ALASKA WORKERS' COMPENSATION BOARD

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

JESUSA L. BERNALDO,	)	
	)	
Employee,	)	
Claimant,	)	
	)	FINAL DECISION AND ORDER
v.	)	
	)	AWCB Case No. 199629747M, 199828759
STATE OF ALASKA,	)	
	)	AWCB Decision No. 19-0058
Self-Insured Employer,	)	
Defendant.	)	Filed with AWCB Juneau, Alaska
	)	On May 9, 2019
	)	

Jesusa L. Bernaldo's (Employee) amended October 10, 2003 claims and April 25, 2017 claim and the State of Alaska's (Employer) January 9, 2019 petition were heard on April 9, 2019 in Juneau, Alaska, a date selected on February 27, 2019. A January 30, 2019 affidavit of readiness for hearing (ARH) gave rise to this hearing. Employee appeared, represented herself and testified through Tagalog interpreters. Attorney Henry Tashjian appeared and represented Employer. Witnesses included Cindy Spanyers who testified telephonically on Employee's behalf. The record closed at the hearing's conclusion on April 9, 2019.

ISSUES

Employer contends Employee failed to report her work injury within 30 days from the date she related work stress to her symptoms, need for treatment and inability to work. It contends her nine year delay in reporting her work injury caused significant prejudice to its ability to mitigate, investigate and defend against her claim. Employer contends evidence has degraded and witnesses are unavailable. It contends addressing Employee's claims on the merits would violate

the legislative intent to ensure quick, efficient, fair and predictable delivery of benefits to employees at a reasonable cost to employers. Employer requests dismissal of Employee's claims.

Employee contends she did not know she needed to report her injury in writing and no one told her she needed to fill out an injury report. She contends her supervisor knew of her symptoms, need for treatment and inability to work in 1995 because her performance evaluation documented the problems she had at work and because Employer required her to obtain a physician's opinion to return to work. She contends her illness delayed her reporting her work injuries. Employee requests an order denying Employer's petition to bar her claims.

1) Are Employee's injuries time-barred for failure to give written notice of a work injury?

Employer contends Employee failed to timely file a claim within two years after she knew of the nature of her disability and its relation to the employment and after disablement. It contends she filed a claim six years after her first injury report and four years after the second. Employer contends Employee's delay was significant and caused significant prejudice to Employer. It requests Employee's claims be dismissed.

Employee contends she did not know she needed to file a claim and no one told her she needed to file a claim. She contends her illness delayed her claim filing. Employee requests an order denying Employer's petition to dismiss her claims.

2) Should Employee's claims be barred for failure to timely file them?

Employer contends Employee failed to request a hearing or additional time to request one for 13 years after it controverted her first claim. It contends her failure to timely pursue her claim caused prejudiced Employer. Employer contends the doctrine of laches bars Employee's claims because she failed to diligently pursue her claims. It requests Employee's claims be dismissed.

Employee contends she delayed requesting a hearing and pursuing her claim because a workers' compensation officer told her she needed an attorney to represent her and she was unable to find

an attorney willing to take her case. She contends she was ill and unable to pursue her claim without an attorney. Employee requests an order denying Employer's petition to dismiss.

3) Should Employee's claims be dismissed for failure to timely request a hearing?

Employee contends her work injuries are a substantial factor in her disability and need for medical treatment. She contends harassment at work caused a mild stroke and a mental injury. Employee contends the work stress was extraordinary and unusual in comparison to the pressures and tensions experienced by individuals in a comparable work environment and the work stress is the predominate cause of her mental injury. Employee requests an order finding her claims compensable.

Employer contends Employee failed to raise the presumption of compensability for her physical injury. Alternatively, if Employee raised the presumption, it contends it rebutted the presumption and Employee failed to prove her claim by a preponderance of the evidence. Employer contends Employee failed to show any work stress was extraordinary or unusual. It contends Employee failed to prove the work stress was the predominate cause of her mental injury. Employer contends it terminated her employment in good faith. It requests an order denying Employee's claims.

4) Are Employee's work injuries compensable?

Employee contends her mental stress work injuries are the predominate cause of her disability and need for medical treatment. She contends her physical work injuries are also a substantial factor in her disability and need for medical treatment. Employee seeks an award of medical and related transportation benefits.

Employer contends Employee did not suffer a compensable mental-mental or mental-physical injury and requests her claims for medical care and transportation be dismissed in their entirety.

5) Is Employee entitled to medical and transportation benefits?

Employee contends she is disabled as a result of the work injuries and seeks an award of temporary total disability (TTD) and temporary partial disability (TPD).

Employer contends Employee did not suffer a compensable mental-mental or mental-physical injury and requests her claims be dismissed in their entirety.

6) Is Employee entitled to TTD or TPD benefits?

Employee contends she suffered a permanent impairment as a result of her work injuries and seeks permanent partial impairment (PPI) benefits.

Employer contends Employee did not suffer a compensable mental-mental or mental-physical injury and there is no work-related PPI rating. It requests her claim PPI claim be dismissed.

7) Is Employee entitled to PPI?

FINDINGS OF FACT

1) On April 4, 1990, Employer hired Employee as a nonpermanent Document Processor for the Department of Revenue. (Personnel Action, April 14, 1990).

2) On August 22, 1990, Employee visited Bartlett Memorial Hospital and reported hearing voices telling her, "Don't do it." She was "unable to discuss" the details of what the voices say to her. She was referred for a psychiatric evaluation. Richard Nault, M.A., examined Employee and she told him, "I don't know what's wrong. . . People at work are talking about me. . . I keep having bad words and pictures in my mind. . . I hear voices from outside my head that tell me not to do things." Employee had not slept well since the onset four weeks earlier and had a poor appetite. Dr. Nault made a provisional diagnosis of major depressive episode with psychotic symptoms and referred her for a psychiatric consultation. (Bartlett Memorial Hospital Chart, August 22, 1990; Nault Chart Notes, August 22, 1990).

3) On August 29, 1990, Employee followed up with Lyn Dyles, M.D., for a psychiatric evaluation. She reported increased stress and depression for about one month. Employee started working a 3:00 to 11:00 p.m. full-time shift and the increased job stress with two small children, one 1.5 years old and the other 11 months, caused her increased difficulties at home. She also

reported increased stress with her husband and some financial concerns. Employee's husband noted Employee had increased emotional lability and inappropriate behavior, confusion, difficulty keeping track of things around the house; for example, she allowed their children to play with her purse and lost her identification. She was also awoke at night, sat in bed and stared at him. Employee described a depressed mood, poor sleep with initial insomnia and early morning awakening, decreased appetite, crying spells, increased anxiety and stress and difficulty concentrating. She also described intrusive thoughts which bothered her. Approximately one earlier, Employee began having brief auditory hallucinations of voices of various people outside her head saying one or two word comments, usually swear words, and telling her to "just do it," referring to the activity she was engaged in at the time. Dr. Dyles diagnosed major depression with mild psychotic features and prescribed Nortriptyline. (Dyles Chart Note, August 29, 1990).

4) On August 30, 1990, Employee resigned from her position as Documents Processor "due to illness." (Resignation letter, August 30, 1990).

5) On October 5, 1990, Employee reported feeling a little bit happier and less stressed but she still experienced intrusive "bad thoughts and words" she had difficulty removing from her mind. Dr. Dyles observed Employee would stop and blink furiously and scrunch her face. She stated she did so when she has a bad thought or word come into her mind but denied they were voices. Employee's husband thought Employee was talking to herself more than usual and did not feel she was getting better. Dr. Dyles was concerned Employee may have "incipient underlying psychotic disorder brewing" but was unwilling to give her "a more damaging label of psychotic disorder." He diagnosed major depression with mild psychotic features and recommended she continue taking Nortriptyline and add Trilafon. (Dyles Chart Note, October 5, 1990).

6) On October 29, 1990, Employee followed up with Dr. Dyles. She reported mood improvement and improved sleep but described being easily upset and embarrassed. Employee's husband noted she cried intermittently for no reason, misinterpreted what other people said and became very emotionally hurt by it, and imagined other people were saying bad things about her. He also reported she talked to herself quite a bit and laughed inappropriately at times. Intrusive thoughts and voices speaking bad words continued to intermittently intrude into Employee's thoughts troubling her. Dr. Dyles tentatively diagnosed "an atypical psychotic disorder" but stated "an incipient schizophreniform disorder must be considered" as her psychotic features

persisted despite medication. He reduced the dosage of Nortriptyline and increased the dosage for Trilafon. (Dyles Chart Note, October 29, 1990).

7) On November 16, 1990, Employee reported fewer episodes of intrusive thoughts and bad words, fewer crying spells, and more socially appropriate behavior. Dr. Dyles assessed a history of major depression with mild psychotic features which could possibly be mild schizophreniform disorder. He recommended continuing Nortriptyline and Trilafon. (Dyles Chart Note, November 16, 1990).

8) On December 3, 1990, Employee returned to work for Employer as a Fish and Game Data Processing Clerk for Employer. (Performance Evaluation Report, April 2, 1991).

9) On March 12, 1991, Employee called Dr. Dyles and complained of extreme tiredness, a tingling sensation in her feet, dizziness, upset stomach and nausea after taking Anafranil for one week. Dr. Dyles recommended she stop taking Anafranil and resume taking Nortriptyline. He was going to consider tapering off and stopping Trilafon at the next appointment. (Dyles Chart Note, March 12, 1991).

10) On March 29, 1991, Employee's employment as a Fish and Game Data Processing Clerk ended because the project she was working on ended. (Performance Evaluation Report, April 2, 1991).

11) On April 2, 1991, Employee began working as a Permanent Fund Dividend Data Processing Clerk in a nonpermanent position for Employer. (Performance Evaluation Report, July 22, 1991).

12) On May 1, 1991, Employee's position as a Permanent Fund Dividend Data Processing Clerk was reclassified as a Document Processor. (Personnel Action, May 1, 1991).

13) On May 7, 1991, Employee denied any crying spells and sleep disturbance or appetite disturbance. She reported her job and family were going well. Employee's main complaint was continued difficulty with "nasty words" intruding into her mind. Sometimes she stopped those intrusive and ruminative thoughts but other times they intruded despite her efforts to stop them. Employee stated they were her own thoughts. Dr. Dyles noted she continued to experience a compulsion to check herself for cleanliness and continued to occasionally mumble under her breath to try to rid herself of the "nasty thoughts." He diagnosed major depression with mild psychotic features resolving on medication and probable obsessive compulsive disorder symptoms with ruminative thoughts and compulsions of cleanliness. Dr. Dyles recommend

Employee taper of Nortriptyline before she started taking Prozac and begin tapering off Trilafon one week after beginning Prozac. (Dyles Chart Note, May 7, 1991).

14) On June 13, 1991, Employee said she tolerated reducing Trilafon, tapering Nortriptyline and starting Prozac. She ran out of Trilafon several days earlier and reported poor sleep for several nights and return of the intrusive thoughts and images. Employee stated her work and home life were going well but she was bothered by thinking about embarrassing things, by trying to rid herself of her "nasty thoughts" and by needing to check herself for cleanliness. Dr. Dyles recommended trying to manage her symptoms without Trilafon because it may cause tardive dyskinesia. He reduced the dosage of Prozac and added Trazodone. (Dyles Chart Note, June 13, 1991).

15) On June 28, 1991, Employee and her husband reported her condition deteriorated after the medication changes. Employee blinked excessively and shook her head up and down to rid herself of thoughts and had paranoid ideas about groups talking about her. She was having difficulty at work. Employee's Prozac was increased. (Frank Ilardi M.D., Chart Note, June 28, 1991).

16) On July 11, 1991, Employee's husband reported he observed a substantial difference when she was taking Trilafon compared to when she was not taking it. When she ran out of the medication or stopped taking it, she became scared to go out of the house and appeared more distracted by her intrusive thoughts. Employee felt the "nasty thoughts" increased in frequency since she discontinued Trilafon and she was having difficulties concentrating at work. She denied any visual or auditory hallucinations but continued to have episodes of scrunching her face up in an attempt to ward off intrusive thoughts. Dr. Dyles restarted Trilafon. (Dyles Chart Note, July 11, 1991).

17) On July 30, 1991, Employee's employment as a Permanent Fund Dividend Document Processor ended because the nonpermanent position ended. (Performance Evaluation Report, July 22, 1991).

18) On August 12, 1991, Employee reported intrusive thoughts and cleanliness checking troubled her still. Dr. Dyles assessed probable obsessive compulsive disorder with ruminative thoughts and compulsion for cleanliness and "history of major depression with psychotic features versus atypical psychosis." He increased Employee's Prozac, Trazodone and Trilafon and encouraged her to follow up with counseling and marital therapy. (Dyles Chart Note, August 12, 1991).

19) On September 9, 1991, Employer hired Employee as a short-term non-permanent appointment Fish and Game Document Processor. (Performance Evaluation, October 30, 1991).

20) On September 10, 1991, Employee stated her intrusive thoughts decreased markedly since her last medication changed and she had a decrease in her compulsions. She worked evenings at Fish and Game doing data entry. Dr. Dyles continued Employee's Prozac and Trilafon. (Dyles Chart Note, September 10, 1991).

21) On October 14, 1991, Employee reported the Trilafon impaired her typing ability, as she was not able to complete the same amount of work. She also reported the medication caused blurry vision and mild tremor. Dr. Dyles observed mild facial scrunching associated with the intrusion of nasty thoughts. He recommended Employee continue to take Trilafon as it improved her mental status and allowed her to work. (Dyles Chart Note, October 14, 1991).

22) On October 30, 1991, Employee's employment as a Fish and Game Document Processor ended because the non-permanent project ended. (Performance Evaluation, October 30, 1991).

23) On January 6, 1992, Employer hired Employee for a short-term non-permanent position for Employer. (Personnel Action, January 24, 1992).

24) On January 6, 1992, Employee's husband contacted Dr. Dyles angry and frustrated Employee was continuing to have psychiatric symptoms. Dr. Dyles expressed concern Employee last filled her Trilafon prescription in mid-October but she had not contacted the office for any more medication and she may be experiencing psychiatric symptoms because she is not taking her medication as prescribed. He recommended Employee's husband follow up with an emergency worker at Juneau Community Mental Health for more intensive care management. (Dyles Chart Note, January 6, 1992).

25) On January 25, 1992, Employee separated from the short-term non-permanent position for Employer. (Personnel Action, February 15, 1992).

26) On April 2, 1992, Employee began working for Employer as a long-term nonpermanent Document Processer with the Permanent Fund Division. (Performance Evaluation, June 22, 1992).

27) On July 30, 1992, Employee reported a recurrence of very intrusive "bad thoughts." She felt people were saying things about her and laughing at her. Employee was diagnosed with a paranoid delusional disorder and started on Haldol. (Juneau Community Mental Health Center Psychiatric Case Notes, July 30, 1992).

