

ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

SHEILA COLLINS,)
)
Employee,)
Respondent,)
)
v.) INTERLOCUTORY
) DECISION AND ORDER
)
NANA REGIONAL CORPORATION,) AWCB Case No. 201615256
)
Employer,) AWCB Decision No. 19-0070
and)
) Filed with AWCB Anchorage, Alaska
AMERICAN ZURICH INSURANCE CO.,) on June 20, 2019
)
Insurer,)
Petitioners.)
)

NANA Regional Corporation's (Employer) July 12, 2018 petition for a second independent medical examination (SIME) and its June 13, 2019 petition to strike Sheila Collins' (Employee) hearing brief and witness list were heard on June 19, 2019, in Anchorage, Alaska, a date selected on May 7, 2019. An April 8, 2019 hearing request gave rise to this hearing. Non-attorney representative Barbara Williams appeared and represented Employee who appeared and testified. Attorney Jeffrey Holloway appeared telephonically and represented Employer and its insurer. Edward Barrington, DC, testified telephonically for Employee. The parties stipulated to an SIME, SIME issues and a panel including a neurologist, otolaryngologist (ENT) and neuropsychologist. They also stipulated to Employer redacting references to another patient from employer medical evaluator (EME) reports before the reports are sent to the SIME physicians. This decision addresses remaining issues from Employer's SIME petition, and its petition to strike, on their merits. The record closed at the hearing's conclusion on June 19, 2019.

ISSUES

Employer contends Employee had until June 12, 2019, to file her hearing brief and witness list for the June 19, 2019 hearing. It contends she filed both documents on June 13, 2019, one day late and did not request additional time from Employer, which is generally accepted custom and practice. Employer seeks an order striking Employee's witness list and her brief as untimely.

Employee contends she filed and served her hearing brief and witness list timely. Alternately, she contends if they were not timely, they were untimely because her representative's relative is in the hospital in intensive care and her representative was understandably distracted. She contends this is an unusual and extenuating circumstance excusing the late filing.

1)Should Employee's hearing brief and witness list be stricken as untimely?

In addition to the three stipulated specialties, Employer has no objection to adding a psychiatrist, but objects to other specialties Employee suggested.

In addition to the stipulated specialties, Employee suggests the panel include a urologist and neuro-ophthalmologist. She contends records belonging to a different Sheila Collins should be excluded and EME reports referencing that person should be redacted or excluded from the SIME records. Employee contends her records that do not relate to her work injuries should also be excluded.

2)What medical specialties and records should be included in the SIME panel?

Employee contends she needs unspecified accommodations for traveling to the SIME appointments. She requests an order requiring Employer to pay for any accommodations.

Employer contends there are no contemporaneous medical records stating Employee needs any accommodation for travel. It did not object to providing reasonable accommodations.

3)How and when should Employee's travel accommodations, if any, be addressed?

FINDINGS OF FACT

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

1) On October 3, 2016, while sitting in an airplane prior to travel for her job with Employer, Employee had an injury she describes as follows:

As I was getting up and leaning over to speak with my coworker, I hit the left side of my forehead on the corner of a sharp edge of the divider between 1st class & coach. I was unaware of the edge because of the divider curtain looped around it, covering the area. (Employee Report of Occupational Injury or Illness to Employer, October 10, 2016).

2) On November 28 and November 30, 2016, Paul Craig, PhD, neuropsychologist, evaluated Employee. She performed well on testing and Dr. Craig said there was nothing about her work injury indicating a traumatic brain injury. In his view, her symptoms could best be described as “post-concussional syndrome,” should resolve “in fairly short order” and it would be highly unusual for symptoms to persist beyond six months. In his opinion, if they do persist, “it is highly probable that the symptoms are related to ongoing emotional distress associated with the accident rather than any actual injury to the brain or associated nervous system structures.” He recommended Employee return to work in a “stepwise manner” to maximize success. From a neuropsychological perspective, there was no restriction on Employee’s driving. Dr. Craig opined if her emotional distress and post-concussional complaints persist, Employee may need aggressive treatment with a psychiatrist, and antidepressant medication. (Dr. Craig report, November 28 and November 30, 2016).

