ALASKA WORKERS' COMPENSATION BOARD

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

MATTHEW RIFE, Employee, Petitioner, v. B.C. EXCAVATING, LLC, Employer, and ALASKA NATIONAL INSURANCE CO., Insurer, Respondents.	FINAL DECISION AND ORDER AWCB Case No. 201601856 AWCB Decision No. 19-0010 Filed with AWCB Anchorage, Alaska on January 23, 2019

Matthew Rife's (Employee) January 14, 2019 email stating he disagreed with *Rife v. B.C. Excavating, LLC*, AWCB Decision No. 19-0001 (January 2, 2019) (*Rife II*) was heard on the written record as a petition for reconsideration on January 16, 2019, in Anchorage, Alaska, a date selected on January 15, 2019. Employee's email gave rise to this hearing, which was set on the board's own motion. Employee represented himself. Attorney Michelle Meshke represented B.C. Excavating, LLC, and Alaska National Insurance (Respondents). The record closed at the hearing's conclusion on January 16, 2019.

ISSUE

Employee contends he was in "great health" prior to his two work related injuries, evidenced by a medical exam performed in April 2012, by Alexander Baskous, M.D. He contends his injuries are life long, and he presented medical evidence to support his claim, which was "ignored" in

Rife II. Employee contends his physicians' opinions should be given greater weight than those of Scot Youngblood, M.D., and James Schwartz, M.D. and, therefore, *Rife II* should be reconsidered.

The time has not yet expired for Employer's answer to Employee's reconsideration request. Accordingly, Employer's position on the request is unknown; however, it is presumed Employer opposes reconsideration.

Should *Rife II* be reconsidered?

FINDINGS OF FACT

All factual findings and factual conclusions from *Rife v. B.C. Excavating, LLC*, AWCB Decision No. 18-0061 (June 26, 2018) (*Rife I*) and *Rife II* are incorporated by reference. Specific facts and factual conclusions from *Rife I* and *Rife II* are reiterated as they apply to issues raised in Employee's request. A preponderance of the evidences establishes the following facts and factual conclusions:

1) Employee reported two injuries while working for Employer. The first occurred on September 5, 2013, when he fell off a trench box onto an eight-foot dip water line, which was approximately 10 feet deep. The second injury occurred on January 23, 2014, when he was welding a flange onto a lift station in an open evacuation. (First Report of Injury, February 4, 2016.)

2) Employee contends the April 3, 2012 medical surveillance program report by Dr. Baskous, was "obviously ignored by the AWCB, the verbatim in the report was not included in the final decision." Employee argues, "The medical exam results that I submitted explicitly indicated that I had no back/spine injury and that I was in great health." He asserts:

> Obviously, the finding by the IMEs that the injuries would not last long is laughable. Theses injures are everlasting, and obviously the medical documentation I have presented to the AWCB support this as well. The medical documentation that was submitted to the AWCB support life-long, debilitating, permanently disabling injuries.

(Request for Reconsideration, Rife, January 14, 2019.)

3) On April 3, 2012, Employee was evaluated as part of a medical surveillance program required pursuant to 29 CFR 1910.120(f) prior to beginning his work for Employer. The entire medical surveillance program report is not relevant to the issues in Employee's case. The relevant portions of the report were either quoted or summarized and included that Employee reported he never had a back injury and did not "currently" have back pain, pain or stiffness when he leaned forward or backward at the waist or any other muscle or skeletal problem that interfered with using a respirator. (Physician's Written Opinion, Dr. Baskous, April 3, 2012; experience, judgment, observations, and inferences drawn therefrom.)

4) Dr. Baskous did not treat Employee either before or after his work injuries, nor did Dr. Baskous offer an opinion on the substantial cause of Employee's disability or need for medical treatment. The medical surveillance program report provides relevant information that on April 3, 2012, by Employee's own report, he had no back pain or skeletal problems. However, Dr. Baskous did not take imaging studies and would have had no way of knowing if Employee had any disc degeneration on April 3, 2012. The report focused on whether Employee's back "currently" had pain, which on April 3, 2012, it did not. (Observations, judgment, inferences drawn therefrom.)