28) On November 2, 1992, Employee's employment as a long-term nonpermanent Permanent Fund Division Document Processer ended because the project was completed. Employer hired Employee as a permanent Document Processer in the Permanent Fund Division. (Personnel Action, January 26, 1993; Personnel Action, December 7, 1992).

29) On November 18, 1992, Employee reported a recurrence of "silly and embarrassing thoughts." Her husband reported a "sexual conflict" which seemed secondary to illness. Employee's Haldol dosage was increased. (Juneau Community Mental Health Center Psychiatric Case Notes, November 18, 1992).

30) On December 21, 1992, Employee reported continuing to experience "silly thoughts." She stated if she stared at an object "in a certain way" she can make the thought go away for a while or if she counts in Tagalog the thought would go away for a while. Employee's Haldol dosage was decreased and Anafranil was prescribed. (Juneau Community Mental Health Center Psychiatric Case Notes, December 21, 1992).

31) On July 28, 1993, Employee was not taking Haldol but was taking Anafranil. She reported "silly thoughts" and left the appointment in tears. Employee's husband asked why she always cried. Dr. Dyles felt Employee was "less than forthcoming about what's going on." (Dyles Chart Note, July 28, 1993).

32) On April 20, 1994, Employee called to refill medications. She would have to be seen by a physician prior to medications being prescribed because her record was closed. Employee stated she had been taking medications sporadically when symptoms occurred and took them until the symptoms decreased. She would try going without the medication. (Juneau Community Mental Health Center Psychiatric Case Notes, April 20, 1994).

33) On September 1, 1994, Employer reclassified Employee's position as an Administrative Clerk in the Permanent Fund Division. (Personnel Action, October 3, 1994).

34) On July 5, 1995, Employee was "always upset" about her "husband's problem" and was diagnosed with situational anxiety. (Henry Akiyama, M.D., Progress Notes, July 5, 1995).

35) On October 12, 1995, Employee signed her performance evaluation and wrote a letter in response. Her performance evaluation gave her an "acceptable" rating in "Work Habits" and "Interpersonal Relationships" and an "outstanding" rating in "Performance." The narrative section stated, "[Employee's] interpersonal relationships during this reporting period were marginally acceptable. . . . She had some confrontations with her co-workers because she

believed they were deliberately trying to distract her. She had at least one confrontation after she has been directed to refer to her supervisor on those occasions when she was being distracted. Other than this area, she accepts supervision with a positive attitude." (Performance Evaluation, October 12, 1995). Employee's letter stated she wanted to clear up some things about her "Interpersonal Relationship" rating because she disagreed with it. She contends her supervisor was not aware of the situation going on in the office. Employee's co-workers were always upset with her and picking on her and she did not know why. She did not start the problem and the persons putting her down had bad manners. Employee described the people she worked with as children, hypocrites and sarcastic. They were nice for a few days and then they would "do it again." She did not know what else to do but wanted the problem to stop. (Employee letter, October 12, 1995).

36) On January 30, 1996, Employee stated she heard voices blaming her for whatever she was doing and complained she was unable to sleep because the voices kept talking to her. She refused to see a psychiatrist. (Akiyama Progress Notes, January 30, 1996).

37) On February 2, 1996, Employee still heard voices but was feeling better and sleeping well. She continued to refuse a mental-health referral. (Akiyama Progress Notes, January 30, 1996).

38) On March 18, 1996, Employee still heard voices but denied she was hallucinating. She believed it was "some witchcraft some man had inflicted" on her. Employee believed "someone" was "doing a mental telepathy on her." (Akiyama Progress Notes, March 18, 1996).

39) On May 17, 1996, Employee's friend brought her to the emergency room as she was unable to go to work and was becoming more delusional and uncooperative. She had been hearing a male voice since March and two other women and they were "doing something bad." Charles Ellis, M.D. performed an emergency psychiatric evaluation and noted Employee was unable to attend to the conversation and was visibly responding to internal stimuli, laughing and carrying on a conversation with an invisible person. He recommended an ex parte admission to the hospital for stabilization as Employee was unable to give informed consent and was totally unreliable to manage her medication. Employee voluntarily admitted herself to the mental health unit. (Bartlett Memorial Hospital Chart Note, May 17, 1996; Ellis Physician Notes, May 17, 1996; Application for Voluntary Admission; May 17, 1996).

40) On May 18, 1996, Dr. Ellis diagnosed schizophrenia as Employee's long history of recurrent psychotic disorder which only responded to antipsychotic medication. Employee voluntarily

signed admission to the psychiatric unit. If she attempted to leave in a disorganized state Dr. Ellis would reevaluate for an ex parte order. (Ellis Psychiatric Evaluation, May 17, 1996).

41) On May 19, 1996, Employee was discharged from the mental health unit. Dr. Ellis noted Employee responded to Trilafon as her delusions and auditory hallucinations resolved. He directed Employee to follow up for treatment and to continue taking Trilafon as ordered. (Ellis Discharge Report, May 19, 1996).

42) On May 31, 1996, Employee forbad Dr. Ellis from communicating about her case with anyone. Dr. Ellis noted Employee stopped taking her medication but was not hold-able. She stated she did not feel like she needed medication and would only take it if she felt she needed it. (Ellis Chart Note, May 31, 1996).

43) On July 3, 1996, the superior court involuntarily committed Employee to the mental health unit because of a mental illness gravely disabling her or presenting a likelihood of causing serious harm to herself or others. She had not been taking Trilafon for over a month and was giving her belongings away, asking people to take care of her children if something happened to her and stated she was tired of life. Dr. Dyles observed paranoia and psychosis, as she appeared to be responding to internal stimuli and hallucinating. Employee separated from her husband over the last year and medication compliance was an issue after they split up. She tended to do better on her medication and did very well at work even though she was not symptom free. ((Petition for Initiation of Involuntary Commitment, July 3, 1996; Findings and Conclusions and Ex Parte Order; July 3, 1996; Notice of Respondent's Arrival at Evaluation Facility, July 3, 1996; Dyles Psychiatric Evaluation, July 3, 1996).

44) On July 9, 1996, the ex parte order was dropped and Employee was voluntarily admitted for treatment at the hospital's mental health unit. (Notice of Voluntary Admission, July 9, 1996).

45) On July 10, 1996, Employee was discharged from the mental health unit. She had been noncompliant with the medication ordered while admitted. Cynthia Richards, M.D., prescribed Trilafon and Cogentin. (Richards Discharge Report, July 10, 1996).

46) On July 18, 1996, Employee demanded a letter stating she was able to return to work. She admitted she was not taking her medication since she got out of the hospital. Employee appeared distracted and would frequently rapidly glance to her side as if she was seeing something. Dr. Ellis denied Employee's request and recommended she go home and take Trilafon or allow him

to admit her to the hospital. She stated she would go home, take her medication and come back in a week to prove she was fine. (Ellis Chart Note, July 18, 1996).

47) On July 25, 1996, Dr. Ellis wrote a letter to Employee's supervisor stating Employee had been under care since July 1, 1996 and may return to work. He recommended she work on a reduced schedule for two weeks. (Ellis letter, July 25, 1996; Certification of Health Care Provider, July 15, 1996).

48) On August 16, 1996, Dr. Ellis stated Employee had a chronic condition requiring treatment with in onset on August 16, 1996. He described the medical facts supporting it as "depression" and stated Employee was not presently incapacitated and it would be necessary for her to work on a reduced schedule because of the condition until October 1, 1996. (Ellis Certification of Health Care Provider, August 16, 1996).

49) On September 5, 1996, Employee denied auditory or visual hallucinations although she occasionally seemed to be responding to internal stimuli and exhibiting disorganized thinking. She was very concerned her medical records were going to be exposed and whether something could be read into the language of Dr. Ellis' letter. Dr. Ellis thought Employee had major depression with psychotic features or schizophrenia as her ruminations and paranoid thinking had a "depressive flavor." Employee agreed to take Prozac along with Trilafon and Dr. Ellis told her if she got better he would change her diagnosis to major depression with psychotic features. (Ellis Chart Note, September 5, 1996).

50) On September 6, 1996, Employee's supervisor wrote a memorandum addressed to Employee with the subject line "REPRIMAND" which concluded her actions on August 30, 1996 were insubordinate. He described the incident:

> I observed you working on a handwritten paper. After approaching you to determine that your lunch was over, I stated that you needed to begin resuming the working project. . . . I departed your work station to afford you an opportunity to put your personal items away. When I returned several minutes later, you were still actively working on this personal item.
>
> During our discussion about this incident at 2:00 p.m. you admitted that you understood my direction but had chosen not to put away your personal items at that time.
>
> Unfortunately, this is not an isolated incident where you have failed to do as directed. Over the last several weeks I have approached you when it was

> observed that you were sitting motionless staring at your computer. Additionally, my supervisor has approached you on this same matter. In those circumstances you had to be reminded to return to work. As your supervisor, I have the right to expect that you will perform the work I assign, and that you will do it in a timely manner. No other response is acceptable and will not be tolerated without viable mitigating circumstances.
>
> We have met several times to discuss the noticed decline in your work habits while at work. Throughout those meetings you indicate that I do not have the right to expect you to work. I must reiterate here, as I have in those meetings, that I most certainly do. Please understand that this means that when I assign you a task, you will proceed promptly and without argument. Also as I have explained, failure to do so could result in disciplinary action, up to and including dismissal. [Employee], it is vital for you to understand that when you are here, you are expected to be productive. Sitting, staring at your computer terminal is not considered to be productive and such actions will be promptly addressed. If you are unable to work, then consider the appropriateness of requesting leave. (Memorandum, September 6, 1996).

51) On September 19, 1996, the superior court involuntarily committed Employee to the mental health unit because of a mental illness gravely disabling her or presenting a likelihood of causing serious harm to herself or others (Petition for Initiation of Involuntary Commitment; September 19, 1996; Notice of Respondent's Arrival at Evaluation Facility, September 19, 1996).

52) On September 20, 1996, Dr. Richards performed a psychiatric evaluation of Employee. An ex parte order issued because Employee as at risk of harming her child by giving her Tylenol for a fever "on the inside" even though a physician examined her child and informed her there was no fever. Employee's parents threw out the Tylenol and she went out and bought more to give to her child. Employee was noncompliant with her medication. Dr. Richards noted her work had become very concerned about her and she had significant difficulties at work because she was disoriented to time, came in at various different hours, laughed inappropriately and was not able to perform her job. Employee also laughed inappropriately, responded to internal stimuli, and appeared to be talking to hallucinations while in the mental health unit. She also reported thinking people could hear her thoughts at times but was unwilling to discuss it. Dr. Richards diagnosed disorganized schizophrenia. (Richards Psychiatric Evaluation Report, September 20, 1996).

53) On September 24, 1996, Patti Hauser, LSW, contacted Employee's supervisor. He reported Employee could be sobbing and then giggling 15 minutes later, she talked to herself and was

disoriented to the date. She stared at her computer. Employee always manifested some symptoms but in the last six months the symptoms had gotten really bad. (Hauser Ex Parte Evaluation, September 24, 1996). The superior court found Employee to be mentally ill and as a result, gravely disabled. She was committed for a period of time not to exceed 30 days. (Order for 30 Day Commitment, September 24, 1996).

54) On October 4, 1996, Dr. Richards wrote a letter to Employee's supervisor stating Employee agreed to provide him written verification every three weeks that she received an injection of Haldol Decanoate as a condition of continued employment. (Richards letter, October 4, 1996).

55) On October 6, 1996, Employee was discharged early from the mental health unit because she was no longer gravely disabled or likely to cause serious harm as a result of mental illness. Dr. Richards noted Employee had difficulty at work because she would show up at inappropriate times, giggle and then start crying hysterically, and be insubordinate and not do her work. She refused to take her medications during her admission and a forced medication order was granted. Employee started taking Haldol and Cogentin; and she agreed to continue complying with her medication. (Notice of Release, October 6, 1996; Richards Discharge Summary, October 6, 1996).

56) On October 17, 1996, Dr. Ellis noted Employee lacked insight into her illness as she denied having a mental illness and stated she was going to take the state to court for committing her. Employee refused to take another Haldol Decanoate shot because of stiffness in her jaw and hands. Dr. Ellis explained Cogentin would help and recommended she continue with Haldol Decanoate and Cogentin. (Ellis Chart Note, October 17, 1996).

57) On October 22, 1996, Employee's supervisor wrote a memorandum addressed to Employee following up on their October 22, 1996 conversation when he reminded her a doctor's note releasing her to work was required:

> One of the conditions of your release was that you provide me with proof that you had been administered your medication. If your doctor had determined that you no longer needed that medication, then the doctor was to provide me with a letter stating such. . . . If you do not provide that proof, you cannot work. . . . (Memorandum, October 22, 1996).

58) On October 23, 1996, Employee returned to Dr. Ellis, as she was not happy with a letter he wrote to Rmployer. She appeared to be responding to some internal stimuli. Employee refused to take medication and refused a trial of Risperdal. (Ellis Chart Note, October 23, 1996).

59) On October 24, 1996, Employee visited Dr. Ellis and demanded a letter stating she suffered from no mental illness. She continued to refuse to take any anti-psychotic medication. Dr. Ellis told her she could not write the letter because it was not true and encouraged her to take the medication. (Ellis Chart Note, October 24, 1996).

60) On November 8, 1996, Employee was willing to take Risperdal and was "apparently asymptomatic otherwise and doing well at work." She denied any auditory or visual hallucinations. Dr. Ellis opined Employee either had major depression with psychotic features or paranoid schizophrenia. He recommended she continue taking Risperdal. (Ellis Chart Note, November 8, 1996).

61) On January 10, 1997, Employee reported she was working full time. She was adamant she did not have a mental illness and believed she did not need the medication but was willing to take it. Dr. Ellis stated her diagnosis was unclear but believed she had some kind of psychotic disorder. Employee believed her past problems were due to stress. Dr. Ellis "had no argument with that" but noticed the anti-psychotic medications made her symptoms go away "no matter what they were caused by, which actually could very well be brought on by the stress." He recommended Employee cut the Risperdal dosage in half because she was doing well. She was adamant about getting off the medication eventually. (Ellis Chart Note, January 10, 1997).

62) On April 4, 1997, Dr. Ellis decreased the Risperdal dosage in half again. If Employee continued to do well, he would consider stopping the medication and following her closely. Dr. Ellis noted Employee had long periods in the past where she was medication free and asymptomatic so it was very difficult to determine what was going on. He diagnosed major depression with psychotic features in current remission. (Ellis Chart Note, April 4, 1997).