3) On September 19, 2017, Mark Lorenz, M.D., performed a left ear repair of an oval and round window perilymphatic fistula with left tympanostomy. (Dr. Lorenz report, September 19, 2017).

4) On October 5, 2017, Employee claimed medical costs. (Claim for Workers’ Compensation Benefits, October 6, 2017).

5) Employee subsequently amended her claim and filed additional claims. (Claim for Workers’ Compensation Benefits, December 5, 2017; December 14, 2017; January 10, 2018).

6) On December 1, 2017, Employer denied coverage for Employee’s urinary dysfunction issues. (Controversion Notice, December 1, 2017).

- 7) On December 11, 2017, David Beal, M.D., opined it is not uncommon for increased inner-ear pressure with a concussion similar to the one Employee suffered with the work injury. (Dr. Beal report, December 11, 2017).
- 8) On April 1, 2018, EME Lewis Almaraz, M.D., neurologist, reviewed Employee's medical records and her video deposition and said the work injury was the substantial cause of the need to evaluate a contusion and bruise. He opined she needed no further neurological treatment, had not incurred any neurological ratable permanent impairment and could have returned to full-time work without restriction since the injury date. (Dr. Almaraz report, April 1, 2018).
- 9) On April 3, 2018, EME James Rockwell, M.D., otolaryngologist, reviewed Employee's medical records and her video deposition and said Employee had only a mild head trauma. In his opinion, Employee did not sustain any perilymphatic fistula or any other inner-ear injury arising from her accident. She needed no inner-ear evaluations, had no permanent physical restrictions or permanent impairment rating. He opined Employee reached medical stability anywhere from a few days to two weeks post-injury. (Dr. Rockwell report, April 1, 2018).
- 10) On April 12, 2018, Dr. Lorenz performed a right ear, oval and round window perilymphatic fistula repair. (Dr. Lorenz report, April 12, 2018).
- 11) On May 31, 2018, Edward Barrington, DC, stated Employee may reach medical stability soon, depending on Dr. Beal's test results. (Dr. Barrington report, May 31, 2018).
- 12) On June 6, 2018, Employer denied Employee's right to disability and impairment benefits, unreasonable and unnecessary medical and related transportation costs, reemployment benefits and ancillary benefits. (Controversion Notice, June 6, 2018).
- 13) On July 12, 2018, Employer asked for an SIME. Employer attached to its petition an SIME form, which noted medical disputes included compensability, causation, treatment, permanent impairment, functional capacity and medical stability based on disputes between Drs. Barrington, Lorenz and Beal on Employee's side versus Drs. Rockwell and Almaraz, on Employer's side. No party signed the form and there is no medical specialty recommended for the SIME. (Petition; SIME form, July 12, 2018).
- 14) On July 17, 2018, Dr. Barrington claimed medical costs, a penalty and interest on medical services he provided to Employee. (Workers' Compensation Claim, July 17, 2018).
- 15) On July 18, 2018, Dr. Barrington asked to be joined as a party to Employee's claim. (Petition, July 18, 2018).

16) On July 25, 2018, Employee contended she was not opposed to an SIME but wanted only her medical records, and not records from a different Sheila Collins to go to the SIME. She also wanted to exclude from the SIME, medical records pertaining to body parts not related to her work injury. Employer contended Employee had to provide a list of the other person's medical records. It again stipulated to remove any such records upon receiving and reviewing a document list from her. Employee countered contending Employer's request is not an appropriate solution because she did not have all the medical records because she has never been to some providers. Employer contended it provided all Employee's medical records in its possession to her on a February 13, 2018 medical summary. Employee's non-attorney representative contended she had not received those documents; Employer agreed to provide another copy to her representative on or before October 1, 2018. The designee reviewed medical records included with the February 13, 2018 medical summary from Ireland Chiropractic and Advanced Pain/Medical Centers and noted some records referred to Sheila Collins with a different birth date and Social Security number than Employee's. Upon reviewing the documents, the designee ordered "the immediate removal of ALL medical records in ER's file that were received from or reference treatment at either Ireland Chiropractic or Advanced Pain/Medical Centers of Alaska, unless ER can show that said reports pertain to EE." The designee further required Employee to identify any other person's records that had been included in her agency file. However, the designee determined Employee sufficiently showed all records from Ireland Chiropractic and Advanced Pain/Medical Centers of Alaska should be removed. (Prehearing Conference Summary, July 25, 2018; emphasis in original).

