ALASKA WORKERS' COMPENSATION BOARD

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

ROBERT A. WOOLF, Employee, Claimant, v. BERING STRAIT SCHOOL DISTRICT, Employer, and APEI, Insurer, Defendants.	)	INTERLOCUTORY DECISION AND ORDER AWCB Case No. 201702574 AWCB Decision No. 19-0080 Filed with AWCB Juneau, Alaska on August 2, 2019

Robert A. Woolf's (Employee) February 22, 2019 petition for a Second Independent Medical Evaluation (SIME) and March 11, 2019 petition for an extension of the time to request a hearing were heard on July 9, 2019 in Juneau, Alaska, a date selected on April 15, 2019. An April 5, 2019 affidavit of readiness for hearing gave rise to this hearing. Employee appeared telephonically, represented himself and testified. Attorney Colby Smith appeared and represented Bering Strait School District and APEI (Employer). As a preliminary matter, oral orders granted Employer's petition to quash a subpoena and denied Employee's hearing continuance request. This decision examines the oral orders and addresses the two petitions on their merits. The record closed at the hearing's conclusion on July 9, 2019.

ISSUES

Employee contended questioning the school district's superintendent would assist in understanding the medical records, specifically to illustrate his work place environment and the unlawful employment actions taken by Employer. He requested an order denying Employer's petition to quash his subpoena.

Employer contended the school district's superintendent's testimony is not necessary at a hearing to decide whether to order an SIME and extend the time to request a hearing. It contended Employee failed to provide sufficient notice because he served the subpoena only ten days before the hearing when the superintendent was traveling out of state and unavailable until after August 4, 2019. Employer contended Employee failed to provide a witness fee. It sought an order quashing Employee's subpoena. An oral order quashed the subpoena.

1) **Was the oral order quashing a subpoena of the superintendent correct?**

Employee requested a hearing continuance. He contends the superintendent is a material witness and he cannot afford to depose him. Employer opposed a hearing continuance to obtain the superintendent's testimony contending he was not a material witness. An oral order denied Employee's hearing continuance request.

2) **Was the oral order denying Employee's hearing continuance request correct?**

Employee contends there is a dispute between his treating physicians and Employer's medical evaluator. Alternatively, he contends an SIME will help assist in resolving his claim. Employee contends Employer's attorney harassed his former attending physician when he sought her opinion regarding his medical stability which resulted in her opining he reached medical stability to stop the harassment. He contends his most recent therapist declined to treat him any further because Employer threatened to depose her. Employee contends Employer's termination of his employment health insurance and refusal to provide medical care under the Act made it impossible for him to obtain medical care because he cannot afford to pay for it. He contends an SIME will enable him to obtain medical treatment. Employee contends the EME report is

flawed because the physician omitted and misrepresented facts he told her about his work environment and she refused to review evidence he brought to the appointment.

Employer opposes an SIME. It contends there are no significant disputes between Employee's treating physicians and Employer's medical evaluator. Employer contends Employee's treating physician agreed with its medical evaluator and found Employee medically stable in December 2016. It contends there is no medical opinion stating Employee is disabled after December 2016 or needs medical treatment due to the work injury. Employer contends an SIME is not intended to give Employee an additional medical opinion at its expense when he disagrees with his own attending physician's opinion. Alternatively, it contends Employee failed to timely request an SIME after he was aware of the medical record he contends created a dispute.

3) **Should an SIME be ordered?**

Employee contends he needs additional time to prepare for hearing to complete discovery and for an SIME. He contends he is still awaiting discovery material Employer was ordered to provide and he has sought sanctions against Employer for noncompliance with a discovery order. Employee seeks up to one year to request a hearing under AS 23.30.110(c).

Employer opposes an extension of Employee's time to request a hearing. It contends Employee had sufficient time to prepare for hearing. Employer contends there is no outstanding discovery because it has complied with all discovery orders. It contends an extension would prejudice Employer financially as it would not be quick or efficient.

4) **Should Employee's time to request a hearing under AS 23.30.110(c) be extended?**

FINDINGS OF FACT

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

1) On September 28, 2016, Nandi Than, M.D., examined Employee and declared him physically and mentally ready for employment as his blood pressure and psychiatric condition was satisfactory for intended employment. (Than medical exam form, September 28, 2016).

2) On November 10, 2016, Principal Roxy Meneguin issued a written notice of reprimand to Employee based upon his insubordination with her and other teachers, failure to follow curriculum and lack of control with his students. (Reprimand, November 10, 2016).

3) On November 13, 2016, Employee responded to the written notice of reprimand contending it was overly broad without any details regarding the allegations. (Letter, November 13, 2016).

4) On November 22, 2016, Employee visited Valentine Wurmstein, FNP-C, for anxiety and stress from work stress which improved with rest. She recommended he return to his previous dose of hypertension medication, use Ativan as written and follow up with her during her next village trip. (Wurmstein chart note, November 22, 2016).

5) On November 29, 2016, Employee complained of increasing anxiety. He reported Post Traumatic Stress Disorder (PTSD) from a shooting 16 years earlier with similar issues. FNP-C Wurmstein referred Employee to behavioral health serves for an urgent assessment. (Wurmstein chart notes, November 29, 2016). Arthur Bannow, LCSW spoke with Employee telephonically. Employee reported increasing distress caused by an ongoing conflict at work. His wife was fired from the school and the principal was attempting to force him to teach a math class that was unethical to teach in the conditions at the school. Employee was offered alternate positions but he felt he needed to stick to his position and protect his students. He reported he still suffered from PTSD from an incident he faced 15 years ago and the conflict at school was "stirring it up." (Bannow behavioral health note, November 29, 2016).

6) On December 1, 2016, FNP-C Wurmstein wrote a letter addressed, "To home this may concern" stating, "[Employee] has been under my care for the last few weeks. Due to medical issues [Employee] has needed to be off work starting November 11, 2016. I am not sure when he will be cleared to return to work. I will notify you when he can return at a later date." (Wurmstein letter, December 1, 2016).

7) On December 8, 2016, the school district superintendent, Robert Bolen, Ed. D., provided Employee a written "Notice of Proposed Dismissal and Pretermination Hearing." (Notice of Proposed Dismissal and Pretermination Hearing, December 8, 2016).

