ALASKA WORKERS' COMPENSATION BOARD

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

DONNA M. HICKLE, Employee, Claimant, v. MAT-SU BOROUGH SCHOOL DISTRICT, Self-Insured Employer, Defendant.	)	FINAL DECISION AND ORDER AWCB Case No. 201324463 AWCB Decision No. 19-0009 Filed with AWCB Anchorage, Alaska on January 22, 2019

Donna M. Hickle's April 24, 2015, and May 3, 2015 claims were heard on November 28, 2018 in Anchorage, Alaska, a date selected on October 16, 2018. A September 12, 2018 affidavit of readiness for hearing gave rise to this hearing. Attorney Robert Bredesen appeared and represented Ms. Hickle (Employee), who appeared and testified. Attorney Michelle Meshke appeared and represented Mat Su Borough School District (Employer). Witnesses included Kim Dunn, Glen Ramos, Jeff Nelles, Ronald Turco, M.D., Aron Wolf, M.D., Amy Spargo, and Katherine Gardner. The record remained open at the hearing's conclusion to allow the filing of additional evidence and for the filing of an affidavit of attorney fees and any objection. Because it was unclear when the affidavit of attorney fees was filed, the panel reopened the record to allow the parties to respond. The record closed on December 21, 2018.

ISSUES

Employer contends Employee failed to timely notify it of any injuries prior to her May 2, 2013 injury, and benefits relating to the earlier injury are time-barred. Employee contends the injury occurred over the entirety of her employment with Employer and was timely reported.

1. Did Employee suffer discrete injuries, some of which she failed to timely report, or did she suffer cumulative trauma over the course of her employment with Employer?

Employee contends she suffered mental stress as a result of a physical injury, a physical-mental claim. Employee also contents if her injury was not physical-mental, she suffered a mental-mental injury as the stress was extraordinary and unusual and did not arise from good faith employment actions by Employer. Employer contends Employee did not suffer a physical-mental injury as there was no physical injury and her mental injury claim is not compensable because the workplace stress was neither unusual nor extraordinary.

2. Did Employee suffer a compensable -mental injury?

Employee contends the work injury is the cause of her need for medical treatment. Employer contends Employee is not entitled to medical treatment because there is no evidence an injury occurred.

3. Is Employee entitled to medical benefits?

Employee contends she is entitled to temporary total disability (TTD) benefits from January 24, 2014 to June 26, 2016. Employer contends Employee is not entitled to disability benefits because there is no evidence an injury occurred.

4. Is Employee entitled to TTD benefits, and, if so, for what dates?

Although the parties identified permanent partial impairment (PPI) benefits as an issue for hearing, Employee did not contend she was entitled to PPI benefits. Employer contends no doctor has provided an impairment rating, so Employee is not entitled to PPI benefits.

5. Is Employee entitled to PPI benefits?

Although Employee requested interest in her claim, neither party specifically addressed interest in briefing or at hearing.

6. Is Employee entitled to interest?

Although Employee requested a penalty in her claim, neither party specifically addressed a penalty in briefing or at hearing.

7. Is Employee entitled to a penalty?

Employee contends her attorney provided valuable services that resulted in the award of benefits, and she should be awarded her attorney fees and costs. Employer contends Employee is not entitled to attorney fees, because she should not prevail at hearing. Additionally, Employer contends some of the fees Employee seeks are unrelated to the issues at hearing, and the affidavit requesting some fees and costs was not timely filed.

8 Is Employee entitled to attorney fes and costs?

FINDINGS OF FACT

A preponderance of the evidence establishes the following facts and factual conclusions:

1. Employee began working for Employer in 1997 as a teacher. (Employee).
2. In 2000, Sam Nelson, Palmer High School assistant principal, wrote a letter of recommendation for Employee to teach in the advanced placement program. He stated all three administrators at Palmer High School agreed Employee had the personality, intellect, and commitment to students needed for an advanced placement program. He believed "without reservation" Employee would make an excellent advanced placement teacher. (Sam Nelson, To Whom It May Concern Letter, Undated; Employee).
3. On January 7, 2003, Wolfgang Winter, Palmer High School principal, wrote a letter supporting Employee for leadership and collegiate honor awards. Mr. Winter noted several examples of Employee going beyond the requirements of her job and concluded by saying, "there are few teachers I have seen in 22 years in public schools who have the determination and the drive to improve and succeed like Donna Hickle . . . . I am confident she will put for the same type of effort in order to become a well-respected educational leader." (Wolfgang Winter, Letter, January 7, 2003).

4. On September 26, 2003, Employee received a note from assistant principal Nelson stating "we need to talk as friends and me not as your boss." The note asked that Employee see him before leaving for the weekend. It was signed "Sam" followed by a smiley face. (Palmer High School, Activities Principal Note, September 26, 2003).
5. Employee did not know why the meeting had been requested, but she arrived at the meeting to find Glen Ramos, the school psychologist was there as well. Mr. Nelson had met with Mr. Ramos prior to the meeting and explained it was to discuss Employee's instructional techniques and classroom delivery." Mr. Ramos was angry with Employee because she had made a comment he perceived as contrary to the message he was trying to convey in a September 25, 2003 presentation on suicide prevention. The three parties understood the meeting would not result in any disciplinary action. Mr. Ramos told Employee she was not to speak or cry during the meeting; she could do that at home on her own time. Employee was visibly upset and began crying. Employee was so upset that Mr. Nelson did not think she even understood Mr. Ramos' explanation of the events. Mr. Ramos left after about 30 minutes, Mr. Nelson continued with the meeting even though he described Employee as crying and sobbing severely. He stated Employee needed to see a psychiatrist for a prescription, and when Employee asked why, Mr. Nelson stated she would be put on Plan for Improvement if she did not. Although the Employee and Mr. Nelson disagreed about the specifics, they agree that at some point Mr. Nelson pushed Employee. The meeting lasted at least two hours. After the meeting, Employee went to the school nurse who told her she needed to see a counselor. The nurse reported the incident to Mr. Winter. An investigation by Employer's equal opportunity employment officer found Mr. Nelson had created a hostile, offensive, or abusive work environment. (Employer, EEO Report, December 2, 2003).
6. A teacher is placed on a Plan for Improvement when they are not performing adequately. Failure to remedy the items on the plan can lead to dismissal. (Employee).
7. On October 14, 2003, Mr. Nelson sent Employee an email because he felt she had been avoiding him. He stated he was "sorry if you feel that I have hurt you." He explained the reason for the meeting was several teachers and one parent had complained about her conduct. (S. Nelson, Email to Employee, October 14, 2003).
8. There are no complaints in the record regarding Employee for any time before the September 29, 2003 meeting. (Observation).

9. The Monday following Employee's meeting with assistant principal Nelson, he sent her a "Thank You" card signed "Your Friend," to which he attached a chocolate mint. (Thank You Card, Undated).
10. On October 20, 2003, Employee was seen by Ellen Halverson, M.D. Employee reported the September 29, 2003 event, naming Mr. Nelson, Mr. Winter, and Mr. Ramos. Dr. Halverson diagnosed Employee with post-traumatic stress. (Dr. Halverson, Chart Note, October 20, 2003
11. On October 29, 2003, Principal Winter wrote a "Disposition" noting Employee had filed an equal opportunity report against Mr. Nelson on October 14, 2003. He reviewed statements from both parties regarding the incident, and conducted his own investigation. Mr. Winter concluded Mr. Nelson had acted in the manner he did out of a concern for Employee's emotional/mental health, and Employee's view of the event was "likely significantly skewed by her emotional/mental state," and there was no basis for a claim of sexual harassment against Mr. Nelson. Mr. Winter's resolution was that Mr. Nelson make every attempt to minimize his contact with Employee. (Employer, Disposition, October 29, 2003).
12. Employer's equal opportunity employment officer investigated Employee discrimination complaint. The investigator interviewed nine individuals and reviewed over 20 documents, and concluded Mr. Nelson had created a hostile, offensive, or abusive work environment. The report also noted Mr. Winter had compromised the investigation by contacting Mr. Nelson after Mr. Winter had been questioned. (Employer, EEO Report, December 2, 2003).
13. Joe Boyle, a union representative, assisted Employee in dealing with Employer regarding Mr. Nelson. He met Employee in 1997, the first year she worked for Employer, and was also a teacher at Palmer High School. Employee contacted him shortly after the incident with Mr. Nelson, and she was very upset and "stressed out" by the matter. Although he had been friends with many principals, he had never seen a document like Mr. Winter's request to meet as a friend. He explained that Employee had alleged Mr. Ramos, who made the complaint, had been asking her for a date, and she had repeatedly declined. When he raised that concern with the human resource manager, the matter was dropped. Mr. Nelson was fairly popular, and Employee feared other people blamed her for Mr. Nelson's troubles. (Boyle, Deposition, October 18, 2018).
14. Mr. Boyle is credible. (Observations: Judgment).

15. On February 11, 2004, Employee was evaluated by Principal Winter. He noted several areas of concern that required corrective actions, but he recommended continued employment. Employee stated this was the most negative evaluation she had received in the fourteen years she had been teaching. (Employer, Summative Evaluation, February 11, 2004).
16. The date and reason are unclear, but Mr. Nelson went on leave and then retired, but on March 11, 2004, he returned to the school, where the administration, counselors, and secretaries threw a party for him with a banner wishing him the very best. (Katherine Gardner; Employee, MSBSD TRS Statement).
17. After Mr. Nelson left, other teachers and staff were rude to Employee; they would walk away, not respond to her, or ignore her in conversations. (Employee).
18. In November 2003, two plainclothes police officers came to Employee's home. In the presence of her young son, they questioned her about a complaint alleging she had a sexual relationship with a student. She was not told the identity of the student, or who made the complaint. Employee denied having a relationship with any student. The police did not take further action, but Employee was very stressed by the incident. (Employee).
19. Katherine Gardner, at that time Employer's personnel supervisor, did not recall the specifics of the incident, but the police did not find evidence Employee had a relationship with a student. (K. Gardner, Deposition, September 21, 2018).
20. On October 22, 2004, Michael Fry, a teacher at Palmer High School who did not have a child in any of Employee's classes, filed a Parent Survey of Teacher Performance. He reported that on October 7, 2004 he had gone to Employee's room to get a DVD player. There were no students present at the time. Employee told Mr. Fry the week was a "blown" week students were absent due to retesting for the High School Graduation Qualifying Exam, and she had shown her students two movies that week. Mr. Fry found "her actions deplorable, and give the teaching profession the label of buffoonery and incompetence. He stated the testing schedule was known before the school year began and a teacher that couldn't come up with an alternate lesson plan was incompetent. Employee responded that Employer's policy was that nothing new be taught on testing days, and her students had been scheduled to use the computer lab to work on an assignment, but due to last-minute changes, the computer lab was not available. She stated the exchange with Mr. Fry had only taken about two minutes,

and she did not believe it should be given any credence. (Parent Survey of Teacher Performance. October 22, 2004; Employee Response, November 5, 2004).

