chronic pain and peroneal tendon discomfort and recommended surgery. (Chang, April 9, 2012).

14) On April 10, 2012, Dr. Chang performed left ankle lateral ligament reconstruction surgery with no complications. Dr. Chang recommended Employee be taken off work for three months following the surgery. (Chang, April 10, 2012).

15) On April 30, 2012, Employer received a certificate from Dr. Chang stating Employee had ankle surgery on April 10, 2012, and needed to be off work for three months. (Certification of Health Care Provider, April 26, 2012).

16) On June 1, 2012, radiologist Jedidiah Malan, M.D., interpreted an MRI of Employee's left ankle to show mild proximal Achilles tendinopathy without focal tear, marked thinning of the anterior talofibular ligament, and a small heel spur. (Malan, June 19, 2012).

17) On July 12, 2012, Employee told a VA counselor Employer insisted he return to work that evening and Employee felt anxious about this, because he was not fully healed from his ankle surgery done "to repair [a] chronic condition." (VA report, July 12, 2012).

18) By July 18, 2012, while undergoing aquatic therapy for his left ankle, Employee said his 12 hour days with Employer caused "a lot of swelling" and discoloration on his left ankle and foot. (Alaska Aquatic Therapy report, July 18, 2012).

19) On July 19, 2012, Employee told his VA counselor he felt stressed about returning to work before his ankle had fully healed. (VA report, July 19, 2012).

20) On July 23, 2012, Employee said his legs continue to swell and turn purple at night. Dr. Carlson recommended Employee elevate his ankle at work. (Carlson, July 23, 2012).

21) On August 3, 2012, Employee reported shooting pains at his ankle scars, which increased at night, and swelling near his ankle scars. (Alaska Aquatic Therapy report, August 3, 2012).

22) On August 14, 2012, Dr. Carlson referred Employee to physical and occupational therapy for left foot pain and charted that Employee's physical therapists suspected Employee might be developing complex regional pain syndrome (CRPS). Dr. Carlson considered Employee might have Reflex Sympathetic Dystrophy (RSD). Dr. Carlson did not offer an opinion on causation. (Carlson, August 14, 2012).

23) By August 28, 2012, Dr. Carlson was actively treating Employee for RSD, also known as CRPS and recommended light duty so this condition could subside. He did not offer a causation opinion. (Carlson, August 28, 2012).

24) On August 31, 2012, Ruth Anderson, M.D., diagnosed Employee with CRPS in the left lower extremity, which had spread to involve his right lower extremity. Dr. Anderson did not offer a causation opinion. (Anderson, August 31, 2012).

25) On September 11, 2012, Employee submitted a letter of resignation to his supervisors at Wildwood. The letter states:

> Thank you for giving me the privilege to serve under your command as a correctional officer for the State of Alaska Department of Corrections. It is with great regret that I give you this letter of resignation. I have forged friendships with many of my co-officers that it saddens me to have to leave my friends as well as end my law-enforcement career.
>
> Months ago, I was diagnosed with Reflex Sympathetic Disorder (RSD), a rare condition I got as a result of having left ankle surgery on April 10, 2012. It is apparent at this time I am no longer able to care for the safety of myself, my co-workers as well as the incarcerated. It has become evident that I am unable to tackle this disease with the intensity needed while working. . . .

The letter makes no mention of the cause for the April 10, 2012 ankle surgery, nor does it mention or imply work for Employer was the cause of either Employee's RSD or the ankle surgery. (Letter, September 11, 2012).

26) On September 12, 2012, Dr. Carlson removed Employee from work. He opined Employee's RSD was spreading and may become CRPS. Employee's RSD "began after complicated surgery on his left ankle." He offered no causation opinion. (Carlson, September 12, 2012).

27) On September 13, 2012, Dr. Carlson said pain prohibited Employee from working. Dr. Carlson stated, "It is my opinion that this problem is work related because he was trying to work on an ankle that was still healing. The work was requiring long hours working on his feet." (Carlson report, September 13, 2012).

28) Dr. Carlson's September 13, 2012 report is the first causation opinion offered by a physician linking Employee's work with Employer to his alleged CRPS. (Experience, judgment and inferences drawn from the above).

29) On September 14, 2012, Employee told his VA counselor "he is filing Worker's [sic] Compensation Claim for his ankle." (VA report, September 14, 2012).

30) On September 15, 2012, a 3-phase bone scan disclosed osteomyelitis, also known as a bone infection. (Bone Scan, September 15, 2012).

31) On September 21, 2012, Dr. Chang reevaluated Employee's left ankle and said though he was not an RSD expert, he was not ready to diagnose CRPS. (Chang report, September 21, 2012).

32) On September 27, 2012, Employee's left ankle MRI showed postoperative changes with probable tenosynovitis but no evidence for osteomyelitis or other infection. (MRI report, September 27, 2012).

33) On September 28, 2012, adjuster Clare Hiratsuka recorded Employee's telephonic statement. Employee was heavily medicated but with assistance from his wife, stated his left ankle ligament "explosion" did not actually happen on the job, but it was nonetheless work-related from "being twisted." (Employee recorded statement, September 28, 2012, at 9-10). Employee felt his left ankle ligament "go" when he "stepped on a ladder" at home. (*Id.* at 15). Employee did not know at the time he had blown out his ligament and thought it was just a "small ankle sprain." (*Id.*). Employee saw Dr. Chang for ankle surgery but "never said anything about" it being work-related because he was only worried about getting it fixed. Employee took personal leave between April

10 and July 12, 2012 for his ankle surgery and recovery. (*Id*. at 16-17). He does not think physical therapy caused his left ankle to regress. The therapist told him long hours at work were responsible for his ankle going "backwards." (*Id*. at 18). The adjuster asked Employee if he ever hurt his ankle on the job with Employer. Employee answered "yes," and rather than giving injury details, said he "just iced it and took some Ibuprofen." (*Id*. at 22). Employee said he saw Michael Applebee, a psychologist with the VA in Kenai for depression. (*Id*. at 28). On August 8, 2012, Applebee reportedly told Employee he would be unable to pursue a career in law enforcement because of his left ankle injury. (*Id*. at 29-30). Employee gave the adjuster the name of his supervisor and some coworkers as witnesses that he was "having problems at work" with his left ankle. (*Id*. at 31-32).

34) On October 1, 2012, Dr. Carlson stated, "Nowhere in the records that we have does it indicate that the cause of the original surgery had to do with pt's working environment. Pt was injured, and went back to work too early, and that caused the RSD. Pt drives around in a truck on terrain with lots of potholes, which causes more trauma to the feet because the feet hit the floor boards." Dr. Carlson further stated, "I am certain that his returning to work too soon after surgery was a or [sic] the major factor in his developing RSD/CRPS." (Carlson, October 1, 2012).

35) On October 3, 2012, Employer began paying Employee temporary total disability effective September 14, 2012 and continuing, in case 201215483, with an injury date listed as August 8, 2012. The adjuster completing the form stated Employer's "knowledge date" was September 26, 2012, and its knowledge came from a "WCC" (workers' compensation claim) Employee had submitted. Employer said it received medical documentation supporting time loss on September 28, 2012. (Compensation Report, October 4, 2012).

36) Finding of fact 78 in *Myers II* states, "No party at hearing could identify the significance of 'August 8, 2012,' the injury date on the injury report Employer filed at the Division's request. (*Myers II*).

37) On October 11, 2012, Employer's Wildwood superintendent signed an injury report in case 201215483. Employee neither signed nor dated the report because he was no longer a State of Alaska employee. The report states the injury, which occurred on "August 8, 2012," was "Gradual deterioration of multiple body parts -- reflex sympathetic dystrophy." The form's bottom half states the "facility was not made aware" and "is unaware of any injury." (Report of Occupational Injury or Illness, undated).

38) On November 13, 2012, the Division sent Employer's adjuster a letter stating Employee claimed injury while in its employ but the Division had not received an injury report from Employer. The letter advised Employer to file an injury report to avoid a penalty. (Letter, November 13, 2012).

39) On November 26, 2012, the Division received from Employer the same injury report the Wildwood superintendent signed on October 11, 2012. (Report of Occupational Injury or Illness, undated).