63) On April 15, 1997, Employee reported she was under a lot of pressure at work and her supervisor was giving her a hard time and harassing her. She complained of a tension headache. (Akiyama Progress Notes, April 15, 1997).

64) On June 3, 1997, Employee felt she was misdiagnosed and wanted to go off her Risperdal. Dr. Ellis recommended she wean down slowly. She requested a work restriction. He stated her

diagnosis was unclear but thought it likely to be major depression with psychotic features currently in remission. (Ellis Chart Note, June 3, 1997).

65) On August 24, 1997, Employee visited the emergency room and complained of her throat feeling tight, dehydration, feeling swollen in her neck and tongue, and trouble chewing and controlling her tongue. She had been unable to sleep for the last two days and she was under a tremendous amount of stress at work and was "seeking a reason for disability from her job." Employee denied psychiatric problems but acknowledged admission under a psychiatric hold in the past. She was encouraged to follow up with a mental-health provider. (Emergency Room report, August 24, 1997).

66) On August 29, 1997, Employee saw Dr. Ellis and denied any auditory or visual hallucinations but reported anxiety and poor sleep. Dr. Ellis started her on Asedin and "deferred" her diagnosis. (Ellis Chart Note, August 29, 1997).

67) On September 15, 1997, Dr. Ellis restricted Employee to half-time work for a chronic condition, a history of major depression, requiring treatments which began on May 17, 1996. He stated Employee was able to function in employment and family roles with medication but stressors exacerbated her condition. (Certification of Health Care Provider, September 15, 1997; Fit-for-Duty Certification, September 15, 1997).

68) On October 24, 1997, Employee last worked for Employer as an Administrative Clerk in the Permanent Fund Division. (Request for Separation Information for Unemployment Insurance, June 29, 1998).

69) On October 25, 1997, Employee reported an injury in "September 1996 and ongoing" for stress and fatigue caused by "pressures and harassment." (Report of Occupational Injury or Illness, October 25, 1997).

70) On October 27, 1997, Employee reported people in black Cadillacs were following her and the government was attempting to control her with "laser beams and some kind of device." She stated the government can beam thoughts into her mind if they want to. Employee requested Dr. Ellis sign a disability form because she was too tired to go to work. She denied any auditory or visual hallucinations. Employee was willing to start Zyprexa. She said she had a stroke because her tongue felt thick and she had jaw tightness. (Ellis Chart Note, October 27, 1997; RN Progress Note, Jacquoline Townsend, RN-C, October 27, 1997). Dr. Ellis advised Employee to refrain from working and to apply for long-term disability. (Ellis letter, October 27, 1997).

71) On October 29, 1997, Mark Choate wrote a letter to Employee stating he regretted he was unable to assist her at that time. He informed her, "There are strict guidelines for all legal claims. Your claim must be filed with the proper authorities within the deadlines or the claim will be barred forever by the law. It is important that you do not hesitate to contact another lawyer for a second opinion if you wish to proceed with a claim." Mr. Choate encouraged Employee to contact the Alaska Bar Association for an attorney referral. (Choate Letter, October 29, 1997).

72) On November 4, 1997, Employee said she was getting disability because "she was having a stroke." She complained of people doing things against her, five or six people were investigating the offices and began harassing her, one person was trying to hurt her, her supervisor was conniving against her and Dr. Ellis thought she was hallucinating when she told him. She was prescribed mediation but did not take it regularly and stated, "They are using my mind for experimentation." Three women and three men were emotionally torturing her and she wanted disability because those people were "producing stroke" and abusing her sexually. She did not believe she had an emotional illness, which needed treatment. (Akiyama Progress Note, November 4, 1997).

73) On November 24, 1997, Employer denied all benefits for the September 5, 1996 work injury, contending there is no medical evidence Employee's mental injury or illness arose out of or in the course of her employment with Employer, she was not subjected to unusual or extraordinary pressures and tensions in comparison to pressures and tensions experienced by similarly situated employees, and there is no medical evidence her work was the predominate cause of her alleged mental injury or illness. The division's file contains only the first page of the controversion notice and not the back page, which contains notification of the AS 23.30.110(c) deadline. (Controversion Notice, November 24, 1997).

74) On December 2, 1997, Employer's payroll supervisor asked for an updated health care provider certification form. (Memorandum, December 2, 1997).

75) On December 10, 1997, Employer told Employee it had not received the requested health care provider certification form and her 12-week family leave entitlement under the federal Family Medical Leave Act expired on December 31, 1997. Employee needed to return to work no later than January 2, 1998, and provide a written fit-for-duty form certification from her physician before or immediately upon returning to duty stating she was able to resume working

full-time in her original position and was able to perform the duties outlined in an attached position description. Failure to provide the certification on or before January 2, 1998, would result in termination of her employment without prejudice effective December 31, 1997. (Memorandum, December 10, 1997).

76) On December 23, 1997, Employer followed up with Employee after a December 22, 1997 conversation with her when she stated she was unable to see her physician until January 7, 1998. It extended the deadline to submit the written fit-for-duty form certification to January 8, 1998. (Memorandum, December 23, 1997).

77) On January 7, 1998, Dr. Ellis wrote a letter addressed "To Whom It May Concern" stating:

> [Employee] has not been a consistent participant in her psychiatric treatment. She does not take medications as recommended, nor does she attend all scheduled appointments. It is impossible for me to determine whether she could successfully return to her employment with [Employer].
>
> Due to her lack of compliance with treatment, and her constant denial of mental illness, I feel it is best to terminate my involvement with this case. My office will be happy to make a referral to another physician who might better meet [Employee's] needs. (Ellis Letter, January 7, 1998).

78) On January 8, 1998, Employer terminated Employee's employment without prejudice effective as of close of business due to her inability to return to work. (Letter, January 8, 1998).

79) On February 20, 1998, Employee complained of pain in her cervical, lumbar and pelvic girdle. She was diagnosed with a possible pelvic fracture and somatic symptoms related to anxiety. An x-ray of Employee's pelvis revealed no abnormalities. (Juneau Urgent Care Chart Note, February 20, 1998; X-Ray report, February 24, 1998).

80) On February 25, 1998, Employee followed up for back pain. An x-ray of her cervical spine revealed reversal of the cervical lordosis consistent with muscle spasm. An x-ray of her lumbar spine was unremarkable. (Juneau Urgent Care Chart Note, February 25, 1998; Cervical and Lumbar X-Ray reports, February 25, 1998).

81) On March 13, 1999, Employee sought care for neck and throat discomfort, lower abdominal pain, both pelvic and vaginal. She was concerned she had a broken pelvis secondary to trauma during her pregnancy. Employee was prescribed ibuprofen and directed to follow up with her primary care provider. (Emergency Room report, March 13, 1999).

82) On March 17, 1999, Employee complained of neck and throat discomfort and lower abdominal pain, both pelvic and vaginal, for years. She was directed to follow up with her primary medical provider for her abdominal discomfort. (Emergency Room report, March 17, 1999).

83) On March 18, 1999, Employee sought care for central pelvic discomfort and vaginal wall pain. She was convinced she had a pelvic fracture or some other cause for the pain. Employee said the pain was present for six to eight years and worsened after an injury to her leg six years ago. She also complained of central chest discomfort related to anxiety. A pelvic x-ray was normal. A mental health consultation was recommended. (Emergency Room report, March 18, 1999).

84) On April 14, 1999, Employee reported an injury occurred from 1990 to 1997 and described how the injury occurred as "harassments, pressured, years/harassed/pressured, stress in the jobs, liftings" and described the parts of body injured were her "pelvic, heads, back, neck, legs, head, mouth." (Report of Occupational injury or Illness, April 14, 1999).

85) On June 7, 1999, Employer denied all benefits contending it received no evidence Employee sustained any of the physical or mental injuries alleged in the April 14, 1999 injury report were caused by her employment, there was no evidence any mental injury arose out of and in the course of employment, and there was no evidence she was subjected to extraordinary or unusual work stress. The division's file contains only the first page of the controversion notice and not the back page, which contains notification of the AS 23.30.110(c) deadline. (Controversion Notice, June 7, 1999).

86) On July 23, 1999, Employee stated she had pelvic pain for several years but it became worse in March 1999 after she went to the emergency room for an evaluation of her pelvic pain. Employee worked at McDonald's in May 1999 and was bumped by a co-worker, which worsened the pelvic pain even more. Anne Bakker, M.D., opined her pelvic pain pre-existed the May 1999 work injury but it was likely the injury did mildly exacerbate her pelvic pain. (Bakker Chart Note, July 23, 1999).

87) On September 14, 1999, Kathryn Collins, M.D., examined Employee for an employer medical evaluation (EME) for the May 1999 injury. Employee checked every system on the review of systems chart except for hearing symptoms and reported she was having all of the symptoms constantly. She stated her pain was getting worse, it started many years ago, it was

exacerbated by the pelvic exam in the emergency room, then it was exacerbated by the bump on her hip, and it continued to worsen. Dr. Collins diagnosed a history of pre-existing pelvic pain unrelated to the May 28, 1999 work injury and a resolved right hip contusion related to the May 28, 1999 work injury. She opined Employee's current symptoms were not related to the work injury. (Collins EME report, September 14, 1999).

88) On September 17, 1999, Employee complained of low pelvic pain since March 1999. A pelvic exam and urinalysis was completed. She was diagnosed with pelvic pain with unclear etiology, urinary tract infection and hysteria and was prescribed antibiotics. After the exam, she sat in the office and cried for 45 minutes and refused to get dressed. (J. McCormick, M.D., Chart Note, September 17, 1999).

89) On September 17, 1999, Employee sought care for abdominal pain after a urinalysis and pelvic exam by another medical provider. She complained of low mid-abdominal discomfort and painful urination. Employee was diagnosed with chronic abdominal pain, potentially consistent with pelvic inflammatory disease. (Emergency Room report, September 17, 1999).

90) On September 18, 1999, Employee went to the emergency room and asked to be admitted to the hospital for abdominal pain. She complained of inability to care for herself at home. She was diagnosed with schizophrenia with somatization. Employee refused a recommended mental health evaluation so she was discharged. (Emergency Room report, September 18, 1999).

91) On September 21, 1999, Employee followed up with Dr. Bakker regarding abdominal discomfort. She said she had to force herself to talk and walk and then could not sit or drive because of the pain. Dr. Bakker referred her to a specialist in pelvic pain. (Bakker Chart Note, September 21, 1999).

92) On December 21, 1999, Dr. Bakker wrote a "To Whom It May Concern" letter stating Employee had a long history of chronic pelvic pain, was being evaluated for it, and was unable to engage in any substantial gainful activity because of the pain. (Bakker letter, December 21, 1999).

93) On December 28, 1999, Employee called 911 most of the day complaining of receiving electrical impulses or shocks from an external source and the police brought her to the emergency room. She reported feeling persecuted by a third-person but was unwilling to identify that person. Employee said she had dry or burning sensations in the back of her mouth and in the walls of her mouth which radiated down her chest towards her abdomen. A

psychological consult was performed and it concluded she was delusional and hallucinating but it did not appear to be causing grave disability and she did not present a danger to herself or others. Employee refused mental health care and was transported to her parent's home. (Emergency Room report, December 28, 1999; Psychological Consult, December 28, 1999).

94) On May 30, 2000, Susan E. Hunter-Joerns, M.D., a neurologist, reported to Dr. Bakker Employee visited her concerned about a stroke and "being paralyzed." Her ex-husband had just had a massive stroke in his right-middle cerebral artery. Employee worried about "being paralyzed," about not being able to do anything but sit or lie down all day, and she would not be able to get up and help herself because she could not get up out of bed. She said this was because of pressures at work as they terminated her from her job. Employee complained of her head shaking and moving by itself, she could not swallow, her saliva got stuck and her jaw and tongue felt like they were cracking. She had trouble with solid foods; she would choke and vomit several times per week. Dr. Hunter-Joerns noted Employee's left jaw had an occasional pop or click. She also complained of stomach pains, dizziness, a balancing problem and teary eyes. Employee said she cried about things that happened to her or if she thought about her situation. She reported pain over the left side of her face and said the whole left side of her body felt numb, hurt and paralyzed. Upon examination, Employee had full range of motion with her neck and 100 percent strength with no fasciculation, atrophy or tremor but had give-way weakness and poor effort overcome with distraction. Dr. Hunter-Joerns diagnosed a possible left TMJ dysfunction, a possible eating disorder and other psychological issues. (Hunter-Joerns letter, May 30, 2000).

95) On July 2, 2000, Employee visited the emergency room and complained of dizziness, headache, chest discomfort, and abdominal pain. She stated she had been in an area breathing in significant car fumes because she had a stroke in the past and could not move. Employee stated two individuals, a male and female, sexually assaulted her that morning and every morning since 1996; but she refused to give their names. She refused an examination and to report the assault to police and requested oxygen. Employee was afraid the people who were sexually abusing her would hurt her. She was given high flow oxygen for an hour but reported continued significant abdominal discomfort and mild headache. Employee signed out against medical advice. (Emergency Room Report, July 2, 2000).

96) On July 6, 2000, Employee said a security guard and police officer had twisted her arm when she went to the Department of Commerce building despite a restraining order forbidding her from going there. She had a bruise on her right upper arm and red marks on her wrists. (Emergency Room report, July 6, 2000).

97) On July 25, 2000, G.C., a former co-worker, wrote to the Director of the Alaska Division of Risk Management about Employee describing his account of events since March 2000:

> I recognize [Employee] as a person who worked for [Employer] about six years ago. I did not work with her, have maybe said five words to her in my life, but worked in the same Division in a non-related job. . . .
>
> Since March of this year, I have been followed home by [Employee] almost on a daily basis. . . . I have seen her waiting for me outside the State Office Building after work and on the 3rd floor SOB parking garage. I have seen her car parked at my weekly softball games with her staring at me when I walk by. . . .
>
> I have received mail at work that is clearly from a person who is mentally ill and who doesn't have command of the English language. . . .
>
> For about the last two months, I have been receiving telephone calls at work. Sometimes my phone basically rings off the hook. Many times the calls are just hang-ups or a short 'fuck you', 'fuck me", or 'you are cheating', etc. on voice mail. . . .
>
> On Wednesday, July 12th, I returned home from work at about 4:40 p.m. to see the street-side of my house spray painted in purpose with the terms 'HOMICIDE', 'DOMESTIC VIOLENCE,' and something like 'SEX IN OUR HOUSE'. The asphalt in front of my house was spray painted with the term 'MANIAC SMART'. . . . (G.C. letter, July 25, 2000).