21. On December 1, 2004, Mr. Fry approached Employee in the office, stuck his head very close to her and kept repeating "hi." He repeated the conduct later that day outside her classroom. Employee reported the incidents to Mr. Winter. (Employee, Memo to W. Winter, December 2, 2004).
22. Employee stated that despite the fact Mr. Winter had talked to Mr. Fry, he continued to block doorways, follow her, and look at her through her classroom window until May 2005. (Employee, MSBSD TRS Statement).
23. Employee reported to Katherine Gardner the problem with Mr. Fry was really bothering her, and she asked for a transfer, but Ms. Gardner responded there wasn't another placement available. Employee stated she was stressed, feeling sick, couldn't cope with it, didn't want to come to work anymore, and did even want to be alive. (Employee, Deposition, October 12, 2018).
24. On February 1, 2005, Ms. Gardner wrote to Employee stating that during their January 28, 2005 conversation, Employee admitted entertaining thoughts of suicide. Ms. Gardner stated that in a later conversation she told Employee she would need a medical authorization to return to work and the authorization Employee provided on January 31st would not be adequate as the doctor did not have formal training in assessing individuals with serious mental and emotional stresses. Ms. Gardner informed Employee she was being placed on conditional family medical leave. Employer's risk management department handles work injuries, and Ms. Gardner doesn't recall informing them of Employee's complaint. (K. Gardner, Letter to Employee, February 1, 2005; K. Gardner, Deposition, September 21, 2018).
25. In a second February 1, 2005 letter to Employee, Ms. Gardner stated Employer had been notified Employee was unable to perform her normal job duties due to a serious health condition, and placed her on conditional family leave until a FMLA request could be processed. (K. Gardner, Letter to Employee, February 1, 2005).
26. The January 31, 2005 medical authorization Employee provided to Ms. Gardner is not in the file. (Record).

27. On February 7, 2005, Employee returned to Dr. Halverson, who noted Employee felt suicidal two weeks earlier, as a result of the work dispute with Mr. Fry. Employee reported she felt trapped in her work and Employer was trying to get rid of her. (Dr. Halverson, Chart Note, February 7, 2005).
28. Dr. Halverson is a psychiatrist. (Observation; Experience).
29. On February 8, 2005, Phillip Baker, Ed.D., a psychologist, diagnosed Employee as suffering from an adjustment disorder with anxiety and depression attributed to "an interaction between herself, a fellow teacher and school officials." He released Employee to return to work. (Dr. Baker, Chart Note, February 8, 2005).
30. On January 3, 2006, Employee was evaluated by a different evaluator who found she met or exceeded standards in all listed categories and found her to be "a pleasant and diligent teacher who is eager to demonstrate greater potential." (Employer, Summative Evaluation, January 3, 2006).
31. On a prescription form dated October 10, 2008, Dr. Halverson excused Employee from work for four days. She did not include a diagnosis or explanation. (Dr. Halverson, Work Release, October 10, 2008).
32. Although the date is unclear, Employee wrote a letter to her personnel file in response to an October 16, 2008 letter that is not in the file. She had been serving as an advisor for the yearbook and was disciplined for sending the publisher a list of student names that also included the students' email addresses. Employee stated she had checked with administration and had been told to send the list she had been given. (Employee, Letter to File, October 16, 2008).
33. On April 4, 2009, the Anchorage Daily News ran an article stating the Colony High School principal had sued MySpace and other individuals for defamation and invasion of privacy. (Anchorage Daily News, April 4, 2009) The suit was dropped when the students who created the page confessed. (Student Press Law Center, July 14, 2009).
34. At the beginning of the 2009 school year, not as many students as anticipated enrolled in Palmer High School. As a result, two teachers, including one English teacher, had to be transferred to other schools. (Palmer High School, Opening Week Message, August 21, 2009). A young, untenured teacher was selected for transfer to Colony High School. Because the teacher selected didn't want to go, Employee volunteered. She gathered her

belongings from the class room and went to Colony High School. The principal took Employee to the office, and told her that her reputation preceded her, a zebra could not change its spots [sic], and she had already hired someone for the position. It is unclear what the principal was referring to, but Employee was transferred back to Palmer High School, and the untenured teacher was transferred elsewhere. (Employee, Deposition, October 12, 2018).

35. Other teachers and staff at Palmer High School were upset with Employee, believing the other teacher had to leave because Employee she had reneged on her agreement. After a weekend, during which students would not have access to her classroom, a note saying "Karma is a bitch . . . just remember that!" was left on Employee's chair. (Employee, Deposition, October 12, 2018; Handwritten Note, Undated).
36. On August 21, 2009, an assistant principal at Palmer High School sent an email to the staff stating the "most recent staffing changes were not the result of ANY PHS staff member's actions," but he was not at liberty so discuss it more specifically. (L. Stanton, Email to Staff, August 21, 2009).
37. On September 4, 2009, Principal Winter hand delivered a letter to Employee stating she was being placed on administrative leave pending the outcome of an investigation into a complaint regarding her conduct in class on August 27, 2009. (W. Winter, Letter to Employee, September 9, 2009). The letter was delivered to Employee in front of a classroom of students, and she was required to leave immediately. (MSBSD TRS# R0025638).
38. Employee learned someone had complained she had threatened to sue students. In her fourth-period class in accordance with her lesson plan, she was discussing the artist Georgia O'Keeffe, and how some people had disparaged her. The discussion turned to rumors and their possible consequences. One student asked Employee what she would do if someone were spreading rumors about her; she jokingly replied she would sue them for 4.2 million dollars. (Employee; Employee Deposition, October 12, 2018).
39. On September 8, 2009, Employee visited Randi Owens, a counselor, due to the stress. Ms. Owens diagnosed anxiety, depression, PTSD, and a mood disorder. Employee saw Ms. Owens on several occasions through July 23, 2010. (Randi Owens, Chart Notes).
40. Five students submitted letters in support of Employee. Three of those students were in the class where Employee made the comment, including the student who asked Employee what

she would do if someone defamed her. He stated he didn't mean for the question to be taken as it was and Employee was a "great teacher." (Student Notes).

41. The complaint led to a pretermination hearing that was held over three dates in October 2009. Employer presented evidence Employee had misused instructional time by addressing personal issues with students and threatening to sue any student who spread rumors about her for 4.2 million dollars. Employer had interviewed more than ten students from the four classes Employee had taught that day. At the advice of her union representative, Employee did not participate in the pretermination hearing. The hearing officer found the case for dismissal to be compelling, and that the statements were made to frighten the students, resulted in harm, and irreparably damaged the teaching relationship. The hearing officer concluded Employee be dismissed and that Employer file a complaint with the Alaska Professional Teaching Practices Commission (PTPC). Employee was informed she could appeal the decision to the school board. (Pretermination Hearing Decision, October 23, 2009).
42. On May 6, 2010, Employee met with Mattie Owens, a counselor. Employee was near tears when she reported feeling harassed by people at work, and she believed Employer did not want her in the school system. Although the copy is not good and appears to have been cut off in copying, Mr. Owens appears to report, "We discussed paranoia resulting from treatment."

    (M. Owens Therapy Note, May 6, 2010; Observation).
43. The parties agreed to arbitration, and on July 17, 2010, the arbitrator issued his decision. The arbitrator explained Employer had the burden to prove two elements by a preponderance of the evidence; that Employee engaged in the conduct for which she was disciplined, and that the penalty was appropriate. The arbitrator found Employer had not proved Employee made the statements in all four periods as alleged, and the dismissal could not be sustained. However, the arbitrator also found Employee had "testified very persuasively" that the statement had only occurred during one class period, and was in response to student questions. The arbitrator noted Employee's statement was supported by statements from students, including the student who had asked the question. Employer was ordered to reinstate Employee with back pay, although given the distrust between Employee and the

administration, Employee could be transferred to another school with her consent. (Arbitration Decision, September 21, 2010).

44. On August 2, 2010, the Professional Teaching Practices Commission (PTPC) informed Employee the complaint against her had been dismissed for insufficient evidence. (PTPC Letter, August 2, 2010).
45. Employee transferred to Wasilla High School. (Employee). On February 10, 2011, students told Employee another student was spreading rumors she had acted inappropriately with a male student. Employee sent the students to the office to report what they had heard. The students also said there was a rumor going around the school she had been fired from her last job for having sex with kids. She explained that wasn't true, or she wouldn't be working in a school. (Employee, Note to File, February 10, 2011).
46. November 15, 2011, Dr. Halverson wrote Employee had "some symptoms of reactive paranoia," and she noted that "in times of extreme stress (which have been real for this pt.) she becomes a little 'unglued' (paranoid obsessive)," but her diagnoses were an unspecified episodic mood disorder and posttraumatic stress disorder. (Dr. Halverson, \Chart Note, November 15, 2011).
47. On April 9, 2012, Employee reported to Mr. Nelles that a student told the class Employee had been fired from her job at Palmer High School because she had a close relationship with a student. (Employee, Email to J. Nelles, April 9, 2012).
48. On February 8, 2013, Amy Spargo, Wasilla High School principal, observed Employee's teaching. After making 11 positive and no negative observations, Ms. Spargo stated, "You are doing a great job." (A. Spargo, Email to Employee, February 8, 2013).
49. On February 11, 2013, Ms. Spargo completed Employee's annual evaluation. Her comments were all positive, she found Employee met or exceeded all standards and recommended Employee's continued employment. (Summative Evaluation, February 11, 2013).
50. On February 21, 2013, Ms. Gardner, now Employer's human resources director, wrote to Employee notifying her the school board had approved her employment for the 2013-14 school year and enclosing her employment contract. (K. Gardner, Letter to Employee, February 21, 2013).
51. On May 2, 2013, before her second period class, Employee got a cup of coffee during the break, set it on her desk, and returned to the hallway. She returned to the classroom at the

end of the break and proceeded with the next class. A student commented on the smell of her coffee, and she noticed it was somewhat bitter but proceeded to drink it. She began to feel strange, and began making mistakes. By the fourth or fifth hour, she knew something was wrong. She went to the adjacent room and asked the staff if it looked like anything was wrong with her. They responded that her eyes were dilated. She drove home, realizing on the way she should not be driving. When she arrived at home, her son convinced her to call an ambulance. She called the school and told the office staff what had happened; they told her to call 911. She was also told they would test her cup. When she was laying in the ambulance, a police officer questioned her as to who might have done it, and what the substance might have been. She named one student who she had had conflicts with and who had a troubled history, but noted there were two students with the same name. She threw up in the ambulance, but the vomitus was not tested or saved. (Employee, Deposition, October 12, 2018).

52. When EMS personnel arrived, they noted Employee was talkative with rambling, repetitive speech, and they assessed anxiety and possible involuntary drug use. Their report indicates the Wasilla Police Department assisted them. (Mat-Su Borough EMS, Patient Care Report, May 2, 2013).
53. Employee was taken to the emergency room at Mat-Su Regional Medical Center where she reported she thought a student had put something in her coffee, but the symptoms were improving. Urinalysis was negative for thirteen common drugs, six of which were opioids, and a sample was sent to be tested for LSD. There is no record of any blood tests. There was no odor of alcohol whatsoever on Employee's breath. The attending physician explained to Employee there were "all kinds of potential substances out there that this could be." Employee was diagnosed with a "possible ingestion" and directed to follow up with her doctor. She was discharged at 4:49 p.m. (Mat-Su Regional Medical Center, Emergency Department Note, May 2, 2013).
54. The result of the LSD test is not in the record, but Employee stated it was negative. (Record; Employee).
55. A day or two before the incident with her coffee, Employee overheard students talking about a "trip;" concerned they were discussing LSD, she cautioned them against drug use. (Employee).