40) On December 4, 2012, Dr. Carlson wrote:

> Mr. Myers injured his ankle while on active duty 1995-1999. His ankle began hurting again two years ago. He has had persistent ankle pain ever since. He went to surgery in April this year to repair his ankle. This was an extensive surgery on the ankle.
>
> When he returned to work, his foot and ankle still hurt, but for financial reasons he had to keep working. He was on his feet most of the day at work.
>
> Unfortunately, this extra pain which he experienced, triggered the development of RSD/CRPS, which has generalized to his other leg and the rest of his body.
>
> He has classic signs and symptoms of CRPS with signs of sympathetic overdrive and severe pain in his feet and various other parts of his body. He had a brief response to sympathetic nerve blocks, which further confirmed the diagnosis.
>
> Several physical medicine and rehab doctors have seen him and agree with the diagnosis.
>
> We all agree that at this point he should avoid all focal trauma to his extremities. We are using multiple other medications to treat his problem, including antihistamines, Lyrica, Effexor, Physical Therapy, and lifestyle changes to decrease inflammation.
>
> Currently he is unable to work because of the severe pain, his inability to put any weight on his feet, his inability to focus, his problems with cognitive function, and problems with fine motor skills, which can all happen with CRPS.
>
> It should be clear that with any disease, there are antecedents, triggers, and mediators of the disease. The antecedents in this case was [sic] injuries while on active duty in the Marine Corps and the immediate triggers to the RSD/CRPS were the ankle surgery and long hours of stress to his feet at work after the surgery. (Filling his job requirements at work). Mediators at this time are even

> minor trauma to his feet, emotional problems caused by the pain (which are known to increase inflammatory mediators/cytokines in the body).
>
> We are currently seeking specialized help in Arizona. (Carlson, December 4, 2012).

41) On March 28, 2013, in response to Employee's request for occupational disability benefits under the Public Employees Retirement System (PERS), based on disability from CRPS, consulting physician Deb Lessmeier, M.D., reviewed Employee's medical records and offered her opinion based on the following history:

> Mr. Travis L. Myers has a long-standing history of ankle instability, felt to be related to multiple strains suffered when he was in the Marines in the mid-1990s. He retired in 1999. . . . In 03/2012, he had a re-injury of his ankle, felt to be related to the chronic instability. This was an injury that occurred, I believe, while he was at work as a Correctional Officer. As a result of the visit for that injury, he was referred to surgery for evaluation of his ankle. . . .

Dr. Lessmeier reviewed Employee's remaining medical records and concluded:

> Based on this review, I do find that Mr. Travis Myers is disabled. I do believe that it was primarily the surgery and that it was the combination of the surgery combined with the physical and emotional stress of going back to work that led to the development of the CRPS. It appears from this review that the return to work and both the physical and emotional stress of this contributed to the development of the CRPS. Therefore, I am recommending that Mr. Travis L. Myers be approved for Occupational Disability. I also acknowledge that his ankle instability was preexisting and that the need for surgery is not relate [sic] to his job. However, it is not the ankle surgery that is causing his disability; it is the CRPS. (Lessmeier, March 28, 2013).

42) On July 16, 2013, the adjuster received Dr. Lessmeier's March 28, 2013 report. (*Id.*).

43) On October 13, 2014, Tashof Bernton, M.D., performed an employer's medical evaluation (EME). After administering several tests, reviewing Employee's records and examining him, Dr. Bernton concluded Employee does not have CRPS, and even if he does have it, it is not work-related because the surgery from which it came was not work-related. Dr. Bernton opined Employee required no work-related treatment and has no work-related impairment or restrictions. A follow-up EME report came to a similar but more forceful conclusion. (Bernton, October 13, 2014; January 18, 2017).

44) On December 29, 2014, Employer denied all benefits based on Dr. Bernton's October 13, 2014 EME report. (Controversion Notice, December 23, 2014).

45) On February 10, 2015, Stephen Barkow, M.D., saw Employee on Dr. Carlson's referral and diagnosed him with CRPS. He concluded surgery sensitized Employee's left lower extremity and "repetitive trauma may exacerbate his symptoms of RSD." Dr. Barkow stated Employee "returned to work at an early time which has exacerbated his RSD symptoms." (Barkow, February 10, 2015).

46) On June 21, 2016, Employee filed a claim in case 201215483 alleging "repetitive injury to ankle at work," which led to ankle surgery, a return to work and additional "repetitive injury to the ankle," which led to CRPS. Employee alleged CRPS in his "full body" rendering him totally disabled with ongoing pain, severe depression, anxiety, and posttraumatic stress disorder (PTSD). Employee claimed permanent total disability (PTD) from December 23, 2014 and continuing, medical and related transportation costs, penalty, interest, a finding of unfair or frivolous controversion, and attorney's fees and costs. This claim did not amend any previously filed claim. (Workers' Compensation Claim, June 21, 2016).

47) On July 13, 2016, Employer denied all benefits. Employer included a defense under AS 23.30.100 to "claims related" to "unreported injuries and/or untimely reported injuries." (Answer, July 13, 2016).

48) On January 16, 2017, Employee's wife, Tina Myers, testified Employee had "multiple" left ankle sprains working for Employer in a two-year span. (Deposition of Tina Myers, January 16, 2017, at 24-25).

49) On January 16, 2017, Employee testified at his telephonic deposition he needed to have ankle surgery because driving around the Wildwood perimeter in a pickup truck repetitively "beat up" his feet on the floor because the road was so bumpy. He also injured his left ankle when he slipped while getting out of the vehicle once. (Deposition of Travis Myers, January 16, 2017, at 52-53).

50) On January 18, 2017, Dr. Bernton issued an addendum EME report, and answered a set of questions posed by Employer's attorney. Dr. Bernton states:

> With respect to the cause of the patient's initial [April 10, 2012] ankle procedure, review of additional records is helpful. The records do not reflect a specific occupational injury to the ankle. Rather, the MRI of the ankle quoted in Dr. Ross'

> report of March 23, 2012, noted "absence of the anterior talofibular ligament consistent with chronic rupture. There is split-type tearing of the distal peroneus longus at the first metatarsal insertion site."
>
> The report reflects a history of "chronic left ankle instability and frequent inversion injuries," which have been treated through the VA.
>
> As noted by Dr. Ross, the absence of the anterior talofibular ligament is consistent with a "chronic rupture." [Underscore in original].
>
> This type of picture evidences the cause of the patient's ankle problems requiring the surgery that was performed in April 2012 was multiple chronic injuries to the ankle, resulting in instability. The records do not reflect a specific occupational injury. The patient's problems predated his work as a guard. The deposition certainly does not indicate a specific injury at work and appears to indicate a specific injury did occur at home when he notes, "I stepped on a ladder," (recorded statement, page 15). Regardless of whether this specific exacerbation occurred, the patient had chronic ankle instability due to the absence of the anterior talofibular ligament, which was the proximate and primary reason for the surgery. That was not related to the patient's work. . .
>
> Dr. Barkow also notes that the patient "had no significant ankle symptoms for almost a decade, during the times he worked at demanding jobs of police officer, sheriffs deputy, and then as an Alaska State Trooper." This assessment is simply inaccurate and may reflect a lack of understanding of the patient's clinical history by Dr. Barkow, or it may simply reflect that Dr. Barkow received an inaccurate history from the patient. . .

Dr. Bernton at length discusses his experience with CRPS and using thermography to diagnose the condition, including diagnosing and treating patients with CRPS for over 25 years. He states CRPS is known to feel better to the patient with immobilization, but immobilization actually is a cause of progression of the problem. On the other hand, increased activity, while it may cause discomfort, is actually considered therapeutic and would be regarded as appropriate therapeutic activity. Dr. Bernton believes, based on his review of objective as well as subjective factors, Employee does not satisfy the accepted criteria for CRPS. Instead, Dr. Bernton believes Employee has developed whole body chronic pain, although it is possible he eventually may have developed CRPS, though this is not supported by diagnostic criteria. Regardless of whether Employee has CRPS or simply a chronic pain syndrome, a strong psychological contribution is present. Dr. Bernton believes the records do not reflect Employee's employment with Employer was the substantial cause of his need for the April 10, 2012 left ankle surgery. The substantial

cause of the need for the ankle surgery is chronic left ankle instability as a result of multiple injuries prior to his employment, resulting in chronic absence of the anterior talofibular ligament. There may also have been a significant exacerbation which occurred as a result of a specific episode at home when he stepped on a ladder, as indicated in his recorded statement. (Bernton, January 18, 2017).