17) On August 14, 2018, Employee provided a list of medical records she wanted removed from the agency file. (Notice of Records to be Removed from Sheila Collins Files, August 13, 2018).

18) On August 15, 2018, with no party objecting, the prehearing conference designee granted Dr. Barrington's July 18, 2018 petition to join, and joined him as a party to this case. The designee confirmed he had received Employee's August 13, 2018 list identifying medical records she wanted removed from her agency file. Monica Hernandez, appearing for Jeffrey Holloway, said she had received and reviewed the list from Employee and had removed from her file "the records ordered removed from the file in the 7/25/2018 prehearing conference summary." The designee noted both Ireland Chiropractic and Advanced Pain/Medical Centers agreed they had provided medical records for a different Sheila Collins. Employee asked about having the records also removed from the board's file. The designee explained the file was entirely digital and there were

no physical records to remove. Since the Ireland Chiropractic and Advanced Pain/Medical Center records were contained in Employer's Medical Summaries dated August 14, 2017 and February 13, 2018, he ordered Employer to file revised medical summaries without these records and the division would replace and delete the original medical summaries. The designee directed Employer to notify him when the amended summaries were filed so he could ensure they were processed properly. The designee said he would notify both parties when the original medical summaries had been deleted. He declined Employee's request to notify "the other Sheila Collins" that her records had been removed. Employee also identified Employee's medical records from Alaska Women's Health as those she wanted removed from her agency file. She claimed Employer obtained the records without a proper release because earlier releases allegedly did not authorize release of medical records relating to urological dysfunction. The designee deferred this issue to a later prehearing conference, but located a December 10, 2017 record release in the agency file releasing records for urological dysfunction. The designee deferred Employer's SIME request until after the medical records had been removed from the agency file. (Prehearing Conference Summary, August 15, 2018).

19) On September 4, 2018, the designee noted the August 14, 2017 and February 13, 2018 medical summaries had not yet been removed and replaced as ordered. Employer contended there was no deadline for accomplishing the designee's prior order and Employee's request to remove additional medical records was still pending. It contended removing additional records would be inefficient and expensive before all records to be removed had been identified. Employee named another record from "Providence Diagnostics" that was not hers. The designee found a September 18, 2009 report from Imaging Associates of Providence on an August 14, 2017 Medical Summary that did not appear to be Employee's. Employer agreed to remove the September 18, 2009 record from its file and agreed to look for others that were not Employee's. She also wanted EME reports that relied on the wrong Sheila Collins' medical records to either be removed or scrubbed to remove improper data. Employee further requested her gynecological records be removed from the file because in her view they were not relevant to her urological dysfunction and because they were allegedly obtained before Employer had a release for such records. Given Employee's pending petitions to remove additional medical records from the file, the designee put his prior order on hold. (Prehearing Conference Summary, September 4, 2018).

