ALASKA WORKERS' COMPENSATION BOARD

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

MANUEL HERNANDEZ, Employee, Claimant, v. OCEAN BEAUTY SEAFOOD'S, LLC, Employer, and LIBERTY INSURANCE CORPORATION, Insurer, Defendants.	)	INTERLOCUTORY DECISION AND ORDER AWCB Case No. 201711427 AWCB Decision No. 19-0107 Filed with AWCB Anchorage, Alaska on October17, 2019.

Manuel Hernandez' (Employee) petition for a second independent medical evaluation (SIME) was heard on September 18, 2019, in Anchorage, Alaska, a date selected on August 7, 2019. Employee's July 3, 2019 hearing request gave rise to this hearing. Employee appeared, represented himself, and testified. Attorney Krista Schwarting appeared and represented Ocean Beauty Seafood's, LLC (Employer). English is Employee's second language. The designated chair interpreted Spanish for Employee; attempted telephonic interpretation with a hired translator was ineffective, and the parties did not object. An oral order struck Employee's hearing brief as untimely. This decision examines the oral order and decides Employee's SIME petition on its merits. The record closed at the hearing's conclusion on September 18, 2019.

ISSUES

As a preliminary matter, Employer requested Employee's September 16, 2019 brief be stricken because it was not timely filed by September 11, 2019, as ordered in the August 7, 2019 Prehearing Conference Summary.

Employee did not dispute the brief was filed late. An oral order was issued striking his September 16, 2019 brief from the record, meaning it was not considered in resolving the issue presented.

1) **Was the oral order striking Employee's September 16, 2019 brief correct?**

Employee contends there is a significant dispute as to whether Employee is medically stable, and an SIME would assist factfinders in resolving the dispute. He requests an SIME.

Employer contends an SIME is unnecessary because there is no medical dispute. Even if there were a dispute, Employer contends it is not significant because the case can be resolved based on the existing medical records.

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

FINDINGS OF FACT

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

1) On August 7, 2017, Employee injured his upper back pushing a large cart of canned salmon while working for Employer, which also caused inguinal, umbilical, and epigastric hernias. (Medical Summary, Janet Abadir, M.D., report; Kayla Gordon, P.A., report, May 8, 2018).

2) On August 9, 2017, PA Gordon saw Employee, opined he had inguinal hernia and muscular back pain, and restricted him to light duty without heavy lifting. (Medical Summary, Gordon report, June 20, 2018).

3) On September 14, 2017, Wendell Wilmoth, M.D., opined ultrasound imaging showed no inguinal or epigastric hernia. (Medical Summary, Wilmoth report, May 8, 2018).

4) On September 21, 2017, James Bise, M.D., said computerized tomography (CT) showed no acute intra-abdominal or intra-pelvic abnormality. (Medical Summary, Bise report, May 8, 2018).

5) On September 28, 2017, Dr. Abadir, a general surgeon, reviewed inguinal and epigastric ultrasounds and stated, "I actually do see hernias on the ultrasound but they were read as negative. CT abdomen/pelvis shows a possible epigastric hernia with fat in the midline on my review, and a small fat-containing left inguinal hernia, and an umbilical hernia on my review." Dr. Abadir diagnosed Employee with epigastric, umbilical, and bilateral inguinal hernias caused by the work injury. (Medical Summary, Abadir report, May 8, 2018).

6) On October 4, 2017, Employee underwent laparoscopic bilateral inguinal, umbilical, and epigastric hernia repairs. (Medical Summary, Abadir report, May 8, 2018).

7) On October 12, 2017, Dr. Abadir released Employee to regular work without restrictions effective November 1, 2017. (Medical Summary, May 8, 2018).

8) On December 21, 2017, x-rays showed there was no fracture, dislocation, disk narrowing or osteophyte formation in Employee's cervical spine. (Medical Summary, Michael McDonnell, M.D., report, May 8, 2018).

9) On January 9, 2018, Laura Creighton, D.C., opined Employee's neck, thoracic, and low back pain were consistent with the work injury, and she would expect him to make full recovery with two or three treatments. (Medical Summary, Creighton report, May 8, 2018).

10) January 30, 2018, PA Gordon released Employee for full duty. She said Employer should accommodate him as he may have pain flares from trigger points. (Medical Summary, Gordon report, May 8, 2018).