98) On July 25, 2000, the superior court involuntarily committed Employee to the mental health unit because of a mental illness gravely disabling her or presenting a likelihood of causing serious harm to herself or others. Employee called the police repeatedly and an officer brought her into the emergency room. She stated people had been telephoning her all day and all night and reported a conspiracy of people harassing her by spying on her telepathically. They asked questions and made obscene comments. She believed she knew who some of the people were and ran into them at work but "they ignore her at those times." Several times during her psychiatric examination she stared off into space and appeared to be attending to external stimuli. (Petition for Initiation of Involuntary Commitment, July 25, 2000; Notice of

Respondent's Arrival at Evaluation Facility, July 25, 2000; Psychiatric Evaluation, July 25, 2000).

99) On July 27, 2000, the superior court found Employee to be mentally ill and as a result, gravely disabled. She was committed for a period of time not to exceed 30 days with court-ordered medications. (Findings and Conclusions and Ex Parte Order, July 27, 2000).

100) On August 25, 2000, Employee was discharged early from the mental health unit because she was no longer gravely disabled or likely to cause serious harm as a result of mental illness. (Notice of Release, August 25, 2000).

101) On February 12, 2001, a transvaginal ultrasound found a small intramural uterine nodule, endometrial implant or myoma, right echogenic ovarian cyst, hemorrhagic cyst or endometrioma on Employee's right ovary. (Ultrasound report, February 12, 2001).

102) On February 21, 2001, an MRI of Employee's brain was unremarkable except for slight focal atrophy in the left fronto-temporal convexity. (MRI Report, February 12, 2001).

103) On March 10, 2001, M.A. Carmencita B. Gonzales, M.D., a neurologist-psychologist wrote a "To whom it may concern" letter which diagnosed a right cerebral infarct and major depression with somatic symptoms. (Letter, March 10, 2001).

104) On May 20, 2001, Employee reported she had not been feeling well for four years since her co-workers constantly harassed her. She experienced difficulty sleeping, anxiousness going to work, and other symptoms including headache, body weakness and difficulty swallowing. Employee's symptoms became worse when her husband suffered a stroke which paralyzed him. She claimed to have suffered a stroke approximately a year ago when she had left-sided weakness. Employee denied visual and auditory hallucinations and believed the harassment she experienced at work caused her present emotional and physical condition. Dr. Gonzales diagnosed mixed-anxiety-depressive disorder and a right cerebral infarct. (Gonzales report, May 20, 2001).

105) On May 8, 2001, Employee complained of abdominal pain. She reported abdominal and vaginal pain extending into her pelvis and believed she had been sexually assaulted. A pelvic exam was performed with no physical findings corresponding with her acute abdominal pathology. Employee was referred to her primary physician. (Emergency Room report, May 8, 2001).

106) On June 14, 2001, Employee complained of jaw clicking, chest pain, shortness of breath, abdominal pain, vomiting, nausea, pelvic tingling and burning, and sometimes her left arm and leg felt dead. Dr. Bakker diagnosed with chronic pelvic pain and depression with somatic features. (Bakker Chart Note, June 14, 2001).

107) On June 22, 2001, the superior court involuntarily committed Employee to the mental health unit because of a mental illness gravely disabling her or presenting a likelihood of causing serious harm to herself or others. Employee reported several men followed her to Anchorage and then followed her back to Juneau and sexually assaulted her at home the previous night. A sexual assault examination found no evidence of an assault. Employee explained the pain as underneath her and stated people were watching her and phoning her about sex. She stated she was admitted to a hospital for stroke in 1996 and she bad been taking medications for her stroke and pelvis. Employee denied any visual or auditory hallucinations. (Petition for Initiation of Involuntary Commitment, June 22, 2001; Notice of Respondent's Arrival at Evaluation Facility, June 22, 2001; Emergency Room report, June 22, 2001; Verner Stillner, M.D., Psychiatric Evaluation, June 22, 2001).

108) On June 27, 2001, Employee was discharged early from the mental health unit because she was no longer gravely disabled or likely to cause serious harm as a result of mental illness. (Notice of Release, June 27, 2001).

109) On July 3, 2001, Dr. Bakker referred Employee to a gynecologist for chronic pelvic pain. (Bakker Medical report, July 3, 2001).

110) On October 10, 2001, a pelvic ultrasound showed Employee's ovaries were enlarged and a cyst in her left ovary. (Ultrasound report, October 10, 2001).

111) On August 2, 2002, Employee complained of chest pain, headache and arm pain. She was concerned electrical surges in her new house would give her another stroke. Employee's mother stated she lived with her and there were no electrical surges. Employee said she felt a stroke coming on causing chest pain. She refused an ECG and was released. (Emergency Room report, August 2, 2002).

112) On December 19, 2002, the superior court involuntarily committed Employee to the mental health unit because of a mental illness gravely disabling her or presenting a likelihood of causing serious harm to herself or others. Employee feared her appliances were emitting forces which caused her knees, shoulders, and abdomen to be greatly distressed. She made numerous

harassing calls to Health and Social Services and Juneau Alliance for Mental Health Inc. (JAMHI). Employee denied hearing voices but unusual sensations greatly distressed her. (Petition for Initiation of Involuntary Commitment, December 19, 2002; Notice of Respondent's Arrival at Evaluation Facility, December 19, 2002; Robert Schults, M.D., Psychiatric Evaluation, December 19, 2002).

113) On December 26, 2002, the superior court found Employee to be mentally ill and as a result, gravely disabled. She was committed for a period of time not to exceed 30 days. (Findings and Conclusions and Ex Parte Order, December 26, 2002).

114) On January 17, 2003, Employee was discharged from the mental health unit early because she was no longer gravely disabled or likely to cause serious harm as a result of mental illness. Dr. Schults prescribed Zyprexa. (Notice of Release, January 17, 2003; Schults Discharge Summary, January 17, 2003).

115) On February 13, 2003, Employee stated she was late for her medical appointment because she had a stroke. She stated she did not have schizophrenia but agreed to take Zyprexa because Dr. Schults ordered her to. (Ellis Medication Management Note, February 13, 2003).

116) On April 13, 2003, Employee called 911 because her back and hip hurt. She complained of intermittent blindness, difficulty breathing and shattering discomfort in her spine and right hip. Employee was stressed and requested psychiatric consultation, which was provided. Employee felt she was being influenced inappropriately by electrical functions around her and felt like her bones were about to explode. She denied hallucinations and was willing to take medications. Employee was admitted on a voluntary basis and restarted on Zyprexa. (Emergency Room Report, April 13, 2003; Schults Psychiatric Evaluation, April 13, 2003).

117) On April 18, 2003, Employee was discharged from the mental health unit. (Schults Discharge Summary, April 18, 2003).

118) On October 10, 2003, Employee filed a claim for a September 1996 work injury and another claim for the January 1998 injury. For both claims, she listed 1990, 1991, 1992-1996 as the "Injury Date" and requested TPD from 1990 through 1996. Under "Describe how the injury or illness happened," she wrote, "harass at work, stress out on the job, stress on the job, force termination, saying an 'F' word by [G.C.] assaulted, got a nervous breakdown, fatigue pushed cart, assaulted, feel letter opener" and under "Part of body injured" she wrote "left body, stiffness of the jaw, mouth, tongue and neck, right leg (pushed cart on me); stomach, chest, abdominal

pain, arms." She wrote "leg, foot and back pain, pelvis pain, stress, harass, fatigue, nervous breakdown, force termination, lifting boxes 25 lbs 150 boxes" under "Nature of injury or illness." The reason she provided for filing the claim was "got a mild stroke, stress on the job, got a nervous breakdown, assaulted." (Workers' Compensation Claim AWCB Case No. 199629747, October 10, 2003; Workers' Compensation Claim AWCB Case No.199828759, October 10, 2003).

119) On November 4, 2003, Employer answered Employee's October 10, 2003 claim asserting the copy of the claim was illegible and it reserved its right to prepare and file an answer until served with a legible copy. (Answer, November 4, 2003).

120) On December 30, 2003, Employee stated she was claiming stress and multiple body parts were injured as a result of harassment by co-workers from date of hire in April 1990 to the last day of employment on January 8, 1998. She amended her claim to request TTD and TPD with periods to be determined later, PPI, and medical and transportation costs. The workers' compensation officer suggested Employee "consider retaining an attorney to assert with her claims as 'stress' injuries are very difficult to prove" and he gave her a list of attorneys. (Prehearing Conference Summary, December 30, 2003).

121) On January 20, 2004, Employer amended its answer to Employee's claims for benefits contending there was no medical evidence linking her mental stress and physical ailments to her employment with Employer, she took no action pursing her claims until October 10, 2003, so her claims are barred under AS 23.30.105, she failed to give written notice of the work injury within 30 days so her claims are barred under AS 23.30.100, Employee must prove her claims by a preponderance of the evidence because she failed to timely report her injuries, she failed to prove her work stress was the predominate cause of a mental injury, Employee failed to demonstrate actual evidence, objectively measures, was the source of extraordinary and unusual mental stress, there was no evidence linking her inability to work to work stress, there was no evidence she suffered a PPI as a result of a work-related injury and there was no evidence linking her need for medical treatment to her employment with Employer. (Amended Answer, January 20, 2004).

122) On January 28, 2004, Employee said C.H.C. harassed her by having romantic inclinations through G.C. and they communicated with her mentally. She described a history of seizures due to her stroke. Employee stated she had a history of stroke, which caused her mental breakdowns, pelvic problems and ovarian cysts and a variety of stressors and anxious worries. She provided a

list of 48 stressors. Employee denied visual hallucinations but stated people were talking about her and two people are contacting and harassing her mentally. Her Zyprexa was increased and Seroquel was added for anxiety. (Stillner Psychiatric Re-evaluation, January 28, 2004).

123) On May 16, 2004, Employee sought care for shortness of breath, chest pain, abdominal pain and an anxiety attack. She had not taken Zyprexa for the past six days. Employee stated a coworker at Department of Labor inserted his penis into her this week and last week. She refused a sexual assault exam and went home with her parents. (Emergency Room Report, May 16, 2004).

124) On May 19, 2004, Employee was charged with third degree criminal mischief for damaging the property of C.H.C. in the amount of $500 or more. (Criminal Information, May 19, 2004).

125) On June 22, 2004, Employee was released from police custody and was ordered not to contact C.H.C. or her residence, family or place of employment. (Judicial Assignment & Conditions of Release Order-Own Recognizance, June 22, 2004).

126) On June 23, 2004, Employee said tion a conservator had been appointed to handle her financial affairs. (Employee Deposition, June 23, 2004 at 10). From April through July 1990, Employee worked in a nonpermanent position for the Department of Revenue as a document processor. (*Id*. at 57-58). She left the job because it was nonpermanent. (*Id*. at 60). Next she worked at the Department of Fish and Game, Division of Licensing as a data processing clerk from October 1990 through January 1991 in a nonpermanent job. (*Id*. at 61). People in the data processing unit harassed Employee; she said, "[T]hey're stalking. They're watching me. They're staring at me. They are looking at me from head to toe. They are talking, they are stalking, and they are tracking -- they are talking behind my -- they are talking something on me that it makes me scared, and annoyed." (*Id*. at 68-69). When asked what she meant my stalking, Employee said,

> They are watching me. They are watching on me. They are looking -- they are looking -- they are staring at me. They are staring me and looking at me from head to -- they are looking at me so bad, and they are looking at me from head to toe. And they are like doing some talks so that I -- they could get my -- so that they can get my attention, and then I would look at them and listen to them. (*Id*. at 69-70).

She stated they kept walking nearby her to get her attention so she would look at them and stalk them. (*Id*. at 70). They gave her a nervous breakdown because "they were saying something that I don't know about, and it makes me scared . . . and it also end up if I don't have sleep sometimes at night, and makes me cry all the time. . . ." (*Id*. at 70-71). Employee said a male co-worker, G.C., threatened her when he was talking on the phone, he said he wanted to investigate and he stared at her bad. (*Id*. at 71). He thought she made fun of him because he had ripped pants and got upset. (*Id*. at 72). He made her nervous when he kept walking around her, talking and staring at her. (*Id*. at 72). The next day a guy in a long jacket and a woman in a skirt came to the office and checked the place where she sat and investigated. (*Id*. at 72). Employee never told her supervisor of the people staring at her and harassing her. (*Id*. at 75). She worked until she became ill and she gave her boss a letter stating she could not work anymore. (*Id*. at 75). Employee worked as a document processor for the Department of Revenue again from April 1991 until July 1991 in a nonpermanent position. (*Id*. at 64) She worked from October 1991 through January 1992 for the Department of Fish and Game in a nonpermanent position. In April 1992, Employee went back to work for the Department of Revenue in a nonpermanent position until November 1992 as a document processor. (*Id*. at 77-78). The harassment continued during that time. (*Id*. at 78). In November 1992, Employer hired her for a permanent position as a document processor in the Department of Revenue. (*Id*. at 78-79). She worked until Employer terminated her employment on January 8, 1998. (*Id*. at 79). As a document processor, Employee processed Permanent Fund applications, opened mail, put in the batch number, filed, pulled files, and lifted boxes weighing 20 to 25 pounds all day. (*Id*. at 83). She testified she already had a stroke when she filed her October 1997 injury report. (*Id*. at 86). When asked to describe the pressures and harassment she meant to describe in the October 1997 injury report, Employee stated, "Because of the stress on the job, the fatigue -- because of the pressure of the supervisor -- supervisors. There were -- because of the -- and other employee harassing me there. It caused me a nervous breakdown, and stress on the job, and fatigue, and it went to stroke." *Id*. at (86-87). When asked to describe the harassment, Employee stated her supervisor's boss sometimes threw chairs and one time it almost hit her and it made her scared. (*Id*. at 87-88). She did not know why he was upset; he acted like that if he did not like something. (*Id*.). A co-worker pushed a cart and it hit her hip. (*Id*. at 88). She reported it to her supervisor but did not fill out an injury report because she did not know she needed to and they

did not tell her to. (*Id*. at 88-89). Afterwards, she suffered a nervous breakdown and it gave her stroke. (*Id*. at 89). When asked what she meant by "stroke", Employee stated, "Like a stroke. I got a stroke, you know, like if I got a nervous breakdown, it make me kind of twisting my tongue. My - - neck is kind of stiff, you know, like that, and I can't talk, it's twisting my -- you know, like that. It's twisting my neck." G.C. said an "F" word to her, that she "is a fucking woman" and I reported it and talked to Cindy Spanyers, a union representative. (*Id*. at 89-90). Her co-workers kept stalking her and harassing her. (*Id*. at 93). She did not tell her psychiatrist about the job harassment because she was scared she might be fired so he just gave her depression medication. (*Id*. at 95). She reported some incidences of harassment, like the cart and cabinet, but not others because she was afraid she would be terminated. (*Id*. at 96-97). Employee reported an incident when a co-worker was talking behind her cubicle wall, pushing the wall and shaking her wall, cabinet and table which scared her. (*Id*. at 98). They were making fun of her and it made her upset. (*Id*. at 98). Her union representative told her to use her radio so she would not be distracted by the talking and shaking. (*Id*. at 99). When she came back from sick leave, her supervisor told her to do something and she did not do it right away because she was on her break. (*Id*. at 109-110). Her supervisor told her if he wanted her to do something, he wanted her to do it right away. (*Id*. at 110). Employee told him she was on her break and taking her time and he got mad. (*Id*.). The human resource person harassed her by forcing her to meet a quota right away after coming back from sick leave. (*Id*. at 103). She told Employee it is her job to meet the quota and she was expected to meet the quota. (*Id*. at 103-104). Employee told the human resources person she just got back from sick leave and she did not have the right to force her to meet a quota. (*Id*. at 104). The human resources person pointed her finger at Employee and was upset with her. (*Id*.). The government was conducting an investigation of Employee and she could hear them talking in her home. (*Id*. at 107). Sometimes she saw them outside of the office and they would look at her "so bad" but she does not see them anymore but believed they were still investigating her. (*Id*. at 107-108). Employee's stroke started in September or October of 1996 and was the reason she started working part-time in 1997. (*Id*. at 110-111). She knew it was a stroke because she felt stiff, she got a stiff neck, tongue and jaw, and her jaw was shaking. (*Id*. at 111). She wrote "feel letter opener poke" on her 2003 claims because she felt like a letter opener was poking her when she urinated and she believed G.C. was hurting her by witchcraft and she wrote "assault" for the cart incident. (*Id*. at