5) On September 11, 2013, Employee sought low back treatment. X-rays were "fairly unremarkable." Upshur Spencer, M.D., expected Employee's symptoms to improve spontaneously with time, he did not restrict Employee from working, nor did he limit Employee in any activity. Employee weighed 240 pounds. (Chart Note, Dr. Spencer, September 11, 2013.)

6) On January 21, 2014 Employee told Robert Lewis, D.C., his lower back was "not feeling good" and had not been for two months. Dr. Lewis provided chiropractic treatment for lumbar subluxation, lumbosacral segmental dysfunction, muscle spasm, and lumbar sprain or strain. Dr. Lewis did not restrict Employee from working. (Chart Note, Dr. Lewis, January 21, 2014; Chart Note, Dr. Lewis, January 28, 2014.)

7) Employee's second work injury was on January 23, 2018. (First Report of Injury, February 4, 2016.)

8) On January 27, 2014 Employee's pain onset was noted to be one week prior. Employee said he was "not sure if related to fall one year ago or what." Employee's back started hurting "one day" and got worse and worse over the next few days and he was "not sure what brought on such severe pain." Sports & Spinal Injury Clinic did not restrict Employee from working. (Sports &

Spinal Injury Clinic, Exam Form / New Injury, January 27, 2014; Sports & Spinal Injury Clinic, History / New Injury, Matthew Rife, January 22, 2014.)

9) There is no record Employee received treatment again until November 2, 2015, when he received "acute care" for left lumbar, left sacroiliac and left buttocks dull and aching discomfort. He also complained of cervical, thoracic, pelvis and sacral pain. Employee reported he had pain "for about the last three months but has gotten much worse within the last week or so." Kristin Grote, D.C., diagnosed segmental and somatic dysfunction of lumbar region. She did not restrict Employee from working. (Chart Note, Dr. Grote, November 2, 2015.)

10) On November 2, 2015, Employee also treated for low back pain with Express Care and reported he injured his back "a couple of years ago" and "recently he was picking up a 5 gallon bucket of water and felt his back pop." Kirwan Webb, M.D., diagnosed low back strain and prescribed Norco for seven days. Dr. Webb did not restrict Employee from working. (Chart Note, Dr. Webb, November 2, 2015.)

11) On January 12, 2016, Employee returned to Dr. Webb and reported he has had pain off and on but now his pain is not "going away." Employee had no radiation symptoms into his lower extremities. Dr. Webb diagnosed sprain of ligaments of lumbar spine, sequela, prescribed Ultracet for seven days and referred Employee to physical therapy. Dr. Webb did not restrict Employee from working. (Chart Note, Dr. Webb, January 12, 2016.)

12) On January 18, 2016, even though medical benefits had not been controverted, Employee reported to Dr. Webb he "never followed up with physical therapy because he didn't know if he could afford the cost and was waiting for workmen's comp. to see if they would pay for it." Employee had no symptoms in his lower extremities. Ultracet was not relieving Employee's pain and Norco, a narcotic was refilled. Dr. Webb educated Employee on narcotic addiction and advised he would prescribe no additional narcotics. Again, Dr. Webb did not restrict Employee from working. (Chart Note, Dr. Webb, January 18, 2016.)

13) Employee's excuse to Dr. Webb for not pursuing physical therapy is groundless and not credible. On January 12, 2016, Employee's medical benefits had not been controverted and he did not have to wait to see if the workers' compensation insurance carrier would pay for physical therapy. (Experience, judgment, observations, and inference therefrom.)

14) On January 25, 2016, Employee began physical therapy for lumbar spine strain due to postural dysfunction. The physical therapy notes state Employee's symptoms began on

November 1, 2015, and that he injured his back "again." Employee was diagnosed with generalized muscle weakness, low back pain, strain of muscle and tendon of back wall of thorax, sequela. Employee's symptoms were reduced with education and postural changes. (Physical Therapy Initial Examination, Lone Peak Physical Therapy – Butte, January 25, 2016.)

15) The onset of symptoms for which Employee sought treatment coincides with the most recent lumbar sprain or strain in the record, which was when he picked up a five-gallon bucket of water and felt his back pop. (*Id.*; Visit No.: 1, Lone Peak Physical Therapy – Butte, January 25, 2016; Chart Note, Dr. Webb, November 2, 2015; Recorded Statement, Matthew Rife, February 25, 2016; observations, unique facts of case, and inferences drawn therefrom.)