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- 20) On October 2, 2018, the designee denied Employee's petition to strike her gynecological records from her agency file. He renewed his order for Employer to refile the August 14, 2017 and February 13, 2018 medical summaries without records from Ireland Chiropractic Clinic, Advanced Medical Center/Advanced Pain Centers and the September 18, 2009 Providence Imaging Alaska report, by October 9, 2018. (Prehearing Conference Summary, October 2, 2018).
- 21) On October 30, 2018, *Collins v. NANA Regional Corp.*, AWCB Decision No. 18-0113 (October 30, 2018) (*Collins I*) affirmed the designee's discovery decision to deny Employee's request for a protective order to recover Alaska Women's Health records from her agency file, and denied Employee's petition seeking the same relief. (*Collins I* at 13).
- 22) On November 27, 2018, *Collins v. NANA Regional Corp.*, AWCB Decision No. 18-0124 (November 27 2018) (*Collins II*) denied Employee's request to reconsider *Collins I* as untimely, but on its own motion ordered her breast cancer screenings and mammogram results were not relevant to her reported work injuries. *Collins II* ordered Employer to refile the October 9, 2018 Medical Summary with Employee's November 20, 2009 and February 25, 2016 Providence Imaging Center's mammogram reports removed. (*Collins II* at 5).
- 23) The August 14, 2017 and February 13, 2018 medical summaries, which included medical records for a different Sheila Collins are no longer in the division's files. (Agency File).
- 24) On May 7, 2019, the designee set June 12, 2019 as the filing and service deadline for hearing briefs and witness lists. The division served the prehearing conference summary on all parties on May 9, 2019. (Prehearing Conference Summary, May 7, 2019).
- 25) On June 13, 2019, Employee filed her hearing brief and witness list, according to the division's date stamp imprinted on each document. Attorney Holloway stated his email receipt showed Employee served the hearing brief and witness list on his office after midnight on June 13, 2019. She did not dispute this statement. Employee's hearing brief and witness list were filed and served one day late. (Judgment, experience and inferences drawn from the above).
- 26) On June 13, 2019, Employer petitioned for an order striking Employee's hearing brief and witness list because they were late. (Petition, June 13, 2019).
- 27) On June 18, 2019, the designated chair reviewed the agency file to see if Employer had refiled the October 9, 2018 medical summary and the division had removed the original medical summary containing the November 20, 2009 and February 25, 2016 Providence Imaging mammogram reports from the agency file as directed in *Collins II*. The medical summary

containing the two mammogram reports was still in the agency file along with another mammogram report dated February 15, 2016. The designated chair directed division staff to electronically delete the November 20, 2009, February 19, 2016 and February 25, 2016 mammogram reports from the October 9, 2018 medical summary. These three documents are no longer in the agency file but the October 9, 2018 medical summary otherwise remains. (Observations; agency file).

28) At hearing on June 19, 2019, Employee's representative said she timely filed and served her hearing brief and witness list. Alternately, if she did not, it was only because a close relative was hospitalized in an intensive care unit and this was a distraction to her. (Record).

29) Employer's representative said Employee never asked for an extension of time to file the brief or witness list, which is custom and practice in this community. Employee's representative did not dispute this assertion. (*Id.*).

30) At hearing, the parties stipulated to this decision modifying *Collins II* to add the February 19, 2016 mammogram report, which *Collins II* had overlooked, as one to be removed and returned to Employee. The designated chair handed photocopies of these three reports to Employee's representative at the hearing. These three mammogram reports are no longer in the agency file. (Record; agency file).

31) The parties also stipulated to an SIME, issues including causation, compensability, medical treatment, medical stability, permanent impairment and functional capacity, and a panel including at least a neurologist, ENT and a neuropsychologist. The parties did not object to a psychiatrist. They further stipulated to Employer redacting references to the wrong Sheila Collins from EME reports before the reports go to the SIME physicians. (Record).

32) The parties disagree on the SIME panel's composition. Employer recommends a panel limited to a neurologist, neuropsychologist and ENT. Employee wants to also include a urologist and neuro-ophthalmologist. (*Id.*).

33) Employee contends her October 3, 2016 work injury with Employer is responsible for injuries, symptoms and consequences to her head and brain, neck, bladder, bilateral ears and vision. She does not at this time claim any mental health issues from her work injury. (*Id.*).

34) Employee's claimed injury to various body parts and functions are extremely complex given the nature of her work injury. The relationship, if any, of Employee's urological issues to her work injury is unusual. Dr. Craig recommended a psychiatric evaluation in the event Employee's

symptoms did not resolve quickly. They have not resolved but no psychiatrist has evaluated her yet. (Experience, judgment and inferences drawn from the above).

35) An SIME panel including an ENT, and a psychiatrist, neurologist, neuropsychologist and urologist will assist the board in understanding any relationship between Employee's work injury and symptoms to her various body parts and functions. Fact-finders with a few exceptions, like mammograms, do not have the medical expertise to know whether particular medical records could be "related to the employee's injury." Neither Employee nor her non-attorney representative have demonstrated sufficient knowledge to make such a judgment. (*Id.*).

36) Employee contends she needs unspecified travel accommodations to attend an SIME. She contends the accommodations have not yet been determined, or may continue from previous restrictions, and will be clarified once the SIME panel is established. (Record).