51) On January 30, 2017, Employee testified "over the years," while working for Employer at Wildwood he had four or five left ankle sprains prior to his April 2012 left ankle surgery (Telephonic Deposition of Travis Myers, January 30, 2017, at 65-66). He could not recall telling anyone at work he had injured his ankle on four or five occasions (*Id*. at 78). Employee recalls no details concerning these injuries (*Id*. at 78-79). Employee did not always report left ankle injuries because they "healed in a couple days, and, you know, ice and it was better" (*Id*. at 85).

52) On the morning of February 2, 2017, Employer filed a petition to dismiss "any and all claims related to unreported injuries prior to the date of Employee's surgery, April 10, 2012, pursuant to AS 23.30.100." (Petition, February 2, 2017).

53) In the afternoon of February 2, 2017, the parties attended a prehearing conference. The conference summary states:

> Employer filed a petition to dismiss on the morning of this prehearing conference. It is the Employer's position this Petition needs to be addressed prior to moving forward with a SIME. Employee wishes the SIME process to move forward.
>
> In order to properly address Employer's Petition as well as give the parties time to review and file the extensive medical records applicable to the SIME, the parties agreed to schedule extended SIME binder deadlines as well as set a follow up prehearing at a time in the future allowing Employer to file an ARH on their petition to dismiss, if necessary. . . .

54) On March 23, 2017, Employee's former supervisor George Showalter testified his work crews normally told him about all work injuries (Deposition of George Showalter, March 23, 2017, at 16-17). He has never heard of an employee getting hurt at work without telling him about the injury. If an injured employee told Showalter they had been hurt, he would do an immediate investigation and fill out workers' compensation paperwork. (*Id*.). At no time did any employee ever tell Showalter they were hurt and he failed to put it in writing. (*Id*. at 18). He knew Employee had ankle surgery while under Showalter's supervision. (*Id*. at 21). Showalter is not aware of Employee reporting any pre-surgery ankle injury to him, and had he done so it

would have been in writing. (*Id.* at 21-22). Showalter unequivocally stated, "If it wasn't written, it didn't happen, and I didn't know about it. I would have written it down if it did happen" (*Id*. at 23). Showalter did not know Employee had any ankle sprains at work before his left ankle surgery. (*Id*. at 25). He never saw Employee limping at work until after his left ankle surgery. (*Id*. at 34).

55) On April 27, 2017, Sergeant Curtis Brown testified at hearing that he is a Training Security Sergeant at the Wildwood complex. Brown is familiar with Employee, supervising him in 2009 through 2011 in the "pretrial side." Employee later went to the "sentence side." Brown was unaware Employee had any ankle sprains while under his supervision. He is unaware Employee ever completed any injury reports or paperwork related to any ankle injury. Brown does not recall any coworkers ever telling him that Employee injured his ankle at work. Protocol required injured workers to fill out a workers' compensation injury form if the worker told Brown about the injury. Brown would never neglect to have an injured worker complete paperwork, or complete it himself. It is not possible that Employee told him he was injured and Brown neglected to file a report. Brown has no recollection of ever seeing Employee limping or complaining about ankle pain while Brown supervised him. Brown is "very certain" he advises workers with any injury to complete an injury report. If a worker has a preexisting condition and believes his work made the condition worse, Brown would not necessarily inform them to file an injury report and would leave it up to the worker. Brown did not supervise Employee when he drove the perimeter rover vehicle. Brown recalls Employee complaining about his lower back hurting. Brown surmised perhaps it was because of his duty belt, but this was not an "injury" in Brown's mind. Brown did nothing in response to Employee's lower back pain complaints. (Brown).

56) On May 1, 2017, *Myers v. State of Alaska*, AWCB Decision No. 17-0048 (May 1, 2017) (*Myers I*) decided the parties' dispute over who should perform an SIME and declined to decide Employer's February 2, 2017 petition to dismiss, stating the SIME is not dependent on the petition to dismiss. *Myers I* ordered a subsequent hearing to decide Employer's pending February 2, 2017 petition to dismiss. (*Myers I*).

57) On June 2, 2017, *Myers v. State of Alaska*, AWCB Decision No. 17-0062 (June 2, 2017) (*Myers II*) ordered:

> 1. Employer's February 2, 2017 petition to dismiss unfiled claims under AS 23.30.100 is denied.
>
> 2. Employee's June 26, 2016 claim pertains only to alleged RSD [reflex sympathetic dystrophy] and CRPS arising from his work with Employer following his April 10, 2012 left ankle surgery.
>
> 3. If Employee intends to seek benefits arising from any work-related left ankle injuries with Employer, he must file a claim for each left ankle injury and a party may petition to join all claims. (*Id*.).

Referencing the April 5, 2012 work leave notification filled out at Wildwood, finding of fact 15 in *Myers II* states, "Employer, through [Walter] Showalter, knew no later than April 5, 2012, that Employee had a left ankle injury." (*Myers II*).

58) Neither party appealed or sought reconsideration or modification of *Myers I* or *Myers II*. (Record).

59) Employee has filed eight claims in this case on the following dates: June 21, 2016; June 22, 2016; three claims dated June 30, 2017; and three claims dated July 25, 2017. Employee's claims seek permanent total disability (PTD) benefits from December 23, 2014 ongoing, medical and related transportation costs, penalty, interest, a finding of unfair or frivolous controversion, and attorney's fees and costs. (Record). Employee's most recent claim states:

> [Employee] was a corrections officer from 2009 until he resigned on September 11, 2012 after developing complex regional pain syndrome (CRPS). From 2009 until February 27, 2012 he suffered several on-the-job left ankle injuries which combined with pre-employment ankle sprains causing him to have a chronic ankle injury. This chronic ankle injury lead [sic] him to undergo ankle surgery on April 10, 2012. He developed CRPS from undergoing ankle surgery and the consequences of ankle surgery. (Workers' Compensation Claim, July 5, 2017).

60) On September 19, 2017, physical medicine and rehabilitation specialist Alan Roth, M.D., performed a second independent medical examination (SIME). Dr. Roth's report states:

> Mr. Travis Myers is a 42-year-old gentleman who has a significant impairment, specifically memory dysfunction, resulting most likely from the huge number of narcotic medications, side effects of multiple antidepressants and central nervous system depressants which undoubtedly aggravate his depression. He cannot clearly recall much of his history. However, the record review demonstrates that the patient had a chronic recurrent inversion injury to his left ankle with instability for a long period of time, apparently treated through the VA system. . .

> When asked to describe the patient's discomfort, he describes total body pain including pain in his hair and eyebrows as well as to his arms and his legs with no more pain in the foot and ankle than anywhere else in his body. Although he states that he has significant pain to the foot and ankle, he tolerates shoes and socks without difficulty, and examination really is not compatible with reflex sympathetic dystrophy or CRPS. . . .

In response to the first Board's SIME question, "Please list all causes of Travis Myers' disability or need for medical treatment," Dr. Roth states:

> Chronic ankle instability and degenerative changes in the soft tissues of the ankle resulting in surgery of the ankle and chronic pain sequelae. Patient had a history of recurrent rolling of the ankle as a result of instability over a long period of time predating his surgery. Other causes include his obesity, his history of work exposure at the jail, including his presurgical history of work, as the wife says, walking around hard surfaces, in addition to driving on bumpy roads after surgery. Other causes of his disability and need for treatment including the massive amount of medications which the patient is on, resulting in memory and attention dysfunction, and his severe depression requiring multiple antidepressant medications. . .

In response to the Board's SIME question, "Please evaluate the relative contribution to different causes of Mr. Myers' disability or need for medical treatment identified in question 1," Dr. Roth states:

> In my opinion, his pre-existing ankle instability resumed in a need for treatment and possibly was associated with secondary CRPS, and this was the substantial cause of the patient's disability, resulting in multiple medication prescriptions which has left him, at least temporarily, with poor memory. All other causes are minimal as compared to his pre-existing non-industrial instability. . .

On the issue of when Employee likely developed CRPS, Dr. Roth states:

> On the one hand, the patient's history and physical examination are not probably suggestive of CRPS. That being said, there is documentation on 3/15/2012, that the patient had redness and numbness to his foot and ankle after "sustaining a new injury on top of a chronic injury," according to the evaluating doctor. Prior to that, the patient underwent on March 3rd an MRI apparently as a result of pain to the right foot and ankle. On 6/19/2012, there was documentation that patient had been unable to bend his toes; on 7/9/2012, there was documentation of swelling to the foot and ankle with walking on the foot and ankle; on 8/14/2012, the patient was complaining of electrical jolts and dysesthesia in a stocking distribution, and on

> 8/20/2012, there was sensitivity to touch. All of these are symptoms which could be elements of CRPS.
>
> As the history is limited in accuracy, in part as a result of the patient's medication intake, the patient probably had developed CRPS even prior to his surgery as a result of his injury, which flared up with the surgery. . . . (Roth, September 19, 2017).