16) On April 22, 2016, diagnostic imaging of Employee's lumbar and thoracic spine revealed normal alignment of his thoracic vertebral bodies and intact intervertebral disc spaces. He had no spinal stenosis or disc herniations. At L4-5, Employee has mild disc space narrowing with a central disc herniation; however, there was no impingement on the right or left lateral recess. He also had a tiny central disc herniation with slight subligamentous extension at L5-S1. Alignment of his lumbar vertebral bodies was otherwise normal; his remaining disc spaces were intact. Edward Curry, M.D., an orthopedic surgeon had nothing to offer Employee and recommended he be seen by a primary care physician or a non-operative spinal provider. Dr. Curry did not restrict Employee from working. (MRI Report, Jesse Cole, M.D. April 22, 2016; Chart Note, Dr. Curry, May 4, 2016.)

17) On August 8, 2016, Employee again sought treatment from an emergency department and wanted pain medication. Employee reported, "[H]e is here for some pain meds and muscle relaxers. He injured his back three years ago in a work-related accident and now he can't get the help he needs because the Alaska state insurance won't pay for his injuries." Employee said he "can't go to the clinic because the insurance won't pay for it." Employee said there was pain to palpation but was observed getting off the bed without any difficulty in walking throughout the facility without any obvious signs of pain. Employee was informed he would not be prescribed medication out of the emergency room. (Roundup Memorial Hospital, Valeri Russell, PA, August 8, 2016.)

18) On August 26, 2016, Employee sought care with James Girolami, M.D., for chronic low back pain. Employee said he had chronic back pain ever since his January 2014 injury, with flare-ups that "come and go off and on." In November 2015, Employee said he moved to Butte,

Montana to attend school, was lifting some water bottles and his back pain flared up. After the water bottle lifting incident an MRI was done. Employee reported the MRI showed he had an L3 herniated disc. He also complained "in the last several months, he has also noticed pain that seems to shoot at times to his lower thoracic area up into the right shoulder, and the abdomen area." Employee believed the shooting pains were tied to his back pain. Employee was working as a civil engineering technician. Although further workup was necessary, Dr. Girolami's initial impressions were: chronic low back pain with patient history of herniated L3 disc; right upper quadrant pain and thoracic pain of unclear etiology; and abnormal liver function studies of unclear etiology. Dr. Girolami noted Employee was obese. Dr. Girolami "made it very clear" to Employee "that we are not going to manage or treat his chronic pain in same day care and this was a one-time prescription for the tramadol, but will not be refilling." Dr. Girolami did not restrict Employee from working. (Progress Report, Dr. Girolami, August 26, 2016.)

19) Employee's recall of his MRI results was not accurate. The April 22, 2016 MRI showed a "tiny central disc herniation with slight subligamentous extension at L5-S1." (Experience, judgment, observations, and inferences drawn therefrom.)

20) On August 27, 2016, Employee was scheduled to attend an employer's medical evaluation (EME) with Dr. Youngblood. Because Employee did not appear, Dr. Youngblood reviewed the medical record. Employee criticizes Dr. Youngblood's opinion because he never "physically evaluated" Employee, "he only went off of the 'fake-news' submitted by the employer's legal agent." (EME Report, Dr. Youngblood, August 27, 2016; Reconsideration Request, Matthew Rife, January 14, 2019.)

21) Dr. Youngblood identified all causes of Employee's need for medical treatment, which include his age, genetics, physical deconditioning, exogenous obesity, and the alleged work injuries of September 5, 2013, January 24, 2014. Employee's medical records contained no objective findings that warranted a permanent partial impairment rating. Treatment after the first three months was reasonable and necessary for each of Employee's work-related sprain / strain injuries. Employee has chronic mechanical lower back pain aggravated by intermittent activities. Because Employee is "clearly deconditioned and has exogenous obesity" no formal treatment other than aerobic conditioning, a self-directed home exercise program, and weight loss was recommended. Neither narcotics nor invasive treatment were reasonable or necessary. This is consistent with reoccurring low back sprains and strains. Dr. Youngblood recommended no

physical restrictions and no work restrictions. (EME Report, Dr. Youngblood, August 27, 2016; Deposition, Dr. Youngblood, November 20, 2018; experience, judgment, observations, and inferences drawn therefrom.)