8) On December 8, 2016, Employee reported increasing anxiety issues and PTSD from a shooting 16 years ago with similar issues. FNP-C Wurmstein assessed anxiety and recommended he continue with the plan of care. (FNP-C Wurmstein chart note, December 8, 2016).

9) On December 14, 2016, Dr. Bolen provided Employee an amended written "Notice of Proposed Dismissal and Pretermination Hearing." (Notice of Proposed Dismissal and Pretermination Hearing, December 14, 2016).

10) On December 21, 2016, Employee visited FNP-C for trouble regulating his blood pressure for a few months due to extreme stress. His blood pressure was 140/80. His associated symptoms included insomnia, anxiety and PTSD issues which stress worsened and a calm environment improved. She referred Employee to behavioral health services and refilled his prescriptions. (FNP-C Wurmstein chart note, December 21, 2016; Marissa Oxereok CHA-C, chart note, December 21, 2016). Employee spoke telephonically with Mr. Bannow, LCSW, for urgent behavioral health services. Employee reported going through a termination process despite his desire to stay and bring resolution for students and the school district rejected his absence based upon medical grounds. He believed his access to services was going to be jeopardized because his employer was going to cut off his health insurance. Mr. Bannow encouraged him to not let that be a barrier and stated there could be another pathway to services, like a sliding fee scale. He noted Employee was in a good mood despite the significant setbacks. (Bannow behavioral health note, December 21, 2016).

11) On December 27, 2016, FNP-C Wurmstein wrote a letter addressed, "To whom this may concern" stating:

> I am writing on behalf of [Employee]. He had been under my care as his primary care provider for several months. I am a FNP-C who provides care in the Village of Wales. As the FNP-C for the village I provide primary care, physicals and referrals. During this time [Employee] has been seen by me multiple times and by the CHA's on several occasions. [Employee] has also been seen by alternative departments at [Norton Sound Health Corporation] NSHC during this time.
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> As a FNP-C and this patient's primary care provider I can certify patients to be off and to return to work as deemed medically necessary. Please let me know what other documentation you need from me to reconsider the elimination of his health care. (Wurmstein letter, December 27, 2016).

12) On December 29, 2016, a medical assistant at NSHC, noted FNP-C Wurmstein's December 28, 2016 order for a psychiatric referral was being closed out as complete because Employee had contacted the behavioral health clinician and an assessment was to be scheduled soon. (Medical assistant note, December 29, 2016).

13) On January 18, 2017, Employee's employment was terminated by the school district for incompetency, substantial noncompliance with the school laws of the state, the regulations or bylaws of the department, the bylaws of the district, or the written rules of the superintendent, and breach of his contract of employment. (Notice of Dismissal, January 18, 2017).

14) On February 2, 2017, Employee reported he had been under a tremendous amount of stress related to his recent job as a teacher in a remote Alaskan village. His blood pressure was 164/100 at the clinic and he had one elevated systolic reading of 177. Employee was able to bring his blood pressure down with exercise and stress reduction. Over the last month, his blood pressure was 136/77. Dr. Than assessed hypertension stage 1 to 2, recently exacerbated by underlying work related stress. She increased his Hyzaar and recommended he monitor his blood pressure closely at home. (Than chart note, February 2, 2017).

15) On February 8, 2017, Employer reported Employee notified it on January 31, 2017 that he had "stress and high blood pressure from work." (Employer First Report of Occupational Injury, February 8, 2017).

16) On March 27, 2017, Employer denied all benefits contending it received no medical documentation indicating work-stress was the cause of any mental injury and Employee is not entitled to benefits for a mental injury arising out of his termination. (Controversion Notice, March 27, 2017).

17) On April 10, 2017, Employee filed a workers' compensation claim seeking temporary total disability (TTD), medical costs, penalty for late paid compensation, interest and a finding of unfair or frivolous controversion. He described the nature of the injury as, "I experienced dangerously high blood pressure initiated by a hostile and chaotic work environment for which I had to take action to protect my students from an abusive principle who had placed my students into courses for which they did not have the pre-requisite skills." The reason for his claim stated Employer denied medical services and lost wages. (Claim for Workers' Compensation Benefits, April 10, 2017).

18) On April 27, 2017, Employer denied all benefits and served its controversion notice on Employee by U.S. mail. It contended it received no medical documentation work-stress was the cause of any mental injury and that Employee was not entitled to benefits for any mental injury arising out of his termination because it was taken in good faith by Employer. (Controversion Notice, April 27, 2017).

19) On June 5, 2017, Employee filed an amended claim seeking TTD, medical costs, penalty, interest, attorney fees and costs for physical and mental injuries caused by work stress. He stated, "While in the course and scope of his employment, [Employee] began to experience dangerously high blood pressure initiated by the work environment." The reason provided for filing the claim included, "Employee reported disability and need for care for hypertension, a physical condition, caused by employment stress. Such report to employer was made timely upon request. . . . The hypertension caused employee to be taken off work. Employee was terminated for abiding physician restriction. . . . There was also a mental injury and that claim remains unchanged." (Amended Workers' Compensation Claim, June 5, 2017).

20) On June 11, 2017, Diane DiGiulio, Ph.D., a clinical neuropsychologist, completed a neurological assessment of Employee for the Division of Vocational Rehabilitation (DVR). Employee reported a history of PTSD 18 years ago with no reoccurrence of symptoms until his recent encounter with the hostile work environment. He described as witnessing, and voicing a complaint, about repetitive verbal and psychological abuse of a ninth grade student by a school administrator. Dr. DiGiulio diagnosed "other specified depressive disorder," "other specified anxiety disorder" and "other specified trauma and stressor-related disorder." She opined Employee's symptoms do not meet full criteria for a PTSD diagnosis. Dr. DiGiulio recommended stress reduction, given his report that his high level of stress was aggravating his hypertension and antidepressant medication to address his obsessional ruminations, which interferes with his ability to adapt to his circumstances and his ability to fully benefit from psychological treatment directed towards reducing his overall stress level. (DiGiulio report, June 11, 2017).

21) On July 17, 2017, Employee's case with the DVR was closed because he was ineligible for services as he had the ability to return to remunerative employment. (Letter, July 17, 2017).

22) On June 23, 2017, Employee reported being under a lot of stress and suffering from anxiety. He had a history of PTSD with depression but did not feel like his depression was active. Employee's blood pressures were intermittently elevated but on average about 130/70. Dr. Than added Norvasc and recommended he continue Hyzaar. (Than chart note, June 23, 2017).