11) On February 13, 2018, a cervical CT showed a nonspecific loss of cervical lordosis, which could have been positional or due to muscle spasm. There were no acute or significant findings in the cervical spine. A thoracic CT was unremarkable. (Medical Summary, Wilmoth report, May 8, 2018).

12) On March 6, 2018, John Koller, M.D., opined it is extremely unusual to develop several hernias on a single event. More likely, Employee had developing hernias, which were aggravated by the work injury. He also said the mechanism of Employee's injury would not produce significant neck pain or injury. Employee reported pain in the mid-thoracic area

between his shoulders; it was muscular in nature. (Medical Summary, Koller report, August 8, 2019).

13) On March 16, 2018, Employee claimed a compensation rate adjustment, an unfair or frivolous controversion finding, and transportation costs. (Workers' Compensation Claim, March 16, 2018).

14) On March 20, 2018, Dr. Koller placed Employee on a 10-day work restriction for his mid-thoracic and low back pain. (Medical Summary, Koller release, March 21, 2018).

15) On April 2, 2018, Employer answered Employee's March 16, 2018 claim, denied it, and asked Employee to file a transportation log so it could determine whether the claimed costs were compensable. (Answer, April 2, 2018).

16) On April 10, 2018, Dr. Koller released Employee to work with a 10-pound lifting restriction. (Medical Summary, Koller release, April 10, 2018).

17) On April 30, 2018, Dr. Koller opined "from a work-comp stand point," Employee's thoracic back strain had resolved. Any residual pain or discomfort could be caused by a previous stab injury. His umbilical hernia was repaired and resolved. Dr. Koller stated Employee was "ripe for return to work [. . .] at light duty with limited hours," but also noted his anxiety, depression, and insomnia might preclude his return to work. (Medical Summary, Koller report, May 8, 2018).

18) On May 4, 2018, Dr. Koller released Employee to work with 20-pound lifting restriction, not to exceed six hours per day for five days, and not to exceed 10 hours per day until May 14, 2018. (Medical Summary, Koller release, June 20, 2018).

19) On June 9, 2018, in response to an inquiry from adjuster Sherrie Arbuckle, Dr. Koller responded:

> "(1) [Employee's] mid-thoracic back strain resolved, and any further pain is attributed to previous impalement in area (pre-existing); (2) hernia (multiple) likely preexisting – unusual to have multiple hernias develop over one incident. However, all are repaired and stable – no further treatment needed. Likely aggravation of previous existing condition (multiple herniation)."

He also stated Employee was released to light duty on May 4, 2018, was medically stable as of May 9, 2018, and will not have any permanent partial impairment from these injuries. (Medical Summary, June 21, 2018).

20) On June 22, 2018, David Bauer, M.D., saw Employee for an employer medical evaluation (EME) and diagnosed him with umbilical, inguinal and epigastric hernias, and thoracic spine strain, which were substantially caused by the August 7, 2017 work injury. He also diagnosed Employee with anxiety unrelated to the work injury. He agreed with Dr. Abadir's opinion that the hernias were caused by the work injury. Dr. Bauer opined Employee had degenerative changes in his spine that existed prior to his work injury; however, no preexisting condition was the substantial cause of his work injury. Further, he found no evidence of any aggravation of a preexisting condition. In his opinion, Employee reached medical stability by January 22, 2018, and did not sustain any impairment. Further treatment would not be reasonable or necessary. Lastly, Dr. Bauer opined Employee is physiologically capable of performing a job he held at the time of injury. Employee's ongoing complaints are probably related to his anxiety and psychological condition. (Medical Summary, Bauer report, July 9, 2018).

21) On June 26, 2018, Employer denied Employee's right to disability and medical benefits for his spine based on Dr. Koller's June 9, 2018 response. (Controversion Notice, June 26, 2018).

22) On July 3, 2018, Employee reported left shoulder pain consistent with probable left shoulder impingement, negatively impacted by poor tolerance for scapular and thoracic muscle activation. (Medical Summary, Roxann White, P.T., report, August 8, 2019).

23) On July 10, 2018, Employee reported his left shoulder had been bothering him more than his back. (Medical Summary, Kalen Pederson, P.T., report, August 8, 2019).