22) Dr. Youngblood's opinion clearly explains Employee's treatment history, which corresponds to waxing and waning low back pain, the nature of which is lumbosacral sprains or strains aggravated by intermittent activities, Employee's exogenous obesity and physical deconditioned state. Dr. Youngblood's opinion is credible, and his opinions are given great weight. (*Id*.)

23) Employee did not attend the properly noticed August 27, 2016 EME with Dr. Youngblood and Employer denied all benefits pursuant to AS 23.30.095(e) and 8 AAC 45.090(c). (Controversion Notice, September 2, 2016; Controversion Notice, September 8, 2016.) Employer also relied on Dr. Youngblood's opinion that work was not the substantial cause of Employee's alleged disability and need for medical treatment, Employee was medically stable, did not have a PPI rating, did not have work restrictions and medical treatment after April 24, 2014 was not reasonable, necessary or related to Employee's work injury to controvert all benefits. (Controversion Notice, September 12, 2016.)

24) Employee began treatment at Yellowstone Naturopathic Clinic and reported his two lower lumbar spine discs were gone and "the other" was severely herniated. Rachel Day, N.D., did not provide a diagnosis other than relying upon the history Employee provided. Patricia Holl, D.C., found Employee overweight and diagnosed "other intervertebral disc displacement, lumbar region"; low back pain; and other muscle spasm. Neither Dr. Day nor Dr. Holl restricted Employee from working. (Office Visit Note, Yellowstone Naturopathic Clinic, Rachel Day, N.D., December 7, 2016; Office Visit Note, Yellowstone Naturopathic Clinic, Dr. Holl, December 27, 2016.)

25) On March 31, 2018, EME physician Dr. Swartz evaluated Employee. Dr. Swartz reviewed the April 22, 2016 thoracic and lumbar spine MRIs. The thoracic MRI showed degenerative disc disease, T8-T9 disk space dehydration and posterior protrusions. The lumbar MRI showed L4-5 and L5-S1 dehydration with a central disc protrusion at L4- 5, midline protrusion, no significant amount of stenosis and no neural foraminal stenosis. Dr. Swartz diagnosed chronic lumbar degenerative disc disease and acute traumatic injuries in September 2013 and January 2014, which were soft tissue lumbosacral strains, resolved. Dr. Schwartz did not relate Employee's

chronic lumbar spine pain to "any structural injury" sustained at work. The acute traumatic injuries in September of 2013 and January of 2014 were soft tissue lumbosacral strains. Dr. Schwartz noted Employee's history and medical treatment were both "patchy." Dr. Schwartz did not find Employee's "present symptoms" were related to an injury. He did observe Employee exhibited "mild to moderate nonphysiologic pain behavior." Employee scored 136 on a Pain Disability Questionnaire, which "means that he is totally physically disabled and in dire need of significant pain medication. This alone is significant nonphysiologic pain symptomatology." Dr. Schwartz made treatment recommendations and emphasized they needed to be followed on a consistent basis; however, the substantial cause of Employee's need for medical treatment to his chronic lumbar degenerative disk disease, which was not posttraumatic, was not Employee's work. Dr. Swartz said the work trauma Employee described was a soft tissue injury, which resolved over several months. After three months post injury, work was no longer the substantial cause of Employee's need for medical treatment. Dr. Swartz "determined this by the fact that [Employee] continued to work for several days after the injury and after being seen and treated without significant amount of pain medication he continued to work." Dr. Schwartz imposed no physical restrictions. (EME Report, Dr. Schwartz, March 31, 2018.)

26) Dr. Schwartz and Dr. Youngblood concur that both Employee's work injuries were soft tissue sprains or strains. Dr. Schwartz's opinion, as Dr. Youngblood's, is entitled to be given weight because he, like Dr. Youngblood, is able to clearly explain Employee's work-related lumbosacral strains were acute traumatic injuries and the continuing treatment over the years has been "patchy," which is indicative of recurrent strains mentioned by Dr. Youngblood as chronic mechanical lower back pain aggravated by intermittent activities. (Experience, judgment, observations, unique facts of the case, and inferences drawn therefrom.)