23) On August 10, 2017, FNP-C Wurmstein responded to an *ex parte* letter from Employer's attorney asking her if Employee was capable of returning to work on December 21, 2016. She

responded, "He was medically cleared at this time." When asked to opine if Employee was medically stable as of December 21, 2016, FNP-C Wurmstein replied, "He was medically cleared at this time." (Wurmstein response, August 10, 2017).

24) On September 28, 2017, Employer denied TTD and medical costs, contending it received no medical documentation indicating work-stress was the cause of any mental injury or that his high blood pressure was the result of his employment. It contended Employee was not entitled to benefits for any mental injury arising out of his termination because Employer terminated him in good faith. Employer also contended Employee is not entitled to TTD after December 22, 2016, based upon FNP-C Wurmstein's opinion he was medically stable. (Controversion Notice, September 28, 2017).

25) On October 2, 2017, Employee reported his blood pressure at home had been in the target 120s over 80s or less. He said he was under a lot of stress but was coping well with it. Dr. Than continued his Hyzaar and Norvasc. (Than chart note, October 2, 2017).

26) On January 10, 2018, Employee petitioned to compel Employer to provide discovery. (Petition, January 10, 2018).

27) On January 30, 2018, Employee again petitioned to compel Employer to provide discovery. (Petition, January 30, 2018).

28) On April 11, 2018, the board designee informed Employee he must file and serve on all opposing parties an ARH within two years of Employer's April 27, 2017 controversion notice or provide written notice he still wants a hearing but has not completed all discovery. (Prehearing Conference Summary, April 11, 2018).

29) On May 17, 2018, the board designee issued a discovery order granting in part and denying in part Employee's January 10, 2018 and January 30, 2018 petitions to compel discovery. The designee ordered Employer to search for and provide Employee copies of emails, that it had not already provided, which were received by or written by Employee regarding specific events, including: the temperature in his classroom, his request for training about the former instructor charged with sexual abuse of minors, special education services for his students, the math curriculum, his students' math skills, the curriculum and textbooks for his science courses, the snake he kept in his classroom, the November 9, 2016 email to Principal Meneguin about his ninth grade math student, written lesson plans after November 10, 2016, his medical treatment and blood pressure, his missing student's tests and other paperwork and his requests to get them

back, his December 3, 2016 Alaska Professional Teaching Practices Commission complaint, and the termination of his wife's employment with Employer. (Prehearing Conference Summary, May 17, 2018).

30) On May 22, 2018, Kari Hancock, M.D., a psychiatrist, evaluated Employee for an Employer's Medication Evaluation (EME). Employee brought five pages of an evaluation titled, "Evaluation of Robert Woolf, January 21, 25, 27, 29, 1999" and an email from Ward Walker dated December 5, 2017. He stated he could return to work without restrictions if he has appropriate therapeutic support. Employee discussed a past situation where he was falsely accused of child molestation and received therapeutic support to get through it and return to work. He was diagnosed with PTSD when the false accusations were made and he felt similar to how he felt back then. Employee's symptoms worsened with the workers' compensation process. He reported he felt responsible for the death of a student that died a violent death after he informed the principal the student was a danger to himself and others and the principal told him to wait for ongoing support until the school psychologist came. Employee also reported another incident involving another student committing suicide after a school trip to another village for a conference when something happened to the student and the student could not talk. He brought the student to the village clinic and the student was taken by float plane the next day to get medical care. Employee stated he felt he had not done enough for that student and still felt guilt about his death. Dr. Hancock diagnosed preexisting PTSD in partial remission, psychological factors affecting hypertension and major depressive disorder recurrent in remission. She opined his employment with Employer is not the substantial cause of his diagnoses. Dr. Hancock stated the stressors while employed for Employer temporarily aggravated his chronic conditions which wax and wane with stressors. She noted he was medically cleared to return to work on December 21, 2016, the last medication addition to his hypertension treatment occurred on June 23, 2017, and on October 2, 2017, Employee reported his blood pressure at home was in the target 120s and that it was quite reactive, for example, when he has a conflict with his wife. Dr. Hancock stated Employee appears to be a compassionate man who appears distressed when he believes someone is being victimized which stems from the unfortunate experienced he had with tragic student deaths in the past and his own situation when he was falsely accused several years ago. Any reminders of those experiences exacerbates his symptoms and ongoing life stressors and health concerns in older individuals can

contribute to symptom recurrence and intensification. She opined Employee did not incur a PPI as a result of his employment. She recommended treatment to help Employee "manage his stress in the context of his chronic conditions" but there are no work restrictions as result of his employment. (Hancock EME report, May 22, 2018).

31) On May 30, 2018, Employer denied TTD, temporary partial disability (TPD), permanent partial impairment (PPI) medical costs and reemployment benefits based upon Dr. Handcock's EME report. (Controversion Notice, May 30, 2018).

32) On May 31, 2018, Employer filed a medical summary with Dr. Hancock's EME report and served it on Employee by first- class mail. (Medical Summary, May 31, 2018). Employer also emailed Employee a copy. (Email, May 31, 2018).

33) On June 1, 2018, Employee requested advice from a workers' compensation technician on how to challenge the EME report. (Email, June 1, 2018). The workers' compensation technician provided Employee a petition form and SIME form by email. (Reply email, June 1, 2018).

34) On June 22, 2018, Employee informed the division and Employer he would be helping his wife move to Illinois for her new position as an ordained United Methodist minister. He would be flying back to Juneau to continue working on his case afterwards. (Email, June 22, 2018).

35) On August 23, 2018, Employee came into the division's Juneau office for assistance with the petition and SIME forms, which was provided by a technician. (ICERS Event, Walk-in, August 23, 2018).

36) On January 7, 2019, Employee emailed the division explaining why he chose to put aside working on his case while his wife settled into her new job as a pastor of two churches in Illinois. He had to set aside working on his case because it caused too much stress and associated high blood pressure. Employee chose to reduce his stress by not working on his case to enable him to form good relations with the members of the two churches. He stated the stress caused by Employer's wrongful actions continued to manifest when he worked on his case so he has to do so carefully. He began to receive professional mental health services to have support necessary to safely work on his case. Employee asked to be informed of any pending deadlines for his case, what he needs to do and the dates of any deadlines. (Email, January 7, 2019).