56. When Ms. Spargo learned of the possible poisoning, she directed Jeff Nelles, an assistant principal, to go to Employee's classroom and collect her coffee cup and other drink containers. She spoke to Employee after she was released from the hospital. Employee told her they had not found anything in the tests, but additional tests were being done. (Spargo).
57. Mr. Nelles collected any cups and drink containers from Employee's room which he stored in his office for about three years. He then threw them away because Employee was no longer working for Employer. (Nelles)
58. On the morning of May 3, 2013, Ms. Spargo emailed Ms. Gardner stating Employee's "paranoia is continuing to grow." Ms. Spargo explained Employee believed she had been drugged by students, naming one student in particular. Ms. Spargo stated a police officer had stated Employee had made over 70 police reports in the last two years. She stated she would be clear with Employee that the identities of the students involved must not be made public as there is no evidence or reason to suspect them other than Employee's belief. (A. Spargo, Email to K. Gardner, May 3, 2013).
59. Ms. Spargo then viewed security video of the hallway outside Employee's classroom taken after the last class on May 2, 2013. There was no evidence the student Employee thought was responsible had gone into the classroom. There had been a group of students working in the hall after school, and Ms. Spargo interviewed the students individually. Some of the students reported they had a conversation with Employee where she warned them against LSD. She did not review the surveillance video for the whole day. Ms. Spargo was very concerned Employee had made a police report about a particular student. She felt an allegation like that crossed the line when there was no evidence or reason to think the student had done it, although she had no idea how the matter got referred to the police. Ms. Spargo relied on Employee's statement the tests at the hospital had been negative and her own investigation in deciding not to send the cups from Employee's classroom for testing. She did not report the incident as a work injury, because she did not believe it had happened. She did not know whether the police had responded to Employee's 911 call, or how the police complaint was made. (Spargo).
60. The evening of May 3, 2013, Ms. Spargo emailed Ms. Gardner stating Employee had a doctor's note excusing her from work, and she had "filed a police report for what she described as attempted murder" by a specific student, who she believed put LSD or some

other drug in her coffee. Ms. Spargo stated Employee had asked her to pull the video for that day and save it for evidence. She stated she would investigate, but questioned whether Employee should be supervising students "when she can come up with accusations like this." (A. Spargo, Email to K. Gardner, May 3, 2013).

61. Ms. Spargo also emailed Employer's attorney on May 3, 2013, attaching her email to Ms. Gardner, and saying she would like to discuss the matter with him. On May 4, 2013, the attorney responded saying Ms. Spargo needed to maintain the chain of custody of what was taken from the classroom. (A. Spargo, Email to Attorney and Response, May 3 and 4, 2013).
62. On May 3, 2013, Dr. Halverson stated she had seen Employee that day. Employee reported she had gone to the emergency room because she believed students had put something in her coffee. Employee reported she felt she had been "picked on" for some time at school. "[S]he admittedly feels paranoid about this situation, although she believes that this has been happening." Dr. Halverson noted she was concerned Employee was experiencing paranoia, but she did not have information to prove or disprove it. Employee was diagnosed with an unspecified episodic mood disorder, and Dr. Halverson asked that Employee be excused from work until May 14, 2013. (Dr. Halvorson, Excuse from Work, May 2, 2013).
63. On May 4, 2013, Employer's attorney also sent an email to Ms. Gardner stating that, if the police were investigating the matter as a crime, the chain of custody of anything taken from the classroom needed to be maintained and it would be best to have the police test the cups. (S. Friedman, Email to K. Gardner, May 4, 2013).
64. On May 14, 2013, Dr. Halverson released Employee to return to work. (Dr. Halverson, Work Release Letter, May 14, 2014).
65. On June 3, 2013, Employer notified Employee she was being placed on administrative leave as of May 15, 2013, and, before she could return for the following year, she would be required to undergo an independent medical evaluation in accordance with State regulations to determine if she was medically fit to teach. (K. Gardner, Letter to Employee, June 3, 2013).
66. At the recommendation of Employee's doctor, a stomach biopsy was done on June 21, 2013. The results were negative. (Providence Alaska Medical Center, Surgical Pathology Report, June 21, 2013).

67. On July 29, 2013, Employer informed Employee the independent medical evaluation would be performed by Aron S. Wolf, M.D., a psychiatrist on August 22, 2013. (K. Gardner, Letter to Employee, June 3, 2013).

68. Dr. Wolf issued his report on August 26, 2013. He stated he had interviewed Employee at Employer's request for an independent medical evaluation. Prior to meeting with Employee, he had conversations with Employer's attorney, two Employer staff members, and reviewed 11 documents that Employer provided

- Two February 1, 2005 letters from Ms. Gardner to Employee
- A February 8, 2005 Letter from Dr. Baker to Employer
- A note from Dr. Halvorson excusing Employee from work
- An October 16, 2008 "letter to the file" by Employee
- A February 23, 2009 "letter to the file" by Employee
- The October 23, 2009 pretermination hearing decision
- A February 21, 2013 letter from Ms. Gardner to Employee
- The May 3, 2013 email from Ms. Spargo to Employer's attorney
- A May 20, 2013 letter from Ms. Gardner to Employee relating to administrative leave
- A July 29, 2013 letter from Ms. Gardner to Employee regarding Dr. Wolf's evaluation
- Several conversations with Employer's attorney clarifying the issues in the documents
- A teleconference with Ms. Gardner
- A teleconference with Ms. Spargo

Dr. Wolf noted that in 2005 Employee "took" FMLA leave because of thoughts of suicide. He stated "all of the material" showed Employee had similar incidents over the years, and had increasingly felt her peers, the administration, and even students were plotting against her. Dr. Wolf noted Employee "was almost terminated" in 2009 for making threatening statements in her class, but the "termination was halted" when the case was taken to

arbitration. Dr. Wolf noted the only medical data in the record was the February 8, 2005 letter from Dr. Baker and the brief work release from Dr. Halverson, neither of which gave any information as to Employee's diagnosis or prognosis. Employee showed Dr. Wolf pictures showing how her vehicle had been defaced by thrown eggs. Dr. Wolf diagnosed paranoid personality disorder, and explained it was defined as "'a pervasive distrust and suspiciousness of others such that their motives are interpreted as malevolent, beginning in early adulthood and present in a variety of contexts.'" Because Employee's diagnosis was "longstanding and pervasive" Dr. Wolf did not feel she was fit to return to employment with Employer. (Dr. Wolf, Report, August 26, 2013).

69. Employee spent just under one hour with Dr. Wolf. (Employee) She explained to Dr. Wolf she believed a student put something in her coffee. She also acknowledged she could be mistaken because the cup had been left out overnight, but she had rinsed it before filling it with coffee. She explained she began to feel intoxicated, numb, urinated a lot. A staff member in an adjoining room said her eyes were dilated. By the time she went home, her stomach was hurting, she was nauseated, and she had a headache. The police came with the ambulance, and she tried to tell them what was going on. Shortly after she began teaching in Palmer, there were rumors she was sleeping with the principal. Then in 2003, she had the incident with the assistant principal keeping her in his office for hours. About the same time, the police had come to her door and questioned her about an accusation she had inappropriate relations with a student. Then, about three years ago Employer accused her of threatening students, and she prevailed at arbitration. These problems were when she was at Palmer High School; after her transfer to Wasilla High School most of the staff was fine, but there were a couple of people with connections to Palmer High School who still treated her differently. Employee told Dr. Wolf that Dr. Halverson had cleared her to go back to work, and she believed that as long as she was under a physician's care for the beginning of school, it would be fine. At no time did Dr. Wolf tell Employee he had conversations with Employer's representatives or tell her what documents Employer had provided. (Transcript of Dr. Wolf's Evaluation of Employee).
70. On October 13, 2013, Employee gave Employer a worker's compensation report of injury for the May 2, 2013 injury. (Report of Injury, October 13, 2013).
71. On October 28, 2013, Employer controverted all benefits stating:

> This is a complex medical claim wherein the employee alleges her coffee was poisoned or drugged by a student. The alleged incident was not witnessed by anyone. There is no medical evidence received to date to indicate employee was poisoned or drugged.

(Controversion, October 25, 2013).

72. Paul Craig, Ph.D., a neuropsychologist, evaluated Employee on November 13 and 19, 2013. He interviewed Employee and reviewed some medical records. Employee described the May 2, 2013 and the 2003 incidents to Dr. Craig. Dr. Craig administered several psychological tests, and found Employee suffered mild anxiety and moderate depression but no neuropsychological disorder. (Dr. Craig, Neuropsychological Evaluation, November 19, 2013).
73. On January 24, 2014, Employee's administrative leave terminated when she was terminated. (Employee).
74. On March 14, 2014, Grace Long, Ph.D., wrote to Dr. Halverson regarding her psychological assessment of Employee. Dr. Long met with Employee on six occasions, and diagnosed unspecified episodic mood disorder and PTSD. Dr. Long explained she did not have enough data to assess Employee's experiences with Employer, but if "her explanation of her experiences is accurate, at a minimum it will contribute to exacerbation in symptoms of her PTSD." (Dr. Long, Psychological Assessment, March 14, 2014).
75. On May 4, 2015, Employee filed a workers' compensation claim listing the date of injury as May 2, 2013 and alleging her digestive system had been injured and she had suffered mental stress. In describing how the injury occurred, she described the events of May 2, 2013, and stated she had been deemed unfit for duty by Employer's doctor after 17 years of employment. She stated she had been harassed, causing her extraordinary and unusual stress. (Claim, April 24, 2015).
76. Employer answered Employee's claim on May 19, 2015, and on the same date filed a medical summary to which were attached Dr. Wolf's August 26, 2013 report, Dr. Baker's February 8, 2005 report, and Dr. Halverson's October 10, 2008 off-work slip. (Employer, Answer and Medical Summary, May 18, 2015).
77. On May 19, 2015, Employer again controverted all benefits stating:

> There is no medical evidence received to date to indicate employee was poisoned or drugged. There is no medical evidence that indicates the 05/02/13 incident is the substantial cause of the employee's disability or need for treatment.

(Controversion, May 18, 2015).

78. On September 25, 2015 Employer controverted all benefits, again stating:

> There is no medical evidence received to date to indicate employee was poisoned or drugged. There is no medical evidence that indicates the 05/02/13 incident is the substantial cause of the employee's disability or need for treatment.

(Controversion Notice, September 24, 2015).

79. Employee was hired as a gardener at Providence Medical Center on June 26, 2016. (Employee Representation).
80. On November 16, 2016, Employee filed evidence relating to the 2003 incident with Mr. Nelson and the 2009 transfer to Colony High School as well as the May 2013 incident. (Employee, Email, November 17, 2016).
81. On May 3, 2017, Employee was seen by Ronald Turco, M.D., a psychiatrist, for an employer's medical evaluation (EME). Dr. Turco noted he had studied " a great many medical records," but he only identified Dr. Wolf's report, Dr. Craig's November 13 and 19, 2013 report, and Dr. Long's March 2014 report. He noted Employee was seeing Dr. Halverson, who had effectively assisted Employee with a mood disorder and possible PTSD. Dr. Turco reported Employee stated she had been the subject of a variety of incidents that appeared not to have been documented and Employee had concerns some individuals did not like her. Employee reviewed her 2003 difficulties with Mr. Nelson, Mr. Winter, Mr. Fry, and the claim she had sexually abused a minor. In his summary, Dr. Turco noted many of Employee complaints regarding Employer "may not have been substantiated on any realistic basis," and, as Dr. Wolf noted, that would meet the criteria for paranoid personality disorder, but an MMPI-2 test would help clarify the matter. He did not find any indication of paranoia or PTSD at the time of his examination. Dr. Turco explained:

> "[I]t is difficult to know whether she has, in many respects, simply imagined what has been going on or whether she has been delusional. I am aware of the fact that teaching can be difficult and situations and circumstances with regard to the students can be problematic and students do tend to have a tendency to retaliate against teachers and do a variety of odd things.

Dr. Turco opined Employee had not been exposed to unusual stress as a teacher, either as a result of the May 2, 2013 incident or while employed by Employer, but the issue "should be tried in the context of fact by an independent investigator." (Dr. Turco, EME Report, May 3, 2017).