27) On September 5, 2018, PA-C Cordova-Eduave confirmed Employee had been a patient at Spine Nevada since May 9, 2018. She diagnosed low back pain, radiculopathy lumbar region, skin paresthesia, sacrococcygeal disorders, and pain in thoracic spine. PA-C Cordova-Eduave said, "This patient is able to perform all of his job duties, however, he has increased symptoms once the weather changes to cold temperatures. It would be beneficial for him to work in a warm climate in order to perform all daily functions of living without increased pain." PA-C Cordova-Eduave did not restrict Employee from work; the letter was written to support Employee's request that his federal employer transfer him to a job in a warmer climate. This is the first time

Employee was diagnosed with radiculopathy; however, PA-C Cordova-Eduave does not explain why she gave this diagnosis or its substantial cause. (Letter to Whom This May Concern from PA-C Cordova-Eduave, September 5, 2018; Letter To Whom It May Concern from PA-C Cordova-Eduave, June 7, 2018; Rife; experience, judgment, observations, and inferences drawn therefrom.)

28) An exhibit to Employee's *Rife II* hearing brief is only page two of an undated multiple page form, which does not contain Employee's name or the author's name or signature. It is assumed the document was completed on Employee's behalf and states, "Approximate date condition commenced" was 2013. "Probable duration of condition" states, "intermittent, life long." The record does not identify the "condition." Presumably, it is Employee's lumbosacral pain. The form asks, "Is the employee unable to perform any of his/her job functions due to the condition." The check-marked response is "No." The author completing the form notes, "Difficulty bending, lifting, climbing in/out truck." Paragraph four requests, "Describe other relevant medical facts, if any, related to the condition for which the employee seeks leave," to which the response is, "patient reports intermittent episodes of 'back going out' which makes basic ADLs difficult and painful. Episodes last 2 hours – 1 week making time off specifications hard to gauge." (Form WH-380-E Revised May 2015, Undated, Author Unknown.)

29) This form supports Drs. Schwartz and Youngblood's opinions that Employee experiences episodic low back pain aggravated by intermittent activities. (Experience, judgment, observations, unique facts of the case, and inferences drawn therefrom.)

30) No medical provider that has treated Employee's low back pain has restricted him from work. (Record; experience, judgment, observations, unique facts of the case, and inferences drawn therefrom.)

31) Employee used the excuse that the workers' compensation carrier had denied him benefits for his noncompliance with medical directives and for seeking pain medication from providers and emergency departments. When Employee used this excuse, Employer had not filed a controversion denying Employee any benefits other than reemployment benefits; medical and indemnity benefits both remained open. Employee was misrepresenting his claim's status and is not credible. (Experience, judgment, observations, and inferences drawn therefrom.)

32) On January 2, 2019, *Rife II* was issued. It made the following conclusions of law:

> 1) Employee's injuries while working for Employer are not the substantial cause of disability or need for medical treatment.
>
> 2) Employee is not entitled to PPI benefits.
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> 3) Employee is not entitled to a compensation rate adjustment.
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> 4) Employee is not entitled to a weekly stipend.
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> 5) Employee is not entitled to penalty and interest.
>
> 6) Employer did not unfairly or frivolously controvert Employee's claim.

(*Rife II*.)

33) On January 14, 2019, Employee timely requested reconsideration of *Rife II*. He contends Employer denied him access to medical care and "after this injury," he "experienced a diminished qualify of life and work." Employee contends *Rife II* ignored the medical surveillance program report by Dr. Baskous, which is evidence he had "no back/spine injury" and "was in great health." Employee contends the medical documentation he has provided supports his claim that the work injuries have caused life-long, debilitating, permanently disabling injuries. (Request for Reconsideration, Rife, January 14, 2019.)

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 . . . to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to . . . employers.
>
> . . . .
>
> (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.

In *Fairbanks North Star Borough v. Rogers & Babler*, 747 P.2d 528 (Alaska 1987), the Alaska Supreme Court noted its task when reviewing a Board determination "is not to reweigh the evidence presented to the Board, but to determine whether there is substantial evidence in light of the whole record that a reasonable mind might accept as adequate to support the Board's conclusion." The court reiterated the well-settled rule, which states 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" *Id.*

> **AS 23.30.122**. **Credibility of witnesses**. The board has the sole power to determine the credibility of a witness. A finding by the board concerning the weight to be accorded a witness's testimony, including medical testimony and reports, is conclusive even if the evidence is conflicting or susceptible to contrary conclusions. The findings of the board are subject to the same standard of review as a jury's finding in a civil action.