37) She further contends she has a right to review all SIME reports before they go to the doctor to make sure they are all her records and no irrelevant records, though, are included. Employee reserves her right to petition to remove any documents from the SIME records. (*Id.*).

38) The division's SIME list does not include a urologist, but includes all the other specialties needed for Employee's SIME. (Observations).

39) Employee's non-attorney representative has appeared before the board for at least 20 years and should be familiar with procedures for obtaining time extensions to file pleadings. (*Id.*).

PRINCIPLES OF LAW

The board may base its decision not only on direct testimony and other tangible evidence, but also on its "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 23.30.095. Medical treatments, services, and examinations. . . .

. . . .

(k) In the event of a medical dispute . . . between the employee's attending physician and the employer's independent medical evaluation, the board may require that a second independent medical evaluation be conducted by a physician or physicians selected by the board from a list established and maintained by the board. . . .

AS 23.30.130. Modification of awards. (a) Upon its own initiative, or upon the application of any party in interest on the ground of a change in conditions, including, for the purposes of AS 23.30.175 , a change in residence, or because of a mistake in its determination of a fact, the board may, before one year after the date of the last payment of compensation benefits under AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, whether or not a compensation order has been issued, or before one year after the rejection of a claim, review a compensation case under the procedure prescribed in respect of claims in AS 23.30.110. . . .

AS 23.30.130 grants the board broad discretion to review its prior decisions because of changes in conditions or factual mistakes. *Interior Paint Co. v. Rodgers*, 522 P.2d 164 (Alaska 1974).

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

8 AAC 45.092. Selection of an independent medical examiner. (a) The board will maintain a list of physicians' names for second independent medical evaluations. The names will be listed in categories based on the physician's designation of his or her specialty or particular type of practice and the geographic location of the physician's practice. . . .

. . . .

(e) If the parties stipulate that a physician not on the board's list may perform an evaluation under AS 23.30.095(k), the board or its designee may select a physician in accordance with the parties' agreement. If the parties do not stipulate to a physician not on the board's list to perform the evaluation, the board or its designee will select a physician to serve as a second independent medical examiner to perform the evaluation. The board or its designee will consider these factors in the following order in selecting the physician:

- (1) the nature and extent of the employee's injuries;
- (2) the physician's specialty and qualifications;
- (3) whether the physician or an associate has previously examined or treated the employee;
- (4) the physician's experience in treating injured workers in this state or another state;
- (5) the physician's impartiality; and
- (6) the proximity of the physician to the employee's geographic location.

(f) If the board or its designee determines that the list of second independent medical examiners does not include an impartial physician with the specialty, qualifications, and experience to examine the employee, the board or its designee

will notify the employee and employer that a physician not named on the list will be selected to perform the examination. The notice will state the board's preferred physician's specialty to examine the employee. Not later than 10 days after notice by the board or its designee, the employer and employee may each submit the names, addresses, and curriculum vitae of no more than three physicians. If both the employee and the employer recommend the same physician, that physician will be selected to perform the examination. If no names are recommended by the employer or employee or if the employee and employer do not recommend the same physician, the board or its designee will select a physician, but the selection need not be from the recommendations by the employee or employer.

“The composition of an SIME panel is a matter of sound discretion.” *Thompson v. Fred Meyer Stores, Inc.*, AWCB Decision No. 10-0167 (October 4, 2010) at 7.

8 AAC 45.112. Witness list. A witness list must indicate whether the witness will testify in person, by deposition, or telephonically, the witness’s address and phone number, and a brief description of the subject matter and substance of the witness’s expected testimony. If a witness list is required under 8 AAC 45.065, the witness list must be filed with the board and served upon all parties at least five working days before the hearing. If a party directed at a prehearing to file a witness list fails to file a witness list as directed or files a witness list that is not in accordance with this section, the board will exclude the party’s witnesses from testifying at the hearing, except that the board will admit and consider

- (1) the testimony of a party. . . .

8 AAC 45.114. Legal memoranda. Except when the board or its designee determines that unusual and extenuating circumstances exist, legal memoranda must

- (1) be filed and served at least five working days before the hearing, or timely filed and served in accordance with the prehearing ruling if an earlier date was established. . . .