82. On May 4 2017, Employee was seen by Brent Burton, M.D., a toxicologist, for an EME. Dr. Burton evaluated Employee and reviewed her medical records, including those from Dr. Halvorson, Dr. Craig, Dr. Long, and Dr. Wolf. He diagnosed Employee with six conditions, only one of which is relevant – paranoid personality disorder. He states Employee persists in her belief something was placed in her coffee on May 2, 2013, "without any corresponding evidence or observations that involve anyone having the means or opportunity to surreptitiously add anything to her coffee." Because there was not medical evidence to indicate Employee was injured by contaminated coffee, her claim "most likely arose from her underlying psychiatric condition." Dr. Burton stated, "the evaluation performed by Dr. Wolf clearly indicates [Employee] suffers from a paranoid thinking disorder," and, consequently, it must be concluded the event did not occur. (Dr. Burton, EME Report, May 4, 2017).
83. On February 9, 2017, Employee requested a reemployment benefits eligibility evaluation. (Request for Eligibility Evaluation, February 9, 2017).
84. On March 3, 2017, the Reemployment Benefits Administrator (RBA) informed the parties, that because Employer had controverted Employee's claim in its entirety, the Board was required to determine her claim's compensability before the eligibility evaluation could continue. (RBA, Letter, March 3, 2017).
85. On June 19 and 20, 2017, Employee was again seen by Dr. Craig for a reevaluation. Employee provided Dr. Craig with additional details about the May 2, 2013 incident, and Dr. Craig again administered several psychological tests and found no underlying neuropsychological disorder, although her depression continued. Dr. Craig noted it was possible, although not probable, that a student had put something in her coffee, but could never be known what actually occurred. (Dr. Craig, Neuropsychological Evaluation, June 20, 2017).
86. On January 22, 2018, Employee was seen by Dana Headapohl, M.D., for a Board-ordered second independent medical evaluation (SIME). Dr. Headapohl is a specialist in

occupational medicine. Dr. Headapohl reviewed Employee's medical record, examined Employee, and discussed the May 2, 2013 incident extensively with Employee. Dr. Headapohl stated, "there is no objective data that helps us understand what, if anything, was in the coffee. A toxicology screen including LSD was negative. This does not confirm that there was nothing extraneous put in her coffee, as only a few chemicals were screened." Dr. Headapohl concluded the May 2, 2013 incident temporarily exacerbated Employee's underlying psychiatric condition, and her current disability status was "related to Dr. Wolf's 2013 assessment only." From a toxicology standpoint, Dr. Headapohl opined Employee's disability would have ended one week after the May 2, 2013 incident. (Dr. Headapohl, SIME Report, January 22, 2018).

87. On January 23, 2018, Ronald Early, M.D., a psychiatrist, examined Employee for an SIME. Dr. Early reviewed Employee's medical record and examined Employee. He stated the first time Employee had mental health difficulties was following the 2003 meeting with Mr. Nelson, and Employee had experienced a series of continuing problems she thought were related to Mr. Nelson's threat. Employee additionally reported she became increasingly distressed and felt isolated by the rumors she had sexual interactions with a student. Employee was already feeling insecure and vulnerable by the May 2013 incident. Employee reported that when she began feeling "weird" on May 2, 2013, she was hesitant to let the administration or other teachers know because before when she told them she was upset, she was placed on a leave of absence. When she was not allowed to continue teaching, she became increasingly depressed and anxious, but her depression and anxiety resolved when she was away from the school system. Dr. Early explained Employee had taken the MCMI-III test, which revealed she was a well-organized person with obsessive compulsive traits, but no personality disorder, and no evidence whatsoever of paranoia. The test showed no major psychiatric illness, and Employee's depression and anxiety were within normal limits. Dr. Early diagnosed unspecified anxiety disorder and unspecified depressive disorder, both of were initially caused by the 2003 assault and temporarily aggravated by the May 2, 2013 incident. Both the depression and anxiety were in remission at the time of his evaluation. Dr. Early opined the May 2, 2013 injury exacerbated Employee's symptoms following the 2003 incident to the point she was no longer able to continue teaching, and as a result, the 2013 injury was the substantial cause of Employee's subsequent disability and need for more

intense medical treatment. He determined Employee's disability ended when she began working full-time at the hospital. Dr. Early stated that Dr. Wolf did not consider that the events and situation at school may have been genuine and Employee was overwhelmed and did not know how to respond. Dr. Wolf's report was an extension of the May 2, 2013 injury, and the sequelae of the May 2, 2013 injury would have resolved quickly had it not been for Dr. Wolf's report that prevented her from returning to teaching. Dr. Early found Employee had no permanent impairment. Dr. Early opined the stress Employee experienced since 2003 would be considered extraordinary or unusual. (Dr. Early, SIME Report, January 23, 2018).

88. On March 27, 2018, Employee's attorney filed an entry of appearance. (Employee, Entry of Appearance, March 26, 2018).

89. On May 3, 2018, Employee filed another workers' compensation claim seeking TTD, temporary partial disability (TPD), PPI, medical and transportation costs, a compensation rate adjustment, penalty, and interest. (Claim, May 3, 2018).

90. On May 25, 2018, Employer controverted TTD, TPD, PPI, medical benefits, transportation costs, a compensation rate adjustment, penalties, interest, and attorney fees and costs. The reason for controverting was:

> Per the 01/22/18 report of Dr. Headapohl and the 01/23/18 report of Dr. Early, the employee is medically stable with no permanent impairment. The work injury of 05/02/13 is not the substantial cause of the employee's injury or disability or need for medical treatment, if any.

(Controversion, May 25, 2018).

91. On July 15, 2018, Dr. Early responded to questions from Employee's attorney. He reviewed 891 pages from Employee's personnel file, Dr. Wolf's Report, and his January 23, 2018 SIME report. He noted Dr. Wolf had been provided eleven written records, and had three conversations or teleconferences with administration personnel. Dr. Early found many records in Employee's file that would have been valuable for Dr. Wolf's evaluation. Dr. Early noted Wolf's report is designated as an "independent medical examination" which indicates it is a forensic evaluation for legal purposes. Dr. Early also noted Dr. Wolf's report does not document telling Employee the purpose of the evaluation, nor did he document telling her he had personal communications with Ms. Gardner, Ms. Spargo, and Employer's

attorney before the evaluation. In response to Employee's questions, Dr. Early stated an independent medical examination would be conducted using only the records provided and to ensure independence, it would not involve contact with anyone associated with Employee's job prior to the issuance of the report. Dr. Early had never heard of an independent medical examiner having conversations with an employee's supervisors or administrative personnel prior to the report. Because the information, both written and oral, is not summarized, there is no basis for the conclusions in the report. Additionally, when records from a personnel file are reviewed as part of an independent medical examination, all records should be provided. In Dr. Early's opinion, the selection of the documents sent to Dr. Wolf raises questions of bias. Dr. Wolf had described paranoid personality disorder as "a pervasive distrust . . . in a variety of contexts." However, from his review of 931 pages of medical records and 891 pages of school records, there was no record of suspiciousness or pervasive mistrust in any aspect of Employee's life other than in the school setting. There was no documentation in the personnel records that any students or teachers had been interviewed to determine if the rumors and innuendo were valid. Dr. Early stated that had Dr. Wolf reviewed all the records and administered psychometric testing, he might have reached a different conclusion. (Dr. Early, Supplemental SIME Report, July 15, 2018).

92. At the September 4, 2018 prehearing conference, Employee amended her claim to clarify that she was alleging a cumulative injury, not just an injury that occurred on May 2, 2013. (Prehearing Conference Summary, September 4, 2018).

93. Dr. Early was deposed on October 19, 2018. He explained the 2013 injury occurred near the end of the school year, and by the beginning of the next school year Employee would have been able to teach, but she was precluded from doing so because of Dr. Wolf's findings. He stated it was not wise to make a personality diagnosis on the basis of one evaluation, and the ability of psychiatrists to do so was not good, particularly without psychiatric testing. To diagnose paranoia there must be some proof that what the person is reporting is untrue. Commenting on Ms. Owen's May 6, 2010 discussion with Employee regarding paranoia, Dr. Early explained it was important to differentiate between a formal diagnosis and its use as a phrase in a medical narrative. Paranoia begins early and continues throughout life; it does not just go away. He clarified that because Dr. Wolf's report precluded Employee from teaching, it was psychologically distressing to her, but he did not consider it to be part of the

May 2013 injury. Dr. Early had no information that any component of Employee's anxiety predated her employment with Employer. Although an anxiety disorder may go into remission, it is a permanent condition. He stated an incident such as Employee described in 2003, if accurate, would make her anxious and afraid of being exploited, and the 2003 incident was the beginning of Employee's anxiety and depression. Employee's ongoing medical treatment related to her employment with Employer. (Dr. Early, Deposition, October 19, 2018).

94. At the inception of the November 28, 2018 hearing, the designated chair noted the issues for hearing had not been identified at an earlier prehearing conference and asked the parties to identify the issues. Employee stated she was seeking TTD, PPI, penalty, interest, and attorney fees. (Employee, Hearing Representation).

95. At the November 28, 2018 hearing, Dr. Turco testified he had reviewed additional records, but he did not identify those records, and it is unclear what records he reviewed in addition to those he had at the time of his May 3, 2017 report. He did not have Employee's personnel file, however. Dr. Turco noted Employee had been diagnosed with PTSD, but he found nothing in her adult life that would have caused PTSD. He did not believe the assault by Mr. Nelson, although extremely stressful, would give rise to PTSD. The records, including the new records he reviewed, show Employee projecting difficulties onto others that have not actually occurred. Dr. Turco liked Dr. Early's report; the report was very logical and Dr. Early did psychological testing. Dr. Turco explained independent medical evaluations and fitness for duty examinations were conducted the same way, but the focus was somewhat different. Often there are fewer medical records for a fitness for duty examination, but he would "absolutely" request more records if needed. It would be extremely rare, however to interview a coworker or supervisor, and when it happens he addresses it with the examinee and documents it in his report. He lets the examinee review any written notes provided by the employer. In a fitness for duty examination he would typically administer an MMPI if he suspected a serious illness. Dr. Turco stated he typically spends about two hours with the person in a fitness for duty examination, and he acknowledged he had never diagnosed paranoid personality disorder in a fitness for duty examination. He agreed with Dr. Wolf that Employee has paranoid personality disorder, but not based on the single incident with the coffee, but on Employee's ongoing behavior. Dr. Turco agreed the 2003 incident

"definitely" contributed to Employee's need for medical treatment, and all of the stresses during her employment contributed to her need for treatment after the 2013 injury. He could not rule out that a student had put something in Employee's coffee, and could not offer an alternative explanation for her visit to the emergency room. (Dr. Turco).

96. Dr. Wolf testified at the November 28, 2018 hearing. For an independent medical examination he typically gets records from both the employer and employee and asks for more records if needed, but only had two medical records in Employee's case. He stated he had been given only limited access to medical records for his examination, and his diagnosis was based on his interview with Employee and the documents Employer provided. When he spoke to Ms. Gardner and Ms. Spargo it was to get confirmation of what was in the documents. Dr. Wolf had recently been provided with additional medical records, and which he noted mentions of potential personality disorder, but not paranoia. At the time of his examination, Dr. Wolf was not aware the 2009 pretermination decision been rejected in a subsequent arbitration. He did not have a list of the drugs that had been tested for at the emergency room. (Dr. Wolf).
97. Mr. Boyle, a union representative and later union president, testified that after the 2003 incident, Employee was always suspicious of Employer. Mr. Nelson had been a popular administrator, and Employee felt people blamed her for his troubles. She seemed stressed and it never went away. He could not recall any instance other than Employee's where Employer had required a fit-for-duty evaluation. (Boyle, Deposition, October 18, 2018).
98. Ms. Gardner was aware of the conflict between Employee and Mr. Fry; Mr. Fry was vocal about Employee's teaching abilities. In 2005, Employee reached out to Ms. Gardner in distress. She could not remember what Employee asked her to do. Ms. Gardner could not remember the specifics of what Employee said, but she did not like where she was working or with whom she was working. Employee's statement led Ms. Gardner to conclude Employee was considering self-harm, and she required Employee to obtain a mental health evaluation. Ms. Gardner did not consider work to be the cause of Employee's stress. In 2013, Employer would have had about 2,500 permanent employees, including 1,200 teachers. Ms. Gardner did not know the exact number for earlier years, but in the last year, there had been five equal opportunity complaints. Less than one termination proceeding per year proceeded to arbitration. (K. Gardner). Ms. Gardner was unaware of any other situation

in which an employee was required to undergo a fitness for duty evaluation by a psychologist or psychiatrist selected by Employer. (K. Gardner, Deposition, September 21, 2018).