37) On January 8, 2019, a workers' compensation officer emailed Employee to inform him he must file an ARH or written notice he still wants a hearing but has not completed all discovery

within two years of Employer's April 27, 2017 controversion notice. A follow up email stated the deadline was approaching rapidly on April 26, 2019. (Emails, January 8, 2019).

38) On January 14, 2019, Employee sought psychological assistance with Jodi Wiman, LCPC. He stated he was facing very difficult legal testimony soon and has situational high blood pressure from case related stress. Employee purposefully ignored his case for the past six months in an attempt to allow him and his wife time to settle in Illinois. However, he recognized more of a need to manage his stress now that he was spending a lot of time preparing for his testimony. Employee reported sleep disruption, irritability and problems concentrating in addition to the blood pressure issue. He noticed some familiar symptoms, such as rumination, creeping in like when he experienced PTSD in the past. Ms. Wiman diagnosed unspecified anxiety and planned to implement coping skills and provide support and validation. (Wiman therapy note, January 14, 2019).

39) On January 21, 2019, Ms. Wiman noted Employee was in good spirits and she spent time working on relaxation and stress management techniques with Employee. She stated, "[Employee] is a very intelligent man with a lot of insights. He mainly needs a sounding board and some guidance on relaxation and stress management." (Wiman therapy note, January 21, 2019).

40) On February 19, 2019, Employee filed an SIME form he signed and contended a dispute existed between Dr. Than and FNP-C Wurmstein versus Dr. Hancock regarding causation and medical stability. He attached Dr. Than's September 28, 2016 medical evaluation declaring him physically and mentally ready for employment. He included letters of recommendation, his resume and a subpoena for him to appear as a witness in a third-party civil case on behalf of minor plaintiffs against the school district for sexual abuse of the minors by an instructor. He included two news articles from the Nome Nugget regarding the third-party civil case. Employee also attached a document he wrote detailing errors made in Dr. Hancock's EME report. He contended Dr. Hancock did not fully or accurately depict his description of the events and work environment he experienced while working for Employer. Employee contended she used words in quotations he did not say in the context she provided. He contended Dr. Hancock refused to look at a 40 page document he brought to the appointment which contained mostly letters of recommendations for his work as a teacher. Employee contended Dr. Hancock's description of past events in his life is very inaccurate and misleading and she ignored his past

work history after a previous traumatic experience. He contended the "Review of Systems" section in Dr. Hancock's report contained incorrect information even though he provided her the correct information. Employee contended an SIME is needed to obtain an accurate independent evaluation. (SIME form with attachments, February 19, 2019).

41) On February 22, 2019, Employee requested an SIME. (Petition, February 22, 2019).

42) On February 26, 2019, Employer opposed Employee's petition for an SIME contending he failed to provide any evidence demonstrating a dispute between his treating physician and the EME physician. It also contended Employee had until April 28, 2019 to file an ARH based upon its April 27, 2017 controversion notice. (Opposition, February 26, 2019).

43) On March 11, 2019, Employee requested an extension of the time to request a hearing. He contended his work injury prevents him from returning to work and he relies on his wife's income. Employee contended he had to move from Juneau, Alaska to Illinois for his wife's work as a minister and it would have been very difficult from him to pursue his workers' compensation claim while forming new relations as a pastor's spouse. He contended he waited until they had settled in Illinois and after he received professional therapeutic support before he returned to working on his claim. Employee claims working on his claim re-traumatized him. He requested a continuance to get an SIME. (Petition, March 11, 2019).

44) On March 20, 2019, Employer withdrew or waived its denial based on the unusual and extraordinary situation and its May 30, 2018 controversion is based solely on the medical evidence. (Prehearing conference summary, March 20, 2018).

45) On April 11, 2019, Employee was much more stressed for his appointment with Ms. Wiman than during previous appointments. He had a deposition the following week and was very worried about his health. Employee's blood pressure had been spiking again while preparing for his case. He panicked when he received an email regarding his case and he was almost scared to open his mail. Employee experienced some symptoms of PTSD as he was feeling re-traumatized by having to revisit the aspects of the case. He reported hypervigilance, rumination, sleep disruption, general anxiousness and a physical response in the form of greatly heightened blood pressure to triggers. Ms. Wiman worked with Employee on ways to emotionally tolerate the hearing so his blood pressure does not reach dangerous levels. (Wiman therapy note, April 11, 2019).

46) On April 15, 2019, Employee was increasingly stressed again. His phone conference was today and he was still noticeably frazzled. He shared documentation, including dates and times of his blood pressure before, during and after this phone conference and it was indicative of a correlation between his contact or involvement with this case and his physical stress response. Ms. Wiman continued working on ways to proactively and reactively manage his stress response symptoms so he can get through the case with the least amount of negative emotional response as possible. (Wiman therapy note, April 15, 2019).

47) On May 7, 2019, Employee testified he is seeking an SIME to assess his circumstances to see what medical treatment he needs to go back to teaching safely. (Employee deposition, May 7, 2019 at 158). Employee experiences stress and blood pressure issues when he works on this case, such as during a prehearing conference. (*Id*. at 168). It was probably a fair assessment that the only stress and blood pressure issues he has are when he deals with litigation issues concerning Employer. (*Id*. at 80). It would be a long process and it would be very hard for him to afford, even with the co-pay, to get counseling. (*Id*. at 114-115). Employee feels it is Employer's responsibility to provide him the medical treatment he needs to go back to teaching. (*Id*. at 115).

48) On June 17, 2019, Employee requested Employer be sanctioned for noncompliance with a discovery order. He contends Employer failed to comply with the designee's May 17, 2018 discovery order. (Petition, June 17, 2019).

49) On July 1, 2019, Employee filed a witness list which included Dr. Bolen, the school district's superintendent. The brief description of the subject matter and substance of Dr. Bolen's testimony included the refusal to accept FNP-C Wurmstein's work release, the reason the school district did not have Employee independently medically assessed before he was terminated, the reason his employer provided health insurance was discontinued, the reason his medical leave was not approved and his employment was terminated, the reason he was accused of not keeping his immediate supervisor informed about his medical leave and Employee's communications with him regarding the serious problems regarding implementing the math program. Employee contended the facts he would question Dr. Bolen about were a significant cause of the worsening of his mental injury. (Employee witness list, July 1, 2019).