24) On July 5, 2018, Employer denied Employee's right to disability, medical and reemployment benefits based on Dr. Bauer's June 22, 2018 EME report. (Controversion Notice, July 5, 2018).

25) On August 15, 2018, Brady Ulrich, P.A., diagnosed Employee with lumbar spondylosis, cervical spondylosis with left upper extremity radiculopathy, and thoracic spondylosis with right-sided radiculopathy in T10-T12 levels. PA Ulrich opined Employee likely has some component of a cervical or thoracic disk herniation that could be contributing to his symptoms. (Medical Summary, Ulrich report, August 8, 2019).

26) On August 22, 2018, Employee reported having left shoulder pain to William Helmick, P.A., who diagnosed him with left rotator cuff tendonitis and left shoulder bursitis. PA Helmick injected lidocaine and bupivacaine into Employee's left subacromial space. (Medical Summary, Helmick report, August 8, 2019).

27) On September 12, 2018, magnetic resonance imaging (MRI) showed a normal thoracic spine with exception of very slight desiccation and disc space narrowing at T5-6. (Medical Summary, Mark Beck, M.D., report, January 7, 2019).

28) On September 17, 2018, PA Ulrich discussed Employee's September 12, 2018 MRI with Dr. Beck. Soft tissues at T1-4 levels appeared as disruption, scar tissues, and atrophy of the left latissimus dorsi muscle. This finding correlated with Employee's stab wound. PA Ulrich diagnosed left hand paresthesias, thoracic spine pain, chronic left shoulder pain, and latissimus dorsi muscle atrophy. (Medical Summary, Ulrich report, August 8, 2019).

29) On September 25, 2018, Jon Van Ravenswaay, M.D., saw Employee for depressive disorder and migraine. (Medical Summary, Ravenswaay letter, August 8, 2019).

30) On October 11, 2018, Dr. Ravenswaay saw Employee for chronic low back pain and left shoulder pain. (Medical Summary, Ravenswaay letter, August 8, 2019).

31) On October 18, 2018, Dr. Ravenswaay saw Employee for chronic pain, anxiety, and depressive disorder. (Medical Summary, Ravenswaay letter, August 8, 2019).

32) On December 6, 2018, Dr. Ravenswaay saw Employee for depressive disorder, tension-type headache, chronic back pain, and left shoulder pain. (Medical Summary, Ravenswaay letter, August 8, 2019).

33) On December 26, 2018, Employee claimed disability benefits, an unfair or frivolous controversion finding, transportation and medical costs. (Workers' Compensation Claim, March 16, 2018).

34) On January 28, 2019, Employer answered Employee's December 26, 2018 claim denying disability benefits, an unfair or frivolous controversion, medical benefits, and transportation costs. It also denied penalty and interest, which Employee had not claimed. (Answer, January 28, 2019).

35) On January 26, 2019, Dr. Ravenswaay reviewed Employee's medical records from September 28, 2018, through January 26, 2019, and opined his left shoulder injury was work-related, unrelated to a prior stabbing to the left upper back, and "still active." Dr. Ravenswaay did not comment on Employee's thoracic injury. (Medical Summary, Ravenswaay letter, March 7, 2019).

36) On February 4, 2019, Employee asked for an SIME. (Petition, February 4, 2019).

37) On February 13, 2019, Employer denied Employee's right to disability, impairment, medical and reemployment benefits based on Dr. Bauer's June 22, 2018 EME report. (Controversion Notice, February 13, 2019).

38) On February 22, 2019, Employer requested Employee's February 4, 2019 petition be denied contending he failed to (1) demonstrate either his former or current attending physicians disagree with the EME and (2) submit a form setting forth the specific areas of dispute and the physician opinions on each issue pursuant to 8 AAC 45.095(g)(l). (Answer, February 22, 2019).

39) On June 7, 2019, Employer denied Employee's right to disability, impairment, medical and reemployment benefits based on Dr. Bauer's June 22, 2018 EME report. (Controversion Notice, June 7, 2019).

40) On July 3, 2019, Employee requested a hearing on his February 4, 2019 petition. (Affidavit of Readiness for Hearing, July 3, 2019).