99. Employee is credible. (Observation; Experience).

100. On November 26, 2018, Employee filed an affidavit detailing $55,660.00 in attorney fees dating from April 7, 2017 through November 21, 2018 and costs of $6,989.85. Employee requested leave to file a supplemental affidavit of fees and costs after the hearing. (Employee, Attorney Fee Affidavit, November 26, 2018).

101. At the November 28, 2018 hearing, the parties stipulated Employee would file a supplemental attorney fee affidavit by December 7, 2018, Employer would file any objections to Employee's attorney fees and costs by December 14, 2018, and Employee would have until December 17, 2018 to respond to any objections. (Hearing Stipulation).

102. On December 13, 2018, Employee filed by email a supplemental affidavit setting out additional attorney fees of $9,320.00 and additional costs of $865.20. The supplemental affidavit was notarized and dated December 4, 2018 and indicated it have been served on Employer's attorney on that day. (Employee, Supplemental Attorney Fee Affidavit, December 4, 2018).

103. On December 14, 2018, Employer objected to Employee's supplemental attorney fee affidavit in its entirety on the grounds it was not timely filed. Employer also objected to the fees and costs contained in Employee's November 26, 2018 affidavit, contended Employee should not be awarded full fees as she did not bring all of the benefits sought in her claim to hearing, work related to events prior to the May 2, 2013 event should not be allowed. Employer also contended Employee's attorney's use of block billing often precluded a determination of the issues being worked on, and the out-of-state deposition of Mr. Boyle could have been done telephonically rather than in person. Employer objected to all fees and costs incurred prior to Employee's attorney's March 26 2018 entry of appearance. (Employer, Objection to Attorney Fees and Costs, December 14, 2018).

104. On December 17, 2018, the Board notified the parties it was reopening the record until December 21, 2018. Given occasional problems with email filings and the discrepancy created by the date of Employee's supplemental affidavit, the parties were asked to submit evidence as to when the supplemental fee affidavit was emailed to the Division and Employer. (Letter to Parties, December 17, 2018).

105. On December 17, 2018, Employee responded to Employer's objection to Employee's claimed fees and costs. Employee's attorney explained the affidavit had been prepared on December 4, 2018, but he had inadvertently forgotten to file it that day. Employee noted that, although late, the supplemental affidavit was filed prior to Employer's deadline to object, and Employer did not appear to have been prejudiced by the delay. Employee noted that several of the benefits sought in Employee's claims that had not been brought to hearing were benefits Employee requested when unrepresented. (Employee, Response to Objection to Attorney Fees and Costs, December 17 2018).

PRINCIPLES OF LAW

> **AS 23.30.001. Intent of the legislature and construction of chapter.**
> It is the intent of the legislature that
>
> (1) this chapter be interpreted so as to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of this chapter;
>
> (2) workers' compensation cases shall be decided on their merits except where otherwise provided by statute;
> . . . .
>
> (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.** (In effect prior to November 7, 2005)
> Compensation is payable under this chapter in respect of disability or death of an employee

> **AS 23.30.010. Coverage.** (Effective November 7, 2005)
> (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.
>
> (b) Compensation and benefits under this chapter are not payable for mental injury caused by mental stress, unless it is established that (1) the work stress was extraordinary and unusual in comparison to pressures and tensions experienced by individuals in a comparable work environment; and (2) the work stress was the predominant cause of the mental injury. The amount of work stress shall be measured by actual events. A mental injury is not considered to arise out of and in the course of employment if it results from a disciplinary action, work evaluation, job transfer, layoff, demotion, termination, or similar action taken in good faith by the employer.

Under the Alaska Workers' Compensation Act, coverage is established by a work connection, meaning the injury must have "arisen out of" and "in the course of" employment. If an accidental injury is connected with any of the incidents of one's employment, then the injury both would "arise out of" and be "in the course of" employment. The "arising out of" and the "in the course of" tests should not be kept in separate compartments but should be merged into a single concept of "work connection." *Northern Corp. v. Saari*, 409 P.2d 845, 846 (Alaska 1966).

In *Runstrom v. Alaska Native Medical Center*, 280 P.3d 567, 572 (Alaska 2012), the Supreme Court has divided mental injuries into three categories for purposes of analysis:

> A "physical injury that causes a mental disorder" is considered a "physical-mental" claim; a "mental stimulus that causes a mental disorder" is considered a "mental-mental" claim; and a "mental-physical" claim occurs when a mental stimulus causes a physical injury, such as a heart attack. Classification is important because the presumption of compensability does not apply to mental-mental claims, making them generally more difficult to prove, and those claims must be based on unusual and extraordinary work-related stress. The fact that an

> accident produces unusual stress does not transform it into a mental-mental claim—the key to analyzing such claims is to look at the underlying cause of the disability. (footnotes omitted)

In *Runstrom*, the employee had been sprayed in the eyes with fluids from an HIV-positive patient. She received immediate treatment, and did not become HIV positive, but she filed a claim for mental stress. The Supreme Court affirmed the Appeals Commission determination it was a physical-mental claim.

In *Kelly v. State of Alaska*, 218 P.3d 291 (Alaska 2009), the Supreme Court addressed a case in which a prison guard, Kelly, filed a claim for job-related stress after being threatened with serious injury or death by an inmate who had been convicted of murder and was armed with a weapon. The Board had found the guard's stress was not compensable as it would not be unusual or extraordinary for correctional officers to be threatened by inmates. The Court noted that a worker's perception he feels stress is by itself inadequate to establish "extraordinary and unusual" stress. *Id.* at 300. The Court reversed the Board, explaining the employee had experienced extraordinary and unusual stress: while other guards had been threatened, it was often by intoxicated inmates, or inmates behind bars, but when the employee was threatened, he was alone, unarmed, locked in a module with an armed inmate who threatened to stab him in the eyes and then stab him to death.

> **AS 23.30.095. Medical treatments, services, and examinations.**
> (a) The employer shall furnish medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus for the period which the nature of the injury or the process of recovery requires, not exceeding two years from and after the date of injury to the employee. However, if the condition requiring the treatment, apparatus, or medicine is a latent one, the two-year period runs from the time the employee has knowledge of the nature of the employee's disability and its relationship to the employment and after disablement. It shall be additionally provided that, if continued treatment or care or both beyond the two-year period is indicated, the injured employee has the right of review by the board. The board may authorize continued treatment or care or both as the process of recovery may require.
>
> (i) . . . the improper influencing or attempt by a person to influence a medical opinion of a physician who has treated or examined an injured employee, is a misdemeanor.

> **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.

In *Tinker v. Veco*, 913 P.2d 488, 491-92 (Alaska 1996) the Supreme Court explained a failure to give timely written notice is excusable under AS 23.30.100(d)(1) if two requirements were met: "first, knowledge of the injury by the employer, in-charge agent, or carrier, and second, a lack of prejudice to the employer or carrier." The court then set out the test for determining whether the employer had been prejudiced:

> [W]e must first ask whether this written notification would have informed Veco of anything about which Tinker had not already told [his supervisors]. If a legally sufficient written notification would have only duplicated the same information Tinker already had communicated verbally to Veco 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.

In *Kolkman v. Greens Creek Mining Co.*, 936 P.2d 150 (Alaska 1997), the employer was aware the employee had a heart attack soon after it happened, but did not know the employee was alleging work was the cause. The Supreme Court rejected the proposition that notice to an employer must include notice the injury was work related.

In *Cogger v. Anchor House*, 936 P.2d 157, 160 (Alaska 1997), the Supreme Court addressed the notice requirement:

> Under *Sullivan*, the thirty-day period begins to run when the worker could reasonably discover an injury's compensability. 518 P.2d at 761. The exact date when an employee could reasonably discover compensability is often difficult to determine, and missing the short thirty-day limitation period bars a claim absolutely. For reasons of clarity and fairness, we hold that the thirty-day period can begin no earlier than when a compensable event first occurs. However, it is not necessary that a claimant fully diagnose his or her injury for the thirty-day period to begin.

When an employee is alleging an injury occurred over the course of his or her employment rather than as the result of specific incident, the question arises as to when the employee must report the injury. In *Sourdough Express, Inc. v. Barron*, AWCAC Decision No. 069, 23 n. 99 (February 7, 2008), the Commission answered that question:

> In our view, date of injury of such claims is the last day the employee engaged in the work activity that he or she alleges brought about the "cumulative" injury.

> **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.

In *Fox v. Alascom, Inc.*, 783 P.2d 1154 (Alaska 1989), an employee began to experience mental stress as a result of work. The Board found the employee knew or reasonably should have known the seriousness of her injury and its connection to work by August 1, 1980. Consequently, the Board determined that under AS 23.30.100 the employee should have

provided notice to the employer by August 31, 1980 and, under AS 23.30.105, she should have filed a claim by August 1, 1982. In November 1982, the employee filed a claim for mental stress, listing the date of injury as February 1982, the date she had a breakdown. The Board found the claim to be untimely. The Supreme Court reversed stating:

> Fox does not dispute that she had experienced work-related stress prior to the breakdown. While it may be that she could have claimed disability benefits for the stress she had experienced prior to her 1982 breakdown, she cannot be penalized for absorbing the costs of her earlier stress, and seeking Workers' Compensation benefits only when that stress culminated in a breakdown. An employee need not claim disability for every pang of pain in order to claim disability benefits for a more fully developed injury. Thus, the relevant limitations periods for filing her breakdown-related claim did not begin to run when Fox began to suffer from work-related stress. Rather, the limitations periods started to run as of the date she became aware of her work-related breakdown.

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 . . . .

(b) The presumption of compensability established in (a) of this section does not apply to a mental injury resulting from work-related stress.

Under AS 23.30.120(a), benefits sought by an injured worker are presumed to be compensable. *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); *Carter* at 665. 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 worker's 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. *Kramer* at 473-74, 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. 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 that the consequences of medical malpractice in treating a compensable injury are also compensable:

> A physician may be wrong in a diagnosis without being negligent. [But], even if there was negligence, the general rule is that the consequences of medical negligence committed while treating a compensable injury are themselves compensable. *Ribar v. H & S Earthmovers*, 618 P.2d 582, 584 (Alaska 1980).

In 1 *Larson's Workers' Compensation Law*, Chapter 10, at §§ 10.01 (2014 ed.), Professor Larson examines compensability of a secondary injury:

> When the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to claimant's own intentional conduct.
>
> § **10.01** . . . The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable injury.

AS 23.30.145. Attorney fees.

(a) Fees for legal services rendered in respect to a claim are not valid unless approved by the board, and the fees may not be less than 25 percent on the first $1,000 of compensation or part of the first $1,000 of compensation, and 10 percent of all sums in excess of $1,000 of compensation. When the board advises that a claim has been controverted, in whole or in part, the board may direct that the fees for legal services be paid by the employer or carrier in addition to compensation awarded; the fees may be allowed only on the amount of compensation controverted and awarded. When the board advises that a claim has not been controverted, but further advises that bona fide legal services have been rendered in respect to the claim, then the board shall direct the payment of the fees out of the compensation awarded. In determining the amount of fees the board shall take into consideration the nature, length, and complexity of the services performed, transportation charges, and the benefits resulting from the services to the compensation beneficiaries.

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

In *Harnish Group, Inc. v. Moore*, 160 P.3d 146, 150-51 (Alaska 2007), the Supreme Court explained fee awards under AS 23.30.145(a) and (b):

> Subsection (a) authorizes the Board to award attorney's fees as a percentage of the amount of benefits awarded to an employee when an employer controverts a claim. . . . In contrast, subsection (b) requires an employer to pay reasonable attorney's fees when the employer "otherwise resists" payment of compensation and the employee's attorney successfully prosecutes his claim.