50) Employee contends he was wrongfully terminated from his employment with Employer in retaliation for reporting concerns regarding the wrongful and unprofessional implementation of a

math program and the wrongful treatment of a student by the school principal and for seeking counseling support for students and training for teachers after an instructor at the school was arrested for sexually abusing students within the school building. He contends he is seeking an SIME so he can receive medical treatment he needs to safely return to work as a teacher. Employee contends Dr. Bolen took employment actions which worsened his work injury, including not accepting FNP-C Wurmstein's medical opinion, discontinuing his health insurance and salary, and other steps which culminated in the termination of his employment. He contends Ms. Wiman discontinued his therapy after Employer considered deposing her and he felt it unwise to seek any additional mental health services because there would likely be more stress associated with the support than the benefit he would receive. Employee contended Dr. Than's September 28, 2016 exam form proves his current mental injury was caused by his work because he was found physically and mentally ready for work as his blood pressure and psychiatric conditions were satisfactory for intended employment. He contends the December 29, 2016 medical assistant note proves FNP-C Wurmstein had continuing concerns about his medical condition beyond the December 21, 2016 medical stability date. (Employee's brief, July 1, 2019).

51) On July 8, 2019, the law office representing the school district wrote a letter addressed to Employer's attorney in response to the subpoena forwarded on June 30, 2019, stating Dr. Bolen is out of the state and unavailable to participate telephonically for the hearing due to travel. He had been out of the state the entire month of June and was scheduled to return the week of August 4, 2019. (Letter, July 8, 2019). Employer requested Employee's subpoena of Dr. Bolen be quashed. It contended Dr. Bolen was unavailable as he was traveling out of state and his testimony was irrelevant. (Petition, July 8, 2019).

52) Employee contends he was unable to obtain a medical opinion after his employment health insurance was illegally discontinued. He no longer had health insurance since his retirement health insurance did not begin until after he was terminated in early 2017 and his retirement health insurance requires co-pays which he cannot afford. He contends he needed to take a break from his case for several months when he moved from Alaska to Illinois with his wife because he needed to devote his time to the move and the case negatively impacted his health by affecting his blood pressure. Employee contends FNP-C Wurmstein restricted him from working and never released him to return to work. He contends Dr. Than declared him ready for

employment with Employer even with his prior psychiatric and hypertension problems because given ordinary circumstances of treatment he had no medical problems that would hinder his performance or dangerous for his health. Employee contends Employer's attorney hassled FNP-C Wurmstein into providing the December 21, 2016 medical stability opinion when he repeatedly called her which interfered with her work and she gave that opinion after being advised to do so by a lawyer representing NSHC. (Employee's hearing arguments).

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, 533-534 (Alaska 1987).

> **AS 23.30.095. Medical treatments, services, and examinations**.
> (a) . . . . When medical care is required, the injured employee may designate a licensed physician to provide all medical and related benefits. The employee may not make more than one change in the employee's choice of attending physician without the written consent of the employer. Referral to a specialist by the employee's attending physician is not considered a change in physicians. Upon procuring the services of a physician, the injured employee shall give proper notification of the selection to the employer within a reasonable time after first being treated. Notice of a change in the attending physician shall be given before the change.
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> (k) In the event of a medical dispute regarding issues of causation, medical stability, ability to enter a reemployment plan, degree of impairment, functional capacity, the amount and efficacy of the continuance of or necessity of treatment, or compensability 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. The cost of an examination and medical report shall be paid by the employer. . . .
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> **AS 23.30.110. Procedure on claims.**
> . . . .
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> (c) Before a hearing is scheduled, a party seeking a hearing shall file a request for hearing together with an affidavit stating that the party has completed necessary

> discovery, obtained necessary evidence, and is prepared for the hearing. An opposing party shall have 10 days after the hearing request is filed to file a response. . . . . 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.
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> (g) An injured employee claiming or entitled to compensation shall submit to the physical examination by a duly qualified physician which the board may require. . . .

AS 23.30.110(c) requires an employee, once a claim has been filed and controverted by the employer, to prosecute the employee's claim in a timely manner. *Jonathan v. Doyon Drilling, Inc.*, 890 P.2d 1121 (Alaska 1995). Generally, failure to request a timely hearing requires a claim be dismissed. *Bailey v. Texas Instruments, Inc.*, 111 P.3d 321 (Alaska 2005).

The Alaska Supreme Court stated because AS 23.30.110(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 v. Alyeska Seafoods, Inc.*, 197 P.3d 193, 196 (Alaska 2008). However, substantial compliance does not mean noncompliance or late compliance. *Id*. at 198. Although substantial compliance does not require the filing of a formal affidavit, it still requires a claimant to file, within two years of a controversion, either a request for hearing, or a request for additional time to prepare for a hearing. *Id*. A request for additional time constitutes substantial compliance and tolls the time-bar until the board decides whether to give the claimant more time to pursue the claim. *Id*. If the claimant is given more time, the board must specify the amount of time granted to the claimant. *Id*. If the claimant's request for additional time is denied, the two-year time limit begins to run again, and the claimant has only the remainder of that time period to request a hearing. *Id*. The board has discretion to consider the merits of the request of additional time and any resulting prejudice to the employer. *Id*. at 199.

The board has power to excuse failure to file a timely request for hearing when the evidence supports application of a form of equitable relief, such as when the parties are participating in the SIME process. *Kim*, at 197-198; *Tonoian v. Pinkerton Sec*, AWCAC Decision No. 029 at 11 (January 30, 2007). A claimant bears the burden of establishing by substantial evidence a legal

excuse from the AS 23.30.110(c) statutory deadline. *Providence Health System v. Hessel*, AWCAC Decision No. 131 at 8 (March 24, 2010).

Certain events relieve an employee from strict compliance with AS 23.30.110(c). The Alaska Supreme Court held the board owes a duty to every claimant to fully advise him of "all the real facts" that bear upon his right to compensation, and to instruct him on how to pursue that right under law. *Richard v. Fireman's Fund Insurance Co.,* 384 P.2d 445, 449 (Alaska 1963). *Bohlman v. Alaska Const. & Engineering*, 205 P.3d 316 (Alaska 2009), applying Richard, held the board has a duty to inform a *pro se* claimant how to preserve his claim under AS 23.30.110(c) with specificity when warranted by the facts, but did not delineate the full extent of the duty. Consequently, *Richard* is applied to excuse noncompliance with AS 23.30.110(c) when the board failed to adequately inform a pro se 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 AS 23.30.110(c), such as lack of mental capacity or incompetence, and equitable estoppel against a governmental agency by a *pro se* claimant. *Tonoian*. An erroneous statement by adjudication staff as to the specific form that a request for hearing must take, or the specific day on which the two years expires, may be grounds for application of estoppel against the board. *Id*. at 7.