ANALYSIS

Collins II ordered Employee’s November 20, 2009 and February 25, 2016 mammogram reports removed from the agency file and Employer’s records. At hearing, the parties stipulated to the instant decision modifying *Collins II* to also remove Employee’s February 19, 2016 mammogram report overlooked in *Collins II*. AS 23.30.130. *Collins II* is therefore modified to remove Employee’s November 20, 2009, February 19, 2016 and February 25, 2016 Providence Imaging Center’s mammogram reports. *Rodgers*. The reports were copied and then removed from

Employee's agency file and the copies were given to her at hearing. Employer confirmed it had also deleted these three records from its electronic file but could not return them to Employee because they were already deleted.

1)Should Employee's hearing brief and witness list be stricken as untimely?

Employee filed her hearing brief and witness list late according to date stamps on the division's copies. Employer objected. The relevant prehearing conference summary provided a date by which hearing briefs and witness lists had to be filed. Failure to timely file hearing briefs may be excused if the late-filing party can demonstrate unusual and extenuating circumstances prevented timely filing. 8 AAC 45.114. Employee's representative said she timely filed the brief and, if not, it was late because she was distracted while attending to a hospitalized relative in an intensive care unit. The division's date stamps show Employee's first contention is incorrect; she did not timely file her brief and witness list. While in some circumstances attending to an ailing relative could be an unusual and extenuating circumstance, Employee's representative failed to explain why she did not contact opposing counsel during normal business hours to request an extension. Employee's representative has many years' experience representing injured workers in these cases and should be familiar with custom and practice among workers' compensation practitioners regarding requesting time extensions for filing pleadings. *Rogers & Babler*. The rule for witness lists is not as flexible and requires excluding a party's witnesses from testifying at hearing when a witness list is not filed as directed. 8 AAC 45.112. Therefore, Employee's hearing brief and witness list will be stricken and not considered. Nevertheless, as the only two witnesses on Employee's witness list were parties to the case, they had a right to testify at hearing notwithstanding the untimely witness list. 8 AAC 45.112(1).

2)What medical specialties and medical records should be included in the SIME?

As Employee described it, her work injury appears relatively minor. *Rogers & Babler*. However, her claims encompass a wide variety of injuries and symptoms. Whether her injury was an event sufficient to affect Employee's brain, neck, bladder, ears and vision is a medically complex question. *Id.* The parties stipulated to the SIME panel including a neurologist, ENT and neuropsychologist. AS 23.30.095(k). Employer objected to additional specialists except for a

psychiatrist. Employee similarly did not object to a psychiatrist but also wanted a urologist and neuro-ophthalmologist. Given Employee's complex urological issues and Dr. Craig's recommendation for a psychiatric evaluation, which has yet to occur, the SIME panel will include an ENT and a neurologist, neuropsychologist, urologist and psychiatrist. *Thompson*. The division's SIME list contains specialists in all these areas except for urology. *Rogers & Babler*. Therefore, the designee will be directed to obtain an ENT and a neurologist, neuropsychologist and psychiatrist from the SIME list in accordance with the division's internal policies and procedures. 8 AAC 45.092(e). Since the SIME list does not include a urologist, the parties may stipulate to one. (*Id.*). If the parties cannot stipulate, they have 10 days from this decision's date to submit names, addresses and resumes of no more than three urologists. 8 AAC 45.092(f).

Employee also contends some medical records, which in her opinion are not related to her injury, must be excluded from the SIME binders under AS 23.30.108(d), which allows her to recover records "not related to the employee's injury." By contrast, the SIME regulation requires the assigned party to compile all medical records "regarding the employee in the party's possession." 8 AAC 45.092(h)(1). With few exceptions, like mammogram results, the panel does not have medical expertise sufficient to know whether certain medical records are related to her injury or not. Similarly, neither Employee nor her non-attorney representative have demonstrated sufficient medical knowledge to determine what medical records may or may not be related to her injury. In other words, Employee's lay opinion about her medical records' potential relationship to her complex injury claims is not dispositive. Furthermore, regardless the topic, Employee's medical records clearly "regard" her. While Employee has the right and obligation to review all SIME records, her review is limited to ensuring a complete medical record. 8 AAC 45.092(h)(3)(A). The regulation does not provide for an objection based on a record that is too inclusive or complete.