In *Robinson v. Municipality of Anchorage*, 69 P.3d 489 (Alaska 2003), the Supreme Court affirmed the board determines how much weight will be "accorded a witness's testimony including medical testimony and reports. . . ."

> **AS 44.62.540. Reconsideration**. (a) The agency may order a reconsideration of all or part of the case on its own motion or on petition of a party. To be considered by the agency, a petition for reconsideration must be filed with the agency within 15 days after delivery or mailing of the decision. The power to order reconsideration expires 30 days after the delivery or mailing of a decision to the respondent. If no action is taken on a petition within the time allowed for ordering reconsideration, the petition is considered denied.

"The appropriate recourse for allegations of legal error is a direct appeal or petition to the board for reconsideration of the decision within the time limits set by AS 44.62.540(a)." *George Easley Co. v. Estate of Lindekugel*, 117 P.3d 734, 743 (Alaska 2005). "Reconsideration" implies a "re-examination" and possibly a different decision of a case by the entity which initially decided it. *Union Oil Co. v. State, Department of Natural Resources*, 526 P.2d 1357 (Alaska 1974).

ANALYSIS

Should *Rife II* be reconsidered?

Employee requests *Rife II*'s finding he failed to prove his claim by a preponderance of the evidence at the third stage of the presumption analysis be reconsidered. AS 44.62.540. Employee does not allege *Rife II* contains a legal error. *Lindekugel*. Employee contends, as a result of his injuries while working for Employer, he has "experienced a diminished quality of life and work" and *Rife II* inappropriately gave weight to Drs. Schwartz and Youngblood's opinions. Employee contends their opinions are "laughable."

Employee believes because he never had back pain before his two work injuries, as evidenced in the medical surveillance program report by Dr. Baskous, all lumbosacral pain he has experienced since those injuries is due to those injuries. In other words, Employee contends "after this," the work injuries, "therefore, because of this," the work injuries, he has life-long, debilitating, permanently disabling back pain. Employee's contention is a logical fallacy. Employee did experience two work injuries; however, prior to his benefits being denied, he did not need medical treatment on a regular or consistent basis. Medical treatment was needed when he had pain aggravations from intermittent activities. Just because Employee had two sprain and strain injuries while working for Employer, does not mean his continuing sporadic episodes of back pain are also caused by his work injuries. *Rogers & Babler*.

The third step of the presumption analysis provides, if Employer produced substantial evidence work is not the substantial cause of Employee's disability or need for medical treatment, the presumption drops out, and Employee must prove all elements of his case by a preponderance of the evidence.

Employee was unable to prove his claims by a preponderance of the evidence. *Rife II* did not find Employee induced a belief the facts he asserted were true. Instead, *Rife II* gave the greatest weight to Dr. Youngblood's report, but also gave weight to that of Dr. Schwartz. AS 23.30.122. Dr. Youngblood's deposition testimony was credible. *Id.* The weight and credibility findings of *Rife II* will not be reconsidered. *Robinson*.

Rife II is "conclusive even if the evidence is conflicting or susceptible to contrary conclusions." AS 23.30.122. Accordingly, Employee's request for reconsideration will be denied. *Union Oil Co.*

CONCLUSIONS OF LAW

Rife II should not be reconsidered.

ORDER

Employee's request for reconsideration is denied.

Dated in Anchorage, Alaska on January 23, 2019.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Janel Wright, Designated Chair

/s/
Amy Steele, Member

/s/
Justin Mack, Member

APPEAL PROCEDURES

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

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

RECONSIDERATION

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

MODIFICATION

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

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Final Decision and Order on Reconsideration in the matter of MATTHEW RIFE, employee / petitioner v. B.C. EXCAVATING, LLC, employer; ALASKA NATIONAL INSURANCE CO., insurer / respondents; Case No. 201601856; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties by First-Class U.S. Mail, postage prepaid, on January 23, 2019.

/s/

Nenita Farmer, Office Assistant