41) On August 7, 2019, the parties agreed to an oral hearing on September 18, 2019. They also agreed to "serve and file witness lists, legal memoranda, and evidence in accordance with 8 AAC 45.060, 8 AAC 45.112, 8 AAC 45.114, and 8 AAC 45.120." (Prehearing Summary Conference Summary, August 7, 2019).

42) On September 16, 2019, Employee filed a brief with attachments; it was not timely filed. (Agency file; observation; judgment).

43) On September 16, 2019, Employer objected to late filing of Employee's September 16, 2019 brief. (Objection to Late-Filed Evidence and Briefing, September 16, 2019).

44) At hearing, Employee did not dispute his brief was not timely filed. (Employee).

PRINCIPLES OF LAW

The board may base its decisions not only on direct testimony and other tangible evidence, but also on the board's "experience, judgment, observations, unique or peculiar facts of the case, and inferences drawn from all of the above." *Fairbanks North Star Borough v. Rogers & Babler*, 747 P.2d 528, 533-34 (Alaska 1987).

> **AS 23.30.095. 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 determinations 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. The report of an independent medical examiner shall be furnished to the board and to the parties within 14 days after the examination is concluded. . .
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> **AS 23.30.110. Procedure on claims.**
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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.

The Alaska Workers' Compensation Appeals Commission (AWCAC) in *Bah v. Trident Seafoods Corp*., AWCAC Decision No. 073 (February 27, 2008) addressed the board's authority to order an SIME under AS 23.30.095(k) and AS 23.30.110(g). With regard to AS 23.30.095(k), the AWCAC confirmed "[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." *Id*. 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 prevents the board from ascertaining the rights of the parties and an opinion would help the board. *Id*. at 5. The AWCAC further stated when deciding whether to order an SIME, the board typically considers the following questions, though the statute does not require it:

> (1) Is there a medical dispute between Employee's physician and an EME?
> (2) Is the dispute significant?
> (3) Will an SIME physician's opinion assist the board in resolving the disputes?

> **AS 23.30.122. Credibility of witnesses**. The board has the sole power to determine the credibility of a witness. A finding by the board concerning the

> weight to be accorded a witness's testimony, including medical testimony and reports, is conclusive even if the evidence is conflicting or susceptible to contrary conclusions. The findings of the board are subject to the same standard of review as a jury's finding in a civil action.

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

> **AS 23.30.135. 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 by 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 45.082. Medical treatment**.
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> (b) A physician may be changed as follows:
> . . . .
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> (2) [. . .] an employee . . . designates an attending physician by getting treatment, advice, an opinion, or any type of service from a physician for the injury; if an employee gets service from a physician at a clinic, all the physicians in the same clinic who provide service to the employee are considered the employee's attending physician; an employee does not designate a physician as an attending physician if the employee gets service
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> (A) at a hospital or an emergency care facility;
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> (B) from a physician
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> (i) whose name was given to the employee by the employer and the employee does not designate that physician as the attending physician;
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> (ii) whom the employer directed the employee to see and the employee does not designate that physician as the attending physician; or
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> (iii) whose appointment was set, scheduled, or arranged by the employer, and the employee does not designate that physician as the attending physician. . .
> . . . .
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> (4) regardless of an employee's date of injury, the following is not a change of an attending physician:

(A) the employee moves a distance of 50 miles or more from the attending physician and the employee does not get services from the attending physician after moving; the first physician providing services to the employee after the employee moves is a substitution of physicians and not a change of attending physicians;

(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 employer thereafter is a substitution of physicians and not a change of attending physicians;

(C) the employer suggests, directs, or schedules an appointment with a physician other than the attending physician, the other physician provides services to the employee, and the employee does not designate in writing that physician as the attending physician;

(D) the employee requests in writing that the employer consent to a change of attending physicians, the employer does not give written consent or denial to the employee within 14 days after receiving the request, and thereafter the employee gets services from another physician.

8 AAC 45.092. Second independent medical evaluation.

. . . .