128). Employee contended she was terminated because she needed to present a letter from her doctor and her doctor did not come back to his job until January 8, 1998. (*Id*. at 131). She asked her supervisor if she could have an extension to find another doctor and he said he could not give her another extension because she ran out of family leave. (*Id*.). Employee initially denied any legal action against her for stalking. (*Id*. at 146-147). She worked for McDonald's in May 1999 but her employment was terminated in the same month. (*Id*. at 157). There is a restraining order precluding Employee from going to the State Office Building because she was accused of "annoying" C.H.C. (*Id*. at 187). C.H.C filed a complaint for harassment and got a restraining order. (*Id*. at 188). Employee was arrested after going to the State Office Building. (*Id*. at 189). G.C. filed a complaint that Employee harassed him. (*Id*. at 190-191).

127) On June 25, 2004, Employee was charged with harassment for making a telephone call threatening physical injury. (Criminal Information, June 25, 2004).

128) On June 25, 2004, Employer denied all benefits contending Employee failed to timely report her injuries, failed to timely file a claim, failed to provide medical evidence linking the work injury to her disability or need for medical treatment and did not experience extraordinary or unusual work stress. The division's file contains only the first page of the controversion notice and not the back page, which contained notification of the AS 23.30.110(c) deadline. (Controversion Notice, June 25, 2004).

129) On November 7, 2004, Employee said she found an attorney that could help process her claim and he requested a copy of her files. (Letter, November 7, 2004).

130) On November 16, 2004, a workers' compensation officer told Employee a copy of her file would cost approximately $420-$525 due to the file's size and her attorney could come into the office and review it at no cost with her written consent. (Letter, November 16, 2004).

131) On April 4, 2006, Employee stated she and her boyfriend broke up because of the things G.C. and C.H.C. are doing to her and her children. She refused to explore the possibility it was a delusion and denied hallucinating. (Schults Medication Management Note, April 4, 2006).

132) On June 18, 2007, Employee believed her former boyfriend was currently involved with her "nemesis" C.H.C. and she reported auditory hallucinations telling her about their activities. (Schults Psychiatric Assessment Update, June 18, 2007).

133) On November 7, 2007, Employee continued to believe C.H.C. and G.C. were plotting to harm her children and reported "imagery of a religious nature that supports that." The intrusive

thoughts were interfering with her ability to fall asleep and stay asleep. (Schults Psychiatric Assessment Update, November 7, 2007).

134) On February 19, 2008, Employee reported nightmares and thinking about the need to protect her family from C.H.C. and G.C. She was experiencing auditory hallucinations and intrusive thoughts about the potential harm to her and her children from C.H.C. and G.C. (Schults Psychiatric Assessment Update, February 19, 2008).

135) On April 17, 2008, Employee continued to believe C.H.C. and G.C. were out to harm her. She thought about suing them but would not because it was expensive and time consuming. (Schults Psychiatric Assessment Update, April 17, 2008).

136) On September 3, 2008, Employee continued to report some paranoid thoughts and felt G.C. continued to have long distant relations with her. She acknowledged it was a symptom of her illness. Dr. Schults diagnosed chronic paranoid schizophrenia. (Schults Psychiatric Assessment Update, September 3, 2008).

137) Employee received Social Security Disability from March 2000 through December 2017. (Social Security Administration Breakdown of Payments, August 3, 2017).

138) On April 29, 2010, Employee believed G.C. and C.H.C. have had sexual relationships with her and her daughter. She reported intrusive memories she relived frequently. Employee agreed she was not tolerating a decrease in her medications and was fine with a higher dose. Her Haldol dosage was increased. (Schults, M.D. Progress Note, April 29, 2010).

139) On July 28, 2011, Employee felt wonderful about her life. She was getting telepathic lust messages from her fiancé and G.C. and C.H.C. were still talking about their desires for threesomes with her. Employee's Haldol and Eskalith dosages were increased. (Schults Progress Note, July 28, 2011).

140) On November 5, 2015, Employee requested a copy of her records. (Request for Release of Information, November 5, 2015).

141) On January 5, 2016, the division notified Employee it could not locate the file for Employee's May 27, 1999 injury at McDonald's. It mailed her a copy of her records in this case. (ICERS File Copy Request Entry; Division letter, January 5, 2016;).

142) On January 12, 2017, Employee's mother brought her to the emergency room because her mother visited her apartment and found the stove left on and the shower left on and her mother was concerned she decreased her antipsychotic medication and was more delusional. Employee

stated she saw several people having sex, including G.C., C.H.C and celebrities; and they sometimes had sex with her. She said it was happening in her head. Employee's mother stated Employee's sexual delusions were not real. Employee had not been eating or sleeping and her mother was concerned she was going to hurt herself. JAMHI obtained an ex parte order and was pursing placement but the mental health unit was out of beds. Claire Maxwell, M.D., consulted and recommended a dose of Haldol. Employee was diagnosed with acute psychosis with delusions. (Emergency Room report, January 12, 2017).

143) On January 13, 2017, Employee was admitted to the mental health unit. She stated she was living with her parents because her apartment burned down. Employee stopped taking her medications months ago because they made her sleepy. She denied having schizophrenia. Employee believed the Philippine and US governments had her under surveillance and reported she occasionally saw and heard people that were not there since she was a little girl. When asked by Dr. Maxwell what was going on, she gave a story about people, possibly co-workers, from long ago who were still bothering her. Employee said the brother of her former husband constantly molested her. When asked how he could molest her when she lived with her mother, she stated her mother would leave the room and her father was watching television. Employee reported seeing him standing at the end of her bed, and even though Dr. Maxwell told her she could not see him, Employee believed he was there. Dr. Maxwell diagnosed psychosis and restarted Haloperidol and began a trail of Mirtazapine. Employee complained of vaginal bleeding for the past two weeks. (Maxwell Initial Psychiatric Assessment, January 13, 2017).

144) On January 20, 2017, Employee was discharged from the mental health unit. During her stay, she continued to have auditory and visual hallucinations. Dr. Maxwell diagnosed Schizoaffective Disorder and prescribed Haloperidol and Mirtazapine. (Maxwell Discharge Note, January 20, 2017).

145) On January 23, 2017, Employee saw Nandi Than, M.D., for vaginal bleeding for the last 23-25 days. Dr. Than referred Employee for a pelvis ultrasound. (Than Chart Note, January 23, 2017).

146) On January 31, 2017, a pelvic ultrasound revealed no abnormality in Employee's uterus but identified a Nabothian cyst. (Ultrasound report, January 31, 2017).

147) On February 7, 2017, Employee's cervix was biopsied. Dr. Than prescribed Rocephin and Doxycycline presumptively for endometritis. (Than Chart Note, February 7, 2017).

148) On February 23, 2017, Employee reported she was feeling better and was no longer experiencing vaginal bleeding or pelvic pain. (Than Chart Note, February 23, 2017).

149) On March 30, 2017, Employee called the division and spoke with a workers' compensation technician to ask about "getting back on" workers' compensation benefits. The technician sent Employee a letter and the "Workers' Compensation and You" pamphlet, a claim form, a list of attorneys and a medical summary form. The letter explained if an employer controverted a claim on a board-prescribed controversion notice and an employee did not request a hearing within two years following the filing of the controversion notice, the claim is denied. (Letter, March 30, 2017).

150) On April 21, 2017, Employee filed an unsigned ARH requesting a hearing on a claim without specifying the two October 10, 2003 claims. She also filed an unsigned claim without selecting any benefits in dispute and filed an unsigned petition with no dispute listed. (ARH, Claim, Petition, April 21, 2017).

151) On April 24, 2017, the division rejected Employee's ARH because, "Both your claim and petition have been rejected. You have no reason to request a hearing at this time." (Letter, April 24, 2017).

152) On April 25, 2017, Employee requested TTD for the 1996 injury from "1990, 1997 to present" contending discrimination and sexual harassment caused her depression and stroke. (Claim for Workers' Compensation Benefits, April 25, 2017).

153) On June 8, 2017, Employer answered Employee's April 25, 2017 claim denying all benefits. (Answer, June 8, 2017).

154) On June 21, 2017, Employee informed the designee and Employer she has a court-appointed conservator with the Office of Public Advocacy (OPA). The designee contacted the conservator and confirmed Employee is competent to sign releases and take actions on her own behalf, including filing claims. Should Employee receive a payout, the conservator stated it would have to go through OPA as the conservatorship involved managing Employee's finances. The board designee noted the division's file was missing the 1997 controversion notice noted in Employer's June 8, 2017 Answer. (Prehearing Conference Summary, June 21, 2017).

155) On June 21, 2017, Employee requested a hearing on her claims. (ARH, June 21, 2017).

156) On June 24, 2017, Employer denied all benefits contending Employee failed to give timely written notice, failed to timely file a claim, failed to provide any evidence linking her disability,

PPI or need for medical treatment to her employment with Employer and submitted no medical bills or reports. (Controversion Notice, June 24, 2017).

157) On June 28, 2017, Employer filed controversion notices dated November 24, 1997 and June 7, 1999. (ICERS Event Entry, Controversion, June 28, 2017).

158) On July 27, 2017, the parties stipulated to not set a hearing date because discovery was still ongoing and the parties were not ready for hearing. The board designee confirmed receipt of the past controversion notices Employer filed. (Prehearing Conference Summary, July 27, 2017).

159) On August 7, 2017, Employer denied all benefits contending Employee's claims were barred under AS 23.30.100 and AS 23.30.105, she failed to present any evidence link her disability, PPI or need for medical treatment to her employment, and failed to submit any medical reports or bills. (Controversion Notice, August 7, 2017).

160) On January 19, 2018, Eric Goranson, M.D., a psychiatrist, examined Employee for an EME. He diagnosed non-work-related paranoid schizophrenia with somatic and persecutory delusion and obsessional features. Dr. Goranson stated, "Although, there is still no clear etiology, there is no evidence that schizophrenia is caused by any specific event (other than substance abuse). Schizophrenia is considered to be a product of genetic, constitutional, and developmental factors and is not work related." He opined Employee's psychiatric diagnosis is a product of preexisting genetic, constitutional and developmental factors and her work for Employer was not the predominate cause of any diagnosed psychiatric condition or Employee's need for any mental health treatment. When asked to identify the "actual events" causing Employee's mental condition, Dr. Goranson stated it is impossible to answer. He noted Employee began having delusional beliefs about her coworkers more than 20 years ago that had nothing to do with the workplace or the individuals involved and there was no objective evidence any actual event occurred. He opined her work for Employer was not the cause of Employee's need for mental health treatment. Dr. Goranson noted Employee was clearly unable to work on the basis of her severe psychiatric illness but any restrictions was based upon her preexisting and non-work related paranoid schizophrenia. (Goranson EME report, January 19, 2018).

161) On January 19, 2018, Lynne A. Bell, M.D., a neurologist, examined Employee for an EME. Employee's neurological examination was normal and Dr. Bell found no evidence of a neurological disease nor any indication she ever sustained a neurological event, like a stroke. She stated Employee's claimed symptoms of a stroke are consistent with psychiatric symptoms.

She opined Employee did not have a neurological condition. (Bell EME report, January 19, 2018).

162) On February 26, 2018, Employer denied all benefits related to stroke based on Dr. Bell's EME report. (Controversion Notice, February 26, 2018).

163) On March 27, 2018, Employer denied all benefits based on Drs. Bell's and Goranson's EME reports. (Controversion Notice, March 27, 2018).

164) On May 25, 2018, Employer filed an ARH on Employee's October 10, 2003 and April 25, 2017 claims. (ARH, May 25, 2018).

165) On June 5, 2018, Employee requested a second independent medical evaluation (SIME) and opposed a hearing on her claims until she had more time for discovery. (Petition, June 5, 2018).

166) On July 6, 2018, Employer opposed Employee's June 5, 2018 petition requesting a SIME contending Employee failed to raise any medical dispute between her physician and the EME physicians necessitating a SIME and she failed to attach a completed SIME form with the corresponding medical records. (Objection, July 6, 2018).

167) On July 11, 2018, the parties agreed to bifurcate the hearings on Employee's June 5, 2018 petition and her claims and agreed to an August 7, 2018 hearing on Employee's June 5, 2018 petition requesting a SIME. (Prehearing Conference Summary, July 11, 2018).

168) On July 17, 2018, Employee filed a completed SIME form. (SIME form, July 17, 2018).

169) On July 30, 2018, a representative from Employer's attorney's office called the division to cancel the August 7, 2018 hearing because the parties agreed to go forward with the SIME and requested a prehearing conference. (ICERS Event Entry, Phone Call, July 30, 2018).

170) On July 30, 2018, Employee called the division and the workers' compensation technician informed her Employer wanted to cancel the August 7, 2018 hearing because it agreed to a SIME. Employee agreed to cancel the hearing. (ICERS Event Entry, Phone Call, July 30, 2018)

171) On August 14, 2018, Employer withdrew its July 6, 2018 opposition and the parties agreed to a SIME. (Prehearing Conference Summary, August 14, 2018).