61) On January 22, 2018, Dr. Roth issued an addendum SIME report in response to questions from Employee's attorney. In response to the question, "Do you agree that the physical activities performed by Travis Myers as a corrections officer was a substantial cause of the development of instability and degeneration of the left ankle?" Dr. Roth states:

> The patient's physical activities were not a substantial cause as in my opinion the ankle situation would have been substantially the same in the absence of his work, given his prior injuries and running on a non-industrial basis documented in the records.
>
> To summarize, it is my opinion that the employment as a corrections officer was not an important or significant contribution to the patient's injuries and certainly was not the substantial factor. In my opinion, the patient had preexisting injuries and chronic pathology with repetitive rolling over of the ankle, not worsened by his work activities as a corrections officer. (Roth, January 22, 2018).

62) On April 30, 2018, Employee took the deposition of Steven Johnson, M.D., Employee's treating physician who specializes in pain management. The transcript reads:

> Q. [Employer's attorney] Now does that sort of physical movement [driving the perimeter rover vehicle] is that the sort of thing that would tend to trigger CRPS?
>
> A. In my experience, as I said before, I haven't really seen - in my memory, dating back almost 30 years, I can't remember any cases similar to this, so it's hard for me to say yes or no. I would certainly feel that if he had something going on in his foot and ankle that was the early stages of CRPS, any ongoing irritable stimulation could potentially do that, yes.
>
> Q. Okay.
>
> A. But, as I say, in my experience I've never really - at least I don't remember seeing anything like this. . . (Deposition of Steven Johnson at 26-27).

> Q. I guess one of the other main questions in this case is Mr. Myers' claim for permanent total disability, which would mean that he's incapable of ever returning to work at a job that would pay him wages comparable to what he earned before his employment. I'm curious whether you feel like its okay to make that determination now or if we don't know enough about what his future holds to know for sure whether he'll ever improve enough to return to work.
>
> A. You know, I'm not a big proponent of patients not going back to work, so I would say I wouldn't want to make that call right now.
>
> Q. [Employee's attorney] Based upon his current condition that you're treating, does he appear to be unable to go back to work as a corrections officer?
>
> A. Yeah, I can't imagine him going back to work as a corrections officer, correct.
>
> Q. As he is right now, do you think he could go back to work doing anything unless he improves substantially?
>
> A. See that's - that gets back to my answer. I mean you have quadriplegics out there that are full-time employed. So I can see if you have an ongoing chronic pain issue how that would impact your ability to at least concentrate on the job. So if we could get him to a point say we ultimately try this new stimulator and it gets him under pretty good control and these new ones actually work pretty well, so it's certainly worth a try, I think. It's not inconceivable that he could get back doing something. . . . (*Id*. at 53-54).

63) On May 15, 2018, Employee filed a petition to add the issue of his entitlement to temporary total disability (TTD) to the May 16, 2018 hearing. (Petition, May 15, 2018). Employer objected to the TTD issue being added to hearing. The parties stipulated only compensability of Employee's condition and need for medical treatment would be heard as a hearing issue, with entitlement to specific benefits remaining in abeyance. (Record; Parties' Hearing Stipulation).

64) Employee presents three alternate theories of compensability related to his work for Employer: First, his work as a corrections officer permanently aggravated and worsened pre-employment chronic left ankle sprains, resulting in ankle surgery on April 10, 2012. The trauma of the surgery and the process of recovery were the substantial cause of his development of CRPS. Second, Employee suffered a new injury to his chronically injured ankle from chasing an inmate while working for Employer, which led to surgery on April 10, 2012. The surgery, the effects of the surgery, and return to work, were the substantial cause of his developing CRPS. The third causation theory is the substantial cause of Employee's developing CRPS was the

trauma he experienced at work after returning to full duty work on July 12, 2012. Employee is not claiming the April 10, 2012 ankle surgery was compensable. (Employee's Hearing Argument; Employee's Hearing Brief).

65) The following reports of injury have been filed or filled out:

i. On June 12, 2008 for a finger injury and left hand and left foot pain during physical exercise. The employer is listed as "Sitka, DPS Academy" and this report is signed by Employee and a staff instructor.

ii. On March 11, 2007 for the lower back, with right arm numbness. The employer is not identified but the location of the injury is listed as Sitka, Alaska. This report is signed only by Employee.

iii. On January 18, 2011 for the left arm, left leg, hip, and back when Employee slipped and fell on ice. The employer is listed as Wildwood Pre-Trial and this report is signed by Employee and a supervisor.

iv. On August 2, 2011 for the right ankle being rolled while Employee was opening a door. The employer is listed as Wildwood Correctional Complex and this report is signed by Employee and a supervisor.

v. On October 11, 2012 for "multiple body parts – reflex sympathetic disorder." The employer is listed as Wildwood Correctional Complex and this report is signed only by a supervisor. (Exhibits to January 30, 2017 Deposition Transcript of Travis Meyers).

66) Employee testified he had no difficulties with his left ankle at the time he began working for Employer as a corrections officer. Employee acknowledges a history of ankle sprains, rolling his ankle, or strains while hiking during his time in the Marine Corps. After receiving an honorable discharge from the Marines in April 1999, he spent about two years building a lodge with his parents in Kodiak, Alaska. Although the work in Kodiak was very physical, he experienced no problems with his ankles. After leaving Kodiak, Employee relocated to Missouri, where he completed a police academy and worked as a police officer for several months. Work as a police officer in Missouri was very physical, and foot pursuits or wrestling with suspects during arrests was common. Employee never experienced a problem with his ankles in Missouri. From 2001 to 2006, Employee lived in California to work on a family orange orchard and attend college. While in California, Employee completed another police academy, and eventually took a job as a deputy sheriff. His work as a deputy sheriff was very physical, and a physical altercation or foot

chase with a suspect or jail inmate was a near daily occurrence. Employee does not recollect any problems with his ankles during his time in California. After relocating to Alaska in 2006, Employee was accepted to the State Trooper Academy in 2007, but could not finish due to a medical problem with his low back. The Trooper academy was a very physical, military-style program, but he experienced no lasting problems with his ankle. Employee resumed the Trooper academy in 2008 and completed the program, with his first assignment in Fairbanks. Employee described his work as a trooper as very physical, but he has no recollection of injuring himself in this job. Due to a series of deaths in the family, Employee took a voluntary leave of absence from the Troopers. Employee worked as a security guard and an associate at Walmart and recalls no injuries or problems with his ankles at those jobs. In March of 2009, Employee began working for Employer as a corrections officer at Wildwood Correctional Complex in Kenai. Employee worked 12-hour shifts, seven days in a row. His duties included patrolling the facilities, doing prison cell searches, walking the outside perimeter checking fences, and driving the "rover" perimeter patrol vehicle. The rover was a Chevy Silverado pickup truck. Correctional officers typically drove the rover in four hour shifts. Employee recalls rolling his ankle sometime around 2011 during an incident at Wildwood when a nurse was being threatened by an inmate, and had to be restrained. Employee did not report this injury, because he did not want to be seen as weak. Another incident where Employee rolled his ankle on a rock was while he was working in the pretrial unit, when he stepped on a rock. Employee again rolled his ankle while exiting the perimeter rover, and slipped, nearly falling under the vehicle. Employee recalls two or three additional episodes of ankle rolls while on duty at Wildwood, but cannot place the dates. Part of the reason Employee did not report these injuries is he did not consider them disabling. He treated these injuries on his own, with ice and ibuprofen. Although he was able to treat them on his own, each progressive ankle injury took longer to resolve, with the pain lasting longer with each injury. Particularly hard on his ankles was the rover driving duty, due to the very rough gravel road surrounding the perimeter. The road was very poorly maintained, with deep potholes and ruts. Employee recalls multiple incidents of the wheels breaking off the rover truck. The road was graded from time to time after employees complained, but would resume its bad condition after it rained. A particularly bad incident involving his ankle was sometime in the summer of 2012, when he had to suddenly chase an inmate on foot about 200 yards. When his ankle began to deteriorate, he often treated at the Veterans' Administration, rather than filing a

workers' compensation claim or reporting the injury. Despite his ankle pain growing serious, Employee continued to do what he could to work through the pain. Treatment he underwent included nerve block injections and using over-the-counter pain medications. When his ankle pain did not resolve, Employee recalls Dr. Anderson eventually diagnosing CRPS. Employee currently experiences flares of CRPS typically two or more times per week, with each incident lasting from a half hour to half a day. Sometime in 2014 or 2015, he had a spinal cord stimulator implanted, which has provided significant relief from pain. Employee also undergoes regular Ketamine infusions, which provide some relief. Employee concedes his memory during the course of his treatment has been spotty at times. Due to recent changes in his medication regimen, his memory of past events is now significantly improved. (Employee).