(g) If there exists a medical dispute under in AS 23.30.095(k),

(1) the parties may file a

(A) completed second independent medical form, available from the division, listing the dispute together with copies of the medical records reflecting the dispute, and

(B) stipulation signed by all parties agreeing

(i) upon the type of specialty to perform the evaluation or the physician to perform the evaluation; and

(ii) that either the board or the board's designee determine whether a dispute under AS 23.30.095(k) exists, and requesting the board or the board's designee to exercise discretion under AS 23.30.095(k) and require an evaluation;

(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;
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> > (A) the completed petition must be filed timely together with a completed second independent medical form, available from the division, listing the dispute; and
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> > (B) copies of the medical records reflecting the dispute; or
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> (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
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> > (A) the parties stipulate, in accordance with (1) of this subsection, to the contrary and the board determines the evaluation is necessary; or
> >
> > (B) the board on its own motion determines an evaluation is necessary.
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> **8 AAC 45.114. Legal memoranda.** Except when the board or its designee determines that unusual and extenuating circumstances exist, legal memoranda must
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> > (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. . . .

In *Richard v. Fireman's Fund Insurance Co.*, 384 P.2d 445, 449 (Alaska 1963), the Alaska Supreme Court held the board must assist claimants by advising them of important facts bearing on their case and instructing them how to pursue their right to compensation.

ANALYSIS

1) Was the oral order striking Employee's September 16, 2019 brief correct?

Employee does not dispute his hearing brief was untimely filed. 8 AAC 45.114. His brief contains a narrative of his case, allegations against Employer, and attachments already filed with the division. It could be reproduced at hearing, and striking it from the record would not cause any prejudice to Employee. *Rogers & Babler*. The oral order denying Employee's September 16, 2019 brief was correct, and the brief will not be considered in rendering this decision.

2) Should an SIME be ordered?

Employee asks for an SIME. AS 23.30.095(k). The purpose of an SIME is not to assist either an employee or an employer. *Bah*. When there is a medical dispute between Employee's attending physician and an EME physician, an SIME may be ordered. AS 23.30.095(k). There are three requirements before an SIME can be ordered. *Bah*. 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 factfinders in resolving the dispute. Absent an attending physician's testimony at hearing, the question whether a medical dispute exists is resolved by reviewing medical records or depositions.

a) Is there a medical dispute between Employee's attending physician and an EME?

Employee seeks an SIME relying on his current attending physician, Dr. Ravenswaay's opinion. Employer opposes it relying on Employee's first attending physician, Dr. Koller, whose opinions agree with EME Dr. Bauer's opinions.

To begin, Dr. Koller opined Employee's multiple hernias likely preexisted the work injury because it is "unusual to have multiple hernias develop over one incident." In contrast, Dr. Abadir stated Employee's epigastric, umbilical, and bilateral inguinal hernias were caused by his work injury. Dr. Abadir has first-hand knowledge of Employee's multiple hernias as she performed laparoscopy to repair them. EME Dr. Bauer also agreed with Dr. Abadir and said multiple hernias were caused by the work injury. All doctors seem to agree Employee's multiple hernias were successfully treated without any lingering effect. There is sufficient evidence in the record addressing the hernias; any dispute regarding Employee's hernias can be resolved without an SIME. *Bah*; *Smith*; *Rogers & Babler*.

As for Employee's spinal injury, which allegedly extended to his left shoulder, the parties' doctors are in disagreement. Dr. Koller stated Employee's mid-thoracic back strain was resolved, and any further pain was attributable to an unrelated prior stabbing injury. Dr. Koller said Employee was medically stable as of May 9, 2018, and will not have any permanent partial

impairment as a result of the work injuries. Dr. Bauer said thoracic spine strain was substantially caused by the work injury. He opined Employee had degenerative changes in his spine that existed prior to his work injury; however, no preexisting condition was the substantial cause of his work injury. Dr. Bauer found no evidence of any aggravation of a preexisting condition and said Employee reached medical stability by January 22, 2018, and did not sustain any permanent impairment as a result of the work injury. Dr. Bauer further opined Employee is physiologically capable of performing a job he held at the time of injury, and no further medical treatment would be reasonable and necessary as a result of the work injury. In short, Drs. Koller and Bauer agreed (1) the spinal injury was substantially caused by the work injury, (2) Employee did not sustain any permanent impairment as a result of the work injury, and (3) Employee has reached medical stability. Nevertheless, they disagreed on the date of medical stability.