172) On September 11, 2018, the parties filed a fully signed SIME form. (SIME form, September 11, 2018)

173) On December 3, 2018, Ronald Turco, M.D., a psychiatrist, examined Employee for a SIME. Dr. Turco diagnosed "paranoid schizophrenia with some degree of persecutory

delusions." He opined Employee chronic paranoid schizophrenia pre-existed the September 5, 1996 and January 8, 1998 work injuries. Dr. Turco stated it was not likely that any acceleration or aggravation occurred, except when she lost her job because she was a bit more depressed. He stated it which would have likely lasted just a few months, but did not produce a permanent change. Dr. Turco ruled out the work injuries or any work experience as a contributing factor to her disability. He recommended continuing Haldol and continuing psychiatric treatment but stated her need for treatment was not related to her work. Dr. Turco stated Employee's delusional beliefs are longstanding and likely originated in a biological condition and in early development. He opined Employee is disabled as a result of her psychotic process and should continue to receive treatment for her non-work related illness, including Haldol and continuing psychiatric care. Dr. Turco opined Employee's medical care was reasonable and necessary but not related to work. (Turco SIME report, December 3, 2018).

174) On January 4, 2019, Jonathan Schleimer, M.D., a neurologist, examined Employee for a SIME. Dr. Schleimer found no objective neurological deficits and no evidence of any neurological disorder including stroke. Upon neurologic examination, he found only mild essential-type tremor, which he stated is often from anxiety or medication side effects. Dr. Schleimer opined her employment was not a substantial factor in her claimed neurologic injuries and her stroke is likely somatically based. (Schleimer SIME report, January 4, 2019).

175) On January 9, 2019, Employer requested Employee's claims be dismissed under AS 23.30.100, AS 23.30.105 and AS 23.30.110(c). (Petition, January 9, 2019).

176) On January 30, 2019, Employer requested a hearing on its January 9, 2019 petition. (ARH, January 30, 2019).

177) On February 12, 2019, Employee opposed Employer's January 9, 2019 petition. She contended a workers' compensation officer told her she needed an attorney to help her with her case and she looked for an attorney but no one would take her case. Employee contended she could not remember when she filed her first claim and her files were lost when her apartment burned down. She contends she finally found physicians, Drs. Hunter-Joerns and Gonzales, willing to treat her mild stroke and depression. Employee contended her MRI showed slight focal atrophy and the medical records dated January 19, 2001 and June 22, 2001 noted left sided weakness. Employee contended she has been taking medicines for mild stroke, depression, schizophrenia, and shaky hands and another to prevent Parkinson's disease. She contended she

is a little bit better than she was before because she could not write, get out of bed or swallow food and her head and hands would shake and her tongue was stiff. Employee contended her symptoms were terrible and prevented her from taking any actions in her case. She contended no one told her she needed to file an injury report or claim, not even her supervisor or personnel, until she was terminated from her job. (Answer, February 12, 2019).

178) On February 27, 2019, the parties agreed to schedule an oral hearing on April 9, 2019 to hear Employee's claims and Employer's January 9, 2019 petition. (Prehearing Conference Summary, February 27, 2019).

179) On March 19, 2019, Employee filed a hearing brief contending her claims should not be dismissed. She contended a past workers' compensation officer told her she needed to find a lawyer to represent her for her claim. Employee contended she listened to the officer and tried to find an attorney by calling attorneys on the attorney's list but none of them were interested in taking her case. She contended most of the attorneys requested money and others discriminated against her. Employee contended she became more stressed and depressed after trying unsuccessfully to get an attorney causing her to have a stroke, nervous breakdown and schizophrenia. She contended she could not sleep and could not help crying or shaking because of the voices she can hear. Employee contended she separated from her husband and sent her children to her brother-in-law because she could not take care of them. She contended she feels a little bit better now after taking medicine and getting counseling and can pursue her claim. Employee contends she suffered a mild stroke and is taking a prescription for high blood pressure and Haldol for schizophrenia. She contended her October 12, 1995 performance evaluation shows she had a problem at work, which is why she used all of her sick and annual leave. Employee contended she could no longer take what her co-workers were doing to her and she was terminated after she did not have a letter from her doctor opining she was fit for duty. She contended she requested more time to find a doctor to evaluate her but she was fired. Employee sought help with her union representative, Cindy Spanyers, but her union could not help her because she did not have a letter from her doctor. (Employee hearing brief, March 19, 2019).

180) On March 19, 2019, Employee filed evidence for hearing including the May 20, 1999 injury report, her October 12, 1995 performance evaluation, and her October 12, 1995 letter. (Employee Hearing Evidence, March 19, 2019).

181) On April 9, 2019, Employer filed and served on Employee two affidavits, one from Murlene Wilkes and another from J.D. Daniels. Murlene Wilkes stated she filed the June 25, 2004 Controversion Notice, it was the standard and customary business practice of Harbor Adjustment Service, the claims administrator in 2004, to serve employees with both the front and back page of the Controversion Notice form 07-6105 and it was common practice to retain only the customized front page in the file. J.D. Daniels stated he worked for Northern Adjusters in the late 1990s, the claims administrator at that time, it was the standard and customary business practice of Northern Adjusters to serve employees with both the front and back pages of the Controversion Cotice form 07-6105 and it was common practice to retain only the customized front page in the file. (Affidavits, April 9, 2019).

182) Employee did not object to Employer's late filed affidavits. (Record).

183) Employee contended her supervisor knew about her work injury and no one told her she needed to file an injury report or claim. She contended she delayed pursuing her claim because she was ill and unable to. Employee contended Dr. Gonzales' medical reports prove her claims. (Employee hearing arguments).

184) Employer contended the affidavits from Murlene Wilkes and J.D. Daniels authenticate the controversions filed in 1997, 1999 and 2004. It contended the controversion notices informed Employee of the AS 23.30.110(c) deadline and how to find help. Employer contended attorney Choate's October 29, 1997 letter informed Employee about the statute of limitations. It contended Employee's unreasonable delay in pursing her case significantly prejudiced it because treating physicians and other witnesses died or became unavailable, evidence has degraded due to the passage of time and the division's case file required supplementation by Employer is 2017. Employer contended there is no authority to waive Employee's failure to meet deadlines and it would be unjust and unfair to reach the merits of her claims. It contended Employee is not credible because she provided inconsistent testimony and concealed her symptoms from her physicians. (Employer hearing arguments).

185) At hearing, Cindy Spanyers testified she remembered Employee was fired from her job but did not remember anything else about her termination because it was so long ago. (Spanyer).

186) At hearing, Employee testified she was harassed at work since 1990. She resigned in 1990 because she could not take the harassment anymore. In 1991, she went back to work because she needed money. Employee was paranoid and she saw and heard things. Her co-workers

continued to harass and annoy her and she got sick because of the harassment and had a nervous breakdown. Employee's co-workers would bang and shake the wall. Her 1995 performance evaluation showed the problems she was having with her co-workers. She started taking sick leave to get rest but she could not sleep because she kept thinking about what those people did to her. One time a co-worker pushed a cart which hit her hip, another time a co-worker opened a cabinet and almost hit in her in the face; and her co-workers called her a slut. Employee ran out of sick leave and went back to work. One day she was on her break and her supervisor told her to get back to work. She was unable to get back to work right away and her supervisor got mad and took her to the personnel manager. The personnel manager screamed, yelled and pointed her finger at Employee. She was embarrassed because her co-workers heard what happened. Employee was not able to meet her quota because she was still sick even though she was trying her best. Then she was fired and she went to her union to tell them what happened. Employee was fired because she was unable to get a certification from her doctor and she was not given the opportunity to find another doctor. After that, Employee had a mild stroke in 1998 or 1999. The workers' compensation officer told Employee to look for an attorney. She was not aware of the 30-day notice requirement or the two-year time limit. Employee tried to get an attorney but no one would take her case. She started feeling better after taking medication and she went back to workers' compensation to pursue her claim. Employee has a conservator with the OPA but no guardian. (Employee).

PRINCIPLES OF LAW

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.** Compensation is payable under this chapter in respect of disability or death of an employee. (In effect prior to November 7, 2005)

For work injuries occurring prior to the November 7, 2005 effective date of the 2005 amendments to the Alaska Workers' Compensation Act, a work injury is compensable where the

employment is "a substantial factor" in bringing about the disability or need for medical care. *Ketchikan Gateway Borough v. Saling*, 604 P.2d 590, 597-98 (Alaska 1979). A work injury is a substantial factor in bringing about the disability or need for medical care if the claimant would not have suffered disability at the same time, in the same way, or to the same degree but for the work injury. *Fairbanks North Star Borough v. Rogers & Babler*, 747 P.2d 528, 532-33 (Alaska 1987).

In *Runstrom v. Alaska Native Medical Center*, 280 P.3d 567, 572 (Alaska 2012), the Alaska 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. . . .
>
> **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 employer.
>
> (b) The notice must be in writing and 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 on whom legal process may be served or who is in charge of the business in the place where the injury occurred.
>
> (d) Failure to give notice does not bar a claim under this chapter
>
> (1) if the employer, an agent of the employer in charge of the business in the place where the injury occurred, or the carrier had knowledge of the injury or death and the board determines that the employer or carrier has not been prejudiced by failure to give notice;
>
> (2) if the board excuses the failure on the ground that for some satisfactory reason notice could not be given;

> (3) unless objection to the failure is raised before the board at the first hearing of a claim for compensation in respect to the injury or death.

An employee must provide formal written notice to his employer within 30 days of an injury in order to be eligible for workers' compensation benefits. AS 23.30.100. For reasons of fairness and based on the general excuse in AS 23.30.100(d)(2), the Alaska Supreme Court has read a "reasonableness" standard, analogous to the "discovery rule" for statutes of limitations, into the statute. *Cogger v. Anchor House*, 936 P.2d 157, 160 (Alaska 1997). Under this standard, the 30-day period begins when "by reasonable care and diligence it is discoverable and apparent that a compensable injury has been sustained." *Id*. (*quoting* 3 Arthur Larson, Workmen's Compensation § 78.41, at 60 (1971)). *Hammer v. City of Fairbanks*, 953 P.2d 500 (Alaska 1998) held "knowledge" does not appear to be a "term of art." In context, it means no more than "awareness, information, or notice (footnote omitted) of the injury . . . ." *Id*. at 505. A claimant's statutory obligation to provide notice of injury to his employer does not arise until the claimant becomes aware of the work-related nature of the injury. *Kolkman v. Greens Creek Mining Co.*, 936 P.2d 150 (Alaska 1997). In *Kolkman*, the employer was aware the employee had a heart attack soon after it happened, but did not know he was alleging work was the cause. The Court rejected the proposition that notice to an employer must include notice the injury was work related.

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

circumstances for this difference in the form by which the information was conveyed to prejudice the employer. *Id*. at 492.

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 Alaska 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. *Id*. at 1159.

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

> bar to compensation unless objection to the failure is made at the first hearing of the claim in which all parties in interest are given reasonable notice and opportunity to be heard.
>
> (c) If a person who is entitled to compensation under this chapter is mentally incompetent or a minor, the provisions of (a) of this section are not applicable so long as the person has no guardian or other authorized representative, but are applicable in the case of a person who is mentally incompetent or a minor from the date of appointment of a guardian or other representative, or, in the case of a minor, if no guardian is appointed before the person becomes of age, from the date the person becomes of age. . . .

The purpose of AS 23.30.105(a) is to "'protect the employer against claims too old to be successfully investigated and defended.'" *Morrison-Knudson Co. v. Vereen,* 414 P.2d 536, 538 (Alaska 1966) (citing 2 Larson, Workmen's Compensation s 78.20 at 254 (1961)). However, an employee must have "actual or chargeable knowledge of his disability and its relation to his employment" to start the running of the two year period under §105(a). *Collins v. Arctic Builders, Inc.,* 31 P.3d 1286, 1290 (Alaska 2001). In *Leslie Cutting Inc. v. Bateman*, 833 P.2d 691 (Alaska 1992), the Court clarified that when an injured worker believed a condition was controlled by medication, the statute of limitations at AS 23.30.105(a) started running only when the worker discovered the treatment no longer controlled the disability. *Id.* at 694. "The mere awareness of the disability's full physical effects is not sufficient" to trigger the running of the statute. *Id.* The statute is only triggered when "one knows of the disability's full effect on one's earning capacity." *Id.* Similarly, in *Egemo v. Egemo Construction Co*., 998 P. 2d 434 (Alaska 2000), the Court held the statute of limitations at AS 23.30.105(a) starts running only when the injured worker (1) knows of the disability, (2) knows of its relationship to the employment, and (3) must actually be disabled from work. *Id.* at 441. A claim is not "ripe," requiring filing under §105(a) until the work injury causes wage loss. *Id.* at 438-439.

> **AS 23.30.110. Procedure on claims.**
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> . . . .
>
> (c) . . . . If the employer controverts a claim on a board-prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied.

Statutes with language similar to AS 23.30.110(c) are referred to by the late Professor Arthur Larson as "no progress" or "failure to prosecute" rules. "[A] claim may be dismissed for failure to prosecute it or set it down for hearing in a specified or reasonable time." 7 Arthur Larson & Lex K. Larson, *Workers' Compensation Law*, Sec. 126.13 [4], at 126-81 (2002). The statute's object is to bring a claim to the board for a decision quickly so the goals of speed and efficiency in board proceedings are met. *Providence Health System v. Hessel,* AWCAC Decision No. 131 (March 24, 2010).

AS 23.30.110(c) requires an employee to prosecute a claim in a timely manner once a claim is filed, and controverted by the employer. *Jonathan v. Doyon Drilling, Inc.*, 890 P.2d 1121, 1124 (Alaska 1995). Only after a claim is filed, can the employer file a controversion to start the time limit of § 110(c). *Wilson v. Flying Tiger Line, Inc*. AWCB Decision No. 94-0143 (June 17, 1994). An employee may file subsequent claims for additional benefits, and the employer must file a controversion to start the time limit of § 110(c) against the subsequent claims. *Wicken v. Polar Mining*, AWCB Decision No. 05-0308 (November 22, 2005).

The Alaska Supreme Court has compared § 110(c) to a statute of limitations. *Suh v. Pingo Corp*., 736 P.2d 342, 346 (Alaska, 1987). In *Tipton v. ARCO Alaska, Inc.*, 922 P.2d 910, 912, 913 (Alaska 1996), the Alaska Supreme Court noted the language of § 110(c) is clear, requiring an employee to request a hearing within two years of the controversion date or face claim dismissal. However, the court also noted the statute of limitations defense is "generally disfavored," and neither "the law [n]or the facts should be strained in aid of it." *Id.* at 912-913.

Certain events relieve an employee from strict compliance with the requirements of §110(c). In *Bohlmann v. Alaska Const. & Engineering,* 205 P.3d 316 (Alaska, 2009), the Court, applying *Richards,* held the board has a specific duty to inform a *pro se* claimant how to preserve his claim under §110(c). Consequently, *Richards* has been applied to excuse noncompliance with §110(c) when the board failed to adequately inform a claimant of the two year time limitation. *Dennis v. Champion Builders,* AWCB Decision No. 08-0151 (August 22, 2008). Certain "legal" grounds might also excuse noncompliance with §110(c), such as lack of mental capacity or incompetence, and equitable estoppel against a governmental agency by a *pro se* claimant.