67) Dr. Barkow is board-certified in emergency medicine and anesthesiology, with dual certifications in pain management. His regular practice involves a great deal of diagnosing and treating CRPS patients. He has given multiple lectures on CRPS, as well as teaching on pain management, anesthesiology, and CRPS. Complex regional pain syndrome is not a common condition, and it is often difficult to explain and determine its causes. The underlying principle of CRPS is an abnormal processing and response to pain and sensory information. Rather than eventual decline in the perception of pain after a stimulus such as trauma or injury, as in a normal person, a patient with CRPS experiences amplification of pain resulting in a neuropathic pain condition. Similarly to the phenomenon of why normal cells in the body suddenly become cancerous, it is not fully understood why the continued windup and amplification of pain perception in CRPS patients occurs. Because of its complexity, optimal treatment of CRPS typically requires a specialist. In adults, CRPS is typically a permanent condition, although the symptoms wax and wane over time. A typical CRPS patient will experience good days and then bad days. A flare is a recurring event when a CRPS patient will experience onset of hypersensitivity in the limbs, pain from slight touch, swelling, discoloration, and sensations of heat or cold. Treatment for CRPS is different for every patient and is done on a case-by-case basis, using different dosages and types of medications. Undergoing surgery is one of the more frequent causes of CRPS. Dr. Barkow last treated Employee in February 2015. In Employee's case, his flares interfere with his ability to function and work. Depression is a part of Employee's symptoms, but this is more a reflection of the severity of Employee's CRPS, rather than a factor contributing to CRPS. Based on review of the medical records as well as Employee's deposition

testimony, Dr. Barkow believes Employee is permanently and totally disabled at this time. Because of recurring flare-ups of his CRPS, Employee has profound difficulties with memory, and is not functioning at a basic day-to-day level. Dr. Barkow believes the incident when Employee ran 200 yards chasing an inmate was a "game-changer," aggravating his ankle problems dramatically, requiring surgery, and eventually leading to CRPS and the flares he now frequently experiences. Duties Employee was regularly required to perform as a corrections officer, such as long periods walking and standing on concrete floors and driving the prison perimeter over on very rough roads, also combined to aggravate Employee's prior ankle problems, eventually leading to CRPS. Dr. Barkow believes the substantial cause for Employee's need for ankle surgery is work for Employer as a corrections officer. Dr. Barkow believes the substantial cause of Employee's current disability and need for medical treatment is CRPS, which began with him undergoing ankle surgery. Dr. Barkow has never seen photos of the perimeter road at Wildwood, and relied on Employee's statements in opining on whether driving the road would have contributed to his ankle problems and subsequent CRPS. Although some people with CRPS do work, it is more-likely-than-not Employee will not be able to return to gainful employment. (Barkow).

68) Dr. Bernton is board-certified in internal medicine and occupational medicine. For the past 26 years, he has run a physical medicine and rehabilitation practice in Colorado, and his specialty is assessment and treatment of musculoskeletal disorders, with particular emphasis on CRPS. He sees on average of three to four patients a month for symptoms of CRPS, from milder cases to those who are bedridden with pain. He has over 20 years of assessing, diagnosing, and treating CRPS. Dr. Bernton evaluated Employee in October of 2014, including a physical exam, oral history, and review of medical records. He reviewed the depositions of Drs. Barkow and Johnson, as well as the SIME report of Dr. Roth. Dr. Bernton performed a stress thermography test, which produces some objectively verifiable signs of CRPS. Based on his examination as well as all the records he has reviewed, Dr. Bernton believes it is not medically probable Employee has CRPS. Dr. Bernton believes work for Employer was not the substantial cause of the need for the April 10, 2012 ankle surgery, but rather his history of ankle problems going as far back as his time in the military. This is objectively supported by the MRI findings of March 3, 2012, which show a chronic ankle condition. Dr. Bernton believes it is improbable that driving the perimeter rover truck at Wildwood would have aggravated or caused CRPS. The primary

diagnosis in Employee's case is chronic pain syndrome, with a strong associated psychological component as the cause. (Bernton).

69) Noel Dale is Employee's sister. Ms. Dale did not know Employee to have any ankle problems around the time he was working on their parents' lodge, or during his time as an Alaska State Trooper. Ms. Dale frequently observed Employee's limbs swelling and discoloring. Prior to the April 10, 2012 surgery, Employee was very active in the outdoors, including hunting and fishing. Since then, she would describe his activity level as "non-existent." (Dale).

70) Mike Clauson is a correctional officer with Employer and worked with Employee at the Wildwood complex between 2009 and 2013, and they continue to be friends. Mr. Clauson observed Employee injure his ankle while working at Wildwood, including a slip and fall exiting the rover vehicle, and injuries while running to assist while on duty, although he does not recall dates. Mr. Clauson has driven the perimeter rover vehicle at Wildwood, and would describe the experience as driving "off-road." Mr. Clauson would see a chiropractor on a monthly basis for treatments related to driving the perimeter road, although he never filed any workers' compensation claims for these treatments. (Clauson).

71) Heather Gilmore is a friend of Employee and has worked as a patient advocate for individuals with CRPS. Ms. Gilmore met Employee on a CRPS Facebook support group and has accompanied him to treatments and examinations for his pain and ankle conditions. Ms. Gilmore believes Employee has CRPS. (Gilmore).

72) Employer filed photographs and video taken the previous weekend of the perimeter road at Wildwood. Employee objected, on the grounds the media would not be helpful as to the condition of the road at the time Employee worked at Wildwood. The panel sustained the objection and an oral order issued excluding the media, on the grounds significant time has passed since Employee worked at Wildwood, and the taking of the photos and video. (Record).

73) James Kines is a security sergeant at the Wildwood complex, where he has worked since 2007. Sergeant Kines recalls periods when the perimeter road was "extremely rough" at times, but has never sought chiropractic treatment from driving the road. Sergeant Kines cannot recall an incident of an employee being retaliated against for filing a report of injury at Wildwood. The rover vehicles at Wildwood are always standard road-worthy vehicles, rather than buggies or four-wheelers, and occasionally must be driven into town on errands. (Kines).

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 23.30.100. Notice of injury or death**. (a) Notice of an injury or death in respect to which compensation is payable under this chapter shall be given within 30 days after the date of such injury or death to the board and to the employer.
>
> (b) The notice must be in writing, contain the name and address of the employee, a statement of the time, place, nature, and cause of the injury or death, and authority to release records of medical treatment for the injury or death, and be signed by the

> employee or by a person on behalf of the employee, or, in case of death, by a person claiming to be entitled to compensation for the death or by a person on behalf of that person.
>
> (c) Notice shall be given to the board by delivering it or sending it by mail addressed to the board's office, and to the employer by delivering it to the employer or by sending it by mail addressed to the employer at the employer's last known place of business. If the employer is a partnership, the notice may be given to a partner, or if a corporation, the notice may be given to an agent or officer upon whom legal process may be served or who is in charge of the business in the place where the injury occurred.
>
> (d) Failure to give notice does not bar a claim under this chapter
>
> > (1) if the employer, an agent of the employer in charge of the business in the place where the injury occurred, or the carrier had knowledge of the injury or death and the board determines that the employer or carrier has not been prejudiced by failure to give notice;
> >
> > (2) if the board excuses the failure on the ground that for some satisfactory reason notice could not be given;
> >
> > (3) unless objection to the failure is raised before the board at the first hearing of a claim for compensation in respect to the injury or death.