The board has generally held the SIME process tolls the AS 23.30.110(c) deadline for the period the parties are actively in the SIME process. In *Aune v. Eastwood, Inc.*, AWCB Decision No. 01-0259 (December 19, 2009), the board began tolling the two-year time period in AS 23.30.110(c) when the parties stipulated to an SIME and the board designee ordered an SIME in a prehearing conference, all of which occurred prior to the two-year time period in AS 23.30.110(c).

In *Turpin v. Alaska General Seafoods*, AWCB Decision No. 09-0054 (March 18, 2009), the board began tolling the two-year period when the *pro se* claimant filed a claim requesting an SIME. It noted the claimant believed she was participating in the SIME process by agreeing to sign releases and give a deposition. *Id*. at 22-23. *Turpin* also found the division did not

adequately inform the claimant of the two-year period in light of her pending SIME request and the employer was not prejudiced by any action of the employee. *Id*.

In *McKitrick v. Municipality of Anchorage*, AWCB Decision No. 10-0081 (May 4, 2010), the board tolled the time period in AS 23.30.110(c) when the employer petitioned for an SIME and the board designee ordered the SIME in a prehearing conference until the SIME process was completed including any discovery or deposition requested from the SIME physician after the report. *McKitrick* noted it would be illogical to require the employee to file an ARH on the merits of his claims while awaiting an SIME examination, report, deposition, or other discovery related to the SIME. *Id*. at 22.

In *Snow v. Tyler Rental Inc.*, AWCB Decision No. 11-0015 (February 16, 2011), the board held the signing of the SIME form, which occurred on the same day the prehearing conference the parties stipulated to an SIME was held, tolled the time period in AS 23.30.110(c) until the SIME report was received. The signed SIME form gave notice the parties needed to request more time to prepare for hearing. *Id*. at 16.

In *Narcisse v. Trident Seafoods Corp.*, AWCAC Decision No. 242 (January 11, 2018), the SIME process began and ended prior to the AS 23.30.110(c) deadline from the employer's after-claim controversion. *Narcisse* began tolling the AS 23.30.110(c) time period on the date of the prehearing conference when the parties further discussed the SIME and the employee's attorney promised to file SIME questions, medical binders, and an SIME form. It ended the tolled period on the date the of the SIME examination and added that tolled time period to the original AS 23.30.110(c) deadline. *Id*. at 21. *Narcisse* noted the two-year time period is tolled when some action by the employee shows a need for additional time before requesting a hearing, and request for an SIME is a demonstration that additional time is needed before a hearing is held. *Id*. at 22. An employee has only the remainder of the AS 23.30.110(c) time period to request a hearing. *Id*. (citation omitted).

In a recent decision reversing a claim dismissal, the Commission held that a second SIME request, filed nearly eight months *after* the expiration of time under AS 23.30.110(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 he had a right to a hearing after the first SIME process was complete and he needed to file an ARH and for not advising his time to request a hearing *had already expired* when he petitioned for a second SIME. *Id*. at 23-25. *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.

> **AS 23.30.115. Attendance and fees of witnesses.** (a) A person is not required to attend as a witness in a proceeding before the board at a place more than 100 miles from the person's place of residence, unless the person's lawful mileage and fee for one day's attendance is first paid or tendered to the person; but the testimony of a witness may be taken by deposition or interrogatories according to the Rules of Civil Procedure.
>
> (b) A witness summoned in a proceeding before the board or whose deposition is taken shall receive the same fees and mileage as a witness in the superior court.
>
> **8 AAC 45.060. Service.**
> . . . .
>
> (b) . . . . Service by mail is complete at the time of deposit in the mail if mailed with sufficient postage and properly addressed to the party at the party's last known address. 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 serviced by mail.
> . . . .
>
> **8 AAC 45.070. Hearings.**
> . . . .

(b) . . . .

. . . .

(3) If the board or designee determines a hearing should be scheduled even though a party has not filed an affidavit of readiness for hearing, the board or designee will give notice of the hearing in accordance with AS 23.30.110 and 8 AAC 45.060(e).

8 AAC 45.082. Medical treatment.

. . . .

(b) A physician may be changed as follows:

. . . .

(4) regardless of an employee's date of injury, the following is not a change of an attending physician:

. . . .

(B) the attending physician dies, moves the physician's practice 50 miles or more from the employee, or refuses to provide services to the employee; the first physician providing services to the employee thereafter is a substitution of physicians and not a change of attending physicians;

. . . .

8 AAC 45.092. Selection of an independent medical examiner.

. . . .

(g) If there exists a medical dispute under AS 20.30.095(k),

. . . .

(2) a party may petition the board to order an evaluation; the petition must be filed within 60 days after the party received the medical reports reflecting a dispute, or the party’s right to request an evaluation under AS 23.30.095(k) is waived;

. . . .

(3) the board will, in its discretion, order an evaluation under AS 23.30.095(k) even if no party timely requested an evaluation under (2) of this subsection if

. . . .

(B) the board on its own motion determines an evaluation is necessary.

The following, general criteria are typically considered when ordering an SIME, though the statute does not expressly so require:

1. Is there a medical dispute between Employee's physician and Employer's EME?

2. Is the dispute "significant"?

3. Will an SIME physician's opinion assist the board in resolving the disputes?

Deal v. Municipality of Anchorage (ATU), AWCB Decision No. 97-0165 at 3 (July 23, 1997). Considering the broad procedural discretion granted in AS 23.30.135(a) and AS 23.30.155(h), wide discretion exists under AS 23.30.095(k) and AS 23.30.110(g) to consider any evidence available when deciding whether to order an SIME.