Tonoian v. Pinkerton Security, AWCAC Decision No. 029 (January 30, 2007). Equitable estoppel against a governmental agency requires a litigant to establish (1) the governmental body asserted a position by conduct or words; (2) the litigation acted in reasonable reliance on the assertion; (3) the litigant suffered resulting prejudice; and (4) estopping the dismissal of the litigant's claim would serve the interest of justice so as to limit public injury. *Id*.

In a recent decision reversing a claim dismissal, the Commission held that an SIME request, filed nearly eight months *after* the expiration of time under § 110(c), in conjunction with an opposition to dismissal, filed one and one-half years *after* the expiration of time, "could be considered an *implicit* request for an extension of time," since they demonstrated the claimant was "not sitting on his rights, but was actively pursuing his claim." *Davis v. Wrangell Forest Products*, AWCAC Decision No. 256 (January 2, 2019) at 24 (emphasis added). *Contra Hessel* at 12 (writing the "object of the statute is not only to generally pursue the claim, it is to bring it to the board for a decision quickly so that the goals of speed and efficiency . . . are met."). It faulted "the Board" for not notifying the claimant his time to request a hearing *had already expired* when he petitioned for a second SIME. *Id*. at 25. *But see Denny's of Alaska v. Colrud,* AWCAC Decision No. 148 (March 10, 2011) at 14 (declining to require the board to correct erroneous information concerning a § 110(c) deadline after time had already run). The Commission then suggested, "In the future, the Board could avoid this kind of situation by establishing a practice of advising a claimant at the first prehearing after a claim and controversion have been filed, of the date by which a hearing needed to be requested, absent any extensions of time." *Davis* at 25. *Contra Hessel* at 17-19.

Technical noncompliance with § 110(c) may be excused in cases where a claimant has substantially complied with the statute. *Kim v. Alyeska Seafoods, Inc.,* 197 P.3d 193 (Alaska, 2008), *accord Omar v. Unisea, Inc.,* AWCAC Decision No. 053 (August 27, 2007) (remanded to the board to determine whether the circumstances as a whole constituted compliance sufficient to excuse failure to comply with the statute). The Alaska Supreme Court stated because § 110(c) is a procedural statute, its application is directory rather than mandatory, and substantial compliance is acceptable absent significant prejudice to the other party. *Kim* at 196. However, substantial compliance does not mean noncompliance, *id.* at 198, or late compliance, *Hessel* at

12, and although substantial compliance does not require the filing of a formal affidavit, it nevertheless still requires a claimant to file, within two years of a controversion, either a request for hearing, *id.*, or a request for additional time to prepare for a hearing. *Colrud* at 11. Attending prehearings, an employer's medical evaluation and a third doctor's evaluation does not establish substantial compliance. *Hessel*. *But see Davis* at 25 (extending "leeway" to an injured worker "actively engaged in the litigation process").

In discussing the problems presented by SIME tolling, *Amendarez v. Compass Group USA,* AWCB Deecision No. 11-0146 (September 21, 2011) noted the utility of the holding in *Kim*:

> The Alaska Supreme Court set forth a very clear and workable rule for § 110(c) in *Kim* . . . . Not only did the Court find this rule applicable under the factual circumstances in *Kim*, but it will also serve in the "rare circumstances" contemplated in *Aune,* and in an indefinite number of other unforeseeable circumstances, as well.

Almendarez at 9-10. The rule in *Kim* was formerly well-settled and had been consistently applied by the Commission. *Colrud*; *Hessel; Harkness.*

> **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) If delay in giving notice is excused by the board under AS 23.30.100(d)(2), the burden of proof of the validity of the claim shifts to the employee notwithstanding the provisions of (a) of this section.
>
> (c) 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. However, under AS 23.30.120(c), that presumption does not extend to stress-induced mental injury claims. *Williams v. State*, 895 P.2d 99, 101 (Alaska 1995).

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 l 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).

> **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.

The board's credibility findings and weight accorded evidence are "binding for any review of the Board's factual findings." *Smith v. CSK Auto, Inc.,* 204 P.3d 1001, 1008 (Alaska 2009).

> **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.

> **AS 23.30.190. Compensation for permanent partial impairment; rating guides.** (a) In case of impairment partial in character but permanent in quality, and not resulting in permanent total disability, the compensation is $177,000 multiplied by the employee's percentage of permanent impairment of the whole person. The percentage of permanent impairment of the whole person is the percentage of impairment to the particular body part, system, or function converted to the percentage of impairment to the whole person as provided under (b) of this section. The compensation is payable in a single lump sum, except as otherwise provided in AS 23.30.041, but the compensation may not be discounted for any present value considerations.
>
> (b) All determinations of the existence and degree of permanent impairment shall be made strictly and solely under the whole person determination as set out in the American Medical Association Guides to the Evaluation of Permanent Impairment, except that an impairment rating may not be rounded to the next five percent. The board shall adopt a supplementary recognized schedule for injuries that cannot be rated by use of the American Medical Association Guides.

AS 23.30.200. Temporary partial disability. (a) In case of temporary partial disability resulting in decrease of earning capacity the compensation shall be 80 percent of the difference between the injured employee's spendable weekly wages before the injury and the wage-earning capacity of the employee after the injury in the same or another employment, to be paid during the continuance of the disability, but not to be paid for more than five years. Temporary partial disability benefits may not be paid for a period of disability occurring after the date of medical stability.

AS 23.30.395. Definitions.

. . . .

(10) "disability" means incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment;

. . . .

(17) "injury" means accidental injury or death arising out of and in the course of employment, and an occupational disease or infection which arises naturally out of the employment or which naturally or unavoidably results from an accidental injury; "injury" includes breakage or damage to eyeglasses, hearing aids, dentures, or any prosthetic devices which function as part of the body and further includes an injury caused by the willful act of a third person directed against an employee because of the employment; "injury" does not include mental injury caused by mental stress unless it is established that (A) the work stress was extraordinary and unusual in comparison to pressures and tensions experienced by individuals in a comparable work environment, and (B) 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.

8 AAC 45.060. Service.

. . . .

(b) . . . . If a right may be exercised or an act is to be done, three days must be added to the prescribed period when a document is served by mail.

. . . .

8 AAC 45.070. Hearings.

. . . .

> (b) Except as provided in this section and 8 AAC 45.074(c), a hearing will not be scheduled unless a claim or petition has been filed, and an affidavit of readiness for hearing has been filed and that affidavit is not returned by the board or designee nor is the affidavit the basis for scheduling a hearing that is cancelled or continued under 8 AAC 45.074(b). The board has available an Affidavit of Readiness for Hearing form that a party may complete and file. The board or its designee will return an affidavit of readiness for hearing, and a hearing will not be set if the affidavit lacks proof of service upon all other parties, or if the affiant fails to state that the party has completed all necessary discovery, has all the necessary evidence, and is fully prepared for the hearing.
> . . . .

ANALYSIS

1) Are Employee's injuries time-barred for failure to give written notice of a work injury?

Under AS 23.30.100(a) and (b) and *Cogger*, an injured employee is required to report an injury to the employer in writing within 30 days of the first compensable event. Failure to give notice is an absolute bar to benefits unless the employer or its agent in charge in the place where the injury occurred had knowledge of the injury and the employer or carrier has not been prejudiced by the employee's failure to give notice or if the failure is excused on the ground for some satisfactory reason notice could not be given. AS 23.30.100(d)(1), (2). "Knowledge" means awareness. *Hammer*. The 30 day period in which a claimant must bring notice of his injury to be eligible for workers' compensation begins when, by reasonable care and diligence, it is discoverable and apparent to the claimant that a compensable injury has been sustained. *Cogger*; *Kolkman*. Under *Fox*, the limitation under AS 23.30.100 for a cumulative stress injury does not begin to run until the date Employee became aware of her work-related injury.

Employee filed two injury reports and those reports in this case are unusual in that Employee claimed an earlier injury date in the second injury report. Employee's first injury report on October 25, 1997 reported stress and fatigue beginning in September 1996 and ongoing -- a cumulative injury. Employee's second injury report on April 14, 1999, reported a mental-mental injury and mental-physical injuries from 1990 to 1997 causing her stress and various physical symptoms, contending she was injured over the entire course of her employment with Employer from 1990 until she was terminated in 1998, which is also a cumulative injury. She described continuing and ongoing harassment by co-workers such as stalking, shaking the walls, saying

vulgar words and talking and walking to distract her. However, Employee provided several discrete incidences which she contended constituted work stress including: her 1990 resignation because of "illness," a co-worker hitting her on the hip with a cart, a co-worker almost hitting her face with a cabinet, her 1995 performance evaluation, her September 1996 reprimand and her 1998 termination. Employer contends Employee untimely reported a cumulative work injury because she should have filed an injury report by October 1990 based on the August 1990 medical treatment and resignation.

The first incident occurred in August 1990 where Employee sought medical treatment for stress and attributed part of her stress to her full-time work on August 29, 1990 and she quit her job the next day. Employee continued to seek periodic treatment for mental health issues after the August 1990 work injury but was able to work several non-permanent positions for Employer until she was hired for a permanent position in November 1992.

Employee did not provide dates or any evidence establishing the dates when a co-worker hit her on the hip with a cart and a co-worker almost hit her face with a cabinet. However, she contended the October 1995 performance evaluation proves she was harassed at work. There is no evidence she missed work because of the October 1995 performance evaluation and she next sought medical treatment over three months later on January 30, 1996.

The next incident occurred on September 6, 1996, when Employee's supervisor reprimanded her for insubordination and is the first incident on her first injury report. She was involuntarily committed to the mental health unit on September 19, 1996 for giving her daughter Tylenol when she did not have a fever. After she was discharged on October 6, 1996, she continued to treat for mental illness and Dr. Ellis noted she lacked insight into her mental illness on October 17, 1996. On January 10, 1997, she attributed her mental health problems to stress and Dr. Ellis agreed her stress could bring on symptoms. On April 15, 1997, she finally reported to a physician her supervisor harassed her and she was under a lot of pressure at work. However, Employee continued to lack insight in her symptoms and denied experiencing hallucinations and delusions and her physician struggled to diagnose her mental illness. On August 24, 1997, Employee reported a "tremendous amount of stress at work" and looked into disability benefits;

and on September 15, 1997, Dr. Ellis restricted her to half-time work for depression and noted stressors exacerbated her condition. She last worked for Employer on October 24, 1997.

The final incident occurred on January 8, 1998, when Employer terminated Employee's employment for failing to provide a fit–for-duty certification stating she could perform the full-time duties of her position.

Under *Fox,* Employee's first reported mental stress injury did not arise until September 15, 1997, when she became aware of the work-related nature of her stress and that it is a cumulative injury. Employee should have provided written notice to Employer by October 15, 1997 (September 15, 1997 + 30 days). *Id*. Employee untimely reported her work injury on October 25, 1997, 40 days after she was aware of the work-related nature of her work injury.

Employee's supervisor spoke with LSW Hauser on September 24, 1996, and he informed LSW Hauser about symptoms Employee exhibited at work and he required proof of medication administration for the mental illness in October 1996. Therefore, he knew Employee was hospitalized and receiving treatment for a mental health crisis in September 1996. *Kolkman.* Employer was clearly aware Employee had a continuing mental health issue when it terminated her employment because she failed to provide a certification from her treating psychiatrist releasing her to work. *Id*.

Employer contends Employee's delay in reporting her work injury caused it significant prejudice to its ability to mitigate, investigate and defend against her claim. It contends evidence has degraded and witnesses are unavailable. However, Employee's report was only late 10 days and she continued to miss work and seek medical treatment until she was terminated on January 8, 1998, both Employer was aware of because it placed Employee on the federal Family Medical Leave and required a health-care provider certification. Any prejudice Employer experienced for a 10 day delay was minor. Employee's late injury report is not time-barred for failure to give written notice of a work injury. AS 23.30.100(d)(1).

2) Should Employee's claims be barred for failure to timely file them?

Employee's October 10, 2003 claims requested benefits arising from mental stress as a result of harassment and pressure at work from 1990 to 1998. She sought medical treatment for her mental injury since 1990 and she seeks TPD and TTD from 1990 to the present. The law bar's Employee's right to disability benefits unless she filed a disability claim within two years after Employee had knowledge of the nature of her disability and its relation to the employment and after disablement. AS 23.30.105(a).

AS 23.30.105 is an affirmative defense. Employer must prove Employee was disabled, knew the nature of her disability and knew its relation to her employment for Employer more than two years prior to the date she filed her claims. *Id*. Employee filed her last injury report on April 14, 1999, one year, three months and six days after she was fired from her job, the last incident Employee contends constituted work stress. Employee knew the nature of her disability and is relation to her employment with Employer when she filed her last injury report on April 14, 1999. More than four years and five months passed from that date until she filed her first claim on October 10, 2003 (April 14, 1999 to October 10, 2003 = 4 years, 5 months and 26 days). Therefore, she knew the nature of her disability and knew its relation to her employment with Employer more than two years before she filed her claims.

Employee contends she was ill and unable to file a claim until she got better after taking medication and getting counseling. There is evidence Employee was unable to handle her own affairs for brief periods of time when the superior court involuntarily committed her to the mental health unit. However, two years past the April 14, 1999 injury report is, Monday, April 16, 2001 (April 14, 1999 + 2 years = Saturday, April 14, 2001 = Monday, April 16, 2001) and Employee was involuntarily committed once from April 14, 1999 to April 16, 2001, on July 27, 2000 until August 25, 2000, which totaled 30 days. Even if the time period was tolled for those 30 days, Employee was required to file her claim by May 14, 2002 (April 14, 1999 to July 27, 2000 = 470 days; 730 days – 470 days = 260 days; August 26, 2000 = Sunday, May 13, 2001 = Monday, May 14, 2001).

Employee contends no one told her she needed to file a claim. Employer contends its controversion notices informed her she needed to file a claim. Furthermore, attorney Choate's October 27, 1997 letter informed her a claim must be filed within the deadlines or it will be barred. Employee's claims are barred by AS 23.30.105. *Egemo*.

3) Should Employee's claims be dismissed for failure to timely request a hearing?