An employee must provide formal written notice to his employer within thirty days of an injury in order to be eligible for workers' compensation benefits. AS 23.30.100. For reasons of fairness and based on the general excuse in AS 23.30.100(d)(2), the Supreme Court has read a "reasonableness" standard, analogous to the "discovery rule" for statutes of limitations, into the statute. *Cogger v. Anchor House*, 936 P.2d 157, 160 (Alaska 1997). Under this standard, the thirty-day period begins when "by reasonable care and diligence it is discoverable and apparent that a compensable injury has been sustained." *Id.* (*quoting* 3 Arthur Larson, Workmen's Compensation § 78.41, at 60 (1971)). *Hammer v. City of Fairbanks*, 953 P.2d 500 (Alaska 1998) held "knowledge" does not appear to be a "term of art." In context, it means no more than "awareness, information, or notice (footnote omitted) of the injury ...." *Id.* at 505. A claimant's statutory obligation to provide notice of injury to his employer does not arise until the claimant becomes aware of the work-related nature of the injury. *Kolkman v. Greens Creek Mining Co.*, 936 P.2d 150 (Alaska 1997).

Timely written notice of worker's injury is required because it lets an employer provide immediate medical diagnosis and treatment to minimize the seriousness of an injury, and because it facilitates the earliest possible investigation of facts surrounding injury. Thus, failure to provide timely notice that impedes either of these objectives prejudices employer. *Tinker v. Veco, Inc.*, 913 P.2d 488 (Alaska 1996). The first step of analyzing whether an employer has been prejudiced by failure to submit written notice of an injury is to determine whether the written notification would have informed the employer of anything about which the injured worker had not already told his supervisor or manager. If a legally sufficient written notification would have only duplicated the same information an injured worker already had communicated verbally to the employer through its in-charge agents, it would require an exceptional set of circumstances for this difference in the form by which the information was conveyed to prejudice the employer. *Id.* at 492.

> **AS 23.30.105. Time for filing of claims.** (a) The right to compensation for disability under this chapter is barred unless a claim for it is filed within two years after the employee has knowledge of the nature of the employee's disability and its relation to the employment and after disablement. However, the maximum time for filing the claim in any event other than arising out of an occupational disease shall be four years from the date of injury, and the right to compensation for death is barred unless a claim therefor is filed within one year after the death, except that, if payment of compensation has been made without an award on account of the injury or death, a claim may be filed within two years after the date of the last payment of benefits under AS 23.30.041, 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215. It is additionally provided that, in the case of latent defects pertinent to and causing compensable disability, the injured employee has full right to claim as shall be determined by the board, time limitations notwithstanding.
>
> (b) Failure to file a claim within the period prescribed in (a) of this section is not a bar to compensation unless objection to the failure is made at the first hearing of the claim in which all parties in interest are given reasonable notice and opportunity to be heard. . . .

The Supreme Court has held subsection .105(a) provides a latent injury exception to the two-year statute of limitations. For latent injuries, the two-year statute of limitations is tolled "so long as the claimant does not know, and in the exercise of reasonable diligence (taking into account his education, intelligence and experience) would not have come to know, the nature of his disability and its relation to his employment." *Collins v. Arctic Builders, Inc.*, 31 P.3d 1286, 1289 (Alaska 2001).

> **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).

The Supreme Court has held occupational disability benefits provided by Public Employees' Retirement System (PERS) serve a distinct function and are not intended to replicate the protection given by the workers' compensation system. *State of Alaska, Public Employees Retirement Board v. Cacioppo*, 813 P.2d 679, 683 (Alaska 1991). Presumptions unique to the workers' compensation system are not employed in occupational disability benefits claims under PERS. *Id.*

> **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. . . .
>
> **8 AAC 45.050. Pleadings.** (a) A person may start a proceeding before the board by filing a written claim or petition.
>
> (b) **Claims and petitions.**
>
> (1) A claim is a written request for benefits, including compensation, attorney's fees, costs, interest, reemployment or rehabilitation benefits, rehabilitation specialist or provider fees, or medical benefits under the Act, that meets the requirements of (4) of this subsection. The board has a form that may be used to file a claim. . . .
>
> (4) Within 10 days after receiving a claim that is complete in accordance with this paragraph, the board or its designee will notify the employer or other person who may be an interested party that a claim has been filed. The board will give notice by serving a copy of the claim by certified mail, return receipt requested, upon the employer or other person. The board or its designee will return to the claimant, and will not serve, an incomplete claim. A claim must
>
> (A) state the names and addresses of all parties, the date of injury, and the general nature of the dispute between the parties; and (B) be signed by the claimant or a representative.
>
> (5) A separate claim must be filed for each injury for which benefits are claimed, regardless of whether the employer is the same in each case. . . .

In *Jonathan v. Doyon Drilling, Inc., JV*, 890 P.2d 1121, 1123-24 (Alaska 1995), the Supreme Court addressed the word "claim" as used in AS 23.30.110. *Jonathan* found the Act does not define the word "claim," and concluded:

> Each of the first four uses of the word 'claim' in section 110 clearly refer to a pleading that must be filed with the Board. None of the other uses indicate that any different meaning is intended. 'There is a presumption that the same words used twice in the same act have the same meaning.' (Citations omitted).
> . . . .
> The more persuasive reading of the word 'claim' is as a written application for benefits filed with the Board. . . .

ANALYSIS

1) Is Employee's claim barred for failure to give timely written notice of a work injury?

Employer contends Employee did not timely give written notice of ankle or pain conditions related to work for Employer, and that Employee's claims are time-barred under AS 23.30.100. Employer contends that due to Employee's failure to timely report an injury, it is not possible to establish any date of injury that led to the April 10, 2012 ankle surgery or subsequent chronic pain or CRPS condition. Employer contends it is prejudiced by the failure to timely report an injury, since Employee's memory has weakened, records may have been lost, and witnesses become unavailable. Employee is not claiming the April 10, 2012 ankle surgery was compensable. Rather, Employee claims after the surgery he developed CRPS, itself a compensable injury. Because the development of the latent condition was gradual and could not be immediately discovered and reported, Employee contends his claim is not time-barred under AS 23.30.100.

An employee must provide formal written notice to his employer within thirty days of an injury in order to be eligible for workers' compensation benefits. AS 23.30.100; *Cogger*. Failure to give notice is an absolute bar to benefits, with several notable exceptions. *Id*. Failure to give such notice does not bar a claim if the employer or its agent in charge in the place where the injury occurred "had knowledge of the injury" and the employer or carrier has not been prejudiced by the employee's failure to give notice; or if the failure is excused on the ground for some satisfactory reason notice could not be given; or unless objection to the failure is raised at the first hearing. AS 23.30.100(d)(l)-(3). The law presumes "sufficient notice of a claim has been given." AS

23.30.120(a)(2). "Knowledge" simply means "awareness." *Hammer*. The 30 day period in which a claimant must bring notice of his injury to be eligible for workers' compensation begins when, by reasonable care and diligence, it is discoverable and apparent to the claimant that a compensable injury has been sustained. *Cogger*; *Kolkman*.

Employee is familiar with the process of reporting a work injury, as shown by the fact that he has completed reports of injury for prior incidents. Because CRPS or chronic pain in this case was a latent injury, which slowly developed and progressed over time, Employee could not have reported it to Employer as work-related until it was apparent this was the case. *Cogger*; *Rogers & Babler*: AS 23.30.135. *Myers II* found Employer, through Employee's work supervisor, George Showalter, knew that Employee had a left ankle injury no later than April 5, 2012. Employee underwent surgery on April 10, 2012 to stabilize chronic ankle instability. Although Employee informed Employer of the April 10, 2012 surgery for the purposes of taking leave from work, he did not inform Employer as to the reason for the need for surgery. One of the theories of Employee's case is that the April 10, 2012 ankle surgery eventually caused him to develop CRPS. The first appearance of a possible diagnosis of CRPS in the record appears on August 14, 2012, when Dr. Carlson referred Employee to physical and occupational therapy for left foot pain and charted that Employee's physical therapists suspected Employee might be developing CRPS. Dr. Carlson's September 13, 2012 report is the first causation opinion offered by a physician linking Employee's work with Employer to his alleged CRPS. Twenty-eight days later, on October 11, 2012, a supervisor at Wildwood completed an injury report for Employee for "multiple body parts – reflex sympathetic disorder [RSD]." The employer is listed as Wildwood Correctional Complex and this report is signed only by a supervisor. Complex regional pain syndrome and RSD are separate, but arguably similar, conditions as understood by laypeople. *Rogers & Babler*. Employer's contention it was prejudiced or had no notice of Employee's developing pain conditions related to his ankle is not supported by the record and is without merit. AS 23.30.100; AS 23.30.135.