The Alaska Workers' Compensation Appeals Commission (commission) in *Bah v. Trident Seafoods Corp.*, AWCAC Decision No. 073 (February 27, 2008), addressed the authority to order an SIME under AS 23.30.095(k), when there is a medical dispute, and AS 23.30.110(g), when there is a gap in the medical evidence. With regard to AS 23.30.095(k), the commission referred to its decision in *Smith v. Anchorage School District,* AWCAC Decision No. 073 (February 27, 2008), at 8, in which it said:

> [t]he statute clearly conditions the Employee's right to an SIME . . . upon the existence of a medical dispute between the physicians for the Employee and the employer.

The commission further noted that before ordering an SIME, the board traditionally finds the medical dispute "significant or relevant" to a pending claim or petition, and the SIME will assist in resolving the dispute. *Bah*, at 4. Under AS 23.30.110(g) the board has discretion to order an SIME when there is a significant gap in the medical evidence or a lack of understanding of the medical or scientific evidence, preventing the board from ascertaining the parties' rights, and an SIME opinion would help the factfinders. *Bah* at 5. "Ordering an SIME is not proper if it serves no purpose to the board by advancing its understanding of the medical evidence or by filling in gaps in the medical evidence, where that gap in the evidence, or lack of understanding of the medical evidence, prevents the board from ascertaining the rights of the parties in the dispute before the board." *Id.*

Under either AS 23.30.095(k) or AS 23.30.110(g), the commission noted an SIME's purpose is to assist the board in resolving a significant medical dispute; it is not intended to give Employee an additional medical opinion at Employer's expense when Employee disagrees with his own physician's opinion. *Bah* at 4. The purpose of an SIME is to have an independent expert provide an opinion about a contested issue. *Seybert* v. *Cominco Alaska Exploration,* 182 P.3d 1079, 1097 (Alaska 2008). "[T]he SIME physician is the board's expert." *Bah*, at 5, citing *Olafson v. State, Dep't of Trans. & Pub. Facilities,* AWCAC Decision No. 061, at 23 (October 25, 2007).

> **8 AAC 45.120. Evidence.**
> . . . .
>
> (c) Each party has the following rights at hearing:
>
> (1) to call and examine witnesses;
> . . . .
>
> (3) to cross-examine opposing witnesses on any matter relevant to the issues even though the matter was not covered in the direct examination. . .
> . . . .
>
> (e) Technical rules relating to evidence and witnesses do not apply in board proceedings, except as provided in this chapter. Any relevant evidence is admissible if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but it is not sufficient in itself to support a finding of fact unless it would be admissible over objection in civil actions. The rules of privilege apply to the same extent as in civil actions. Irrelevant or unduly repetitious evidence may be excluded on those grounds.

ANALYSIS

1) Was the oral order quashing a subpoena of the superintendent correct?

Employee subpoenaed Dr. Bolen, school district's superintendent, because he wanted to question him about the employment actions resulting in his termination from employment. Employer

contended Dr. Bolen's testimony is not necessary to decide the SIME issue and Employee's request for additional time under AS 23.30.110(c).

An SIME order requires finding a medical dispute between Employee's attending physician and Employer's medical evaluator or a gap in the medical record. AS 23.30.095(k); AS 23.30.110(g). Extension of the AS 23.30.110(c) statutory deadline requires evidence of a legal excuse, participation in the SIME process or the division's failure to adequately inform a pro se claimant of the deadline. *Kim*; *Tonoian*; *Dennis*. Dr. Bolen's testimony regarding the work place environment and employment actions taken by Employer is not relevant or necessary in determining whether to order an SIME or whether to order an extension under AS 23.30.110(c). 8 AAC 45.120(e). The oral order quashing the subpoena was correct.

Employee has the right to depose Dr. Bolen at a mutually convenient time, under the Rules of Civil Procedure. AS 23.30.115(a), (b). He also has the rights to call and examine witnesses and cross-examine opposing witnesses at a future hearing. 8 AAC 45.120(c)

2) Was the oral order denying Employee's hearing continuance request correct?

Employee requested a continuance to obtain Dr. Bolen's testimony. He contended Dr. Bolen is a material witness and his testimony would assist in understanding the medical records, specifically to illustrate his work place environment and the unlawful employment actions taken by Employer. He contended he cannot afford to depose Dr. Bolen.

Continuances are not favored and will not be routinely granted. 8 AAC 45.074(b). Continuance are only granted for good cause as defined under 8 AAC 45.074(b)(1)(A)-(N). Dr. Bolen is not a material witness in this procedural hearing as his testimony is not necessary in determining the issues. 8 AAC 45.074(b)(1)(A). The oral order denying Employee's request for a hearing continuance was correct.

3) Should an SIME be ordered?

Employee requested an SIME on February 22, 2019 based upon a dispute between his treating physicians, FNP-C Wurmstein and Dr. Than, versus EME Dr. Hancock. The issues are whether

the work injury is the substantial cause of Employee's disability and need for medical treatment and if so, whether Employee is entitled to TTD and medical treatment. Employee requested an SIME more than 60 days after acquiring the medical report he contended reflected the dispute. 8 AAC 45.092(g)(2). The latest filed medical evidence Employee contends demonstrates a dispute is Dr. Hancock's EME report. Employer filed Dr. Hancock's EME report on May 31, 2018, and Employee requested an SIME 267 days after receiving the EME report (May 31, 2018 through February 22, 2019). Employee requested an SIME more than 60 days after acquiring the medical report he contends reflects the dispute. Therefore, his request for an SIME was not timely. 8 AAC 45.092(g)(2).

Even if a party's request for an SIME is untimely, an SIME may still be ordered if it is necessary. 8 AAC 45.092(g)(3). There are three requirements before an SIME can be ordered under AS 23.30.095(k). First, there must be a medical dispute between an Employee's attending physician and an EME. Second, the dispute must be significant. Third, an SIME physician's opinion would assist the fact-finders in resolving the dispute. Dr. Hancock, the EME, opined the work stress temporarily aggravated Employee's chronic conditions and he was medically stable on December 21, 2016. She recommended treatment "to manage his stress in the context of his chronic conditions." FNP-C Wurmstein restricted Employee from working beginning on November 11, 2016, in her December 1, 2016 letter. She also referred Employee to behavioral health services on December 21, 2016. FNP-C Wurmstein's December 27, 2016 letter does not address Employee's ability to return to work, whether his work is the substantial cause of his need for medical treatment or disability or the date of medical stability. Her August 10, 2017 response agreed with the EME's opinion that Employee reached medical stability in December 2016. An SIME is not intended to give Employee an additional medical opinion at Employer's expense when he disagrees with his own physician's opinion. *Bah*. Dr. DiGiulio did not offer an opinion on whether the work injury was the substantial cause of Employee's disability or need for the psychological treatment. She recommended to reduce his overall stress level and did not address medical stability. On February 2, 2017, Dr. Than stated Employee's hypertension was recently exacerbated by "underlying work stress" and increased his medication. However, Dr. Hancock agreed the employment stressors temporarily aggravated Employee's chronic conditions which included hypertension. Dr. Than did not offer an opinion on whether his work

is the substantial cause of his need for medical treatment or disability, or opine on the date of medical stability. The current medical record demonstrates no medical dispute warranting an SIME. *Seybert*; *Bah*; *Smith*; *Rogers & Babler*.