In addition, medical records indicate Employee reported his left shoulder injury on July 3, 2018, after the June 22, 2018 EME. Neither Drs. Koller nor Bauer has specifically addressed Employee's left shoulder injury. However, Dr. Koller said any further pain was attributable to an unrelated prior stabbing injury; Dr. Bauer said there was no radicular condition in Employee's spine. On July 3, 2018, PT White said Employee has left shoulder pain consistent with probable left shoulder impingement. On July 10, 2018, Employee told PT Pederson his left shoulder had been bothering him more than his back. On August 15, 2018, PA Ulrich diagnosed Employee with lumbar spondylosis, cervical spondylosis with left upper extremity radiculopathy, and thoracic spondylosis with right-sided radiculopathy in the T10-T12 levels. PA Ulrich said Employee likely has some component of a cervical or thoracic disk herniation that could be contributing to his symptoms. On August 22, 2018, PA Helmick diagnosed Employee with left rotator cuff tendonitis and left shoulder bursitis. On September 17, 2018, PA Ulrich discussed Employee's September 12, 2018 MRI with Dr. Beck. Soft tissues at T1-4 levels appeared as disruption, scar tissues, and atrophy of the left latissimus dorsi muscle. Based on this finding, PA Ulrich correlated Employee's left shoulder pain with his prior stab wound and diagnosed left hand paresthesias, thoracic spine pain, chronic left shoulder pain, and latissimus dorsi muscle atrophy. In contrast, Dr. Ravenswaay said Employee's left shoulder injury was work-related and unrelated to a prior stabbing injury to the left upper back, and is "still active." It is not clear what Dr. Ravenswaay meant by "still active." Likely, he meant Employee's left shoulder injury has

not reached medical stability. *Rogers & Babler*. Dr. Ravenswaay did not offer a medical opinion regarding Employee's spinal injury.

In any event, the following disputes or gaps in the medical evidence exist: (1) whether work was the substantial cause of the need to treat Employee's thoracic spine and left shoulder; (2) whether Employee's left shoulder has reached medical stability; and (3) when his spinal injury reached medical stability. An SIME would assist in filling these gaps. AS 23.30.110(g); *Bah*.

b) Is the dispute significant?

Employee seeks disability and medical benefits. Because Employee's entitlement to those benefits depends on whether or not he has a compensable injury, and whether or not he is medically stable, the dispute is significant. *Rogers & Babler*.

c) Will an SIME physician's opinion assist in resolving the dispute?

The parties' doctors are not in agreement on the above described medical facts. *Bah.* An additional medical opinion would aid in resolving the disputes and filling in the medical gaps. *Id*. Therefore, an SIME will be ordered. AS 23.30.095(k); 23.30.110(g).

Lastly, Employer also contends Employee failed to submit a form setting forth the specific areas of dispute and the physicians' opinions on each issue. A request for an SIME will not be denied on that basis because Employee is an unrepresented claimant, Employer had access to all medical reports in this case, and Employer failed to show prejudice. AS 23.30.135; 8 AAC 45.092(g)(3)(B).

Employee is cautioned against making an "unlawful change of physician" as Employer may not pay the bill for the physician's services, and the physician's medical reports may not be considered as evidence for any purpose. AS 23.30.095(a); 8 AAC 45.082(b); *Richard*. The designee will be directed to explain this concept in more detail to Employee at the next prehearing conference.

CONCLUSION OF LAW

1) The oral order striking Employee's September 16, 2019 brief was correct.
2) An SIME should be ordered.

ORDER

1) Employee's February 4, 2019 SIME petition is granted.
2) An SIME is ordered to address left shoulder causation issues and the medical stability date for Employee's spine injury.
3) The parties are directed to appear at a mutually convenient prehearing conference so the designee can begin the SIME record process.
4) The designee is directed to explain to Employee the statute and regulations addressing unlawful changes in his choice of an attending physician, at the next prehearing conference.
5) The designee is also directed to explain the statute of limitations set forth in AS 23.30.110(c) to Employee at the next prehearing conference.

Dated in Anchorage, Alaska on October 17, 2019.

ALASKA WORKERS' COMPENSATION BOARD

/s/
Jung M Yeo, Designated Chair

/s/
Randy Beltz, 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 MANUEL HERNANDEZ, employee / claimant v. OCEAN BEAUTY SEAFOOD'S LLC, employer; LIBERTY INSURANCE CORPORATION, insurer / defendants; Case No. 201711427; 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 October 17, 2019.

/s/
Nenita Farmer, Office Assistant