2) Is work for Employer the substantial cause of Employee's chronic pain or complex regional pain syndrome?

Employee seeks an order stating his CRPS is a compensable work injury related to work for Employer. Employer contends the weight of the evidence establishes Employee has longstanding and pre-existing ankle problems which ultimately led to surgery, and that Employee's chronic pain or CRPS are not related to work with the Department of Corrections. This raises a factual dispute to which the presumption of compensability analysis applies. AS 23.30.010(a); AS 23.30.120(1); *Meek*; *Saxon*; *Huit*. The parties stipulated only compensability of Employee's injuries is at issue, and this decision will not address Employee's entitlement to specific benefits under the Act. AS 23.30.010; AS 23.30.135.

Employee raises the presumption his with his own testimony that his CRPS was eventually caused by repeated ankle injuries while working for Employer, including multiple incidents of running to chase inmates or assist other staff on the job, and the rough conditions of driving the perimeter rover at the Wildwood complex. *McGahuey*; *Smith*; *Cheeks*; *Wolfer*. Employee also testified the repeated ankle injuries experienced on the job eventually gave rise to the need for surgery, which eventually caused CRPS. *Id.* Employee also raises the presumption work for Employer was the cause of his CRPS with the opinion of Dr. Barkow that Employee having to run 200 yards while chasing an inmate was a "game-changer," aggravating his ankle problems dramatically, requiring surgery, and eventually leading to CRPS. The presumption is also raised by Dr. Carlson's September 13, 2012 opinion linking work to Employer to Employee possibly developing RSD or CRPS. Because Employee raised the presumption his CRPS is related to work for Employer, Employer has the burden to rebut the presumption with substantial evidence to the contrary. *Kramer*; *Smallwood*.

Employer rebuts the presumption with Dr. Bernton's October 13, 2014 and January 18, 2017 EME reports, which concluded Employee does not have CRPS. Dr. Bernton opines even if Employee does have CRPS, it is not work-related because the surgery which caused it was not work-related. *Tolbert*. Employer also rebuts the presumption Employee's CRPS was caused by work for Employer with the SIME opinions of Dr. Roth, who states Employee had chronic pre-

existing ankle injuries and chronic repetitive rolling over of the ankle, not worsened by his work activities as a corrections officer with Employer. *Id*. Dr. Roth believes Employee had pre-existing injuries and chronic pathology of the ankle, not worsened by his work activities with Employer. Dr. Bernton's EME reports reach similar conclusions, offer a thorough review of the medical record, and state the medical bases for his conclusions. *Rogers & Babler*. Dr. Bernton has extensive experience in diagnosing and treating CRPS patients, and it has been a part of his practice for over 25 years. *Id*.; *Apone*. The opinions of Drs. Bernton and Roth constitute substantial evidence Employee's CRPS is not related to work for Employer. *Kramer*; *Smallwood*. Because Employer rebutted the presumption, Employee must prove his entitlement to medical benefits for CRPS by a preponderance of the evidence. *Koons*. At this step of the analysis, evidence is weighed, credibility considered, and inferences drawn. *Saxton*.

Employee's testimony outlines a gradual deterioration of his lower extremities through the years, leading to ankle surgery and an eventual diagnosis of CRPS. Employee testified he had no problems with his left ankle when he began working for Employer as a corrections officer. However, this testimony is contradicted by significant medical evidence that, prior to work for Employer, he had problems with his ankles. For example, the February 10, 2011 VA report states Employee was referred for a left ankle x-ray to check for "possible lateral instability." These x-rays were compared with x-rays from November 3, 1999, for Employee's "service-connected left ankle injury." While this report includes no history and does not say why the doctor referred Employee for the left ankle x-ray, it is evidence Employee's testimony concerning his medical history is not accurate. AS 23.30.122; *Rogers & Babler*. On March 15, 2012, PA-C Gale noted Employee was experiencing chronic problems with his left ankle due to "many injuries in the past." PA-C Gale noted Employee complained of his foot flapping when he walks and noted an MRI at the VA showed "chronically ruptured anterior talofibular ligament." Again, while this report is not helpful as to causation of Employee's eventual CRPS, it contradicts Employee's contention he had no ankle problems until he began work as a corrections officer. Similarly, Dr. Ross saw Employee on March 23, 2012 for left ankle pain. Dr. Ross' chart note states Employee had "multiple ankle inversion injuries" while in service as a Marine. Importantly, on April 9, 2012 when undergoing a surgical consult with Dr. Chang for ankle surgery, Employee reported a "longstanding history of ankle instability." Due to his lapses in memory concerning his work and

medical history, Employee is a poor historian and is not credible. *Id.*; AS 23.30.001; AS 23.30.122; AS 23.30.135.

Employee also relies on the opinions of Dr. Barkow supporting compensability of the CRPS condition. On February 10, 2015, Dr. Barkow saw Employee on referral and diagnosed him with CRPS. He concluded surgery sensitized Employee's left lower extremity and "repetitive trauma may exacerbate his symptoms of RSD." Dr. Barkow stated Employee "returned to work at an early time which has exacerbated his RSD symptoms." Dr. Barkow testified the substantial cause for Employee's need for ankle surgery is work for Employer as a corrections officer. Dr. Barkow believes the substantial cause of Employee's current disability and need for medical treatment is CRPS, which began with him undergoing ankle surgery. However, Dr. Barkow last treated Employee in February 2015. Because the last time he treated Employee was over three years ago, and there are many medical records and opinions since that time, his opinion as to causation receives less weight. Dr. Barkow also has never seen photos of the perimeter road at Wildwood, and relied on Employee's statements in opining on whether driving the road would have contributed to his ankle problems and subsequent CRPS. Moreover, Dr. Bernton strongly contradicts Dr. Barkow's opinions on causation, noting, "Dr. Barkow also notes that the patient 'had no significant ankle symptoms for almost a decade, during the times he worked at demanding jobs of police officer, sheriffs deputy, and then as an Alaska State Trooper.' This assessment is simply inaccurate and may reflect a lack of understanding of the patient's clinical history by Dr. Barkow, or it may simply reflect that Dr. Barkow received an inaccurate history from the patient." Because much of Dr. Barkow's opinions are based on statements by Employee, who is an unreliable historian, Dr. Barkow's opinions receive less weight.

Medical expert testimony in hearings under the Act is generally limited to the employee's treating physician, the employer's medical evaluator, and the second independent medical evaluator. AS 23.30.095. The testimony of Heather Gilmore and Noel Dale on Employee's CRPS diagnosis is therefore weighed as lay testimony, limited to observations of Employee's condition in light of their previous acquaintance with him. *Rogers & Babler*; AS 23.30.135. Although Ms. Gilmore and Ms. Dale believe Employee has CRPS, their testimony is not helpful

in establishing the cause, or relative contribution of causes, in the development of this complex medical condition, which typically requires evaluation by an expert. *Id.*; AS 23.30.122.

Employee testified at his telephonic deposition he needed to have ankle surgery because driving the perimeter road at Wildwood repetitively "beat up" his feet on the floor because the road was so bumpy. Employee testified at hearing the road was very poorly maintained, with deep potholes and ruts. Employee recalls multiple incidents of the wheels breaking off the rover truck. Dr. Barkow lists driving the perimeter road as one of the causes of Employee's eventual development of CRPS. However, Dr. Barkow has never visited nor seen photos of the perimeter road, and relied on Employee's statements in opining whether driving the road could have contributed to his injury. As above, because Dr. Barkow relied on statements by Employee concerning the road, Dr. Barkow's opinion on this subject is given less weight. Mike Clauson testified the perimeter road was so bad, he would see a chiropractor on a monthly basis for treatments related to driving it. On the other hand, James Kines testified he recalled periods when the perimeter road was "extremely rough," but has never sought chiropractic treatment from driving the road. The evidence shows the perimeter rover vehicles were ordinary, unmodified, road-worthy commercial pickup trucks. Although there is mixed evidence of how bad the perimeter road at Wildwood was, considering it had to be driven daily by Wildwood employees in standard, unmodified pickup trucks, it strains reason to conclude the road was so bad it contributed to Employee needing ankle surgery, and to subsequently develop CRPS. *Rogers & Babler*.