Subsections (a) and (b) are not mutually exclusive, however:

> Subsection (a) fees may be awarded only when claims are controverted in actuality or fact. Subsection (b) may apply to fee awards in controverted claims, in cases in which the employer does not controvert but otherwise resists, and in other circumstances. *Uresco Construction Materials, Inc. v. Porteleki*, AWCAC Decision No. 152, at 15 (May 11, 2011) (Citations omitted).

Attorney fees in workers' compensation cases should be fully compensatory and reasonable so injured workers have competent counsel available to them. *Cortay v. Silver Bay Logging*, 787 P.2d 103, 108 (Alaska 1990). An employee is entitled to attorney fees when the attorney is instrumental in inducing an employer to voluntarily but belatedly pay benefits. *Childs v. Copper Valley Elec. Ass'n*, 860 P.2d 1184, 1190 (Alaska 1993).

In *Israelson v. Alaska Marine Trucking, LLC*, AWCAC Decision No. 226 (May 27, 2016), an attorney filed an affidavit of fees and costs four calendar days, but only two working days, prior to hearing, Three days after the hearing he filed a supplemental affidavit. The Board declined to consider it, and awarded statutory fees under AS 23.30.145(a).

The commission concluded, when the circumstances warrant, the board has exercised its discretion to provide additional time to file an affidavit of attorney's fees and considered the following circumstances: (1) whether the delay in filing was minimal; (2) whether the late affidavit was otherwise compliant with 8 AAC 45.180; (3) whether the affidavit was delivered to opposing counsel on the date of filing; (4) whether there was prejudice to a party; (5) whether there was a pattern of failure to meet deadlines by the claimant or his

counsel; and (6) whether the fee awarded is reasonable compensation as compared with the fee claimed. *Id.* at 10-11. (Citations omitted.)

> **23.30.155. Payment of compensation.**
> (a) Compensation under this chapter shall be paid periodically, promptly, and directly to the person entitled to it, without an award, except where liability to pay compensation is controverted by the employer. . . ..
>
> . . . .
>
> (e) If any installment of compensation payable without an award is not paid within seven days after it becomes due, as provided in (b) of this section, there shall be added to the unpaid installment an amount equal to 25 percent of the installment. This additional amount shall be paid at the same time as, and in addition to, the installment, unless notice is filed under (d) of this section or unless the nonpayment is excused by the board after a showing by the employer that owing to conditions over which the employer had no control the installment could not be paid within the period prescribed for the payment. The additional amount shall be paid directly to the recipient to whom the unpaid installment was to be paid.
> . . . .
>
> (p) An employer shall pay interest on compensation that is not paid when due. Interest required under this subsection accrues at the rate specified in AS 09.30.070(a) that is in effect on the date the compensation is due.

In *Harp v. ARCO Alaska, Inc.*, 831.P.2d 352 (Alaska 1992), the Supreme Court held a controversion notice must be filed in good faith to protect an employer from imposition of a penalty, and it explained that for a controversion to be in good faith, the employer must possess sufficient evidence in support of the controversion that, if the claimant does not introduce evidence in opposition to the controversion, the Board would find that the claimant is not entitled to benefits.

> **AS 23.30.185. Compensation for temporary total disability.**
> In case of disability total in character but temporary in quality, 80 percent of the injured employee's spendable weekly wages shall be paid to the employee during the continuance of the disability. Temporary total disability benefits may not be paid for any period of disability occurring after the date of medical stability.

> **8 AAC 45.063. Computation of Time.**

. . . .

(b) Upon petition by a party and for good cause, the board will, in its discretion, extend any time period prescribed by this chapter.

ANALYSIS

1. Did Employee suffer discrete injuries, some of which she failed to timely report, or did she suffer cumulative trauma over the course of her employment with Employer?

Employee contends she was injured over the entire course of her employment with Employer –a cumulative injury. Although Employer disputes whether the incidents at work were the cause of her disability or need for treatment, Employer contends, if Employee was injured, she suffered discrete injuries, and except for the May 2, 2013 incident, she did not timely report them.

The first incident was the September 26, 2003 meeting with Assistant Principal Nelson. Employee reported the incident to the school nurse the same day, and the nurse reported it to Principal Winter. Employer had actual notice well within the 30 days required by AS 23.30.100. Employee saw Dr. Halverson on October 20, 2003 and was diagnosed with PTSD as a result of the meeting and Mr. Winter's attempted resolution. Employee's appointment with Dr. Halverson would have been the first compensable event.

The second incident was the November 2003 incident in which Employee was anonymously accused of a sexual relationship with a student. It is unclear when Employer learned of the incident, but Ms. Gardner knew of the allegation and that the police had not found any evidence to support it. There is no indication Employee sought medical care as a result of this incident.

The third incident was the ongoing interaction with Mr. Fry beginning in October 2004. On November 5, 2004, Employee responded to the written complaint Mr. Fry had filed with Employer. On December 4, 2004, she wrote to Mr. Winter complaining about Mr. Fry's conduct. On January 28, 2005, Employee complained to Ms. Gardner she was unable to cope with the stress the interactions with Mr. Fry were causing. At that point, Employer had notice of

the injury. On February 1, 2005, Ms. Gardner suspended Employee from work until she obtained a medical release; this have been the first compensable event.

The fourth incident was in August 2009, when Employee attempted to transfer to Colony High School. As the incident involved the principal at Colony High School, Employer had actual notice of the injury when it occurred, and Palmer High School clearly knew Employee was feeling repercussions of the failed transfer by August 21, 2009 when the administration emailed staff. There is no evidence Employee sought medical care or missed work because of this incident.

The fifth incident was when Employee was suspended on September 4, 2009, over the allegation she had threatened to sue students. As the suspension was by Principal Winter, Employer had actual knowledge at the time. Employee sought treatment with Randi Owens on September 8, 2009, which was the first compensable event.

The sixth incident was the May 2, 2013 incident in which Employee alleged someone had put something in her coffee. Employer does not dispute it received timely notice of this injury.

Employee also contends she was disabled and required medical care as a result of Dr. Wolf's August 26, 2013 report. As Dr. Wolf's evaluation was a direct and natural result of the May 2, 2013 injury, any disability or medical care due to Dr. Wolf's report is compensable if the May 2, 2013 injury is compensable.

Under AS 23.30.100(a) and *Cogger*, an injured worker must give written notice to the employer no later than 30 days after the first compensable event. However, under AS 23.30.100(d), failure to give written notice may be excused if the employer's agent in the place where the injury occurred had actual notice and the employer was not prejudiced by the failure to give written notice. Employer had actual knowledge of the September 2003, November 2003, October 2004, August 2009 and September 2009 events at the time they occurred or within days of the event, and with the exception of the November 2003 allegation regarding sexual misconduct with a student, Employer was aware Employee was experiencing significant stress as a result.

Employer was not prejudiced by the lack of written notice; in fact, it extensively investigated the September 2003 and September 2009 events. Employee's failure to give written notice is excused under AS 23.30.100(d)(1).

The question remains, however, whether the injuries are separate or part of a cumulative injury. The fact Employee sought medical treatment, which is a compensable event, as a result of the September 2003, October 2004, and September 2009 incidents suggests they are separate injuries. However, in *Fox*, the Supreme Court held that even though an employee had paid for some treatment, the limitation period for a cumulative stress injury does not begin to run when an employee began to suffer from the stress, but on the date she became aware it was work-related. As did the employee in *Fox*, Employee clearly knew she had suffered stress from work, and she had incurred some medical costs as a result. But there is no evidence she knew the stress continued or contributed to her reaction to the May 2013 coffee incident until Dr. Early issued his report saying the 2003 incident was the initial cause of Employee's anxiety and depression, which were aggravated by the May 2013 incident. Under *Fox*, Employee's mental stress claim did not arise until May 2013, and is a cumulative injury.

However, even if the injury was not cumulative, the prior injuries may still be relevant. Because Employee does not seek disability benefits or medical costs for treatment prior to the May 2, 2013 injury, all benefits that may be awarded would be due to that injury. Even if the prior injuries are not themselves compensable, they would be a preexisting condition that may have exacerbated the May 2, 2013 injury.

2. Did Employee suffer a compensable mental injury?

Work-related mental injuries fall into three categories: mental stimulus that causes a physical injury, or "mental-physical" cases; physical injury that causes a mental disorder, or "physical-mental" cases; and mental stimulus that causes a mental disorder, or "mental-mental" cases. *Kelly*. Employee claims two types of mental stress claims, each based upon anxiety and depression. One is a physical injury that caused a mental disorder -- a physical-

mental injury. The second is a mental-mental injury; in other words, a mental stimulus that caused a mental disorder. Each will be analyzed.

a) Did Employee suffer a compensable physical-mental injury?

Employee contends the first physical injury occurred when Mr. Nelson pushed her during the September 26, 2003 meeting. The AS 23.30.120 presumption applies to physical-mental claims, but need not be applied when there is no factual dispute. The EEO Report states Employee was pushed, and Employer does not dispute that fact. While the fact of the push is undisputed, the parties disagree as to whether it is sufficient to support a physical-mental injury. Employee notes that under *Runstrom* the physical injury need not be substantial. In *Runstrom*, the employee had been splashed with fluids from an HIV patient. The injury was not the mere physical contact with the fluids, but risk of exposure to HIV, and it was due to that risk the employee received medical treatment. It is unlikely the Court would have found a physical injury had the employee been splashed with sterile water. Here in contrast, there is no indication Employee sought or received any medical care or suffered any disability as a result of the push itself. Both the EEO Report and Employee's testimony demonstrate Employee's stress resulted from the fact she was restricted from leaving the meeting and threatened with disciplinary action. The push was incidental. Dr. Halverson's October 20, 2003 chart note does not mention the push. While in some cases, a push alone might well support a physical-mental claim, in this case the preponderance of the evidence is that the push was inconsequential. The push will not support a physical-mental claim.

Employee also contends she suffered a physical injury as a result of the substance that was put in her coffee on May 2, 2013. Again, the presumption analysis applies. To raise the presumption, Employee must present some, minimal evidence she developed a physical injury as a result of the substance in her coffee. Credibility is not assessed, and contrary evidence is not considered at this step. Employee's testimony regarding the events, the onset and progression of the symptoms, student comments, and the staff member's observation her eyes were dilated is sufficient to raise the presumption. Because Employee raised the presumption, Employer was required to rebut it. Again, credibility is not assessed, nor is the evidence weighed against competing evidence. Employer successfully rebutted the presumption through the negative drug

test results. Because Employer rebutted the presumption, Employee must prove the physical injury by a preponderance of the evidence. She did not do so. The negative drug tests are given greater weight than Employee's testimony. However, the fact that Employer retained the drink containers from Employee's classroom for three years and then disposed of them without testing is problematic. That evidence may well have established Employee's claim. But the preponderance of the evidence in the record is that Employee did not suffer a physical injury, and, consequently, does not have a physical-mental injury.

b) Did Employee suffer a compensable mental-mental injury?

Because the AS 23.30.120 presumption does not apply to mental-mental injures, Employee must prove a mental-mental injury by a preponderance of the evidence. Employee must prove: (1) her work-related stress resulted from extraordinary and unusual pressures and tensions in comparison to other persons in a comparable work environment, and (2) her work-related stress was the predominant cause of her anxiety, depression, or other mental injury. AS 23.30.010(b). The amount of work stress must be measured by actual events and cannot be caused by good faith personnel actions such as work evaluations, job transfer or job termination. Claimant's perception she feels stress is, by itself, inadequate to establish "extraordinary and unusual" stress. *Kelly*. "Individuals in a comparable work environment" means other employees holding the same position for an employer. *Williams*.

i) Was the work-related stress caused by extraordinary and unusual pressures and tensions in comparison to other teachers?