The parties will be directed to attend a prehearing conference at the earliest possible date to follow the normal procedure for arranging the SIME. Employer will be directed to compile the SIME records and the designee will establish deadlines for filing the records and any questions. The parties will otherwise follow the procedure set forth in 8 AAC 45.092. In addition to the normal SIME procedure, and to avoid additional delays, Employer will be directed to redact from its EME reports any and all references to medical records for "the other Sheila Collins." Employer will be

directed to provide these redacted reports to Employee within 10 days of this decision and prior to preparing the SIME records so Employee has an opportunity to raise any objection to the manner by which Employer redacted the reports before the SIME records are compiled. AS 23.30.135.

3)How and when should Employee’s travel accommodations, if any, be addressed?

Employee requests unspecified accommodations for travel to the SIME. There is no current travel restriction in Employee’s medical records. She will be directed to obtain any travel restrictions required by her physicians at her earliest opportunity and file and serve these documents on a medical summary. The parties and the designee at a prehearing conference will discuss any SIME travel accommodations, once Employee has obtained them from her physicians. AS 23.30.135.

CONCLUSIONS OF LAW

- 1) Employee’s hearing brief and witness list will be stricken as untimely.
- 2) A neurologist, ENT, neuropsychologist, urologist and psychiatrist will comprise the SIME panel and all medical records, including medical providers’ depositions, regarding Employee in Employer’s possession will be included in the SIME.
- 3) Employee’s travel accommodations, if any, will be addressed at a prehearing conference.

ORDER

- 1) Employer’s July 12, 2018 petition for an SIME and its June 13, 2019 petition to strike Employee’s hearing brief and witness list as untimely are granted.
- 2) An SIME panel including a neurologist, ENT, neuropsychologist, urologist and psychiatrist will examine Employee. The SIME panel will address causation, medical stability, permanent impairment, functional capacity, medical treatment, and compensability.
- 3) The assigned designee will select a neurologist, ENT, neuropsychologist and psychiatrist from the division’s SIME list.
- 4) The parties may stipulate to a urologist; if they cannot stipulate, the designee will select one following the procedures set forth in 8 AAC 45.092(f), as directed at a prehearing conference.
- 5) Employer is directed to redact all references in its EME reports to the other Sheila Collins and provide the redacted copies to Employee within 10 days of this decision’s date, independent of the

SIME records, which will be compiled and served on Employee later. Employee is directed to address any objection to Employer's redactions to the designee at the next prehearing conference.

6) Employer is directed to compile the SIME records, along with any providers' depositions, in accordance with 8 AAC 45.092(h)(1). Specifically, Employer shall include in the SIME records "all medical records . . . regarding the employee in the party's possession. . . ."

7) Employee is directed to consult with and obtain from her physicians any travel restrictions or accommodations necessary to attend the SIME. Employee shall obtain, file and serve this information within 14 days from this decision's date.

Dated in Anchorage, Alaska on June 20, 2019.

ALASKA WORKERS' COMPENSATION BOARD

_____/s/
William Soule, Designated Chair

_____/s/
Sara Faulkner, Member

_____/s/
Nancy Shaw, Member

PETITION FOR REVIEW

A party may seek review of an interlocutory other non-final Board decision and order by filing a petition for review with the Alaska Workers' Compensation Appeals Commission. Unless a petition for reconsideration of a Board decision or order is timely filed with the board under AS 44.62.540, a petition for review must be filed with the commission within 15 days after service of the board's decision and order. If a petition for reconsideration is timely filed with the board, a petition for review must be filed within 15 days after the board serves the reconsideration decision, or within 15 days from date the petition for reconsideration is considered denied absent Board action, whichever is earlier.

RECONSIDERATION

A party may ask the board to reconsider this decision by filing a petition for reconsideration under AS 44.62.540 and in accordance 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 accordance 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 Interlocutory Decision and Order in the matter of Sheila Collins, employee / claimant v. NANA Regional Corporation, employer; American Zurich Insurance Company, insurer / defendants; Case No. 201615256; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties by First-Class U.S. Mail, postage prepaid, on June 20, 2019.

_____/s/
Nenita Farmer, Office Assistant