Dr. Johnson testified at his April 30, 2018 deposition that Employee driving the perimeter rover vehicle could have "potentially" triggered CRPS. However, at the same deposition, Dr. Johnson testified that, in 30 years of practice, he had not really seen circumstances like those in Employee's case leading to a patient developing CRPS. Because it is equivocal, Dr. Johnson's opinion on the subject of the cause of Employee's development of CRPS through work for Employer is not particularly helpful, and is given less weight.

Employee also relies on Dr. Lessmeier's opinion in establishing his claim. On March 28, 2013, Dr. Lessmeier opined it was primarily the April 10, 2012 ankle surgery, combined with the

physical and emotional stress of going back to work for Employer, that led to the development of CRPS. Dr. Lessmeier acknowledged it is not the ankle surgery which caused Employee's disability, but rather the CRPS. Dr. Lessmeier's opinions lend some support to Employee's claim that work for Employer was the cause of his CRPS. However, as Employer points out, Dr. Lessmeier's March 28, 2013 evaluation was conducted for the purposes of determining whether Employee was entitled to occupational disability benefits under the PERS system, and not for workers' compensation benefits. Claims for benefits under PERS and those under the Act are separate statutory schemes, under which there are differing legal standards of causation. *Cacioppo.* Dr. Lessmeier's opinion provides some support for Employee's claim work for Employer was the cause of his CRPS. But because it was made for the purposes of a PERS benefits evaluation, rather than a claim for benefits under the Act, Dr. Lessmeier's opinion is not conclusive and receives less weight.

Dr. Carlson's December 4, 2012 note states Employee injured his ankle while on active duty in the Marines in 1995-1999 and that his ankle began hurting again "two years ago." Dr. Carlson states Employee has had persistent ankle pain ever since, with a mix of causes in the form of injuries while on active duty in the Marines and the immediate triggers to the RSD or CRPS were the ankle surgery and long hours of stress to his feet at work for Employer after the surgery. Dr. Carlson's December 4, 2012 opinion is given some weight in favor of Employee's claim because it forges a causal chain between work for Employer, the need for ankle surgery, and the subsequent RSD or CRPS. But because it is impossible to determine from Dr. Carlson's opinion the relative contribution of different causes, only that there may have been multiple causes, it is given less weight. *Rogers & Babler*; *Huit*; AS 23.30.010.

As to evidence in favor of Employer, as early as March 23, 2012, Dr. Ross noted Employee's history of "multiple ankle inversion injuries" while Employee was a Marine. Employer points out Employee did not tell Dr. Ross he hurt or rolled his ankle while working for Employer as a corrections officer. On April 9, 2012, Employee reported a "longstanding history of ankle instability" to Dr. Chang while being considered for ankle surgery. Employee reported "his ankle keeps giving out," and he has had "many periods of convalescence from his ankle discomfort and instability." Dr. Chang diagnosed left ankle instability with chronic pain and peroneal tendon

discomfort and recommended surgery. No causal link is established in Dr. Chang's opinions between work for Employer and Employee's need for ankle surgery. The first appearance of a possible diagnosis of CRPS in the record appears on August 14, 2012, when Dr. Carlson referred Employee to physical and occupational therapy for left foot pain and charted that Employee's physical therapists suspected Employee might be developing CRPS. On August 31, 2012, Dr. Anderson diagnosed Employee with CRPS in the left lower extremity, which had spread to involve his right lower extremity. Dr. Anderson did not offer a causation opinion. On September 11, 2012, Employee resigned from his position as a corrections officer, citing having recently developed a chronic pain condition, RSD. Employee's eloquent and well-written letter of resignation does not say work for Employer was the cause of either his chronic pain or the April 10, 2012 ankle surgery. When Employee gave a recorded interview with adjuster Clare Hiratsuka on September 28, 2012, he told her he had suffered an ankle "explosion" while "just doing regular stuff around the house." The lack of a significant connection between work for Employer and Employee's developing ankle problems in late 2012 undercuts Employee's claim and suggest pre-existing ankle problems, or the "explosion" incident while working at home, as the cause or causes of his CRPS.

Significant weight is given to the April 27, 2017 hearing testimony of Sergeant Curtis Brown, who supervised Employee from 2009 through 2011 while working for Employer. Sergeant Brown was unaware Employee had any ankle sprains while under his supervision. He is unaware Employee ever completed any injury reports or paperwork related to any ankle injury. Sergeant Brown did not recall any coworkers ever telling him Employee injured his ankle at work and testified it is not possible that Employee told him he was injured and Brown neglected to file a report. He had no recollection of ever seeing Employee limping or complaining about ankle pain while he supervised Employee and was "very certain" he advises workers with any injury to complete an injury report. Although Sergeant Brown did not supervise Employee when Employee drove the perimeter rover vehicle, his hearing testimony is given significant weight in support of the fact Employee did not experience or at the very least, report, ankle injuries or pain while working for Employer. *Rogers & Babler*; AS 23.30.122.

Dr. Bernton's October 13, 2014 EME concluded Employee does not have CRPS, and even if he does have it, it is not work-related because the surgery from which it came was not work-related. Dr. Bernton believes work for Employer was not the substantial cause of the need for the April 10, 2012 ankle surgery, but rather Employee's history of ankle problems going as far back as his time in the military, which is objectively supported by the March 3, 2012 MRI findings showing a chronic ankle condition. Dr. Bernton believes it is improbable that driving the perimeter rover truck at Wildwood would have aggravated or caused CRPS. In his January 18, 2017 addendum EME, Dr. Bernton reaches the same conclusions, but adds a more forceful rejection of the diagnosis of CRPS. Dr. Bernton states a diagnosis of CRPS is not supported by either subjective or objective criteria, and Employee's then-current complaints are attributable either to the incident where he stepped on a ladder at home and felt his ankle explode, or to a history of chronic ankle problems predating his work with Employer. In his most recent opinion, Dr. Bernton testified it is not medically probable Employee has CRPS. Rather, the primary diagnosis in Employee's case is chronic pain syndrome, with a strong associated psychological component as the cause.

In accord with Dr. Bernton's opinions, Dr. Roth's SIME opinions reach similar conclusions about Employee's history of ankle problems and whether work for Employer is the substantial of his chronic pain. Dr. Roth's September 19, 2017 SIME report states he believes Employee probably had developed CRPS prior to the April 10, 2012 ankle surgery, which flared up after surgery. Dr. Roth's January 22, 2018 addendum SIME states it is his opinion that employment as a corrections officer was not an important or significant contribution to the Employee's injuries and certainly was not the substantial factor. In Dr. Roth's opinion, Employee had preexisting injuries and chronic pathology with repetitive rolling over of the ankle, not worsened by his work activities as a corrections officer. Because they are more recent, occurring after the 2012 ankle surgeries, and rely less on statements given by Employee concerning his medical history, the opinions of Drs. Bernton and Roth receive more consideration than Dr. Barkow's opinion on causation. *Saxton*; *DeYonge*; *Sosa de Rosario*. When taken together, the opinions of Drs. Bernton and Roth constitute strong evidence supporting a finding the cause of Employee's CRPS or chronic pain was longstanding pre-existing conditions, combined with the ankle "explosion" sometime in 2012 when Employee was working at home. *Id*. A preponderance of the evidence

shows that while Employee may have CRPS or a different chronic pain condition, it is not related to work for Employer because the injuries and surgery from which it came were not work-related. *Id.*; AS 23.30.010; AS 23.30.120; AS 23.30.135; *Huit*. Instead, the substantial cause of the need for the ankle surgery and subsequent pain condition is chronic left ankle instability as a result of multiple injuries prior to his employment with Employer as a corrections officer. *Id.*

CONCLUSIONS OF LAW

1) Employee's claim is not time-barred for failure to give written notice of a work injury.

2) Work for Employer is not the substantial cause of Employee's chronic pain or complex regional pain syndrome.

ORDER

Employee's June 22, 2016 amended claim for benefits related to CRPS or chronic pain caused by work for Employer is dismissed.

Dated in Anchorage, Alaska on July 26, 2018.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Matthew Slodowy, Designated Chair

/s/
Linda Murphy, Member

APPEAL PROCEDURES

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

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

RECONSIDERATION

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

MODIFICATION

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

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Final Decision and Order in the matter of TRAVIS MYERS, employee / claimant; v. STATE OF ALASKA, employer, self-insured defendant; Case No. 201215483; 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 July 26, 2018.

/s/
Charlotte Corriveau/ Office Assistant