Without doubt, teaching, especially at the high school level, will involve pressures and tensions that result in stress. The question is whether the events that caused Employee stress were extraordinary and unusual in comparison to the pressures and tensions experienced by other teachers, and the stress cannot be due to disciplinary actions, work evaluations, job transfers, layoffs, demotions, terminations, or similar actions taken in good faith by Employer.

Employee first alleges the 2003 meeting with Assistant Principal Nelson and Mr. Ramos was unusual and extraordinary and resulted in stress. Employee was told the meeting would be as a "friend", and would not result in any disciplinary actions. Mr. Boyle, a teacher and union

representative, had never seen a document like Mr. Nelson's request to meet with Employee. The meeting lasted at least two hours, during which time Employee was upset and crying, and she was essentially told to see a psychiatrist or she would be put on a "plan for improvement," which is a disciplinary action. The meeting had apparently been requested because Mr. Ramos, a school psychologist, complained about a comment Employee had made after he had given a suicide prevention presentation. Mr. Nelson invited Employee to the meeting under false pretenses, which is extraordinary and unusual in any supervisor and subordinate relationship. Mr. Nelson told Employee they needed to talk "as friends" and not because he was her boss. Employee was assured the meeting would not lead to disciplinary action; however, she was threatened with a disciplinary action, a performance improvement plan, if she did not seek psychological counseling. While the meeting itself was stressful, as evidenced by Employee's breakdown in tears and sobbing, subsequent events show how unusual it was, and the subsequent events caused Employee even more stress.

After his investigation, Principal Winter essentially dismissed the incident as "significantly skewed" by Employee's mental state. Mr. Winter's investigation failed to reveal Mr. Ramos's perception of Employee's comment may have been skewed by the fact Employee had repeatedly declined his requests for a date. The matter proceeded to an EEO hearing, which is rare. Although the numbers for 2003 are not known, in 2013 Employer had 2,500 permanent employees, which included about 1,200 teachers, and there were five EEO complaints. Even if all of the complaints were made by teachers, that would be five out of 1,200, or 0.4 percent of the teachers experiencing conduct they believed was unusual or extraordinary. It is unlikely all EEO complaints are resolved in the teacher's favor, but the EEO officer found Employee's complaint to be well established. Mr. Nelson had created a hostile work environment. Almost by definition Employee experienced work-related stress caused by extraordinary and unusual pressures and tensions in comparison to other teachers because there were no other teacher at the meeting nor is the evidence of similar meetings.

The stress of the incident was not limited to the meeting itself or the EEO proceeding. It is apparent the meeting led to Mr. Nelson leaving his employment. His popularity with staff and other teachers is evident from the fact that even after he had been found to have created a hostile

workplace, they held a retirement party for him. Employee's claims she felt stress because other teachers blamed her for Mr. Nelson's leaving are credible. Mr. Winter's February 11, 2004 annual evaluation of Employee was also a cause of stress. Her previous evaluations had been very good, and when she was again rated by someone else, her rating was again very good. Mr. Winter's February 2004 poor rating followed two months after the issuance of the EEO report, which criticized Mr. Winter. In context, the evaluation was retaliation, not a good faith employment action.

The November 2003 incident in which someone anonymously accused Employee of a sexual relationship with a student arose out of her employment. Because such an accusation could be not only career-ending for a teacher, but could lead to imprisonment, Employee was understandably stressed. Hopefully such instances are rare, but there is no evidence to support a conclusion the event was extraordinary and unusual in comparison to other teachers.

Employee's 2004 and 2005 interactions with Mr. Fry, a fellow teacher, also caused Employee stress. Mr. Fry overreacted to an innocuous comment about the unavailability of the computer lab that was made out of the presence of students, and reported Employee's comment as "deplorable," "buffoonery and incompetence." Mr. Fry followed with what can only be described as bizarre conduct attempting to provoke a reaction from Employee over several months. Despite Employee's complaints to Principal Winter, the conduct continued. Employee reported to Ms. Gardner, Employer's personnel supervisor, the interactions with Mr. Fry were causing her stress to the point she was considering suicide. Ms. Gardner did not address the problem with Mr. Fry, but forced Employee to take leave until she had obtained a psychiatric opinion she could return to work. There is no evidence any investigation was conducted or any action taken Mr. Fry. Dr. Baker released Employee to return to work on February 8, 2005, but Mr. Fry continued his bizarre behavior until May 2005. Not only did Employer fail to protect Employee from Mr. Fry's ongoing harassment, but it suspended her instead. When Employee reported she had been harassed to the point she was considering suicide, forcing her to take leave rather than investigating the harassment is extraordinary and unusual.

Employee volunteered to transfer to Colony High School at the beginning of the 2009 school year, only to be told by the principal that her reputation preceded her and she would not be allowed to teach there. While that would certainly be a source of stress, it is also substantial evidence Employee's suspicion that people were spreading rumors about her was true. However, returning to Palmer High School was even more stressful. Believing Employee had reneged on her agreement to the transfer, other teachers and staff were upset with her to the point the administration had to send an email explaining it was not her fault. An anonymous threatening note from another teacher or staff member saying "Karma is a bitch . . . just remember that" was left on her chair. The combination of the rejection from the Colony High principal, the upset teachers and staff at Palmer High, and the threatening note are extraordinary and unusual. Under the Act, stress related to a job transfer undertaken in good faith by Employer is not compensable. Here, transfer itself was not the source of Employee's stress – she volunteered for the transfer. The stress was caused by the principals' and her coworkers' reactions.

Then, within a month of the Colony High incident, Employee was placed on leave because of complaints she had threatened to sue students in four classes. Employer stated it had interviewed more than ten students from the classes, and determined Employee's statement was made to frighten the students. After a pretermination hearing, Employer determined Employee should be dismissed, and referred the matter to the PTPC. A PTPC investigation can lead to the revocation of a teacher's license. The potential loss of employment and teaching credentials would be highly stressful. The parties agreed to arbitration. Ms. Gardner testified that less than one termination proceeding per year proceeds to arbitration. With the number of teachers Employer has, a termination proceeding that proceeds to arbitration is extraordinary and unusual. The arbitrator noted the student interviews only showed Employee made the statement in one class, not four, and the alleged threat was in response to one student's question. That student submitted a statement in support of Employee stating he did not intend for his question to be taken the way it was, and he felt Employee was "a great teacher." The arbitrator ordered Employee be reinstated, but recognized a transfer to another school might be appropriate given the damaged relationship between Employee and the administration. Under the Act, stress due to termination actions is not compensable if taken in good faith by Employer. Here, the arbitrator's decision essentially repudiated all of the facts Employer asserted as the basis for termination.

Additionally, only months before, a principal at one of Employer's schools had actually filed a lawsuit against unidentified students without any repercussions. Employer's termination action was not in good faith.

On May 2, 2013, Employee began to experience symptoms shortly after drinking coffee during her second period class. The symptoms worsened throughout the day, and after the fifth period, she went home. Based on the symptoms and a student's comments during the class, she suspected a student may have placed drugs in her coffee while it was in her classroom. She called the office, reported her suspicion, and was told to call 911, which she did. She was also told Employer would test her coffee cup. When the police and ambulance arrived, the police took a report, including the name of the student Employee suspected might be responsible. By the time Employee reached the emergency room, her symptoms were waning. A limited urinalysis did not identify any common drugs, but the doctor explained it could be "all kinds of potential substances" for which tests were not run. The possibility a teacher had been involuntarily drugged or poisoned by a student would be extremely stressful.

Employee asked Ms. Spargo to retain her coffee cup for testing and to save the video for the day as evidence. While Employer retained the coffee cup, it was never tested, nor was the video saved. Ms. Spargo spoke to Employee after she was released from the emergency room. After Employee reported the tests done at the emergency room were negative, and without knowing how limited the drug scan was, Ms. Spargo, concluded there was no need to test the coffee cup. Then, even before she began her investigation, Ms. Spargo emailed Ms. Gardner stating Employee's "paranoia is continuing to grow," Employee had filed a police report accusing a specific student of attempted murder, and while Ms. Spargo would investigate, she questioned whether Employee should be supervising students. Because Ms. Spargo believed the incident had happened after the last class of the day, she reviewed surveillance video from that time, but did not review the video for the rest of the day. From her review, she concluded a student could not have put drugs in Employee's coffee because no students had gone into Employee's classroom after the last class. Employer also interviewed students shown in the surveillance video, and, not surprisingly, was unable to learn anything.

Employer's investigation was so biased and incomplete that it cannot be considered to have been done in good faith. Ms. Spargo had clearly concluded the problem was Employee's "paranoia" before beginning the investigation. Whether due to misunderstanding or lack of information, Ms. Spargo characterization of Employee's police report as one for "attempted murder" is woefully mistaken. Employee responded to questions from the police who responded to the 911 call Employer had instructed her to make. There is no evidence whatsoever that she "filed a police report" or accused a student of attempted murder. Ms. Spargo had no evidence how limited the drug scan at the hospital had been, or that the doctor acknowledged there were all kinds of substances it could have been. Most importantly, Ms. Spargo reached her conclusion after reviewing surveillance video for the wrong time period and interviewing only the students that were present during that wrong time period.

The day after the coffee incident, Employee was seen by Dr. Halvorson, and Employee explained she believed a student had put something in her coffee. Employee stated she felt paranoid, but believed the event had happened. Dr. Halverson noted she had no evidence as to whether or not the event actually happened. Nevertheless, on May 14, 2013, Dr. Halverson, a psychiatrist who had seen Employee off and on for ten years, released Employee to return to work. Despite Dr. Halverson's release, Employer placed Employee on leave until it could have an evaluation by Employer's psychiatrist. Ms. Gardner testified this was the only time she was aware of that Employer had required an employee to undergo such an evaluation.

The evaluation by Employer's psychiatrist, Dr. Wolf, occurred on August 26, 2013. The documents provided to Dr. Wolf by Employer appear to have been deliberately selected to ensure an opinion adverse to Employee. While Employee's personnel file contains many positive evaluations and recommendations, none of those were provided to Dr. Wolf. Instead, Employer sent the two letters Ms. Gardner sent Employee after her "threat of suicide," but nothing suggesting the threat resulted from the stress of being harassed by a coworker and Employer's failure to address the harassment. Similarly, Employer filed the October 23, 2009 pretermination decision, but did not inform Dr. Wolf that decision had been soundly rejected in subsequent arbitration. Also included were the February 21, 2013 letter from Ms. Gardner informing Employee her contract for the year had been approved, the May 20, 2013 letter from

Ms. Gardner placing Employee on administrative leave, and the July 29, 2013 letter informing Employee of the appointment with Dr. Wolf. While the three letters do not reflect negatively on Employee, they are utterly irrelevant to whether Employee was fit to continue teaching. Dr. Wolf also reviewed a February 23, 2009 letter from Employee, but that letter is not in the Board's file. Particularly concerning is that Employer sent Dr. Wolf the May 3, 2013 email from Ms. Spargo to Employer's attorney, attached to which was her May 3, 2013 email to Ms. Gardner stating Employee's "paranoia was continuing to grow." What was said in Dr. Wolf's telephone conversations with Ms. Spargo, Ms. Gardner, and Employer's attorney is unknown, but based on the documents Employer provided Dr. Wolf, it is highly improbable the conversations were favorable to Employee. Finally, Dr. Wolf had only two medical records, neither of which related to the May 2, 2013 coffee incident. One was the February 2008 letter from Dr. Baker releasing Employee to return to work; the letter included diagnoses of adjustment disorder, anxiety, and depression, but did not mention paranoia. The second medical record is Dr. Halverson's October 10, 2008 note excusing Employee from work for four days; it did not give a reason or include a diagnosis. The information provided to Dr. Wolf is so selective and one-sided it might well constitute improper influencing of a physician under AS 23.30.095(i).