Employee contends errors in the EME report justify an SIME. However, any errors in the EME report alleged by Employee are of no consequence to the present SIME dispute. AS 23.30.095(k); AS 23.30.135; *Bah*. His arguments go to the weight accorded Dr. Hancock's report at a hearing on the merits of his claims. Given the lack of a medical dispute between Employee's treating physicians and the EME, an SIME will not be ordered. AS 23.30.095(k).

An SIME may also be ordered if there is a significant gap in the medical evidence or a lack of understanding of the medical or scientific evidence preventing the fact-finders from ascertaining the parties' rights and an SIME opinion would assist the factfinders. *Bah*; AS 23.30.110(g). Employee contends he was unable to obtain a medical treatment and an opinion because his employment health insurance was discontinued by the school district in December 2016, his retirement health insurance did not begin until after he was terminated in 2017 and Employer denied all medical treatment and his retirement health insurance requires co-pays, which he cannot afford. Employee did not obtain behavioral or psychological treatment from June 11, 2017, when he saw Dr. DiGiulio at DVR, until January 14, 2019, when he saw Ms. Wiman. While that might be considered a gap in the medical records, it is not significant because it is not likely one that could be resolved by an SIME. *Rogers & Babler*. The purpose of the SIME under AS 23.30.110(g) is not to create a dispute that would warrant an SIME under AS 23.30.095(k).

Employee has other ways to obtain a medical opinion regarding causation, including calling his attending physicians as hearing witnesses, obtaining his attending physicians' deposition or requesting additional examinations or reports. AS 23.30.115; 8 AAC 45.120. An injured worker is also permitted to change his choice of attending physician should his attending physician refuse to provide services. AS 23.30.095(a); 8 AAC 45.082(b)(4)(B).

4) Should Employee's time to request a hearing under AS 23.30.110(c) be extended?

Employee requested his time to request a hearing under AS 23.30.110(c) be extended up to twelve months to allow time to obtain an SIME. If an SIME is ordered or stipulated to, the two-year time period AS 23.30.110(c) may be tolled. Because Employer did not stipulate to an SIME and Employee's request for an SIME was denied above, the parties were not actively in the SIME process. *Aune*; *Turpin*; *McKitrick*; *Snow*; *Narcisse*. Unlike the claimant in *Davis*, Employee explicitly requested an extension of his time to request a hearing on March 11, 2019, before the time period expired. Therefore, his February 22, 2019 request for an SIME did not toll the two-year time period. *Kim*.

Employee contends he needs additional time to prepare for hearing because he is still awaiting discovery material the designee ordered Employer to provide and he has sought sanctions against Employer for noncompliance with a discovery order. He also contends he needed to take a break from his case for several months when he moved from Alaska to Illinois with his wife because the case negatively impacted his health by affecting his blood pressure and he needed to devote his time to the move. Discretion is granted to consider if a claimant's request has merit and whether the employer will be prejudiced if the request is granted. *Kim*. The discovery order was issued May 17, 2018 and the time Employee took a break from the case occurred afterwards from June 22, 2018 through January 9, 2019. Employee bears the burden of establishing by substantial evidence a legal excuse from the AS 23.30.110(c) statutory deadline. *Hessel*. The record contains no medical reports stating his hypertension or psychological condition incapacitated him to such an extent that he was unable to participate in his case's discovery or prepare his case for hearing from June 22, 2018 through January 9, 2019. He failed to provide substantial evidence excusing him from the statutory deadline. *Rogers & Babler*. Employee's time to request a hearing under AS 23.30.110(c) will not be extended.

Employee filed his claim on April 10, 2017. Employer controverted the claim on April 27, 2017. The two-year period to request a hearing or to request an extension of time to make the hearing request began on April 27, 2017. AS 23.30.110(c). Because Employer served the controversion notice on Employee by mail, three days must be added to the two-year period. 8 AAC 45.060(b). The date by which Employee had to request a hearing or to request an extension of

time to make the hearing request was April 30, 2019. AS 23.30.110(c); *Kim*. Employee's March 11, 2019 petition tolled the two-year time period. *Id*. He filed his request for an extension to request a hearing on March 11, 2019, 50 days before his AS 23.30.110(c) deadline. Employee has 50 days from the date this decision and order is issued and served to request a hearing on his claims. *Id*.

Employee has not requested a hearing on his June 17, 2019 petition for sanctions. A prehearing conference will be held on August 22, 2019 to set a hearing on his June 17, 2019 petition. 8 AAC 45.070(b)(3).

CONCLUSIONS OF LAW

1) The oral order granting Employer's petition to quash was correct.
2) The oral order denying Employee's request for a continuance was correct.
3) An SIME should not be ordered.
4) Employee's time to request a hearing under AS 23.30.110(c) should not be extended.

ORDER

1) Employee's February 22, 2019 petition is denied.
2) Employee's March 11, 2019 petition is denied.
3) The parties shall attend a prehearing conference on August 22, 2019 at 10:00 a.m. Alaska Time.
4) Employee will have 50 days from the date of this decision an order to either file an affidavit of readiness for hearing on his April 10, 2017 claim, or to file a petition for an additional time extension meeting the requirements set forth in *Kim*, to include medical evidence to support his assertions he needs more time.

Dated in Juneau, Alaska on August 2, 2019.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Kathryn Setzer, Designated Chair

/s/
Bradley Austin, 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 Robert A. Woolf, employee / claimant v. Bering Strait School District, employer; APEI, insurer / defendants; Case No. 201702574; 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 August 2, 2019.

/s/
Dani Byers, Technician