A claimant must request a hearing within two years of the employer's post-claim controversion or face dismissal of the claim. AS 23.30.110(c). Employee filed her first claims on October 10, 2003, and Employer filed its first post-claim controversion on June 25, 2004. She filed her first ARH on June 21, 2017, more than 13 years later. Although Employee filed another claim on April 25, 2017, her claim sought the same TTD benefits her amended October 10, 2003 claims requested. Employee's deadline to request a hearing or additional time to prepare for a hearing was June 28, 2006. (June 25, 2004 + 2 years + 3 days = June 28, 2006). AS 23.30.110(c); 8 AAC 45.060(b). Employee did not request a hearing on her claims nor did she provide written notice she wanted a hearing on her claims but had not completed all discovery by June 28, 2006. She requested a hearing more than 10 years after the deadline to do so passed. Therefore, Employee failed to actually or substantially comply with AS 23.30.110(c). *Rogers & Babler*.

After the only prehearing conference on December 30, 2003, she did not contact the division or take any action for over 11 years until she requested a copy of her file on November 5, 2015. Employee was not advised at the first prehearing conference on December 30, 2003 of the AS 23.30.110(c) deadline. While there is a duty to inform a pro se claimant how to preserve her claim, Employer had not yet filed its June 25, 2004 post-claim controversion and its January 20, 2004 answer denying her claims. *Davis*. Employer contends Employee was informed of the AS 23.30.110(c) deadline when it served her with its 2004 controversion notice and its prior controversion notices. However, Employee contends no one told her she needed to request a hearing. Employee was first advised of the deadline by the division on March 30, 2017 when she contacted the division to inquire about how to get workers' compensation benefits. Although the division's April 24, 2017 letter incorrectly informed Employee she had no reason to request a hearing and rejected her April 21, 2017 ARH, there is no evidence the division incorrectly informed Employee about the AS 23.30.110(c) deadline or failed to instruct her how to preserve

her claim. Employee failed to substantially comply with AS 23.30.110(c). *Kim*; *Davis; Rogers & Babler*.

Employee contends she delayed in requesting a hearing because a workers' compensation officer told her she needed an attorney to represent her and she was unable to find an attorney willing to take her case. She is claiming estopplel. The elements of estoppel are assertion of a position by word or conduct by a governmental body, reasonable reliance thereon the party, resulting prejudice, and the estoppel would serve the interest of justice so as to limit public injury. *Tonoian*. The officer suggested Employee "consider retaining an attorney to assert with her claims as 'stress' injuries are very difficult to prove" and he gave her a list of attorneys. There was no assertion by the officer that Employee needed to have an attorney to represent her. Therefore, there is no evidence of equitable estoppel against the division. While Employee is *pro se* and held to a lesser standard, she is required to prosecute her claim in a timely manner and her lack of representation does not excuse noncompliance or late compliance. *Jonathan*; *Kim*; *Hessel*; *Dougan*.

Employer's agreement to a SIME after the AS 23.30.110(c) deadline does not constitute a waiver of its defense. Employer did not represent to Employee that it would not seek to dismiss her claims for failure to comply with AS 23.30.110(c). It provided Employee written notice of the AS 23.30.110(c) time limit on Employer's controversion notices. Therefore, it was not reasonable for Employee to conclude Employer's failure to request a dismissal based upon AS 23.30.110(c) until after agreeing to a SIME amounted to an implied waiver of the deadline. Employer's conduct does not support a finding of waiver or equitable estoppel. *Rogers & Babler*; *Van Biene*.

Mental incapacity can excuse noncompliance with AS 23.30.110(c). *Tonoian*. Employee contends she was ill and unable to request a hearing until she got better after taking medication and getting counseling. There is evidence Employee was unable to handle her own affairs for brief periods when the superior court involuntarily committed her to the mental health unit. Although she was committed to the mental health unit seven times from May 1996 to April of 2003, she demonstrated the ability to take actions on her own behalf by filing injury reports and

claims during that period. Furthermore, Employee was not admitted to the mental health unit after she filed her October 10, 2003 claims until January 31, 2017, after the deadline to request a hearing or additional time passed on June 28, 2006. While a conservator with OPA had been appointed to handle only her financial affairs, a guardian has not been appointed; nor is there evidence she sought appointment of a guardian. There is no evidence in the medical record showing Employee was unable to take action on her own behalf from October 10, 2003 until June 28, 2006. The evidence does not support a finding that mental incapacity excused her failure to pursue her claims for many years. There is no evidence of record justifying Employee's more than 10 year delay in pursuing her claims. Employee's claims will be dismissed for failure to timely request a hearing.

4) Are Employee's work injuries compensable?

Even if Employee provided timely written notice of her injuries, she timely filed her claims and timely requested a hearing, the evidence fails to prove by a preponderance of the evidence her work place stress was the predominate cause of her psychological disease and her work for Employer is a substantial factor in bringing about her need for medical treatment or disability for her injuries.

a) Mental-Mental Injury

Employee claims a mental injury, depression, caused by work stress. This is known as a "mental-mental" injury. To prevail on a mental-mental injury, Employee must prove each element of the test by a preponderance of the evidence without the benefit of the presumption of compensability. AS 23.30.120(c); *Kelly*. Employee must demonstrate her work stress was extraordinary and unusual in comparison to pressures and tensions experienced by individuals in a comparable work environment and the work stress was the predominate cause of the mental injury. AS 23.30.395(17). "Individuals in a comparable work environment" has been interpreted to mean other employees holding the same position for an employer. *Williams*.

Because Employee worked as a Document Processor, her stress will be compared to that of other Document Processors. *Id*. Employee was expected to meet processing quotas and to complete

tasks she was directed to by her supervisor during work hours. The duties of a Document Processor are to process documents and being pressured to meet quotas is neither extraordinary or unusual.

Employee contends she was harassed by co-workers when they stalked her, banged and shook her wall, called her a slut, when she was hit in the hip by a cart and almost hit in the face by a cabinet door. Harassment at work by co-workers could constitute extraordinary and unusual work stress. Employee contended her September 1995 performance evaluation documented the ongoing harassment she experienced during her employment. The evidence shows Employee confronted her co-workers in 1995 because she believed they were deliberately trying to distract her, and she continued to confront her co-workers after she was directed to refer to her supervisor. She responded to her performance evaluation documenting the confrontations by stating she disagreed with her supervisor's rating of her "Interpersonal Relationships" because her co-workers were always upset with her and picking on her and she did not know why. Employee's perception of her co-worker's harassment is called into question by evidence of her continuing delusions and hallucinations. There is medical evidence Employee's delusions and hallucinations included her co-workers. She described hearing voices saying "bad things," seeing and feeling people doing "bad things" to her, people doing mental telepathy on her, and intruding "nasty thoughts." Furthermore, Employee's description of the harassing behavior by her co-workers in her deposition testimony is consistent with descriptions of her delusions and hallucinations in her medical records. Therefore, Employee's testimony she was harassed by co-workers is not credible because it is unclear whether the described harassment actually occurred or whether the perceived harassment was a delusion or hallucination. AS 23.30.122; *Smith*. Even if her co-workers hit her once on the hip with a cart, shook a wall, and almost hit her in the face once with a cabinet door, these events were not extraordinary or unusual and are within ordinary and usual events, which may happen in a typical office setting. Employee did not prove by a preponderance of the evidence that her co-workers harassed her which caused her work stress. *Rogers & Babler*.

A mental injury is not considered to arise out of and in the course of employment if it results from a work evaluation, disciplinary action or termination taken in good faith by an employer.

AS 23.30.395(17). Employee contends her 1995 work evaluation contends proves she was harassed at work. She acknowledged there were problems at work between her and her co-worker but disputed her supervisor's evaluation of her interpersonal relationships at work contending her co-workers were the problem, not her. However, the evaluation stated she failed to follow her supervisor's direction to report her co-workers' distracting actions to him and to not confront them. Employee failed to prove by a preponderance of the evidence her performance evaluation was not taken in good faith by Employer. *Rogers & Babler.*

The evidence shows Employee was reprimanded for being insubordinate in September 1996 after failing to resume her work after her break as directed to by her supervisor. In her deposition, Employee testified she did not do what her supervisor directed her to do because she was still on her break. However, her supervisor determined her lunch was over after speaking with her and later Employee acknowledged she understood his direction but failed to follow it. Employee failed to prove by a preponderance of the evidence that the reprimand was not taken in good faith by Employer. *Rogers & Babler.*

Employee's employment with Employer was terminated on January 8, 1998, after she failed to provide a certification from a physician releasing her to return to full duty work. She contends she requested more time to find a doctor to evaluate her but she was fired. The record proves Employer first notified her of the deadline to submit a certification on December 10, 1997, and it extended the deadline to submit a physician's note from January 2, 1998 to January 8, 1998, on December 23, 1997, because Employee was unable to see her physician until January 7, 1998. Her physician terminated his involvement in her case and stated it was impossible for him to make a determination on her ability to return to work with Employer on January 7, 1998. Employee failed to prove by a preponderance of the evidence her termination was not taken in good faith by Employer. *Rogers & Babler.*

Employee failed to show the work stress was the predominate cause of her mental injury. While Dr. Ellis noted stress may exacerbate Employee's symptomology, he did not opine her work stress was the cause of Employee's psychological disease, whether he diagnosed it as depression with psychosis or schizophrenia. Drs. Goranson and Turco opined her work for Employer was

not the cause of her need for medical treatment or for her disability and was pre-existing schizophrenia. Rather they opined her schizophrenia and need for treatment and disability was caused by “genetic, constitutional and developmental factors” and “biological condition” and “early development.” Employee did not prove by a preponderance of the evidence that work place stress was the predominate cause of her psychological disease.

b) Mental-Physical Injury

Employee claims physical injuries, including stroke, back pain and pelvis pain, caused by work stress. The presumption of compensability applies to this dispute. AS 23.30.120(a). Employee’s claim of physical injuries from mental stress is highly complex and she failed to obtain any physician opinion stating her work for Employer was a substantial factor in her need for medical treatment or disability for stroke, back pain or pelvic pain. *Burgess*. Though Dr. Gonzales diagnosed a cerebral infarct, she did not give an opinion about whether Employee’s work was a substantial factor in causing this condition found on MRI. Employee failed to attach the presumption of compensability. *McGahuey*; *Burgess*; *Rogers & Babler*.

Even had Employee attached the presumption of compensability, Employer rebutted the presumption with Drs. Bell’s and Schleimer’s reports opining that her work could not have caused her disability or need for treatment. *Kramer*; *Tolbert*. Dr. Bell performed an EME and found no evidence of a neurological disease or event, and Dr. Schleimer performed a SIME and found no objective neurological deficits or any evidence of any neurological disorder and opined Employee’s stroke is somatically based.

As Employer rebutted the presumption, Employee must prove all elements of her mental-physical case by a preponderance of the evidence. *Koons*. She contends Dr. Gonzales’ medical reports prove her claim. She diagnosed a right cerebral infarct based upon Employee’s report of left-sided weakness and MRI which revealed a slight left fronto-temporal convexity. However, Dr. Gonzales did not address whether work stress was a substantial factor in the infarct. She simply recited the history Employee verbally provided her about harassment at work and her denial of hallucination and delusions. The record proves Employee suffers from delusions and hallucinations. Because Dr. Gonzales’ report relies on Employee’s inaccurate statements, Dr.

Gonzales medical report is given less weight. AS 23.30.122; *Smith*. Furthermore, the other neurologists in the record, determined Employee did not have a stroke. In 2000, Dr. Hunger-Joerns diagnosed psychological issues rather than a neurological disorder after examining Employee. Dr. Bell found no evidence of a neurological disease or event, and Dr. Schleimer found no objective neurological deficits or any evidence of any neurological disorder and opined Employee's "stroke" is somatically based. Drs. Bell's and Schleimer's medical report are given the most weight because they reviewed Employee's lengthy medical history and examined Employee to conclude she did not sustain a stroke or any other neurological disorder. *Id*.

Employee's first report of pelvic pain in the medical record is in 1998. In 1999, she was diagnosed with chronic pelvic pain, a urinary tract infection and pelvic inflammatory disease. In 2001, she was diagnosed with a uterine cyst. There is no medical record containing a medical opinion linking Employee's need for treatment or disability for these medical conditions to her work for Employer. The only medical record containing a complaint of back pain was from February 25, 1998. There is no medical records containing a medical opinion linking Employee's need for treatment or disability for back pain to her work for Employer. Both Drs. Hunter-Joerns and Schleimer opined Employee's stroke symptoms were psychological in nature. Employee did not prove by a preponderance of the evidence that work place stress was the predominate cause of her psychological disease. *Saxton*. Employee failed to prove by a preponderance of the evidence her work for Employer is a substantial factor in bringing about her need for medical treatment or disability for her mental-physical injuries. *Id*.

5) Is Employee entitled to medical and transportation benefits?

The Act provides for payment of medical and related transportation benefits arising from a compensable injury. AS 23.30.010; AS 23.30.095. Because Employee has not sustained a compensable mental-mental or mental-physical injury, her claim for these benefits will be denied. *Id*.; AS 23.30.395(17).

6) Is Employee entitled to TTD or TPD benefits?

The Act provides for TTD and TPD benefits arising from a compensable injury. AS 23.30.010; AS 23.30.185; AS 23.30.200. "Disability" means an inability to earn wages because of a work injury. AS 23.30.395(10). Because Employee has not sustained a compensable mental-mental or mental-physical work injury, her claim for TTD and TPD benefits will be denied. AS 23.30.395(17).

7) Is Employee entitled to PPI benefits?

The Act provides for payment of PPI benefits resulting from a compensable work-related injury. AS 23.30.010; AS 23.30.190. However, since Employee has not sustained a compensable mental-mental or mental-physician work injury and because there is no PPI rating provided by any physician, her claim for PPI will be denied. AS 23.30.395(17).

CONCLUSIONS OF LAW

1) Employee's injuries are not time-barred for failure to give written notice of a work injury.
2) Employee's claims are barred for failure to timely file them.
3) Employee's claims are dismissed for failure to timely request a hearing.
4) Employee's work injuries are not a substantial factor in her disability or need for medical care.
5) Employee is not entitled to medical and transportation benefits.
6) Employee is not entitled to TPD or TTD benefits.
7) Employee is not entitled to PPI benefits.

ORDER

1) Employee's October 10, 2003 amended claims and April 25, 2017 claim are denied.
2) Employer's January 9, 2019 petition is granted.

Dated in Juneau, Alaska on May 9, 2019.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Kathryn Setzer, Designated Chair

/s/
Charles Collins, Member

/s/
Bradley Austin, Member

APPEAL PROCEDURES

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

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

RECONSIDERATION

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

MODIFICATION

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

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Final Decision and Order in the matter of Jesusa L. Bernaldo, employee / claimant v. State of Alaska, self-insured employer / defendant; Case No. 199629747M, 199828759; dated and filed in the Alaska Workers' Compensation Board's office in Juneau, Alaska, and served on the parties by First-Class U.S. Mail, postage prepaid, on May 9, 2019.

/s/
Dani Byers, Technician