The effect of Employer's "cherry-picking" of evidence for Dr. Wolf is evident in the language of his report. First, Dr. Wolf stated Employee "took" FMLA in 2005, when, in fact, Employer forced her to take leave rather than addressing the harassment that caused her stress. Dr. Wolf stated that "all of the material" he reviewed showed Employee had similar incidents over the years; clearly Dr. Wolf was unaware of other materials casting Employee in a positive light, or the fact that most of the similar incidents were caused by others and had been resolved in Employee's favor. He stated Employee was "almost terminated" for making threatening statements in class, but the "termination was halted" when the case was taken to arbitration. Dr. Wolf was unaware of the actual arbitration decision rejecting Employer's evidence or the statement of the student whose question initiated the alleged threat. Dr. Wolf specifically noted the medical records he had been given provided no information as to Employee's diagnosis or prognosis. Nevertheless he diagnosed long-standing and pervasive paranoid personality disorder. The only "diagnosis" of paranoia Dr. Wolf had was Principal Spargo's May 3, 2013 email to Ms. Gardner.

Dr. Wolf's report was devastating to Employee. Not only could she not return to work for Employer as a teacher, a position she had held for 23 years, the diagnosis of paranoid personality disorder would effectively prevent her from teaching anywhere. The result of Dr. Wolf's evaluation caused extraordinary stress, and as Ms. Gardner stated this was the only time such a procedure had been used. And even though the evaluation was part of a termination proceeding, it was not done in good faith.

The preponderance of the evidence is that the work-related stress suffered by Employee was extraordinary and unusual in comparison to other teachers.

ii) Was the work-related stress the predominant cause of Employee's anxiety, depression, or other mental injury?

Dr. Wolf's report is given no weight. It was based on incomplete and biased information. His diagnosis of "long-standing and pervasive" paranoid personality disorder is without support. He conceded two medical records he was provided gave him no indication of Employee's diagnosis. The only "evidence" Employee ever had paranoia was Principal Spargo's May 3, 2013 "diagnosis."

Employee was seen by two toxicologists, Dr. Burton, who performed an EME and Dr. Headapohl, who performed an SIME. Dr. Burton's opinion is given little weight. He relied on Dr. Wolf's diagnosis of a "paranoid thinking disorder" to conclude the May 2, 2013 event did not occur. Dr. Headapohl's opinion is given far greater weight. She noted Employee was screened for only a few chemicals and there was no objective data that would reveal what, if anything, was put in Employee's coffee. Dr. Headapohl concluded from a toxicology standpoint, Employee's disability would have resolved within one week of the May 2, 2013 incident. The physical effects of any substance that may have been placed in Employee's coffee resolved quickly, and, as noted, she was released to return to work by Dr. Halverson on May 14, 2013. Dr. Headapohl concluded Employee's current disability was due to Dr. Wolf's assessment.

Employee was examined by several psychiatrists and psychologists, primarily Dr. Halverson, Dr. Wolf, Dr. Turco, and Dr. Early. As previously noted, Dr. Wolf's opinion is given no weight. Dr. Turco's opinion is of little use. He stated many of Employee's complaints "may not have been substantiated on any realistic basis, but an MMPI test would help clarify the matter. Dr. Turco determined Employee had not been exposed to unusual stress as a result of the May 2, 2013 event or while employed by Employer, but he qualifies that by stating "the issue should be tried in the context of fact." This decision does that, and finds Employee's complaints to be well substantiated and the cause of extraordinary and unusual stress. Consequently, Dr. Turco's opinions are without basis and entitled to no weight. Dr. Halverson's opinions are gleaned from her chart notes rather than a comprehensive report. Given she has treated Employee for several years, her opinions are given some weight, but there is no indication she was aware of or had reviewed the reports of other doctors, or that she had been provided Employee's personnel file. Dr. Early's opinions are given the most weight. He is the only doctor to have reviewed both Employee's medical and personnel files. He alone notes Employee's mental health difficulties began after the 2003 meeting with Mr. Nelson. He reviewed the results of Employee's MMPI test which revealed "no evidence whatsoever of paranoia or other major psychiatric illnesses." Dr. Early noted that while a few medical reports mentioned symptoms of paranoia, or Employee's concern about paranoia, simply discussing paranoia is far different than actually diagnosing it. Dr. Early diagnosed anxiety disorder and depressive disorder, both of which were initially caused by the 2003 event, and both of which were worsened by the 2013 event. However, the sequela of the 2013 event would have resolved quickly had it not been for Dr. Wolf's report.

Employee has shown by a preponderance of the evidence that the work-related stress was the predominant cause of Employee's anxiety and depression, and it was not caused by good faith personnel actions. Employee has a compensable mental-mental injury.

3 Is Employee entitled to medical benefits?

Employee has established she suffered a compensable mental injury. Under AS 23.30.095, she is entitled to reasonable and necessary medical costs caused by that injury. In his deposition, Dr. Early opined Employee's anxiety and depression arose as a result of the 2003 incident with Mr.

Nelson, and was the need for Employee's medical treatment, but the 2013 incident caused a need for more intense treatment. Employee is entitled to medical benefits.

4 Is Employee entitled to TTD benefits, and, if so, for what dates?

Employee has established she suffered a compensable mental injury and was disabled after the May 2, 2013 incident. Under AS 23.30.185, she is entitled to TTD during the continuance of the disability. Although she was released to work by Dr. Halverson shortly thereafter, Employer would not honor that release, and required an evaluation by its own psychiatrist, Dr. Wolf, and Employee continued to be paid through January 24, 2014, when her administrative suspension ended. Consequently, she is not entitled to TTD from April 2, 2013 to January 24, 2014. Dr. Early explained that as a result of Dr. Wolf's report, Employee remained disabled until she began working for Providence Medical Center on June 26, 2016. Employee is entitled to TTD benefits from January 24, 2014 to June 26, 2016.

5 Is Employee entitled to PPI benefits?

Under *Settje*, an employee seeking PPI benefits must submit a rating by a physician at or before the hearing on the issue. Employee did not submit a rating, and no PPI benefits can be awarded.

6. Is Employee entitled to interest?

Although neither party specifically addressed Employee's claim for interest, under AS 23.30.155(p) interest is mandatory for compensation not paid when due. Employee has established she is entitled to TTD benefits, which were not paid when due. She is entitled to interest on those benefits from the date due to the date they are paid.

7. Is Employee entitled to a penalty?

Under AS 23.30.155(f), an injured worker is entitled to a penalty on benefits that are not either timely paid or controverted in good faith. *Harp* held that for a controversion to be in good faith, the employer must possess sufficient evidence in support of the controversion that, if the claimant does not introduce evidence in opposition to the controversion, the Board would find that the claimant is not entitled to benefits. Employee did not present any argument on the issue,

and it is not apparent that the Board would have found she would have been entitled to benefits without presenting evidence opposing the controversions. Employee is not entitled to a penalty.

8 Is Employee entitled to attorney fees and costs?

Attorney fees may be awarded under AS 23.30.145(b) when an employer resists payment of compensation, and an attorney is successful in prosecuting the employee's claim. Here, Employer controverted or resisted all of the benefits sought by Employee. Employee was successful in obtaining disability benefits, medical costs, penalty, and interest. She did not prevail on her claims for PPI benefits, a compensation rate adjustment, and penalty. Given the late filing of Employee's supplemental affidavit of fees and costs, the attorney fee affidavits will be analyzed separately.

Some entries in Employee's attorney's November23, 2018 affidavit might be characterized as block billing, but in general each entry addresses work on a specific task or issue or on closely related issues. The affidavit lists 171 time entries totaling 140.9 hours. Three entries totaling 1.6 hours mention, but are not exclusively devoted to the compensation rate issue. None of the entries identify time spent on the PPI issue. One entry includes research into the *Harp* case, but it is not clear the research related to the penalty issue on which Employee did not prevail. Time spent on the compensation rate and PPI issues and researching the *Harp* decision was *de minimus*, and the attorney fees will not be reduced on that basis. Employer's objection to the out-of-state, in-person deposition of Mr. Boyle is not well taken. The deposition testimony was significant evidence that the hearing panel relied on in reaching its conclusions, and the deposition was scheduled to coincide with the deposition of Dr. Early, which was also out-of-state. The time between which Employee's attorney began work and when he entered his appearance was unusually long, but nothing in the Act or case law suggests that is a reason to reduce attorney fees. Employee will be awarded the $55,660.00 in fees and the $6,989.85 in costs identified in the November 23, 2018 affidavit.

Because Employee's supplemental fee affidavit was not filed until December 13, 2018, well after the December 7, 2014 deadline, additional analysis is necessary. In *Israelson*, the Commission

held the Board has the discretion to provide additional time to file an affidavit of attorney fees, when six conditions are met:

- First, the delay must have been minimal. Here, Employee missed the deadline by six days, which, in this case is not significant.

- Second, whether the affidavit complied with the regulations. Employee's supplemental fee affidavit complies with the regulation: it identified the hours expended and the character of the work performed.

- Third, whether the affidavit was delivered to opposing counsel the same day it was filed; Employer's objection notes it had the supplemental affidavit on December 12, 2018, the day before it was actually filed.

- Fourth, whether the other party was prejudiced by the delay. According to Employer's objection, it had the supplemental affidavit two day before its objection was due, and while that limited Employer's ability to review the affidavit, the supplemental affidavit only contains six time entries and one cost item. Employer timely filed its objection, and it was not prejudiced by the delay.

- Fifth, whether there was a pattern of failure to meet deadlines. There is no indication Employee's attorney missed any other deadline in the case.

- Sixth, whether the fee awarded is reasonable compensation as compared with the fee claimed. This was a complex case, and Employee's attorney provided a high level of service. His brief and arguments at hearing were substantially above average

Employee is granted additional time to file the post-hearing fee affidavit. *Israelson*. Employee will also be awarded additional attorney fees of $9,320.00 and additional costs of $865.20, for total fees of $64,980.00 and total costs of $7,855.05.

CONCLUSIONS OF LAW

1. Employee suffered cumulative trauma over the course of her employment with Employer.
2. Employee suffered a compensable -mental injury.
3 Employee is entitled to medical benefits.
4 Employee is entitled to TTD benefits from January 24, 2014 to June 26, 2016.
5 Employee is not entitled to PPI benefits.
6. Employee is entitled to interest.
7. Employee is not entitled to a penalty.
8. Employee is entitled to attorney fees and costs.

ORDER

1. Employee's claim for medical benefits is granted.
2. Employee's claim for TTD is granted.
3. Employer shall pay Employee TTD for the period from January 24, 2014 to June 26, 2016.
4. Employee's claim for PPI is denied.
5. Employee's claim for interest is granted.
6. Employer shall pay Employee interest on TTD that was not timely paid.
7. Employee's claim for a penalty is denied.
8. Employee's claim for attorney fees and costs is granted.
9. Employer is ordered to pay attorney fees of $64,980.00 and total costs of $7,855.05.

Dated in Anchorage, Alaska on January 22, 2019.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Ronald P. Ringel, Designated Chair

/s/
Robert C. Weel, Member

/s/
Rick Traini, Member

If compensation is payable under terms of this decision, it is due on the date of issue. A penalty of 25 percent will accrue if not paid within 14 days of the due date, unless an interlocutory order staying payment is obtained in the Alaska Workers' Compensation Appeals Commission.

If compensation awarded is not paid within 30 days of this decision, the person to whom the awarded compensation is payable may, within one year after the default of payment, request from the board a supplementary order declaring the amount of the default.

APPEAL PROCEDURES

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

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

RECONSIDERATION

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

MODIFICATION

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

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Final Decision and Order in the matter of DONNA M. HICKLE, employee / claimant v. MAT-SU BOROUGH SCHOOL DISTRICT, self-insured employer; / defendant; Case No. 201324463; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties on January 22, 2019.

/s/
Nenita Farmer, Office Assistant